

ELIZABETH II



1979 CHAPTER xiii

An Act to transfer the Sheffield General Cemetery to the Council of the city of Sheffield, to provide for the removal of restrictions attaching to the cemetery; and for other purposes. [6th December 1979]

WHEREAS—

(1) The city of Sheffield (hereinafter referred to as “the city”) is under the management and local government of the Sheffield City Council (hereinafter referred to as “the Council”):

(2) The Sheffield General Cemetery Company was incorporated by the Sheffield General Cemetery Act 1846 and is now incorporated under the Companies Act 1948 as The Sheffield General Cemetery Company Limited (hereinafter referred to as “the Company”): 1846c.cclxxxiv. 1948 c. 38.

(3) The Company owns the Sheffield General Cemetery (hereinafter referred to as “the cemetery”) within the city and the Company and the Council have agreed that the cemetery should be transferred to the Council:

(4) It is expedient that burials in the cemetery should be discontinued and that powers contained in this Act with respect to the use of the cemetery be enacted:

(5) It is expedient that the other provisions contained in this Act should be enacted:

(6) The objects of this Act cannot be attained without the authority of Parliament:

1972 c. 70. (7) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

(8) Copies of a plan showing the cemetery and a book of reference thereto were duly deposited in the office of the Clerk of the Parliaments, House of Lords, and in the Private Bill Office, House of Commons, and with the Head of Administration and Legal Department of the Council, which plan is in this Act referred to as the deposited plan:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the Sheffield General Cemetery Act 1979.

Interpretation. 2. In this Act, unless the subject or context otherwise requires—

“the cemetery” means the Sheffield General Cemetery in the city comprising the lands and buildings delineated on the deposited plan;

“the city” means the city of Sheffield;

“the Company” means The Sheffield General Cemetery Company Limited;

“the Council” means the Sheffield City Council;

1971 c. 78. “development” has the meaning assigned to it by section 22 of the Town and Country Planning Act 1971 and “develop” shall be construed accordingly;

“memorial” means any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone, tablet, or any other commemorative object placed in the cemetery, but does not include a vault;

“the proprietors” means, in relation to any part of the cemetery, the Council or their successors in title;

1846
c. cclxxxiv. “the 1846 Act” means the Sheffield General Cemetery Act 1846;

and references to a grave shall be construed as including references to a vault.

3. On the passing of this Act the freehold interest in the cemetery shall by virtue of this Act be transferred to and vest in the Council without any deed of conveyance, transfer or other instrument but subject to any private right of way or other easement (not being a right of burial or other right in respect of a grave) over the cemetery, or any part thereof, which attached thereto immediately before the passing of this Act.

Vesting in Council of interest in cemetery.

4. As from the passing of this Act—

- (1) burials in the cemetery shall be wholly discontinued;
- (2) all rights of burial in any part of the cemetery shall be extinguished; and
- (3) the 1846 Act shall cease to apply to the cemetery and the cemetery shall be freed from all trusts, uses, obligations, disabilities, restrictions and the legal consequences of consecration and of having been used or set apart for the interment of human remains; and any interest of a person as personal representative or relative of a person buried in the cemetery shall cease and become extinguished.

Closing of cemetery for burials and discharge of trusts and restrictions affecting cemetery.

5.—(1) Any person being the holder of a grant of the exclusive right of burial in any part of the cemetery granted by the Company prior to the passing of this Act (in this section referred to as “the grantee”) may, within one year after the first publication of the notice referred to in subsection (2) of this section, apply to the Council for a grant of the exclusive right of burial in another cemetery of the Council, and the Council shall on receiving such application grant such exclusive right of burial accordingly for a period of 40 years after the passing of this Act, or for such shorter period as the grantee may require, without further payment by the grantee in consideration for such grant.

Exclusive rights of burial.

(2) As soon as may be after the passing of this Act the Council shall—

- (a) publish a notice stating the effect of the foregoing subsection once in each of two successive weeks in some newspaper circulating in the city, with an interval between the dates of publication of not less than six clear days; and
- (b) display a notice to the said effect in conspicuous positions in the cemetery.

6.—(1) Notwithstanding anything contained in any enactment, but subject to the provisions of this Act, it shall be lawful at any time after the passing of this Act to use, develop, deal with or dispose of the cemetery or any part thereof.

Power to use specified lands.

(2) In the exercise of their powers under subsection (1) of this section and without prejudice to the generality of those powers

or of their powers under section 7 (Removal of human remains) of this Act the proprietors may remove or change the position of any memorial in the cemetery.

(3) (a) The proprietors shall not remove or change the position of any memorial under this section until they have—

- (i) served a notice of their intention to do so upon a personal representative or relative of any deceased person to whom the memorial relates, if after reasonable inquiry the name and address of a personal representative or relative of such person can be ascertained; or
- (ii) if the name and address cannot be ascertained after reasonable inquiry, published a notice of their intention to do so once in each of two successive weeks in some newspaper circulating in the city with an interval between the dates of publication of not less than six clear days and displayed a notice thereof in conspicuous positions in the cemetery.

(b) Each of the notices shall in relation to the grave to which it refers—

- (i) contain brief particulars of the proposals of the proprietors and specify an address at which full particulars of the proposals can be obtained, unless the brief particulars are of proposals incapable of further statement;
- (ii) specify the date on which it is intended that the proprietors will begin to carry out the proposals, which shall be not earlier than three months after the service or the first publication of such notice;
- (iii) state the option available under subsection (4) of this section;
- (iv) set out how a claim to the memorial may be made.

(4) At any time within two months after the service, first publication or commencement of display of such notice, any person who is a personal representative or relative of any deceased person to whom the memorial relates may give notice in writing to the proprietors that if the memorial is to be removed or its position changed, he desires the removal of all remains in the grave and the memorial.

(5) On receipt of a notice under subsection (4) of this section, the proprietors may elect to reverse or confirm their decision to remove or change the position of the memorial to which the notice relates and shall notify their election to the person who gave the notice under subsection (4); if they elect to confirm their decision, the person who gave the notice under subsection (4) shall upon receipt of the notification and subject to subsections (6)

and (7) of this section be at liberty to cause such memorial to be removed and all remains to be removed from the grave and—

- (a) re-interred in such part of such burial ground or cemetery as may be nominated by the proprietors and either cause the memorial to be re-erected there or, if the proprietors so require cause a new one to be erected there bearing the same inscription (if legible) as the original memorial; or
- (b) re-interred in any other burial ground or cemetery in which burials may legally take place and cause the memorial to be re-erected there; or
- (c) cremated in any crematorium;

and forthwith after such re-interment or cremation shall provide to the proprietors such information as they require for the purpose of enabling the proprietors to comply with the provisions of section 9 (Provisions applicable to foregoing sections) of this Act.

(6) If any person giving such notice as aforesaid fails to satisfy the proprietors that he is such personal representative or relative as he claims to be, the question shall be determined on the application of either party by the county court, and the court shall have power to make an order determining whether such person is a personal representative or relative.

(7) If such personal representative or relative does not cause all the remains and the memorial to be removed within the period of two months after receipt of the notification confirming the decision mentioned in subsection (5) of this section or (if an application is made to the county court before the end of the said period of two months) such remains and memorial are not removed within the period of two months after any order made by the county court under subsection (6) of this section such personal representative or relative shall cease to be at liberty to remove the remains and memorial.

(8) If a memorial is removed by the proprietors under this section, they may, after breaking and defacing it, dispose of it in such manner as they think fit.

7.—(1) Before the proprietors begin to use any part of the cemetery for any purpose likely to involve the disturbance of human remains, they shall give notice of their intention to remove, or cause to be removed, from that part of the cemetery the remains of any deceased person found interred therein by—

Removal
of human
remains.

- (a) serving a notice of their intention upon a personal representative or relative of any deceased person whose

remains are interred in that part of the cemetery if after reasonable inquiry the name and address of a personal representative or relative of such person can be ascertained; or

- (b) if the name and address cannot be ascertained after reasonable inquiry publishing a notice of their intention once in each of two successive weeks in a newspaper circulating in the city with an interval between publications of not less than six clear days, and displaying a like notice in conspicuous positions in the cemetery;

and such notice shall have embodied in it the substance of the following provisions of this section.

(2) At any time within two months after the service, first publication or commencement of display of such notice, any person who is a personal representative or relative of any deceased person whose remains are interred in that part of the cemetery may give notice in writing to the proprietors of his intention to undertake the removal of all remains in the grave and thereupon, subject in the case of a Commonwealth war burial to the provisions of subsection (4) of section 11 (For protection of Commonwealth War Graves Commission) of this Act, if such remains can be identified he shall be at liberty subject to subsection (4) of this section to cause all remains to be removed from the grave and re-interred in any burial ground or cemetery in which burials may legally take place or to be removed to and cremated in any crematorium, and forthwith after such re-interment or cremation shall provide to the proprietors a certificate for the purpose of enabling the proprietors to comply with the provisions of section 9 (Provisions applicable to foregoing sections) of this Act.

(3) If any person giving such notice as aforesaid fails to satisfy the proprietors that he is such personal representative or relative as he claims to be, the question shall be determined on the application of either party by the county court, and the court shall have power to make an order empowering that person to remove and re-inter or cremate the remains.

(4) If—

- (a) within the aforesaid period of two months no such notice as aforesaid shall have been given to the proprietors in respect of the remains in any grave; or
- (b) within two months after such notice has been given no application has been made under subsection (3) of this section and the person who gave the notice fails to remove all the remains; or

- (c) within two months after any order is made by the county court under the said subsection the person empowered by the order to remove the remains fails to do so;

such personal representative or relative shall cease to be at liberty to remove the remains and the proprietors shall be at liberty to remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the proprietors think suitable for the purpose.

(5) (a) Subject to the provisions of this subsection, where the remains of a deceased person are removed and re-interred by the proprietors under subsection (4) of this section the proprietors shall, at their expense, either—

- (i) remove and re-erect any memorial relating to the deceased person; or
- (ii) remove such memorial and erect a new one, bearing the same inscription (if legible) as the original memorial;

at the place of re-interment of such remains or at such place in the city as the county court may direct on the application either of such personal representative or relative as aforesaid, or of the proprietors.

(b) Any memorial not re-erected in accordance with the provisions of paragraph (a) of this subsection shall be broken and defaced before being disposed of in such manner as the proprietors think fit.

(c) The proprietors shall not be required under this subsection to remove or re-erect any memorial built into or forming part of a building in the cemetery unless and until that building is demolished.

(d) In this subsection references to re-erection mean placing a memorial in any position in which any words inscribed thereon are visible.

8.—(1) (a) Before the proprietors, in pursuance of their powers Inaccessible graves. in section 6 (Power to use specified lands) of this Act, carry out any work on any part of the cemetery which does not necessitate the disturbance of the remains of any deceased person but which will render inaccessible the grave of any deceased person interred in such part, they shall, in accordance with the provisions of this section, give notice that the grave will become inaccessible by publishing a notice in manner provided in paragraph (b) of this subsection in a newspaper circulating in the city and shall display a like notice in conspicuous places in the cemetery, and shall serve a copy of such notice on a personal representative or relative of any deceased person whose remains were interred in such grave within 25 years before the first publication of such notice, in so far as the name and address of such personal representative or relative can be ascertained on reasonable inquiry.

(b) The notice referred to in paragraph (a) of this subsection shall have embodied in it the substance of subsections (2) to (5) of this section and shall be published in each of two successive weeks.

(2) At any time within two months after the service, first publication or commencement of display of such notice, any person who is a personal representative or relative of any deceased person whose remains are interred in such grave may give notice in writing to the proprietors of his intention to undertake the removal of all remains in the grave and thereupon if such remains can be identified he shall be at liberty subject to subsection (4) of this section to cause all remains to be removed from the grave and re-interred in any burial ground or cemetery in which interments may legally take place or to be removed to and cremated in any crematorium, and forthwith after such re-interment or cremation shall provide to the proprietors a certificate for the purpose of enabling the proprietors to comply with the provisions of section 9 (Provisions applicable to foregoing sections) of this Act.

(3) If any person giving such notice as aforesaid fails to satisfy the proprietors that he is such personal representative or relative as he claims to be, the question shall be determined on the application of either party by the county court which shall have power to make an order empowering that person to remove and re-inter or cremate the remains.

(4) If—

- (a) within the aforesaid period of two months no such notice as aforesaid shall have been given to the proprietors in respect of the remains in any grave; or
- (b) within two months after such notice has been given no application has been made under subsection (3) of this section and the person giving the notice fails to remove all the remains; or
- (c) within two months after any order is made by the county court under the said subsection, the person empowered by the order to remove the remains fails to do so;

such personal representative or relative shall cease to be at liberty to remove the remains and the proprietors may proceed with any work in pursuance of their powers in section 6 (Power to use specified lands) of this Act that will render such grave inaccessible.

(5) The proprietors shall cause a record to be made of every grave rendered inaccessible by them in the exercise of their powers under section 6 (Power to use specified lands) of this Act containing a copy of any legible inscription on any tombstone on such grave.

(6) In this section "inaccessible" means in relation to any grave that the site of any such grave is not capable of being reached by persons on foot.

9.—(1) Upon the removal of remains from the cemetery a certificate of removal and re-interment or cremation shall be sent to the Registrar General by the proprietors giving the date of re-interment and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, showing the particulars of each removal separately. Provisions applicable to foregoing sections.

(2) The removal of the remains of any deceased person under this Act shall be carried out in accordance—

(a) with any directions that may be given by the Secretary of State; and

(b) subject thereto, where the religion of the deceased person is known, with the requirements of that religion.

(3) Any question arising under subsection (4) of section 6 (Power to use specified lands), subsection (2) of section 7 (Removal of human remains) or subsection (2) of section 8 (Inaccessible graves) of this Act between any persons claiming to be personal representatives or relatives of a deceased person shall on the application of any of them or of the proprietors be determined by the county court and any jurisdiction or powers conferred on the county court by this Act may be exercised by the registrar of the court.

(4) Where a person causes the remains to be removed from a grave under subsection (2) of section 7 (Removal of human remains) or subsection (2) of section 8 (Inaccessible graves) of this Act and re-interred, he may remove any memorial relating to the deceased person and re-erect it, or, if the place of re-interment is a cemetery of the proprietors and they so require, erect a new one bearing the same inscription (if legible) as the original memorial, at the place of re-interment of such remains and shall thereupon give the proprietors such information as they may require to enable them to comply with the provisions of this section.

(5) Where a person causes the remains to be removed from a grave under subsection (5) of section 6 (Power to use specified lands), subsection (2) of section 7 (Removal of human remains) or subsection (2) of section 8 (Inaccessible graves) of this Act and cremated—

(a) he may at any time before the expiration of six weeks after the removal cause any memorial relating to the deceased person to be removed from the cemetery and

shall thereupon give the proprietors such information as they may require to enable them to comply with the provisions of this section; and

- (b) if the cremation takes place at a crematorium of the proprietors, they shall cause a suitable entry to be recorded in any book of remembrance maintained at that crematorium.

(6) The expenses of removal and re-interment or cremation of remains and of the removal or the removal and re-erection of any memorial by a personal representative or relative under any of the foregoing provisions of this Act shall be defrayed by the proprietors up to £50 or, if it is greater, the sum which it would have cost the proprietors to have removed and re-interred or cremated those remains in the city and removed or removed and re-erected that memorial in the city if the personal representative or relative had not done so.

(7) The proprietors shall cause a record to be made of each memorial taken from the cemetery or otherwise disposed of under section 6 (Power to use specified lands), section 7 (Removal of human remains) or section 8 (Inaccessible graves) of this Act containing—

- (a) a copy of the inscription thereon; and
 (b) if it is intended to preserve the memorial, a statement naming the place to which it has been taken or where it has been re-erected;

and shall deposit a copy of the record with the Registrar General.

Enactments
not to apply
to cemetery.
1972 c. 70.

10. The cemetery shall be deemed not to be within the expression “cemetery” for the purposes of section 214 of the Local Government Act 1972 and orders, regulations and rules made thereunder.

For protection
of Common-
wealth War
Graves
Commission.

11.—(1) In this section—

“the Commission” means the Commonwealth War Graves Commission;

“Commonwealth war burial” means a burial of any officer or man of the naval, military or air forces of His Majesty fallen in the war of 1914 to 1921 or in the war of 1939 to 1947.

(2) If a person claiming to be a personal representative or relative of the deceased person gives notice to the proprietors pursuant to subsection (4) of section 6 (Power to use specified lands) or subsection (2) of section 8 (Inaccessible graves) of this

Act that he desires the removal of a Commonwealth war burial then the proprietors shall forthwith send to the Commission a copy of that notice.

(3) Upon the removal of a Commonwealth war burial the proprietors shall send to the Commission a copy of the certificate in respect of that removal sent to the Registrar General in accordance with the requirements of subsection (1) of section 9 (Provisions applicable to foregoing sections) of this Act.

(4) In the event of the exercise of the powers of section 7 (Removal of human remains) of this Act then—

(a) the proprietors shall not later than the date upon which any such notice as is referred to in subsection (1) of the said section 7 is first published in a newspaper circulating in the city serve a copy of such notice upon the Commission; and

(b) if it is agreed between the proprietors and the Commission that, in relation to any work proposed to be carried out by the proprietors on any part of the cemetery, there is no practicable alternative other than for a Commonwealth war burial to be removed, then subject to the proprietors complying with the provisions of the said section 7 the removal of the remains shall be carried out in accordance with such arrangements and to such place of re-interment as shall be agreed between the Commission and the proprietors and any personal representative or relative who has given a notice to the proprietors in accordance with the provisions of subsection (2) of that section:

Provided that in default of agreement between the parties for any of the purposes of this paragraph any difference shall be referred to the Secretary of State for determination and effect shall be given thereto accordingly.

(5) Notwithstanding the provisions of subsection (3) of section 4 (Closing of cemetery for burials and discharge of trusts and restrictions affecting cemetery) of this Act the provisions of clause (a) of a deed of covenant dated 26th February 1965 made between the Company of the one part and the Commission of the other part (for the protection of 37 graves in the cemetery containing 39 Commonwealth war burials) shall be as binding and of as full force and effect in every respect in favour of the Commission and against the proprietors and may be enforced as fully and effectually as if, instead of the Company, the proprietors had been a party to that deed of covenant and bound thereby.

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Sheffield General Cemetery Act 1979

CHAPTER xiii

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