

## 1974 No. 628

**BURIAL, ENGLAND AND WALES****The Local Authorities' Cemeteries Order 1974**

<i>Made</i> - - - -	12th March 1974
<i>Laid before the House of Commons</i>	18th March 1974
<i>Laid before the House of Lords</i>	20th March 1974
<i>Coming into Operation</i>	1st April 1974

The Secretary of State for the Environment, in relation to England, and the Secretary of State for Wales, in relation to Wales, after consultation with associations appearing to them to be representative of local authorities and with other bodies appearing to them to be concerned, in exercise of the powers conferred upon them by section 214(3) of the Local Government Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following order:—

*Title and commencement*

1. This order may be cited as the Local Authorities' Cemeteries Order 1974 and shall come into operation on 1st April 1974 or on the day following the day on which it has been approved by a resolution of each House of Parliament, whichever is the later.

*Interpretation*

2.—(1) The Interpretation Act 1889(b) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(2) In this order, unless the context otherwise requires—

“the Act” means the Local Government Act 1972;

“bishop” means, in relation to any ecclesiastical district or place not subject to the jurisdiction of a bishop, the authority known to the law of the Church of England as “the ordinary”;

“burial” includes—

(a) the interment of cremated human remains;

(b) the interment of the bodies of still-born children or of the cremated remains thereof; and

(c) burial in a vault;

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(a) 1972 c. 70.

(b) 1889 c. 63.

“burial authority” means the council of a district, London borough, parish or community, the Common Council of the City of London, the parish meeting of a parish having no parish council, whether separate or common or a joint board established under section 6 of the Public Health Act 1936(a) or by or under any local Act to exercise the functions conferred by section 214 of, and Schedule 26 to, the Act or by any enactment replaced by those provisions;

“cemetery” means a cemetery provided and maintained by a burial authority;

“consecration” means consecration according to the rites of the Church of England, and cognate expressions shall be construed accordingly;

“tombstone” includes kerbs;

“Wales” means the area consisting of the counties established by section 20 of the Act (new local government areas in Wales), and “England” does not include any area included in any of those counties; and

“the Welsh Church Act” means the Welsh Church Act 1914(b), and “the area subject to the Welsh Church Act” means the area in which the Church of England was disestablished by the Act.

(3) Any reference in this order to a chapel provided as mentioned in article 6(1)(b) includes a reference to any chapel provided under any enactment replaced by that provision.

(4) For the purposes of this order, subject to the provisions thereof, any power or right to provide anything includes a power or right to maintain it.

(5) For the purposes of this order any railings surrounding a grave, vault, tombstone or other memorial shall be treated as forming part thereof.

(6) In this order, unless the context otherwise requires, references to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment or by this order.

#### *General powers of management*

3.—(1) Subject to the provisions of this order, a burial authority may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery.

(2) Nothing in paragraph (1) shall be construed as authorising—

(a) any action in relation to any chapel provided as mentioned in article 6(1)(b) below; or

(b) any action in relation to any tombstone or other memorial other than action which is necessary to remove a danger which arises by reason of the condition of the tombstone or other memorial itself.

#### *Layout, repair and access*

4.—(1) A burial authority may enclose, lay out and embellish a cemetery in such manner as they think fit, and from time to time improve it, and shall keep

(a) 1936 c. 49.

(b) 1914 c. 91.

the cemetery in good order and repair, together with all buildings, walls and fences thereon and other buildings provided for use therewith.

Nothing in this paragraph shall be construed as requiring any action in relation to any chapel provided as mentioned in article 6(1)(b) below.

(2) Schedule 1 to this order shall have effect with respect to the provision of access to cemeteries.

*Consecration, and setting apart for particular denominations*

5.—(1) Subject to paragraphs (2) and (3) below, a burial authority may if they think fit—

(a) apply to the bishop of the diocese in which a cemetery is situated for the consecration of any part thereof;

(b) set apart for the use of a particular denomination or religious body any part of a cemetery which has not been consecrated.

(2) A burial authority in exercising the powers conferred by paragraph (1) above shall satisfy themselves that a sufficient part of the cemetery remains unconsecrated and not set apart for the use of denominations or religious bodies.

(3) Paragraph (1)(a) above does not apply to cemeteries within the area subject to the Welsh Church Act, and any part of such a cemetery which was consecrated before the end of March 1920, or in respect of which a ceremony of consecration has been performed since that time in accordance with the rites of the Church in Wales, shall be treated for the purposes of this order as having been set apart for the use of that Church (and as not having been consecrated).

(4) A burial authority shall mark off any consecrated part of a cemetery in such manner as they consider suitable.

(5) Notwithstanding the consecration or the setting apart for the use of a particular Christian denomination of the part of a cemetery in which any body is to be buried the burial may take place without any religious service or with such Christian and orderly religious service at the grave, conducted by such person or persons, as the person having the charge of or being responsible for the burial may think fit.

(6) A burial authority may at the request of a particular denomination or religious body prohibit the interring or scattering of cremated human remains in or over a part of the cemetery set apart for their use.

(7) Burials in the consecrated part of a cemetery shall be registered in the same way and subject to the same provisions as burials in the unconsecrated part.

*Provision of chapels*

6.—(1) A burial authority may provide chapels as follows—

(a) on any part of a cemetery which is not consecrated or set apart for the use of a particular denomination or religious body, they may provide any chapel which they consider necessary for the due performance of funeral services, and

(b) on any part of a cemetery which is consecrated or so set apart, they may, subject to paragraph (3) below, provide a chapel for the performance of funeral services according to the rites of the Church of England or other denomination or religious body.

(2) A chapel provided on any part of a cemetery which is neither consecrated nor set apart for the use of a particular denomination or religious body shall not itself be consecrated or reserved for such a use.

(3) A burial authority may provide a chapel as mentioned in paragraph (1)(b) above only at the request of members of the Church of England or other denomination or religious body, and out of funds provided for the purpose otherwise than by the authority; and the authority shall not be required to maintain any chapel so provided except so far as funds provided otherwise than by them are available for that purpose.

(4) At the request of persons appearing to them to be representative of the members of the Church of England or other denomination or religious body at whose request a chapel was provided under paragraph (1)(b) above or under any enactment replaced by that provision, a burial authority may make such chapel available for funeral services according to the rites of any other such body or for the due performance of any funeral services.

(5) Where the cemeteries of any two authorities adjoin each other, the authorities may agree to exercise their powers under paragraph (1) above by providing jointly, on either cemetery or partly on one and partly on the other, one chapel to be used in connection with both cemeteries in accordance with the terms of the agreement.

(6) A burial authority may furnish and equip their chapels in such manner as they think proper, but, in the case of one provided on consecrated ground or on ground set apart for the use of a particular denomination or religious body, only out of funds provided for the purpose otherwise than by the authority.

(7) Where a chapel provided under paragraph (1)(b) above or under any enactment replaced by that provision becomes dangerous, a burial authority may take such action, including removal, in relation thereto as they consider proper.

#### *Provision of mortuaries and biers*

7.—(1) A burial authority may if they think fit provide a mortuary for use in connection with a cemetery, and may furnish and equip any mortuary so provided in such manner as they think proper.

(2) A burial authority may provide biers, and such other things as they consider necessary or desirable, for use in connection with burials taking place in a cemetery.

#### *Arrangements for sharing of facilities*

8.—(1) A burial authority may enter into such agreements as they think fit for—

(a) the use in connection with burials taking place in a cemetery of chapels, mortuaries, biers and other things provided by persons other than the authority, or

- (b) the use in connection with burials taking place in other places of burial, or in connection with cremations, of any chapel, mortuary, bier or other thing provided for use in connection with burials taking place in the cemetery.

Nothing in this paragraph shall be construed as authorising any action in relation to any chapel provided as mentioned in article 6(1)(b) above.

- (2) An agreement under this article may include terms as to the services of any staff employed in connection with the subject matter of the agreement.

*Grant of burial rights and rights to erect memorials, and agreements for maintenance of graves and memorials*

9.—(1) A burial authority may grant, on such terms and subject to such conditions as they think proper—

- (a) to any person—
- (i) the exclusive right of burial in any grave space or grave, or the right to construct a walled grave or vault together with the exclusive right of burial therein; or
  - (ii) the right to one or more burials in any grave space or grave which is not subject to any exclusive right of burial;
- (b) to the owner of a right described in (a)(i) or (ii) (or to any person who satisfies them that he is a relative of a person buried in the grave, walled grave or vault, or is acting at the request of the person first mentioned, and that it is impractical for such relative to trace the owner of the right so described), the right to place and maintain, or to put any additional inscription on, a tombstone or other memorial on the grave space, grave, walled grave or vault in respect of which the right so described subsists;
- (c) to any person, the right to place and maintain a memorial in a cemetery otherwise than on a grave space, grave, walled grave or vault in respect of which a right described in (a)(i) has been granted, but—
- (i) in the case of a memorial to be placed in a chapel provided under article 6(1)(b) above or under any enactment replaced by that provision, only at the request of persons appearing to the burial authority to be representative of the Church of England or other denomination or religious body at whose request the chapel was provided; and
  - (ii) in the case of any other memorial being an additional inscription on an existing memorial, only with the consent of the owner of the right to place and maintain such existing memorial.

(2) A right under paragraph (1) above shall subsist for the period specified in the grant, being a period beginning with the date of the grant and not exceeding 100 years.

(3) A burial authority may from time to time extend the period of any grant under subsection (1) above or under any enactment replaced by that provision (subject if they think fit, to any modification of its terms or conditions) for up to 100 years from the date on which the extension is granted.

(4) No body shall be buried, or cremated human remains interred or scattered, in or over any grave, walled grave or vault in which an exclusive right of burial for the time being subsists except by or with the consent in writing of the owner of the right.

(5) A burial authority shall also have power to agree with any person, on such terms and subject to such conditions as they think proper, to maintain any grave, vault, tombstone or other memorial in a cemetery for a period not exceeding 100 years from the date of the agreement.

Any agreement under section 1(1)(a) of the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970(a) shall have effect as if it had been entered into under this paragraph.

(6) Rights granted under paragraph (1) above or under enactments replaced by that paragraph shall be exercisable subject to and in accordance with the provisions of Part I of Schedule 2 to this order. The provisions of Part II of that Schedule shall have effect with respect to grants under paragraph (1) above and with respect to the registration of, and other matters concerning, rights granted under that paragraph or under enactments replaced by that paragraph. The provisions of Part III of the said Schedule shall have effect for the purpose of enabling a burial authority to terminate certain rights and agreements entered into before 1st April 1974.

*Right of bishop to object to inscriptions in consecrated parts*

**10.** A bishop of the Church of England shall, as respects the consecrated part of any cemetery (including any chapel thereon), have the same rights of objecting to, and procuring the removal of, any inscription on a tombstone or other memorial placed, or intended to be placed, therein as he has in the case of churches of the Church of England and the churchyards belonging thereto.

*Rites of Church of England*

**11.—(1)** The incumbent of an ecclesiastical parish situated wholly or partly in an area chargeable with the expenses of a cemetery shall, with respect to members of the Church of England who are his own parishioners or who die in his parish, where he is requested to do so, be under the same obligation to perform funeral services in the consecrated part, if any, of the cemetery as he has to perform funeral services in any churchyard of the ecclesiastical parish.

(2) This article does not apply to a cemetery in the area subject to the Welsh Church Act.

*Fees and other charges*

**12.—(1)** Subject to the provisions of this article a burial authority may charge such fees as they think proper—

- (a) for or in connection with burials in a cemetery;
- (b) for any grant of a right to place a tombstone or other memorial in a cemetery otherwise than in a chapel provided as mentioned in article 6(1) (b) above; or
- (c) for any grant of a right to put an additional inscription on such a tombstone or other memorial.

In determining the fees to be charged the burial authority shall take into account the effect of any resolution under section 147(3) of, or under paragraph 6 of Schedule 26 to, the Act.

(2) Fees collected by a burial authority in respect of services rendered by any minister of religion or sexton acting at the request of the authority shall be paid by the authority to the minister of religion or sexton.

(3) A burial authority shall keep a table showing the matters in respect of which fees or other charges are payable to them, and the amount of each such fee or charge, and the table shall be available for inspection by the public at all reasonable times.

(4) No fee shall be payable to an incumbent of an ecclesiastical parish in respect of any burial in a cemetery, or in respect of any other matter connected with a cemetery, except for services rendered by him; and no fee shall be paid to any clerk or other ecclesiastical officer in respect of burial in a cemetery except for services rendered by him.

*Cost of removal of unauthorised memorials*

13. If a burial authority remove from a cemetery any tombstone or other memorial placed therein otherwise than in the exercise of a right granted by, or otherwise with the approval of, the burial authority or any predecessor of theirs, the burial authority may recover the cost thereby incurred by them—

- (a) from the person to whose order the tombstone or memorial was placed;
- (b) within two years from the placing of the tombstone or memorial, from the personal representative of such person,

as a simple contract debt in any court of competent jurisdiction.

*Offences in cemeteries*

14.—(1) No person shall—

- (a) wilfully create any disturbance in a cemetery;
- (b) commit any nuisance in a cemetery;
- (c) wilfully interfere with any burial taking place in a cemetery;
- (d) wilfully interfere with any grave, walled grave or vault, any tombstone or other memorial, or any flowers or plants on any such matter; or
- (e) play at any game or sport in a cemetery.

(2) No person not being an officer or servant of the burial authority or another person so authorised by or on behalf of the burial authority shall enter or remain in a cemetery at any hour when it is closed to the public.

*Penalties*

15. Every person who contravenes—

- (a) any prohibition under article 5(6) above;
- (b) article 9(4) above;
- (c) article 14 above;
- (d) Part I of Schedule 2 to this order,

shall be liable on summary conviction to a fine not exceeding £20 and in the case of a continuing offence to a fine not exceeding £5 for each day during which the offence continues after conviction therefor.

*Commonwealth War Graves Commission*

**16.—(1)** In this article “the Commission” means the Commonwealth War Graves Commission.

(2) A burial authority may grant to the Commission the right to provide any structure or any tree, plant, path or other feature.

(3) Nothing in article 3 above shall be construed as authorising any action in relation to any tombstone or other memorial, any structure or any tree, plant, path or other feature provided by the Commission, except with the consent of the Commission.

(4) In the application of article 9 to the Commission—

the words “and not exceeding 100 years” in paragraph (2);

the words “for up to 100 years from the date on which the extension is granted” in paragraph (3);

the words “for a period not exceeding 100 years from the date of the agreement” in paragraph 5

shall not have effect.

(5) Part III of Schedule 2 to this order shall not apply to the Commission.

*Repeals*

**17.** The enactments specified in Schedule 3 to this order are hereby repealed to the extent mentioned in that Schedule except in their application to the Isles of Scilly.

*General saving*

**18.** Nothing in this order shall be construed as authorising the disturbance of human remains.

## Article 4

## SCHEDULE 1

## ACCESS TO CEMETERIES

1. A burial authority may construct such roads to a cemetery as they think fit and, subject to the next following paragraph, may widen or otherwise improve any road leading to a cemetery or giving access to such a road.

2. A burial authority shall not widen or otherwise improve any road which is not vested in them except with the consent of the highway authority or other person in whom it is vested.

3. A burial authority shall be responsible as such for maintaining in a proper state of repair any road constructed by them or any predecessor of theirs, not being a highway which is for the time being maintainable at the public expense.

## Article 9

## SCHEDULE 2

BURIAL RIGHTS, RIGHTS TO ERECT MEMORIALS, AND AGREEMENTS  
FOR MAINTENANCE OF GRAVES AND MEMORIALS

## PART I

## EXERCISE OF RIGHTS

1. No burial shall take place, no cremated human remains shall be scattered and no tombstone or other memorial shall be placed in a cemetery, and no additional



inscription shall be made on a tombstone or other memorial, without the permission of the officer appointed for that purpose by the burial authority.

2. No body shall be buried in a grave in such a manner that any part of the coffin is less than three feet below the level of any ground adjoining the grave:

Provided that the burial authority may, where they consider the soil to be of suitable character, permit a coffin made of perishable materials to be placed not less than two feet below the level of any ground adjoining the grave.

3. No body shall be buried in a grave unless the coffin is effectively separated from any coffin interred in the grave on a previous occasion by means of a layer of earth not less than six inches thick.

4. When any grave is reopened for the purpose of making another burial therein, no person shall disturb any human remains interred therein or remove therefrom any soil which is offensive.

5. Every walled grave or vault shall be properly constructed of suitable materials.

6. Within 24 hours of any burial in a walled grave or vault, the coffin shall be—  
(a) embedded in concrete, and covered with a layer of concrete not less than six inches thick; or

(b) enclosed in a separate cell or compartment of slate, stone flagging or precast concrete slabs of a 1: 2: 4 mix, in any case not less than two inches thick, in such a manner as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or compartment.

7. Any person to whose order a body is buried in a grave in respect of which an exclusive right of burial has been granted shall, as soon as conveniently may be after the subsidence of the earth has been completed, cause the surface of the grave to be covered with any tombstone or other memorial in respect of which a right has been granted by the burial authority or any predecessor of theirs, or with fresh turf, or, where the burial authority permits, with such flowers and shrubs, or in such other manner, as may be permitted.

## PART II

### PROVISION AS TO GRANTS AND MATTERS CONCERNING RIGHTS

1.—(1) A grant under article 9 of this order shall be in writing signed by the officer appointed for that purpose by the burial authority.

(2) Any extension of the period of such a grant shall also be in writing signed by such an officer.

2.—(1) A burial authority shall—

(a) maintain a register of all rights granted by them or any predecessor of theirs under article 9, which shall show as respects each such right the date on which it was granted, the name and address of the grantee, the consideration for the grant, the place in which it is exercisable and its duration; and

(b) subject to the provision of section 229 of the Act, preserve registers of the rights granted under section 33 of the Burial Act 1852(a), section 40 of the Cemeteries Clauses Act 1847(b), or a corresponding provision in any local Act, transferred to them by the Local Authorities (England) (Property etc.) Order 1973(c) or the Local Authorities (Wales) (Property etc.) Order 1973(d).

(2) A burial authority shall also maintain a plan of any cemetery, showing and allocating a distinguishing number to each place which is subject to a right so granted,

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(a) 1852 c. 85.

(c) S.I. 1973/1861 (1973 III, p. 6401).

(b) 1847 c. 65.

(d) S.I. 1973/1863 (1973 III, p. 6452).

and a book, setting out the numbers so allocated and specifying in relation to each the name and address of the grantee of the right.

3. Rights to which paragraph 2(1) above applies may be assigned by deed or bequeathed by will.

4. A person to whom any such right is assigned or transmitted shall not be entitled to its exercise until he has notified the assignment or transmission to the burial authority in writing, and, subject to such investigation as they think proper, the authority shall record particulars of the notification in the register under this Schedule.

5. A burial authority may charge such fees as they think proper for the making of searches in, and the provision of certified copies of entries in, a register under this Schedule, and the register shall at all reasonable times be available for inspection by any person free of charge.

### PART III

#### DETERMINATION OF RIGHTS AND AGREEMENTS FOR PERIODS EXCEEDING 100 YEARS

1.—(1) This paragraph applies to the following rights and agreements granted or entered into by a burial authority or any predecessor of theirs at a time before this order came into operation—

(a) any right granted in perpetuity, or for a period exceeding 100 years from the date of the grant, under a provision falling within paragraph 2(1)(b) of Part II above, and

(b) any agreement to maintain a grave, vault, tombstone or other memorial in a cemetery either in perpetuity or for a period ending more than 100 years after the date of the agreement.

(2) Where any right to which this paragraph applies has not been exercised during the period of 100 years beginning with the date on which it was granted, the burial authority may at any time thereafter serve notice on the owner of the right of its liability to determination under this paragraph, and the right shall determine by virtue of the notice unless, within 6 months of the date of service, the owner notifies the authority in writing of his intention to retain it.

(3) In the case of any agreement to which this paragraph applies, the burial authority may at any time after the period of 100 years beginning with the date of the agreement serve a like notice on the person entitled to its benefit, and the agreement shall determine by virtue of the notice unless, within 6 months of the date of service, that person notifies the authority in writing of his intention that the agreement should continue in force.

(4) Where a burial authority are entitled to serve a notice under sub-paragraph (2) or (3) above in respect of any right or agreement, but are unable after reasonable inquiry to trace the owner of the right or, as the case may be, the person entitled to the benefit of the agreement, they may instead—

(a) display the notice in a conspicuous position in the cemetery, and

(b) publish the notice in two successive weeks in one or more newspapers circulating in their area and, if the cemetery is situated outside their area and it is not practicable to select a newspaper circulating both in that area and in the locality of the cemetery, in the same two weeks in one or more newspapers circulating in the locality of the cemetery,

and the sub-paragraph in question shall then have effect as if the notice had been duly served thereunder on the date on which it was first published pursuant to item (b) of this sub-paragraph.

## SCHEDULE 3

## Article 17

## REPEAL OF ENACTMENTS

(1) Chapter	(2) Short Title	(3) Extent of Repeal
43 & 44 Vict. c. 41	The Burial Laws Amendment Act 1880	In section 1 the words from "The word 'graveyard'" to the end of the section. In section 10 the words from "or in the case of any burial ground" to "burials in such burial ground or cemetery" and the words "or of such burial ground or cemetery" and "or other such person as aforesaid". In section 12 the words "vested in any burial board, or".
63 & 64 Vict. c. 15	The Burial Act 1900	Sections 1, 2 and 7 to 11.
1970 c. 29	The Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970	In section 1(1), sub-paragraph (a) and the words "grave, vault, tombstone".
1972 c. 70	The Local Government Act 1972	In Schedule 26, paragraphs 12, 13 and 18 to 23, and in paragraph 25 the words "the Burial Act 1900 and".

12th March 1974.

*Anthony Crosland,*  
Secretary of State for the Environment.

12th March 1974.

*John Morris,*  
Secretary of State for Wales.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

Section 214(3) of the Local Government Act 1972 provides that provision may be made by Order for the management, regulation and control of the cemeteries of local authorities. This Order contains such provision. In accordance with section 214(4) of the Act, this Order was approved by a resolution of the House of Commons on 25th March 1974 and a resolution of the House of Lords on 28th March 1974. It therefore has effect from 1st April 1974.

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