

SCHEDULE 3

Article 16

REMOVAL OF MEMORIALS AND LEVELLING, ETC

Restrictions on exercise of powers

1. The powers described in article 16(2) shall not be exercisable—
 - (a) contrary to the terms of the agreement, in respect of any grave, vault, tombstone or other memorial which the burial authority are bound by agreement to maintain;
 - (b) within the period of the grant or of any extension thereof, in respect of any tombstone or other memorial placed in the cemetery in pursuance of a grant made after the coming into operation of this order;
 - (c) within the period of the grant or of any extension thereof, except where a reservation as to the exercise of powers under any local enactment was made on the making of the grant, in respect of any tombstone or other memorial placed in the cemetery in pursuance of a grant made under the order of 1974;
 - (d) in respect of any other tombstone or other memorial placed in the cemetery (otherwise than under a permission expressed to be revocable) within the 20 years preceding the first publication of the notice required by paragraph 3,

except with the consent in writing of the person entitled to the benefit of the agreement to maintain, the owner of the right to place and maintain the tombstone or other memorial or the person granted permission to place the tombstone or other memorial.

2. The said powers shall not be exercisable in relation to any building of special architectural or historic interest included in a list compiled or approved under section 54 of the Town and Country Planning Act 1971 unless the works have been authorised under section 55(2) of that Act.

Notification of exercise of powers

3. Before exercising the powers described in article 16(2) the burial authority shall—
 - (a) display a notice of their intention to do so in conspicuous positions at the entrances to the cemetery and if the powers are to be exercised only in any area of the cemetery in conspicuous positions in or adjoining such area;
 - (b) publish the notice in two successive weeks in the newspaper or newspapers which in their opinion would secure the best publicity in the area served by the cemetery;
 - (c) where the area of the cemetery in which the powers are to be exercised, or any part thereof, has been consecrated or set apart for the use of a particular denomination or religious body, notify the rural dean or persons representative of the particular denomination or religious body, and where such dean or persons within the 3 months following the notification make any representations to them, consider such representations with them; and
 - (d) if they have not already done so, comply with article 20(5).

4. Before exercising the said powers in respect of any grave on which there is a tombstone or other memorial the burial authority shall, in the circumstances in which this paragraph applies, subject to paragraph 6, serve copies of the said notice and of paragraphs 9, 10, 12, 15, 17 and 18 on the owner of the right to place and maintain it or (if they have a record of his name and address) on the person granted permission to place it.

The circumstances in which this paragraph applies are where—

- a burial in the grave has taken place;

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the right to place and maintain, or the permission to place, the tombstone or other memorial has been granted or renewed;

the right, or permission, to place any additional inscription on the tombstone or other memorial has been granted; or

notification of any assignment or transmission of the right to place and maintain the tombstone or other memorial, or of the address of the owner of such right or of the person granted permission to place it, has been given,

within the 30 years preceding the first display of the notice under paragraph 3.

5. Before exercising the powers described in article 16(2)(c) in respect of any other grave the burial authority shall, in the circumstances in which this paragraph applies, subject to paragraph 6, serve copies of the said notice and of paragraphs 11, 14, 17 and 19 on the owner of the right described in article 10(1)(a)(i) or (ii) in respect of the grave.

The circumstances in which this paragraph applies are where—

a burial in the grave has been made in exercise of the right described in article 10(1)(a)(i) or (ii); or

notification of any assignment or transmission of such right, or of the address of the owner thereof, has been given,

within the 30 years preceding the first display of the notice under paragraph 3.

6. Paragraph 4 or 5 shall not apply in relation to any owner or person where the specified circumstances exist in respect of him.

7. The said notice shall—

(a) contain brief particulars of the proposals and unless the proposals are incapable of further statement specify an address at which further particulars are obtainable free of charge;

(b) specify a date before which the carrying out of the proposals will not be commenced, being a date not less than 3 months following the completion of the action required by paragraph 3; and

(c) indicate that particulars as to—

(i) the objections which can be made to the proposals;

(ii) requests for the re-erection of tombstones or other memorials; and

(iii) the removal of tombstones and other memorials,

are obtainable free of charge from a specified address.

Objections

8. The burial authority shall consider all objections made to the proposals.

9. If notice of objection, and of the grounds thereof, to the proposals in respect of any tombstone or other memorial placed and maintained on a grave in pursuance of a right is given—

by the owner of such right; or

by a relative of any person buried in the grave,

to the burial authority before the date specified in the notice under paragraph 3, the proposals shall not be carried out in respect of that tombstone or other memorial unless the objection is withdrawn:

Provided that if the burial authority consider that the grave has been long neglected they may make representations to the Secretary of State, and, if the Secretary of State approves, the proposals may

be carried out in respect of the tombstone or other memorial after the expiration of two months after notification of the Secretary of State's approval by the burial authority to the objector.

10. If notice of objection, and of the grounds thereof, to the proposals in respect of any tombstone or other memorial placed on a grave in the exercise of a permission not expressed to be revocable is given—

- by the person to whom permission was granted; or
- by a relative of any person commemorated by the memorial,

to the burial authority before the date specified in the notice under paragraph 3, the proposals shall not be carried out in respect of that tombstone or other memorial unless the objection is withdrawn:

Provided that the burial authority may make representations to the Secretary of State, and, if the Secretary of State approves, the proposals may be carried out in respect of the tombstone or other memorial after the expiration of two months after notification of the Secretary of State's approval by the burial authority to the objector.

11. If notice of objection, and of the grounds thereof, to the levelling of any grave not included in paragraph 9 or 10 in exercise of the powers set out in article 16(2)(c) is given—

- by the owner of a right described in article 10(1)(a)(i) or (ii) in respect of the grave; or
- by a relative of any person buried in the grave,

to the burial authority before the date specified in the notice under paragraph 3, the grave shall not be levelled unless the objection is withdrawn:

Provided that the burial authority may make representations to the Secretary of State, and, if the Secretary of State approves, the grave may be levelled after the expiration of two months after notification of the Secretary of State's approval by the burial authority to the objector.

Removal of tombstones

12. Where the burial authority propose to re-erect at another place in the cemetery or elsewhere, or to remove from the cemetery and destroy, any tombstone or other memorial, not being a tombstone or other memorial provided by the Commonwealth War Graves Commission, the owner of the right to place and maintain, or the person granted permission to place, the tombstone or other memorial may, whether or not he gives notice of objection under paragraph 9 or 10, claim the tombstone or other memorial. A claim under this paragraph shall be made before the date specified in the notice under paragraph 3 or, where the tombstone or other memorial is to be removed with the approval of the Secretary of State, within the period of two months after the notification required by paragraph 9 or 10.

The tombstone or other memorial shall be removed by the person claiming it at such date as may be arranged between such person and the burial authority or if the burial authority give notice to such person that it has been removed from the ground or dismantled, and is available for removal from the cemetery, within one month of such notice.

Identification of graves

13. Before levelling the surface of any grave or removing any tombstone or other memorial or other identification from a grave, the burial authority shall ensure that the situation of the grave is shown in the plan required by article 9.

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Identification marks and substitute memorials

14. In respect of any grave levelled by them in exercise of the powers set out in article 16(2)(c), the burial authority may, and shall if so requested in writing by—

- the owner of a right described in article 10(1)(a)(i) or (ii) in respect of the grave, or
- a relative of any person buried in the grave,

within a year of the date specified in the notice under paragraph 3 (whether such owner or relative made objection under paragraph 11 or not), provide at their own expense such identification mark as they consider adequate.

15. Where the burial authority remove from a grave either the whole of an existing tombstone or other memorial or the part thereof containing any material particulars they may, and shall if so requested by—

- the owner of the right to place and maintain, or the person granted permission (not expressed to be revocable) to place, the tombstone or other memorial, or
- a relative of any person buried in the grave,

within a year of the date specified in the notice under paragraph 3 (whether such owner or relative made objection under paragraph 9 or 10 or not), place on the grave at their own expense such memorial stone or tablet as they consider suitable.

Records of memorials

16. The burial authority shall make and keep—

- (a) a record of the tombstones and other memorials removed from graves, showing whether they have been destroyed or re-erected by them in the cemetery or elsewhere and if so re-erected of the positions in which they have been re-erected; and
- (b) a photographic or other record of all legible inscriptions on the tombstones and other memorials destroyed.

Interpretation

17. In this Schedule, “relative” means , in relation to any person buried in a grave—

- a husband or wife;
- a child or grandchild;
- a grandparent;
- a parent or step-parent;
- a brother or sister or half-brother or half-sister;
- an uncle or aunt or a child thereof.

In the application of this paragraph, an adopted person to whom sub-paragraphs (1) and (2) of paragraph 3 of Schedule 1 to the Children Act 1975 did not apply shall be treated as if the said paragraphs had applied to him.

18. In this Schedule, any reference to a permission to place a memorial includes a permission granted by the burial authority or any predecessors of theirs, and any reference to the person granted such a permission includes a reference to his personal representatives.

19. In paragraphs 5, 11 and 14, any reference to a right described in article 10(1)(a)(i) or (ii) includes a reference to any right granted under sub-paragraph (a) of article 9(1) of the order of 1974 or any enactment replaced by that sub-paragraph.

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General saving

20. Nothing in article 16(2) or this Schedule shall affect any right described in article 10(1)(a) (i) or (ii).