

# Technical Guidance on the Re-Use and Reclamation of Graves in London Local Authority Cemeteries



**October 2013**

London Environment Directors Network (LEDNET)  
Cemeteries, Crematoria and Burials Provision (CCBP) Sub-Group

## Acknowledgement

The production of this guidance has been made possible thanks to the contributions of all the stakeholders and contributors who have provided insight, guidance and feedback to the authors. Particular thanks are given to officers of the Commonwealth War Graves Commission, the Environment Agency, The Muslim Council of Britain, Brent Council, Enfield Council, the London Borough of Sutton, Southwark Council, and the Islington and Camden Cemetery Service.

This document has been co-ordinated and produced by Harrison Design Development Ltd on behalf of the Cemeteries, Crematoria and Burials Provision (CCBP) Sub-Group of the London Environment Directors Network (LEDNET) with inputs from the Cemetery Research Group (University of York) and the Institute of Cemetery and Crematorium Management and the City of London Cemetery.



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## **EXECUTIVE SUMMARY**

### **Background**

Burial Authorities in London have the legal capacity to re-use graves in certain defined circumstances, as prescribed by legislation. Despite a critical shortage of burial space in the capital very few authorities are making use of that legal provision, and that may be in part due to the fact that, for many boroughs, some of the issues surrounding re-use are seen as problematic.

### **What is Re Use ?**

Re-use involves burial in graves previously used for burials, at depths where it may be necessary to disturb human remains. Under *section 74 of the London Local Authorities Act 2007* re-use may take place in *private graves* (i.e. with exclusive 'private' rights) where those graves are at least 75 years old, and subject to those rights having been cancelled under *Section 9 of the Greater London (General Powers) Act 1976*. Re-use of private graves involves what has been termed a '*lift and deepen*' approach, in which any remains encountered are exhumed and re-interred in the same grave, at a greater depth.

Re-use may also take place in old *public graves* (common graves) where no rights have been granted. This may occur only in consecrated land, and with permission from the church (known as a '*Faculty*') in accordance with *Section 25 of the Burial Act 1857*. This form of re-use involves disinterment of any remains encountered from one consecrated grave and their re-burial in another consecrated grave (i.e. '*lift and re-inter*' approach).

Other circumstances in which used (or unused) graves are used for burial *without disturbing remains* is known as '*reclamation*'. The re-use or reclamation of a memorial is a separate process to the re-use or reclamation of the grave but may take place at the same time.

### **Scope of this Guidance**

The purpose of this document is to explain the key principles involved in re-use. It sets out guidance on the application of the legislation, on methods and procedures, and on the terminology involved. It applies only to municipal cemeteries which have been established under the Burial Acts managed by Burial Authorities within Greater London (and not those outside London). The guidance addresses a range of considerations, as set out below.

### **Planning and Timetabling Re-use**

Developing new burial capacity can be technically and politically complicated, and is likely to take time to plan and deliver. The guidance advises that each Authority will need first to understand existing and potential burial capacity and projected demand for burial within

their cemeteries and then timetable and plan ahead accordingly so as to make provision, before capacity becomes critical.

### **Legislative Framework**

The guide explains the legal basis for re-use and reclamation in London and some of the restrictions and constraints in the application of the 1976 and 2007 legislation. Some cemeteries are subject to specific enactments and Councils should check with their own legal officers as to the precise interpretation and application of the legislation. The relevance of certain planning and environmental legislation is also explained

### **Development of a Strategic Approach to Re-use**

The guidance sets out the benefits of developing and working to a '*Cemetery Strategy*', which it suggests, should be formally adopted by the Council. Advice is given on developing a strategy and considerations such as the age-structure of burial areas, plot sizes, memorial types, infrastructure, and faith issues are explained. Re-use should be founded on a good understanding of the historic, cultural and landscape value of cemeteries and so the process of *Conservation Management Planning* is also addressed.

### **Consecrated Burial Areas, Faculty Processes and Working with the Diocese**

The Church of England generally views the re-use of graves in a favourable light. The type and method of re-use chosen will depend on whether certain burial areas are consecrated or not, as noted above. Understanding the pattern of consecration, making reference to burial registers and archival research is therefore essential. Guidance is given on this aspect along with advice on the approach to seeking a Faculty.

### **Communication**

The development of a *Communication Plan* by which to formally consult with officers, councillors and other stakeholders (as well as the public and the press) is considered essential.

### **Summary**

The Parliamentary Select Committee of 2001 concluded that "*If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave re-use.*" This guidance, developed in close collaboration with the Institute of Cemetery and Crematorium Management, aims to inform the reader on a range of legal, technical, practical and administrative aspects surrounding re-use so as to help make the planning and implementation of re-use more achievable for London Burial Authorities.

## Contents

<b>1.0</b>	<b>Introduction</b>	
1.1	Technical Guidance for Re-Use	..... 1
1.2	What is Re-Use?	..... 1
1.3	Scope of this Guidance	..... 3
<b>2.0</b>	<b>Process and Timing</b>	
2.1	Audit Existing Burial Provision and Planning Ahead	..... 6
2.2	Process and Timetabling for Re-use and Reclamation	..... 6
<b>3.0</b>	<b>Legislative Context: Greater London</b>	
3.1	The Legislation	..... 9
3.2	Burial Act 1857, s25 and the Ministry of Justice Application of the Act	..... 12
3.3	Reclaiming Graves <i>Greater London Council (General Powers) Act 1976</i>	..... 13
3.4	Re-Use of Graves - <i>London Local Authorities Act 2007</i>	..... 14
3.5	Other Acts Relevant to Re-Use and Reclamation	..... 17
3.6	Borough, Corporation or Cemetery -Specific Legislation	..... 19
3.7	Re-Use Under Faculty	..... 19
3.8	Cremated Remains - Legal Status	..... 20
3.9	Planning and Environmental Legislation	..... 21
<b>4.0</b>	<b>Consecration</b>	
4.1	Background: Reason for Consecration	..... 28
4.2	Consecration Under Burial Acts; and the Public Health (Interment) Act 1879	..... 28
4.3	Defining Consecrated Areas	..... 30
4.4	Sentences of Consecration	..... 30
4.5	Areas Set Aside for Specified Denominations	..... 31
4.6	Evidence of Consecration	..... 31
4.7	Re-Use of Consecrated Areas for other Faiths	..... 31

<b>5.0</b>	<b>Working with the Diocese</b>	
5.1	What is a Diocese?	..... 32
5.2	What is a Faculty?	..... 33
5.3	The Church of England and the Re-Use of Graves	..... 34
5.4	Applying for Faculty	..... 35
5.5	Diocesan Requirements	..... 36
<b>6.0</b>	<b>Deciding a Re-Use Strategy</b>	
6.1	Developing a Strategy	..... 37
6.2	Understanding Key Characteristics of the Cemetery	..... 38
6.3	Above Ground Assessment	..... 39
6.4	Understanding Age Structure of Burials	..... 42
6.5	Below Ground Assessment	..... 42
6.6	Re-Use of Graves in Public Consecrated Areas	..... 44
6.7	Approaches to Re-Use: Area by Area or Grave by Grave	..... 45
<b>7.0</b>	<b>Age Structure</b>	
7.1	Deciding an Appropriate Age of Last Burial	..... 46
7.2	Factors to Consider	..... 46
7.3	Assessing Age Structure from Burial Records	..... 51
7.4	Progressing Re-Use Where Burial Records are Problematic	..... 52
<b>8.0</b>	<b>Conservation Management Planning</b>	
8.1	Character Based Approach	..... 55
8.2	Development of the Cemetery, Patterns of Consecration	..... 57
8.3	Burial Uses, Layouts and Arrangements	..... 58
8.4	Assessments of Funerary Monuments and Sculptures	..... 58
8.5	Cultural and Biographical Heritage Assessment	..... 59
8.6	Landscape Design	..... 60
8.7	Architecture and Structures	..... 60
8.8	Nature Conservation Assessment	..... 61
8.9	Arboricultural Assessments	..... 62
8.10	Amenity and Open Space, Public Use and Value	..... 63

<b>9.0</b>	<b>Communication Plan</b>	
9.1	Developing a Communication Plan	..... 65
9.2	Funeral Directors	..... 66
9.3	The Press	..... 67
9.4	The Public	..... 67
<b>10.0</b>	<b>Preparing for Re-Use and Reclamation</b>	
10.1	Administrative Preparation	..... 69
10.2	Monument Recording	..... 72
10.3	Recording of Graves and Plots	..... 72
10.4	Monument Clearance	..... 73
10.5	Infrastructure	..... 76
10.6	Vegetation and Planting	..... 78
<b>11.0</b>	<b>Administration of Re-Use and Reclamation</b>	
11.1	Notification for Reclamation and Re-Use Under the 1976 and 2007 Acts	..... 79
11.2	Notification for Reclaiming Reserved/ Pre-Purchased Graves under LACO (1977)	..... 80
11.3	Notice Procedures – Re-Use of Public Graves Under Faculty	..... 81
11.4	General Advice	..... 81
<b>12.0</b>	<b>Technicalities of Re-Use</b>	
12.1	Recording and Archiving Pre-Implementation	..... 82
12.2	New Burial Layouts	..... 83
12.3	Re-Use – Opening	..... 91
12.4	Designated Graves for Re-Interment	..... 92
12.5	Handling and Storage of Memorials	..... 93
12.6	Disposal of Memorials	..... 94
12.7	Devising Ethical Standards for Handling Remains and Artefacts	..... 94
12.8	Staff Training	..... 97
12.9	Health and Safety	..... 98
12.10	Memorial Panel Process	..... 99
12.11	Integration of Re-Use into Existing Provision	..... 102

## List of Figures / Boxes / Plates

Figure 1.1	Illustration of Re-use and Reclamation	.....	5
Figure 2.1	Existing Audit Data: Capacity Status of London Boroughs	.....	7
Figure 2.2	General Process Requirements	.....	8
Figure 3.1	Legislative Process	.....	10
Figure 12.1	Re- Use of Private Graves: Typical Historic Plots	.....	87
Figure 12.2	Re- Use of Private Graves: Small Historic Plots	.....	88
Figure 12.3	Re- Use of Private Graves: Very Short Historic Plots	.....	89
Figure 12.4	Re- Use of Private Graves: Very Narrow Historic Plots	.....	90
Box 1.1	Principles of Re-use	.....	2
Box 3.1	Re-use and Reclamation by Grave Types	.....	11
Box 3.2	General Legislative Context	.....	12
Box 5.1:	Which Diocese Are You In?	.....	32
Box 5.2	Diocese of Southwark Statement on Re-use	.....	34
Box 7.1	Date of Re-use, Age and Date of Last Burial	.....	47
Box 7.2	Example of Assessment of Age of Last Burial and Date of Re-Use	.....	50
Box 12.1	Re-Use Process, Public Graves City of London	.....	91
Box 12.2	Burial Depths	.....	92
Box 12.3	Basis of Ethics Statement	.....	95
Box 12.4	Example Grave Re-use Protocol City of London Cemetery.....	.....	96
Plate 1.1	Heritage Areas: City of London		
Plate 12.1	Re-Use of Public Graves Under Faculty	.....	84
Plate 12.2	Restoration, Reversal, Re-inscription of Monuments: City Of London	.....	101



## Appendices

Appendix 1.1	Glossary
Appendix 3.1	Excerpt 1857 Burial Act
Appendix 3.2	Local Authorities Cemetery Order (LACO) 1977
Appendix 3.3	Greater London (General Powers) Act 1976 Section 9
Appendix 3.3	London Local Authorities Act 2007 Section 74
Appendix 5.1	Example Documentation: Faculty Application
Appendix 7.1	Typical Burial Records
Appendix 8.1	Conservation Management Plan: Typical Headings
Appendix 10.1	Typical Heritage Memorial Area Regulations
Appendix 11.1	Notice of Extinguishing Rights under 1976 Act
Appendix 11.2	Notice of Extinguishing Rights under 1976 Act and Re-Use under 2007 Act
Appendix 11.3	Letter: For use with Notice of Extinguishing Rights under 1976 Act
Appendix 11.4	Letter: For use with Notice of Extinguishing Rights under 1976 Act and Re-Use under 2007 Act
Appendix 11.5	Notice of Extinguishing Rights in Reserved Graves under LACO
Appendix 11.6	Letter: For use with Notice of Extinguishing Rights in Reserved Graves under LACO
Appendix 11.7	Notice of Re-use of Public Graves under Faculty
Appendix 12.1	Heritage Panel Process: Memorial Assessment Categories And Criteria.
Appendix 12.2	ICCM: Policy Relating to Shallow Depth Graves.
Appendix 12.3	Faith Considerations – Re-used and Reclaimed Graves

***Plate 1.1 Heritage Areas: City of London***



***Heritage Areas: City of London***



***Private areas previously part cleared being considered for reclamation and/or re-use***

## **1.0 Introduction**

### **1.1 Technical Guidance for Re-Use**

1.1.1 Burial Authorities in London have the legal capacity to re-use graves in certain defined circumstances. The purpose of this handbook is to provide guidance on the application, methods and procedures of re-use.

1.1.2 Re-use can only take place in certain conditions and following certain procedures prescribed by legislation. No two cemeteries are the same, and Burial Authorities operate in different circumstances. There is therefore a degree of discretion as to how to go about the process and, as re-use becomes more widespread, it is envisaged that further evidence on best-practice will develop.

1.1.3 The legislation is different inside and outside Greater London and this guidance only therefore applies within municipal cemeteries run by Burial Authorities in Greater London.

### **1.2 What is Re-Use?**

1.2.1 Re-use involves burial in graves previously used for burials (but at least 75 years previously), at depths where it may be necessary to disturb human remains. Re-use may take place in:

- Private Graves (certain graves where exclusive rights of interment have previously been granted and subject to cancellation of those rights and fulfilment of certain legal procedures).
- Public Graves (also known as common, un-purchased or paupers graves, albeit the latter term is now considered inappropriate) where situated in consecrated land, but only under certain circumstances, and subject to permission from the church authorities.

1.2.2 Key principles of re-use are as set out in Box 1.1 below.

### **Box 1.1 Principles of Re-Use**

- Graves will not be re-used until a period of at least seventy-five years has elapsed since the last burial took place.
- Burial Authorities will consult with the owner of the burial rights, where contact details are available, and other relevant stakeholders before re-use of a particular grave takes place.
- Re-use will take place only where a conservation assessment exercise has assessed the impact of re-use on the historic, cultural, and environmental features of the site. In the case of sites with historical designations, a full Conservation Management Plan will be prepared.
- Burial Authorities will introduce and follow clear notification, objection and appeals procedures with regard to re-use plans for individual graves.
- Records will be retained of all prior interments in a re-used grave.
- A record will be taken of all above-ground grave furniture prior to any removal or re-use, in addition to a full transcription being made of any inscription or monumental mason mark.
- Due respect will be afforded human remains at all times during the process of exhumation and reburial.
- Any artefact whether precious or not will be re-interred with the disturbed remains.
- Before a new grave is sold, the public will be told whether the grave is a re-used grave.
- The presumption remains that re-use programmes should, where possible, restore and conserve existing memorials.
- Where an old memorial has been leased on a re-used grave, the grave owners become the *custodian* of the memorial and will take responsibility to maintain the memorial for the period of the burial right.
- Re-use of plots and memorials takes place strictly in accordance with a Memorial Panel process and with this Protocol

## ***Reclamation and Other Processes***

1.2.3 Within each Burial Authority, re-use is likely to take place as part of a wider strategy for cemetery development concerned with extending burial provision (Section 6.0). A number of other processes may be relevant to these strategies, and there is sometimes confusion and/or misunderstanding as to the different processes and terminology involved. The Glossary (Appendix 1.1) sets out some useful terms. In particular:

- *Reclamation* refers to burial into *unused space* (depth) in graves where the last interment was at least 75 years prior to the new burial. Generally this involves the cancellation of private burial rights where previously held on those graves, and removal of any memorial. Because of the limited depth over existing burials, reclamation often involves only a single new burial per grave.
- *Reclamation* is also used to refer to burial within private plots previously purchased in reserve where there has been no previous burial and where any rights over that plot have been extinguished.
- *Reclamation* is also sometimes used to refer to burial over Public graves where there is sufficient depth to conduct new burials without disturbance of existing remains (usually because of an accumulation of topsoil that may have occurred historically over Public graves).

1.2.4 Re-use or reclamation of a memorial is separate to, and not to be confused with, the re-use or reclamation of the grave. *Re-inscription* is a better term to describe the process of taking an existing memorial, refurbishing it and re-inscribing it with the details of the new burial. This may potentially be by reversing the headstone in-situ and retaining the old inscription to the rear, or making use of the existing memorial in another location altogether.

1.2.5 A simple illustration of the re-use process which also illustrates reclamation is given at Figure 1.1

## **1.3 Scope of this Guidance**

1.3.1 Given the legal framework (section 3.0) this guidance applies to:

- the process of re-use of graves;

- Burial Authorities within Greater London (and is not applicable outside London) (Figure 2.1);
- municipal cemeteries which have been established under the Burial Acts.

1.3.2 This guidance does not apply to:

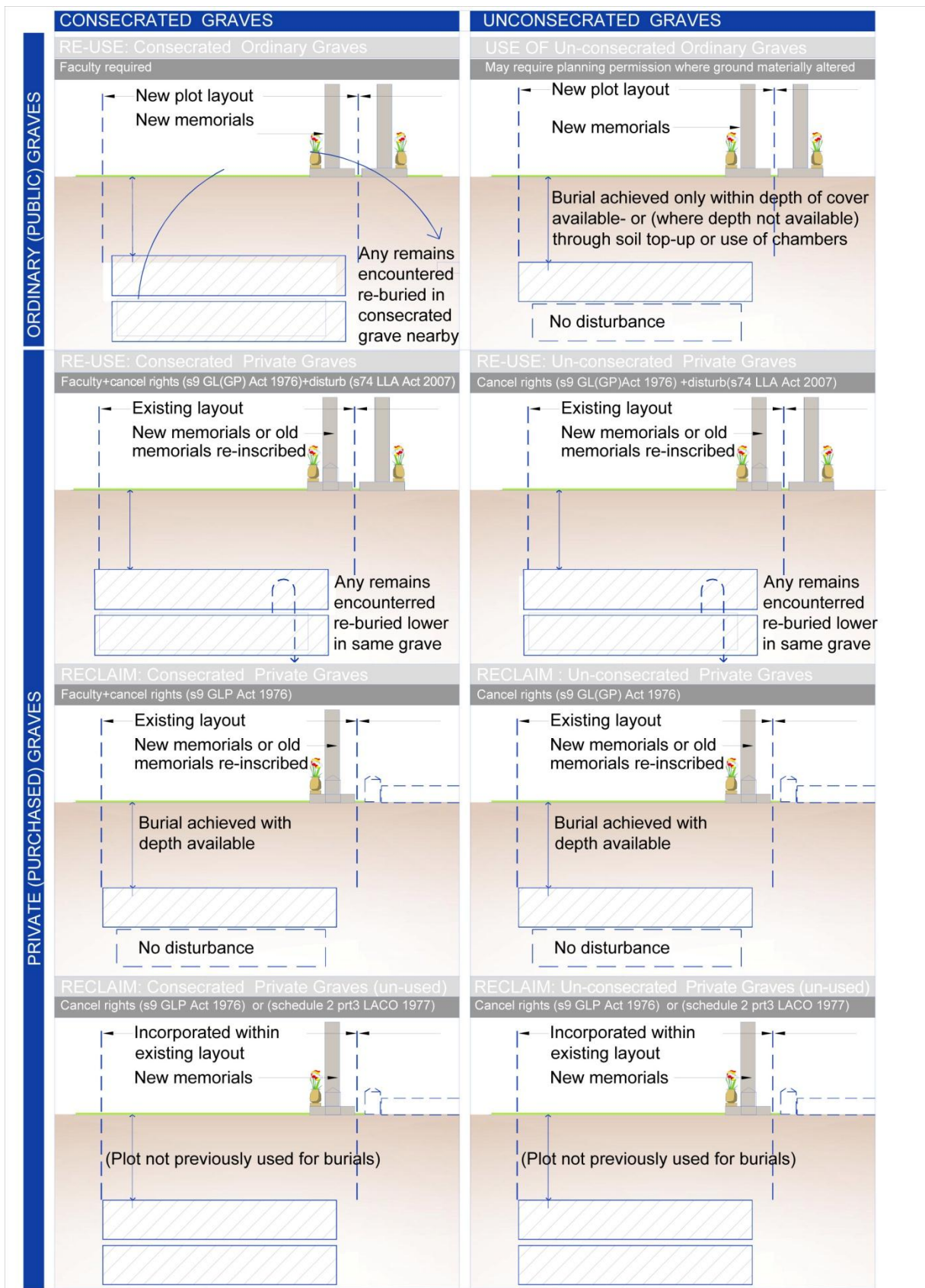
- private cemeteries that have their own acts of parliament;
- cemeteries established prior to the Burial Act of 1852.

1.3.3 Not all municipal cemeteries were established under the Burial Acts. A number of cemeteries were laid out by local authorities under the Public Health (Interment) Act 1879, which was less prescriptive with regard to the amount of land required to be consecrated. These cemeteries are covered by guidance in this document. However, some cemeteries may have site-specific legal restrictions or covenants. It is incumbent upon each authority to check particular legal circumstances and/or the application of the legal framework to their own cemetery or cemeteries.

1.3.4 The scope of this guidance extends to address:

- the general approach to planning and timetabling for re-use;
- the legislative framework and the application of that framework;
- the implications of consecrated burial areas, and working with the local Diocese;
- the development of a strategic approach to re-use within a cemetery;
- the implications of age structure of graves and burial areas;
- historic, cultural and environmental concerns including Conservation Management Planning;
- communicating strategies for re-use;
- preparation of burial areas for re-use;
- administration and technicalities of re-use;
- integration of re-use into existing provision.

**Figure 1.1 Illustration of Re-use and Reclamation**



## **2.0 Process and Timing**

### **2.1 Auditing Existing Burial Provision and Planning Ahead**

- 2.1.1 The Cemetery Research Group Audit of London Burial Provision (March 2011) commissioned by the Greater London Authority highlighted that in many London Boroughs there is a critical shortage of burial space and that in many areas capacity is likely to be exhausted in the coming decade. In order to plan ahead, each Authority will need to understand the existing, projected, and potential burial capacity within their cemeteries and landholdings by completing an audit of existing supply against likely future demand.
- 2.1.2 Creating new burial capacity within (or adjacent to) existing cemetery landholdings may involve preparatory works and/or new infrastructure which may in turn be dependent on funding, planning and other factors. The political will to create graves (especially in areas where burial was not initially intended) may not always be strong. Given these factors, auditing future capacity is not necessarily straightforward.
- 2.1.3 Having conducted an initial audit it may be necessary to research and develop a cemetery strategy (see section 6.0) investigating the different options, capacities and costs. Clearly for many Authorities it is only by investing in new capacity that revenue can be sustained, and without that revenue the long term maintenance of cemetery landholdings will become a liability. The formal adoption of a cemetery strategy by the relevant council committee gives more certainty of delivery and funding.

### **2.2 Process and Timetabling for Re-use and Reclamation**

- 2.2.1 The planning and delivery of a strategy takes time. Securing diocesan permissions; assessing site capability and planning applications can take several months. The procedures and notifications for both reclamation and re-use are best conducted over a period of at least a year. Planning for and introducing grave re-use should therefore be embarked upon at least 2 to 3 years before capacity becomes critical so that all the necessary preparations can be made in advance of re-use becoming necessary.



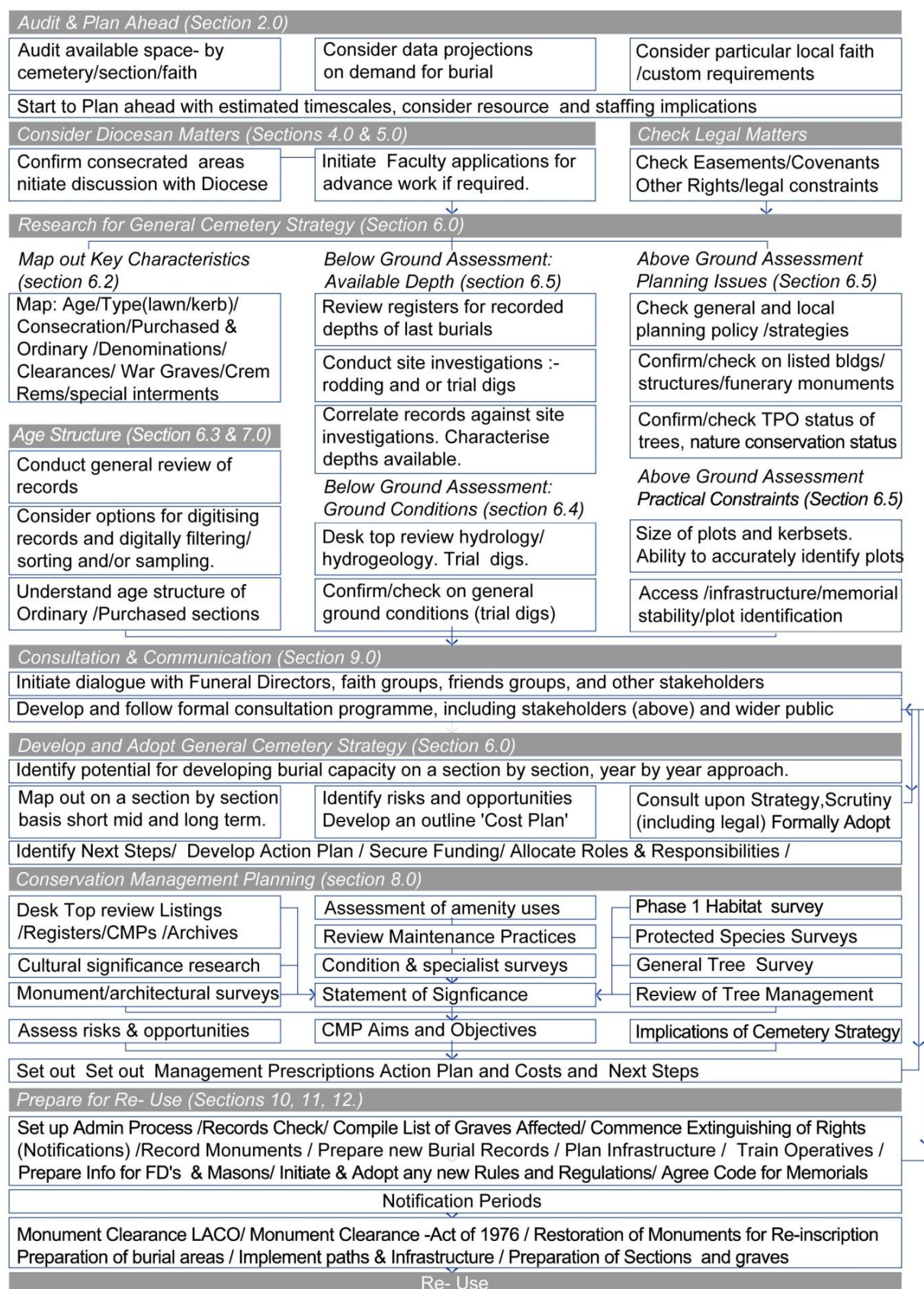
**Figure 2.1 Existing Audit Data: Capacity Status of London Boroughs**

(source : [An Audit of London Burial Provision](#)

A report for the Greater London Authority by Cemetery Research Group,  
University of York (March 2011 )



**Figure 2.2 General Process Requirements**



### 3.0 Legislative Context: Greater London

#### 3.1 The Legislation

3.1.1 This section addresses the legislative context relating to re-use including the three principal Acts:

- Burial Act 1857, s25 and the Ministry of Justice application of the Act. (Appendix 3.1)
- Greater London (General Powers) Act 1976 (see Appendix 3.3).
- London Local Authorities Act 2007 (see Appendix 3.4).

3.1.2 Other legal considerations and Acts relevant to re-use and reclamation are briefly addressed including:

- Local Authorities Cemetery Order (LACO) 1977 (Appendix 3.2).
- Borough, Corporation or Cemetery - Specific Legislation.
- Re-use under Faculty.
- Cremated Remains – Legal Status.
- Planning and Environmental Legislation.

3.1.3 Specific public legislation is in operation for Greater London (Greater London (General Powers) Act 1976 and London Local Authorities Act 2007) which does not apply to the remainder of England, and which allows the re-use of some purchased (private) graves with the disturbance of human remains in certain specified circumstances.

3.1.4 It is also possible for public graves to be re-used in *consecrated land* subject to permission from the church authorities (a Faculty).

3.1.5 It should be noted that some London cemeteries (including cemeteries in Southwark) are also subject to specific enactments which may exclude them from these general provisions. Officers should therefore check with their own legal officers as to the precise interpretation of the legislation and its application to the cemeteries within their control.

**Figure 3.1 Legislative Process**

	CONSECRATED GRAVES		UNCONSECRATED GRAVES	
<b>PUBLIC GRAVES</b>	<b>RE-USE (CONSECRATED PUBLIC GRAVES) UNDER FACULTY</b>		<b>USE OF SPACE ABOVE (UN-CONSECRATED) PUBLIC GRAVES</b>	
	Consult with Diocese		Burial achieved only where suitable depth of cover available- or (where depth not available) through soil top-up or use of chambers	
	Seek Faculty Approval		Space used above Grave. No disturbance of remains	
<b>PRIVATE (PURCHASED) GRAVES</b>	Conduct Re-use in accordance with Faculty conditions (which may include press and site notices, notifications periods and procedures - see Appendix 5.1)			
	<i>Re-use of Public Grave with disturbance of remains</i> Deepen the grave (over-dig) Exhume any remains found & re-inter remains in adjacent consecrated grave			
	<b>RECLAIM OR RE-USE (CONSECRATED PRIVATE GRAVES)- FACULTY</b>		<b>RECLAIM OR RE-USE (UN-CONSECRATED PRIVATE GRAVES)</b>	
	Faculty required for all Reclaim/ Re-use where previous burials have occurred (but not required where right never exercised (where no interments))		No Faculty required	
	Consult with Diocese			
	Seek Faculty Approval			
	Conduct Re-use or Reclaim in accordance with Faculty conditions (which may include notifications periods and procedures in common with the legal requirements )			
	<b>RECLAIM</b> (s9 Greater London Council (General Powers) Act 1976)		<b>RECLAIM</b> (s9 Greater London Council (General Powers) Act 1976)	
	a) if right of interment not exercised >75yrs or		a) if right of interment not exercised >75yrs or	
	b) if grave has at least one space available or		b) if grave has at least one space available or	
	c) there has been no interment		c) there has been no interment	
	<b>RE-USE</b> (s74 London Local Authorities Act 2007)		<b>RE-USE</b> (s74 London Local Authorities Act 2007)	
	a) if right of interment not exercised >75yrs or		a) if right of interment not exercised >75yrs or	
	b) and if rights have been extinguished under s9 of the 1976 Act - (see left)		b) and if rights have been extinguished under s9 of the 1976 Act - (see left)	
	Publish notice - in paper 2 weeks 6 day intervals		Publish notice - in paper 2 weeks 6 day intervals	
Display notice - on site 2 weeks 6 day intervals		Display notice - on site 2 weeks 6 day intervals		
Serve notice - upon registered owner of rights & of tombstone		Serve notice - upon registered owner of rights & of tombstone		
Record objections, if any (must be 'with grounds')		Record objections, if any (must be 'with grounds')		
Make a record of each tombstone removed		Make a record of each tombstone removed		
Keep tombstone (insitu/ off-site) for min 3 months		Keep tombstone (insitu/ off-site) for min 3 months		
<i>Rights Extinguished</i> → <i>Re-use of grave, Grave Reclaimed</i> <i>No disturbance of remains</i> No over-deepening		<i>Rights Extinguished</i> → <i>Re-use of grave, disturbance of remains</i> <i>Grave Reclaimed</i> <i>No disturbance of remains</i> No over-deepening		
Bury within available depth over previous interment		Bury within available depth over previous interment		
Deepen the grave (over-dig) Exhume any remains found & re-inter remains in same grave (in coffin / bag)		Deepen the grave (over-dig) Exhume any remains found & re-inter remains in same grave (in coffin / bag)		
Memorialise with new or re-inscribed headstones (ensuring grave is marked with tablet or memorial stone denoting plot number).		Memorialise with new or re-inscribed headstones (ensuring grave is marked with tablet or memorial stone denoting plot number).		

- 3.1.6 Re-use (of private graves) only applies to municipal cemeteries (with some exceptions e.g. Southwark), and does not extend to those established prior to the Burial Act of 1852. The Burial Authority should seek legal guidance in respect of the application of re-use in other cemeteries under their control.
- 3.1.7 Purchased or ‘private’ graves are those for which a burial right has been sold in perpetuity or for a period defined by the Burial Authority at the time of sale. Private graves should be distinguished from public graves, which contain unrelated individuals in plots where the burial authority has retained the burial right.
- 3.1.8 Re-use of private graves involves what has been termed a ‘lift and deepen’ approach. Under this approach, any remains exhumed from graves where re-use is planned would be reinterred in the same grave, at a greater depth than that required for the first new burial.
- 3.1.9 Grave re-use ‘under Faculty’ refers to the disinterment of any remains from one consecrated grave and reburial in another consecrated grave, so releasing the first grave for new use. This is the approach taken for consecrated public graves.
- 3.1.10 Whilst it is possible to make use of available depth in public graves in consecrated or unconsecrated ground, there is currently no legal mechanism that allows re-use of public graves where those graves are not consecrated. Notwithstanding the exceptions outlines above, the general legislative framework is outlined in Boxes 3.1 and 3.2

**Box 3.1 Re-Use and Reclamation by Grave Types**

	PRIVATE GRAVE	PUBLIC GRAVE
<b>Consecrated Section</b>	Re-use permitted under London Local Authorities Act provided Faculty secured and rights have been extinguished.	Re-use permitted under Faculty.
<b>Unconsecrated Section</b>	Re-use permitted under London Local Authorities Act provided rights have been extinguished..	Re-Use not currently permitted.

**Box 3.2 General Legislative Context**

PROCESS	LEGISLATION	FUNCTION	APPLICABLE TO	DISTURBANCE OF REMAINS ALLOWED?
Reclamation	S9 of the Greater London (General Powers) Act 1976 ( the 1976 Act)	Burial authority able to extinguish burial rights.	Purchased grave where the last interment was 75 years previously. Un-consecrated ground; and/or consecrated ground <i>if</i> Faculty secured. Does not apply to Public graves.	No
Reclamation and re-use	S74, London Local Authorities Act, 2007	Burial authority able to disturb remains in graves where right had been extinguished under the 1976 Act.	Purchased grave where the last interment was 75 years previously Un-consecrated ground; and/or consecrated ground <i>if</i> Faculty secured. Does not apply to Public graves.	Yes
Re-use under Faculty jurisdiction	Permitted under s25 Burial Act, 1857	Disturbance of remains permitted in consecrated land where body is moved from one consecrated place to another, under Faculty.	No time limit on previous burial Consecrated land only, if Faculty secured . Applies to Public graves only.	Yes

**3.2 Burial Act 1857, s25 and the Ministry of Justice Application of the Act**

3.2.1 There is in civic law a general presumption against the disturbance of human remains without specific permission (see Article 23 of Local Authority Cemeteries Order 1977). The principal enactment governing the disturbance of human remains sits within the Burial Act 1857 s25. This Act currently states that:

*‘Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the Ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her Majesty’s Principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as to the condition of such licence’.*

- 3.2.2 Whilst the Ministry of Justice issues licences in general circumstances that accord with section 25 of the Burial Act 1857, a local authority situated in London is not required to apply for a licence when specifically utilising the London Local Authorities Act 2007.
- 3.2.3 Outside London a different situation exists. As the powers contained in the London Local Authorities Act 2007 are not available to authorities outside of London any application to the Ministry of Justice for a licence to reuse graves via lift and deepen made by an authority situated outside of London would be refused. Outside of London the Ministry will only consider the granting of a licence to lift and deepen on an individual basis (i.e. at the request of an individual grave owner or to rectify an error in connection with a particular grave).
- 3.2.4 Further guidance can be found within [Guide for Burial Ground Managers, Department of Constitutional Affairs \(2005\)](#).
- 3.2.5 A draft measure has been proposed by the Church of England in July 2012 which, if it makes its way through the synodical process, may bring about an amendment change to section 25 of the 1857 Burial Act. This may potentially cause the 'lift and re-inter' approach (under Faculty) to become 'lift and deepen', potentially making re-use under Faculty and more similar in approach to re-use under the 2007 Act. Guidance in respect of applications for re-use under Faculty (3.7) is therefore subject to review as it may change

### **3.3 Reclaiming Graves- Greater London Council (General Powers) Act 1976**

- 3.3.1 Across Greater London legislation to permit reclamation of grave space was established under S9 of the Greater London (General Powers) Act 1976, (the 1976 Act) which permits Burial Authorities in London to extinguish burial rights in graves where no interment had taken place for 75 years. Unused space (depth) within the grave can then be used for the purpose of further interment. This process would not disturb any existing remains in the grave, and has been termed '*reclamation*'.

### ***Restrictions/Constraints***

#### 3.3.2 The Greater London (General Powers) Act 1976:

- only applies to private graves and not to public graves (which do not have rights). It applies only where no interment has taken place for at least 75 years, either of cremated remains or of full burial;
- applies only where space is available for at least one more interment as defined in Part I of Schedule 2 of the Local Authorities Cemeteries Order 1977, (see section 6.0);
- has savings (restrictions) in respect of the Commonwealth War Graves Commission, (see 3.4.6 below).

### ***Notifications***

3.3.3 Notification processes are detailed in section 11.0 and include publication of notices in a Greater London newspaper, site notices, individual notices on the registered owners of burial rights and memorials, and notices served on the Commonwealth War Graves Commission.

### ***Record of Memorials Removed***

3.3.4 Under the 1976 Act the Burial Authority must make a record of memorials removed that contains a copy of any legible inscription and, if not destroyed, details of the place where it has been removed to. A copy of this record must be deposited with the Registrar General.

## **3.4 Re-Use of Graves - *London Local Authorities Act 2007***

3.4.1 The ability to re-use (private) graves became available to London boroughs by s74 of the London Local Authorities Act 2007, which permits Burial Authorities, following the notification procedure set out in the 1976 Act (see above), to re-use the full depth of any reclaimed grave in order to permit more interments. The provision relates to graves that are at least 75 years old.

3.4.2 s74 of the London Local Authorities Act 2007 granted local authorities additional powers to:



*“Disturb or authorise the disturbance of human remains interred in the grave for the purpose of increasing the space for interments in the grave.”*

- 3.4.3 The Act specifies that any remains disturbed by this process must be re-interred in the same grave. Burial authorities following the specified procedure do not have to apply to the Ministry of Justice for a licence under s25 of the Burial Act 1957, but do have to follow a specified notification procedure. In addition, Faculty also has to be secured where graves are located in consecrated ground.
- 3.4.4 Note that the London Local Authorities Act 2007 granted powers that were dependent on rights in respect of the grave having been extinguished under previous Acts (notably the Act of 1976). As a consequence, the London Local Authorities Act does not permit the re-use of public graves, since rights have not been sold and extinguished in that type of grave.

#### ***Restrictions/Constraints***

- 3.4.5 The London Local Authorities Act 2007:
- only applies to private graves where rights have been cancelled under *Greater London (General Powers) Act 1976*, and not to public graves;
  - only applies where purchased at least 75 years ago;
  - only applies where no interment has taken place for at least 75 years – either of cremated remains or of full burial;
  - has savings (restrictions) in respect of the Commonwealth War Graves Commission (see 3.4.6 below).

#### ***Savings for the Commonwealth War Graves Commission (CWGC)***

- 3.4.6 Many cemeteries include graves designated as Commonwealth War Graves and fall under the jurisdiction of the Commonwealth War Graves Commission (CWGC). Many of these graves will soon become more than 100 years old. Before exercising any of the rights under the 2007 Act or 1975 Act, or indeed before exercising any of the general powers conferred under LACO (for instance in relation to removal or repair of memorials), burial authorities must give prior notice to the CWGC. Such powers cannot be exercised in respect of any grave, however marked, containing a Commonwealth War burial, without the consent of the Commission. Certain other dispensations and rights in relation to the Commission are also provided within LACO.

- 3.4.7 There are more war graves in cemeteries than is generally appreciated. In addition to those marked by its own familiar war pattern headstones, the CWGC is also responsible for many other war graves and memorials, some outside the normally accepted dates of the First and Second World Wars, and some are marked by private memorials provided by families. Some graves falling under CWGC jurisdiction may fall within public burial areas and may not be marked. War graves may thus be marked by many different types of marker or by no marker at all. The savings (restrictions) that apply to CWGC graves apply to all of these graves.
- 3.4.8 In some cases casualties that have previously been missed from the CWGC records may come to light during the course of research.
- 3.4.9 Graves that contain a Commonwealth war burial should not be included in any re-use scheme. This covers both those graves owned by the Commission on which a standard pattern headstone has been erected and those private graves, owned by the relatives of the deceased war casualty serviceman, where a war burial has taken place. The Commission holds records for the latter graves that will assist in identifying their locations within any cemetery. Notwithstanding the savings contained in law for the Commission, the requirement to serve a notice on the Commission and its right to object, it is advisable to inform the Commission that all graves containing a war burial will be specifically excluded.
- 3.4.10 Savings for the Commission can be found in:
- Article 20 – Local Authorities Cemeteries Order 1977;
  - Section 74(d) - London Local Authorities Act 2007;
  - Section 9(12) Greater London Council (General Powers) Act 1976;
  - These savings being again referred to under Restrictions/Constraints relating to each specific piece of legislation.

### ***Notifications***

- 3.4.11 Notification processes for re-use under the Act of 2007 are similar to those for reclamation under the Act of 1976. Indeed the Act of 2007 specifically permits that a single notice may be used for the purposes of both Acts. Notices are as detailed in Section 11.0. The procedure includes the publication of notices in a Greater London

newspaper, site notices, individual notices served on the registered owners of burial rights and memorials, and notices served on the Commonwealth War Graves Commission.

### **3.5 Other Acts Relevant to Re-Use and Reclamation**

3.5.1 This guidance addresses re-use. Detailed guidance in respect of other processes that may run alongside re-use within any cemetery strategy is outwith the scope of the guidance. As noted above, reclamation of the rights is a preliminary requirement for re-use in respect of private graves and is therefore addressed here. There are, however, other mechanisms to make available burial space including reclaiming reserved/pre-purchased graves (under LACO (1977)) and also use of available depth in public graves (under LACO (1977)). These are briefly set out below, not to provide specific guidance, but rather so that they can be understood in the context of an overall cemetery strategy involving re-use.

#### ***Reclaiming Reserved/Pre-purchased Graves under LACO (1977)***

3.5.2 Under the Local Authorities Cemeteries Order 1977 burial authorities also have the right to 'reclaim' rights in reserved graves purchased at least 75 years ago but into which no burials have taken place. Such graves would also become available for new burials. These powers are contained in Part III of Schedule 2 of LACO.

3.5.3 Restrictions/constraints in respect of Part III of Schedule 2 of LACO include that:

- it only applies to private graves;
- it only applies where graves purchased 75 years ago or more;
- it only applies where no burials have taken place.

3.5.4 A process/notifications procedure applies (see section 11 and Appendix 11.5)

#### ***Using Available Depth in Public Graves under LACO (1977)***

3.5.5 Public graves are those graves where the exclusive right of burial has not been purchased and therefore ownership remains with the Burial Authority. Usually, unrelated persons are buried in these public graves. Article 10 of LACO states that “*a burial authority may grant, on such terms and subject to such conditions as they think proper – to any person - the exclusive right of burial in any grave space*”.

- 3.5.6 Therefore, the exclusive right of burial in any public grave that has available depth to accommodate further burial without disturbing previously buried remains, could be sold for further private burial together with memorial rights. It would be considered good practice to inform potential purchasers that unrelated burials had taken place in these graves in the past.
- 3.5.7 In the past, interments in public graves were sometimes sold with the proviso that no further burial would take place in that grave for the next fourteen years, unless it was a related family member. The space was 'reserved', as it were. So, these graves whilst 'public' may have had certain agreements appertaining to them. In some instances, families might then go on and purchase the grave. Records should be checked for all such purchases of rights.
- 3.5.8 It should be noted that in some cemeteries the right to erect and maintain a memorial might have been granted to a relative of a person buried in a public grave, albeit not the exclusive right of burial. Where memorials exist on public graves they may only be removed in accordance with Article 16 and Schedule 3 of LACO.

#### ***Authority to Disturb***

- 3.5.9 Permission to disturb human remains for the purposes of pursuing re-use can only come in following the procedures and under the provisions of the 1976 legislation and the 2007 legislation and/or in combination with the provisions afforded by a Faculty application.
- 3.5.10 Article 23 of LACO is clear in stating *'Nothing in this order (LACO) shall be construed as authorising the disturbance of human remains.'*
- 3.5.11 Any other forms of disturbance of human remains specifically require a licence from the Secretary of State.

### **3.6 Borough, Corporation or Cemetery - Specific Legislation**

#### ***City of London***

- 3.6.1 Similar provisions for re-use to those set out in the London Local Authorities Act 2007 are also made in respect of graves within City of London Cemeteries by reference to the City of London (Various Powers Act 1969) (the 1969 Act).

#### ***Other Cemeteries and Boroughs***

- 3.6.2 The provision of cemeteries in London also took place under private enactment, including a number of nineteenth century cemetery companies. These companies were often established by Act of Parliament, since Bishops specified this formality as a condition of consecration.
- 3.6.3 Private cemeteries are not Burial Authorities as defined under s214 of the Local Government Act 1972, and therefore do not have the authority to extinguish burial rights unless another private act is secured.
- 3.6.4 Specified cemeteries owned by London Borough of Southwark were also excluded from the Greater London (General Powers) Act 1976, since those cemeteries were subject to a similar earlier enactment: the Greater London Council (General Powers) Act 1975. For that reason, and pending any further change in the law, the 2007 Act does not provide for re-use (of private graves) in Southwark.

### **3.7 Re-Use Under Faculty**

- 3.7.1 Section 25 of the Burial Act 1857 specifies that the disturbance of remains will require a specific licence from the Ministry of Justice:  
*“except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the Ordinary for that purpose.”*
- 3.7.2 Therefore, it is possible to re-use graves under Faculty, or Church permission, in consecrated ground only. The Church of England has not specified a time limit before which the re-use of any graves would be prohibited. It is likely that each application for

re-use under Faculty will be judged individually in terms of the appropriateness of the time limit specified.

- 3.7.3 The process of re-use for Public graves does not use a 'lift and deepen' method, since the legislation specifies the removal of remains from one consecrated place to another. Rather, the process disinters remains and relocates them to a 'designated grave', (the 'lift and re-inter' approach).
- 3.7.4 For Private graves in consecrated areas, cancellation of rights and re-use will take place under the provisions of the 1976 Act and the 2007 Act, and the minimum age limit of 75 years would apply. A Faculty would also need to be secured.

### **3.8 Cremated Remains – Legal Status**

#### ***Cremated Remains - Implication of the Acts***

- 3.8.1 Under the 1976 Act a grave can be reclaimed where there is sufficient space remaining for at least one interment. The burial of cremated remains at shallow depth would have the effect of excluding such affected graves from reclamation as using this Act alone places such graves outside of the criteria and does not on its own permit the disturbance of previously buried remains.
- 3.8.2 Under the 2007 Act where lift and deepen (disturbance) is proposed, and in consideration of the criteria, it could be interpreted that where cremated remains have been buried at shallow depth and space remains for at least one full body burial that the grave could be reclaimed and the cremated remains subjected to lift and deepen. Whilst this is an interpretation that is not fully clarified under the Act(s), authorities may decide not to include graves where shallow depth burial of cremated remains has taken place in a scheme for re-use.

#### **Difference between Scattering (Strewing) and Interment**

- 3.8.3 Cremated remains when buried below ground level are afforded the same protection as full body burial under burial law.
- 3.8.4 It has long been the view of the Ministry of Justice (previously Home Office) that cremated remains buried below ground in a definable mass constitutes a burial of

human remains and hence full burial registration is required and hence the allocation of a burial register number. A definable mass is defined as identifiable cremated remains buried in a container or buried as an 'uncoffined' burial. Cremated remains can remain visible in a definable mass below ground for many years and even where a container has long since perished.

- 3.8.5 A scattering (or strewing) is defined as the wider dispersal of cremated remains over the surface of the grave or beneath the turf, i.e. not in a definable mass.
- 3.8.6 Where the burial register indicates that the last interment in a grave was that of cremated remains it is important to note that the 75 year period required under the Acts must commence from the date of the burial of cremated remains.
- 3.8.7 Where cremated remains have been scattered (or strewn) and there is no legal requirement to register a burial and allocate a burial register number, the 75 year period can commence from the last registered full body burial or registered burial of cremated remains. Where remains have been scattered on graves many burial authorities have considered it good practice to either maintain a non-statutory record of scatterings or add a note to the remarks column of the register of graves in order to identify those graves where scatterings have taken place. Technically and legally any cremated remains scattered on graves are not protected by burial law and hence it could be assumed that they need no consideration. However, the morality and lack of respect in not considering this situation could be seen as questionable. In order to protect scattered remains, even though they may not now be visible, it is advised that the topsoil and turf removed from any grave to be re-used, where it is recorded that cremated remains have been previously scattered, are replaced in the same grave following the subsequent new burial. It is also advised that the fact that scattered remains were and still could be present is transferred into the new records.

### **3.9 Planning and Environmental Legislation**

- 3.9.1 A range of acts and regulations concerning planning and environmental protection may be of relevance in pursuing a strategy of re-use as set out below.

### ***Planning Permission***

- 3.9.2 Under the Town and Country Planning Act (T&CP) Act 1949, planning permission is required in England and Wales for any 'operational development' or the making of a material 'change of use' in any land or building.
- 3.9.3 As re-use of graves inherently concerns use of land that is already cemetery it cannot, by definition, involve change of use and so planning permission will not be necessary solely on grounds of 'change of use'.
- 3.9.4 'Operational development' is defined as any building, engineering or mining operation that results in some physical alteration to the land (or building). Construction of new or widened carriageways, footpaths or parking bays, necessary as part of a re-use programme could be deemed 'engineering operations' and hence require planning permission.
- 3.9.5 Under the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) (as amended) certain insignificant developments such as low walls or fences, temporary works and repairs do not require planning permission.
- 3.9.6 Officers should consider what infrastructure improvements will be required. Where any improvements will be made, new features created or existing features materially altered, then direction should be sought from the planning department as to requirements for planning consent.

### ***Conservation Areas***

- 3.9.7 Where a cemetery lies within a Conservation Area it should be noted that:
- planning applications will be considered with a high level of scrutiny in terms of whether it *preserves or enhances* the *character or appearance* of the Area;
  - certain rights of development (*Permitted Development Rights*) are restricted and demolitions are subject to additional controls;
  - trees are subject to special controls (see below).

### ***Listed Buildings and Monuments***

- 3.9.8 Older cemeteries may have listed monuments and/or listed buildings. Under the Planning (Listed Building and Conservation Areas) Act 1990 any work to these elements will need consent. If there is any uncertainty as to which buildings or



funerary monuments might be listed this should be checked with the Conservation Officer. It is not permissible to change or remove Listed funerary monuments under Article 16(2) of LACO, without Listed Building Consent (Schedule 3 of LACO).

***Trees, Trees in Conservation Areas, Tree Preservation Orders,  
Felling Licences***

- 3.9.9 Re-use may require felling, thinning, crown-lifting and/or crown-reduction of trees. An arboricultural survey is recommended for all significant trees (see section 8.0), and where a planning application is involved, that survey should adhere to the principles of *British Standard 5837 'Trees in Relation to Design, Demolition & Construction - Recommendations' 2012*.
- 3.9.10 In Conservation Areas, notification must be provided to the local planning authority for any works to trees that have a trunk diameter of more than 75mm (at 1.5m from ground level) or more than 100mm if thinning. 6 weeks prior notification is required and similar procedures need to be followed as apply to trees with specific Tree Preservation Order (TPO) (see below).
- 3.9.11 Tree Preservation Orders (TPOs), are designated under the Town and Country Planning (Tree Preservation) (England) Regulations. Permission is always required when carrying out work to TPO trees except for:
- cutting down/pruning a tree which presents an urgent and serious safety risk; or a tree which is dead;
  - trees which are to be removed for development that has detailed planning consent.
- 3.9.12 If more than 5 cubic metres of timber is proposed to be felled within any calendar quarter (and/or more than two cubic metres sold) it may be necessary also to apply to the Forestry Commission for a felling licence (under Forestry Act 1967, as amended).
- 3.9.13 Where there is any doubt as to the requirement for consents or licences officers are advised to consult with the local authority tree officer. Trees on the boundary of the site (but in neighbours' properties) may be similarly affected by re-use proposals and agreement may need to be sought with those neighbours. .

### ***Protection of Surface and Ground Waters***

- 3.9.14 Burials have the potential to pollute ground and surface waters. The (European) Water Framework Directive 2000/60/EC (WFD) and the Groundwater Daughter Directive (GWDD) stipulate that pollution from certain substances must be reduced or prevented. The Environmental Permitting (England and Wales) Regulations 2010 (EPR 2010) enact these directives and certain types of installations or activities with potential to pollute require an Environmental Permit (EP) from the Environment Agency (EA). At the time of writing burial grounds do not require a Permit.
- 3.9.15 Passive discharges from old cemeteries are covered by Part 2A of the Environment Protection Act 1990, and Anti-Pollution Works Notices under Section 161A of the Water Resources Act 1991. If groundwater/surface pollution incidents were to occur (and/or be foreseen as likely to occur), then the EA could take action under this legislation and/or the EA may use its powers under the EPR 2010 to control or prohibit the burial.
- 3.9.16 The EA will object to any new cemeteries or extensions within Zone 1 of a 'Source Protection Zone' (SPZ) or within 250m of a well, borehole or spring used for potable supply. For low risk sites, the EA may request (through planning conditions) only best practice controls, including requirements that no burials take place:
- within 250m distance from a potable groundwater supply source;
  - within 30m distance from a watercourse or spring;
  - within 10m distance from field drains;
  - into standing water.
- These controls would similarly be good practice for sites proposed for re-use.
- 3.9.17 The potential risks to surface and ground water posed by re-opening of a cemetery for re-use will be dependent on a number of factors (similar to new cemetery proposals) including the scale of burials and the local ground conditions. As a 'change of use' planning permission is not specifically required, the EA is unlikely to be consulted on the proposals. However, given the requirements of the GWDD and the EPR 2010 it is advised that a 'Tier 1' risk assessment is undertaken prior to commencing burials. Where conditions exist that increase groundwater vulnerability (i.e. shallow groundwater, field drains/steams/watercourses nearby, proximity to a potable extraction point or location within Zone 1 of an SPZ), and/or other factors which

increase risk (large numbers of burials, in excess of 100 annually) a more detailed assessment should be carried out. Where any of these factors point to increased risk, additional specialist intrusive investigation and more detailed assessments may be advisable. For more details please refer to the Environment Agency's GP3 document [Principles and Practice for the Protection of Groundwater](#). The local office of the Environment Agency should be contacted to discuss specific proposals before undertaking intrusive investigations. The Agency has also produced [EA Cemetery guidance](#). At the time of writing the document is undergoing revision and new documents are to replace the existing ones in due course.

***Flood Risk and National Planning Policy Framework (NPPF)  
(Replacing PPS25)***

- 3.9.18 A Flood Risk Assessment (FRA) is required if a planning application concerns a site greater than one hectare in size in Flood Zone 1 (zone with low probability of flooding) and for all proposals for new developments located in Flood Zones 2 and 3 (zones with medium and high probability of flooding). An FRA must consider the risk of flooding arising from the development (notably on account of additional hard surfaced areas) and the risk of flooding of the development itself.
- 3.9.19 For many cemetery developments, given the low vulnerability of the use to flooding and the fact that most of the land is maintained as grass (through which rainfall infiltrates), a simple 'qualitative' flood risk assessment will often suffice. If there is any doubt as to the requirement or content of an FRA, it is advisable to seek the advice of the Planning Liaison Officer in the local EA office.

***Drainage - Flood and Water Management Act 2010 (FWMA)***

- 3.9.20 Re-use may involve proposals to reinstate 'land drainage' (to improve below-ground conditions) or more likely, 'surface water drainage' to prevent ponding/improve ground conditions at the surface). The two forms of drainage are interrelated and yet they may be considered distinct and separately by utilities (sewerage) companies, and by the EA, especially in terms of the disposal of water from drainage systems.
- 3.9.21 The principal effect of the FWMA 2010, as relevant to re-use in cemeteries, is that any new or redeveloped drainage systems must be to Sustainable Drainage System

(SuDS) National Standards approved by a SuDS Approving Body, usually the local authority itself.

- 3.9.22 Section 32 of the Floods and Water Management Act (FWMA) makes an amendment to Section 106 of the Water Industries Act (WIA) and provides the right to connect surface water drainage from new development to the public sewerage system (owned and operated by utilities companies) subject to that drainage being SuDS and approved by the Approving Body. The right to connect land drainage to the sewerage system is however not automatic and may require specialist advice and dialogue with the utilities company.
- 3.9.23 If and where discharge is sought to a water course then subject to the nature of the proposal, consent may be required under Section 23 of the Land Drainage Act 1991 as amended by the Flood and Water Management Act 2010.

#### ***Nature Conservation and Protected Species***

- 3.9.24 Great Crested Newts and all bats are on the [list of species protected under European law](#) (under the European Habitats Directive as implemented by the Conservation of Habitats and Species Regulations 2010). It is an offence to deliberately capture, injure, kill or disturb or to damage or destroy breeding sites or nesting places at any stages of the life of a protected animal species. For protected plants it is an offence to deliberately pick, collect, cut, uproot or destroy a wild plant of a European protected species.
- 3.9.25 All wild birds, many plants and animals, insects, fish and others such as amphibians are protected under the Wildlife and Countryside Act 1981 (as amended). The level of protection ranges from complete protection to prohibition of sale or possession of live or dead specimens.
- 3.9.26 It is an offence under Section 1 of the Wildlife and Countryside Act 1981 to intentionally take, damage or destroy the nest of any wild bird while in use or being built. The nesting season is usually taken to be between March and August over which period cutting hedges and trees should be avoided.
- 3.9.27 Some cemeteries have non-statutory designations in respect of their nature conservation and/or geological importance and this affords a degree of protection,

primarily through planning policy. In the London Metropolitan area, the following three designations are-used:

- Site of Metropolitan Importance for Nature Conservation (equivalent to SNCIs elsewhere).
- Site of Borough Importance for Nature Conservation.
- Site of Local Importance for Nature Conservation.

Some cemeteries may also be Local Nature Reserves which has the effect of affording additional protection.

3.9.28 In all cases where there is any potential disturbance to bat roosts or nesting birds or any protected species, and/or where there is any other nature conservation interest, officers are advised to speak to the authority ecology/conservation officer and to seek advice on carrying out appropriate surveys.

## **4.0 Consecration**

### **4.1 Background: Reason for Consecration**

4.1.1 In order to introduce re-use by Faculty, it is necessary to be clear about which sections, if any, of the cemetery are consecrated. An understanding of the legal foundation of the site is useful in assessing the site's possible consecration pattern.

- Where a cemetery was established in the second half of the nineteenth-century under the Burial Acts, it is likely that at least half the site was consecrated at the site's inception. Site extensions were consecrated according to demand: in some instances, new sections were wholly consecrated, since demand for consecrated land was often far greater at the time. However, it was also possible for new sections to be half-consecrated. The boundary between the two types of land was generally fixed by road and/or pathways.
- If the cemetery was established under the Public Health (Interment) Act 1879, then legally it was possible for the site to remain wholly un-consecrated. However, local pressure generally dictated for at least part of the site to be consecrated.
- Consecration generally followed the same principle regardless of the legislation, and included the signing of a legal Sentence of Consecration, to which was attached a map of the site.

4.3.1 Under the Local Authorities Cemeteries Order 1977, a Burial Authority may have part of a cemetery consecrated, providing sufficient unconsecrated space remains that is neither consecrated nor has been set aside for the specific use of any particular denomination.

### **4.2 Consecration Under Burial Acts; and the Public Health (Interment) Act 1879**

4.2.1 In the nineteenth century, cemeteries laid out under the Burial Acts were required to be consecrated, providing that a section of the cemetery remained unconsecrated. A distinction was made because interment in unconsecrated ground was the preference of some Protestant denominations including Congregationalists or

Independents and Quakers who wanted to retain their independence from the Church of England, and considered consecration to be 'Popish'.

- 4.2.2 All consecrated land fell under the control of the Bishop, or Ordinary. Under the Burial Acts, that land was deemed to be an addition to local parish burial space and the vicar retained rights in that land including the right to burial fees, regardless of who took the service, and to monument erection fees. As a consequence, consecration had economic as well as religious implications.
- 4.2.3 A desire to express religious equality, and to prevent inter-denominational tension, meant that many cemeteries laid out by Burial Boards were half consecrated and half unconsecrated. However, the addition of extensions to the cemetery did not necessarily have to follow the same pattern. Some burial boards found that consecrated land tended to be used up more quickly, because burials under the Poor Law legislation had to take place in consecrated ground. As a consequence, extensions could in some circumstances be wholly consecrated since sufficient unconsecrated space was still available in the existing site.
- 4.2.4 The majority of cemeteries still in use were established under the Burial Acts, which established burial boards that operated under the old parish vestry structure. However, the 1879 legislation permitted local authorities to lay out new cemeteries directly, and outside the regulations introduced by the Burial Acts.
- 4.2.5 It was not necessary for cemeteries 'under the Public Health Act' to be consecrated, and local authorities could themselves decide whether they wanted to take this step. However, it is unlikely that many wholly un-consecrated cemeteries were established.
- 4.2.6 Following the passage of the Burial Act, 1900 the inequity between denominations was resolved by regulations that carried the presumption that all cemeteries would remain unconsecrated unless a case could be made that strong demand existed for consecration in the area. Local authorities were required to submit their consecration plans to the Secretary of State at the Home Office for approval. Generally, the Secretary of State required that at least some of the site should be consecrated even if there was no immediate evidence of demand.

- 4.2.7 Most burial boards laid out sites with internal road or pathways that acted as dividing boundaries. Digging up road and pathways to maximise space for interment may compromise the ability to be certain about the boundaries of any consecrated area in a cemetery.

### **4.3 Defining Consecrated Areas**

- 4.3.1 The great majority of cemeteries under local authority control will contain areas that are consecrated.
- 4.3.2 Consecration is both a ritual and a legal action undertaken by the Church of England to set aside a building or piece of land for sacred use. The Church of England does not require its members to be interred in consecrated ground, as it confers no spiritual benefit on the deceased. However, some people, for a number of personal reasons, prefer to be buried in consecrated ground.
- 4.3.3 Nineteenth-century burial registers generally indicate whether a particular burial has taken place in a consecrated or unconsecrated section, so that in the absence of any other supporting documentation the pattern of consecration is generally part of the 'working knowledge' of the site. Many of the larger burial board cemeteries will contain two chapels to serve the Church of England and the non-Anglican communities.
- 4.3.4 Where the pattern may be uncertain, some archival research may be required.

### **4.4 Sentences of Consecration**

- 4.5.2 The act of consecration comprises a legal process which includes the production of certain key documents which may be useful in defining consecrated areas. Early burial boards would have to petition the Bishop to consecrate their cemetery. The Bishop could then judge whether they were satisfied with arrangements at the site before proceeding with consecration. The petition generally included a large-scale map of the site with an area for consecration marked in coloured ink.



4.5.3 Even where no petition for consecration still exists, it is likely that a Sentence of Consecration remains within Diocesan archives within the London Metropolitan Archive, or amongst burial board records held by the local record office.

4.5.4 A Sentence of Consecration is the legal document indicating that a consecration took place, and again usually includes a large-scale map of the site with an area for consecration marked in coloured ink. Where there are one or more extensions to the site, separate Sentences of Consecration will exist for each subsequent consecrated area. In all cases, burial boards would retain copies of the Sentence of Consecration for their own use.

#### **4.5 Areas Set Aside for Specified Denominations**

4.5.1 The Roman Catholic Church has a requirement for burial to take place in consecrated ground. Some cemeteries will include Roman Catholic sections which may have been consecrated by a Roman Catholic Bishop. However, it should be noted that only Church of England consecration carries legal status.

#### **4.6 Evidence of Consecration**

4.6.1 In the course of making an application for a Faculty (see section 5.0) it may be necessary to provide evidence of areas of the site that have been consecrated. Site maps will mark consecrated areas and where these maps are not available, archive offices/diocesan archives are likely to have Sentences of Consecration which include a site map.

#### **4.7 Re-use of Consecrated Areas for Other Faiths**

4.7.1 Re-used graves in consecrated ground may be used for people of non-Christian faith. However, the potential use of consecrated areas by other faiths groups should be discussed with the Diocese at planning stage and made clear in the Faculty application.

4.7.2 There are a number of specific issues that may need to be considered when planning the re-use of graves for other faiths. More detail is given at Appendix 12.3

## 5.0 Working with the Diocese

### 5.1 What is a Diocese?

- 5.1.1 For administrative purposes, the Church of England is organised into two provinces – York and Canterbury. Each province is split into dioceses and each diocese is made up of a number of parishes. Each diocese normally falls under the authority of a bishop.
- 5.1.2 Diocesan boundaries do not correspond with any civic boundaries, and the area of Greater London is covered by five separate dioceses: Chelmsford, London, St Albans, Rochester and Southwark. Each diocese has responsibility for dealing with Church legal matters arising within its geographic area, including the creation of guidelines for the management of consecrated burial space in churchyards and in the consecrated sections of municipal cemeteries.

#### **Box 5.1 Which Diocese Are You In?**

##### **Chelmsford**

<http://www.chelmsford.anglican.org/>

*Barking and Dagenham, Havering, Newham, Redbridge, Waltham Forest*

##### **London**

<http://www.london.anglican.org/>

*Brent, Camden, City of London, City of Westminster, Ealing, Enfield, Hackney, Hammersmith and Fulham, Haringey, Harrow, Hillingdon, Hounslow, Islington, Kensington and Chelsea, Tower Hamlets*

##### **London or St Albans (depending on where site located)**

<http://www.stalbans.anglican.org/>

*Barnet*

##### **Rochester or Southwark (depending on where site located)**

<http://www.rochester.anglican.org/>

*Bexley, Bromley*

##### **Southwark**

<http://southwark.anglican.org/>

*Croydon, Greenwich, Kingston upon Thames, Lambeth, Lewisham, Merton, Richmond upon Thames, Southwark, Sutton, Wandsworth*

## 5.2 What is a Faculty ?

- 5.2.1 A Faculty is a species of licence or permission required under Church law for any substantive alterations to church fabric. It is granted by the Diocesan Chancellor via application to the Diocesan Registrar. Diocesan websites have the contact information and in some give guidelines for application. Faculty approval is required for all works, alterations and additions to parish churches and churchyards, and is also required for any substantial alteration to consecrated land within a municipal cemetery including the removal of headstones and kerbsets.
- 5.2.2 Faculty is also required for the re-use or reclamation of graves in consecrated ground even where following the procedures under the 1976 and 2007 Acts.
- 5.2.3 Faculty secures permission to undertake the action stated on the Faculty application, and cannot be taken as blanket approval to apply a particular procedure. So, for example, Faculty to re-use a particular section within a consecrated portion of the cemetery cannot be taken as permission to re-use all graves within the consecrated portion.
- 5.2.4 Faculty does not override parliamentary statute (or vica versa); s25 of the Burial Act 1857, rather it allows for the removal of remains from one consecrated place of burial to another. If the intention is to remove remains and re-inter those remains in unconsecrated ground, or to re-inter the remains within the same grave, then appropriate licence from the Ministry of Justice is required, or the provisions of the 2007 Act must be followed.
- 5.2.5 Other operations as relevant to re-use/reclamation may also require permission from the diocesan authorities. Depending on their scope, nature or extent, such operations might include:
- Trial pits and intrusive site investigations.
  - Development of new infrastructure such as paths and carriageways.
  - Development of new burial layouts.
  - Development of new forms of memorialisation.
- 5.2.6 It is therefore essential to maintain good contact with the Diocese throughout the process of planning for re-use and to seek advice on the necessity for any Faculty permission.

### 5.3 The Church of England and the Re-Use of Graves

- 5.3.1 The Church of England generally views the re-use of graves in a favourable light. Continued burial in old churchyard generally disturbs earlier interments and the Church considers such disturbance 'a natural consequence of the use of churchyards for their intended purpose. (see [Guidance for Best Practice for Treatment of Human Remains Excavated from Christian Burial Grounds in England Church of England and English Heritage \(2005\), p11](#)). For example, the Diocese of Rochester has issued guidance on re-use in its churchyards recommending that a 50 year period be left.
- 5.3.2 However, the Church regards the respectful and dignified treatment of human remains as paramount, and would require applications for Faculty to re-use in order to demonstrate due sensitivity.

#### **Box 5.2 Diocese of Southwark Statement on Re-Use**

Save where burial rights are granted subject to a particular period of years, there should be an expectation that grave spaces will in due course be reused, and this is necessary to economise on land-use at a time when gravespace is a diminishing resource. This is an increasingly urgent problem which all those responsible for churchyards have to face. Sensitive solutions have to be devised and implemented.

Reuse of graves within a period of less than 75 years is likely to cause distress and offence to the living, as well as appearing disrespectful to the dead. But incumbents should promote and publicise policies for the reuse of graves as soon as 75 years have elapsed after the most recent burial therein, not least so that those presently arranging a burial are informed of what is likely to happen in the future.

Rather than planning for re-use on a grave-by-grave basis, there is merit in seeking to bring larger areas into re-use as part of a coherent plan.

Removal of existing memorials (including laying them flat) requires a Faculty from the Chancellor, and consultation with any surviving relatives who can be traced will always be appropriate. Memorials remain the private property of those who initially paid for their erection, and therefore any Faculty granted will contain provision for safeguarding (by some form of relocation) of the memorials. Where authorisation is sought to reuse part of a churchyard, the removal of a number of memorials can properly form the subject of a single petition for Faculty. Reference : <http://www.southwark.anglican.org/dac/reuse>

## **5.4 Applying for Faculty**

- 5.4.1 Application for Faculty to introduce a programme of grave re-use would have to be made to the Chancellor of the Diocese in which the cemetery is situated. The application is generally made via the Registrar, and a fee may be charged. Given the specific nature of this request, it is advisable to contact the Registrar in advance to be clear about the information that will be required and the form in which it should be submitted.
- 5.4.2 Good practice in the matter of applications for any Faculty indicates that full information should be provided, since permission will be granted only to undertake the procedures clearly specified in the application.
- 5.4.3 The applications should include the following:
- The address of the site, and its date of opening.
  - A justification for the intention to introduce re-use, including the estimated capacity of the cemetery.
  - A site map with the consecrated sections clearly indicated, and the areas for intended re-use highlighted.
  - Indicative photographs of the proposed section.
  - A date range for the burials where re-use is intended.
  - Summary of public notification strategy and planned consultation exercises with clergy, funeral directors and the public.
  - A summary statement of your memorial strategy.
  - A clear statement of the intent to reinter remains in consecrated ground.
  - Copy of the re-use protocol.
- 5.4.4 Notification procedures in respect of re-use of graves under Faculty are likely to parallel the procedures set out in the 1976 and 2007 Acts. For an example letter applying for Faculty to re-use public graves, see Appendix 5.1. For an example of typical site notices for re-use of public graves under Faculty see Appendix 11.7.

## **5.5 Diocesan Requirements**

- 5.5.1 The diocese may grant Faculty unconditionally, or require that certain conditions be met. The provision of full information at the outset gives diocesan authorities confidence that re-use will take place in a legal, ethical and fully transparent manner. The types of requirement the diocese may specify include a set notification procedure or it may require that only graves of a certain age be included in the re-use programme.
- 5.5.2 The principles of local Faculty notifications follow the need to ensure sufficient time for the lodging of objections, and the placement of notices at the areas due to be affected by the Faculty application. These principles are likely to be met by local authorities observing good practice on notification procedures for the removal of headstones and kerbsets, leaving at least a year between notification and any action.

## **6.0 Deciding a Re-Use Strategy**

### **6.1 Developing a Strategy**

6.1.1 For re-use to be successful it must be approached in a considered, well-resourced way. This will involve the development of a re-use strategy. Strategies will seek re-use prioritised according to local circumstances for instance:

- Areas of public graves free of memorials (within consecrated ground and under diocesan Faculty).
- Private areas where there has been substantial degradation or removal of memorials (but where plot layout can still be ascertained).
- Other private areas where memorials may be intact but where those graves/memorials do not have particular cultural or historic significance.

6.1.2 The development of the Strategy will involve:

- research to understand of the basic resource; i.e. what is what within the cemetery;
- above ground assessment, considering ecological, heritage and cultural issues as well as reliability of identification of graves, layout, types and spacing of graves (kerbset/headstones/other types) (see 6.3 );
- reviewing practical constraints of the infrastructure in terms of access for corteges, funeral parties, grave digging and visitors (see 6.3).
- a preliminary (and where possible a more detailed) review of records to establish the age structure of burial areas (see section 6.4 & 7.0);
- below-ground assessment, trial digs/site investigation (see 6.5),
- consideration of user groups and faith issues (see Appendix 12.3)

6.1.3 Ultimately consideration of these elements will enable the Burial Authority to develop a phased programme for re-use.

6.1.4 Re-use may be seen as contentious by some people and the approach should therefore be carefully communicated to officers, councillors and the public. Therefore, there is a need to:

- have a plan by which to formally consult with the public, officers, councillors and other stakeholders (including funeral directors);

- have the burial/cemetery strategy formally adopted by the local authority;
- have the strategy costed and budgets allocated;
- set out clearly any risks associated with adopting and moving forward with the Strategy.

6.1.5 More detail on communication is given in sections 9.0 and 13.0

## **6.2 Understanding Key Characteristics of the Cemetery**

6.2.1 Drawing upon knowledge of the cemetery landholdings, through discussions with colleagues and review of documentation, it will be necessary to first research and collate information on:

- general history and age of cemetery landholdings, including extensions;
- general type/ pattern of burial (kerbset/ lawn/ vault);
- consecrated/unconsecrated areas;
- public/private burial areas;
- Roman Catholic and other denominational areas;
- private areas previously subjected to monument clearances;
- location of war graves under the jurisdiction of the Commonwealth War Graves Commission (see section 3.4);
- areas with cremated remains/special interments.

6.2.2 It will also be important to understand the effect and extent of:

- restrictive covenants/other agreements that may constrain cemetery strategy/policy;
- Planning designations (Conservation Area/Listings/TPO/Sites of Importance of or Nature Conservation (SINC) or similar designations/ Planning status (Metropolitan Open Land (MOL)) etc.

6.2.3 It is best practice to clearly map out all the above factors on a large scale plan of the cemetery. If the existing cemetery layout plan is accurate it may be used directly. Otherwise the information can be overlaid and plotted out over a detailed Ordnance Survey (OS) base plan. A digital drawing package such as AutoCAD can be very helpful tool in developing this overlay.



- 6.2.4 In some cases the original layout of the cemetery may be obscured (for instance where areas are overgrown, or have been affected by earlier monument clearances or where paths have been removed or where there have been previous efforts at soil top up/mounding). In these cases digitally overlaying and 'tracing' the burial plan onto the OS base plan to show private and public graves within different sections can be useful.
- 6.2.5 Research to establish what areas are consecrated/unconsecrated may be necessary (see section 5.0)
- 6.2.6 Understanding 'what is important and why' in a cemetery is effectively the process of Conservation Management Planning (section 8.0), which should be initiated hand in hand and so as to inform Re-Use Strategy. In practice the above ground and below ground assessments, as well as research into the Age Structure, (below) may take place simultaneously.

### **6.3 Above Ground Assessment**

- 6.3.1 All the factors noted in section 6.2.1 should be checked on the ground. Working knowledge of the site(s) from long serving or retired staff can give valuable insight.
- 6.3.2 In advance of doing more detailed Conservation Management Plan works (see section 8.0), heritage information may be gleaned through contact with the council's conservation officer, and preliminary research should be conducted in the local studies library. Friends' groups, civic societies and local historians may be all able to provide information on cultural background and heritage. Initially it will be necessary to gain a basic understanding of:
- which areas of the cemetery are the most historic with heritage interest;
  - the locations of Listed structures/monuments;
  - the locations of culturally important monuments (considering both funerary architecture and locally or nationally important people);
  - the general condition of monuments.

6.3.3 Then, (and again in advance of more detailed studies - see section 8.0), contact should be made with the council's nature conservation/ecology officer and/or tree officer, so as to understand basic areas of arboricultural and nature conservation interest. Areas potentially valuable for general nature conservation, or with valuable trees on should be noted.

6.3.4 Contact might also be made with the authority planners/landscape architect/parks service (depending upon the structure of the authority ) to gain additional insight as to the contribution the cemetery makes to Landscape/Parks/Amenity strategies and the key features of the cemetery that make that contribution.

6.3.5 All these elements then need to be checked on the ground and included on the basic mapping. The aim should be then to focus the strategy on areas of least potential impact in terms of the historic and cultural heritage and nature conservation, landscape or amenity interest.

6.3.6 In cases where the pattern/layout of the site is very difficult to ascertain it may be necessary to undertake limited clearance of vegetation (seeking first the advice of nature conservation and tree officers). A topographic survey of more complicated area(s) can be useful in these instances. The surveys can be imported to supplement the OS mapping.

#### ***Size and Disposition of Plots, Graves, and Kerbsets***

6.3.7 The small size of many historic plots, especially those with kerbsets, may prove problematic for reclamation and/or re-use.

6.3.8 Plot and grave sizes in many modern lawn cemeteries generally have :

- Plot sizes of 4'0" wide x 9'0" long (1.22m x 2.74m).
- Graves of 2'2" wide x 7'0" long (0.66m x 2.15m) (allowing routine excavation of graves).
- Oversized graves for casket burial of 2'6" wide x 8" long (0.760m x 2.44m).
- Allowances for a Memorial rafts 18" wide (450mm) at the head of each plot (or doubled to 900mm where set 'back to back').

- 6.3.9 Guidance to burial authorities issued alongside the Burial Acts of 1852/53 recommended a plot size of 9' x 4'. This was however only guidance, and in many cases plots were smaller. Historic plots as small as 2'11" x 6'9" (0.89m x 2.06m) can be seen in some cemeteries, with kerbsets of 2'6" x 6'6" (0.76m x 1.98m) set within them.
- 6.3.10 Reclamation and re-use of private graves has to follow a plot by plot approach. The implication of this is that for very tight historic plot layouts it may not be possible to re-use every grave, even if all other factors are favourable, (see section 12.2).
- 6.3.11 What is certain (in terms of developing a strategy) is that any comprehensive re-use/reclamation (see below) of tight historic kerbset areas will necessarily involve permanent removal of kerbsets to gain safe workable access. Areas with important historic character (on account of the kerbsets) are unlikely to be suitable for this reason. Moreover, the original densities are unlikely to be achieved in such areas.
- 6.3.12 These issues will need to be considered at the time of an above ground assessment
- 6.3.13 Figures 12.1 to 12.4 illustrate issues surrounding the size and disposition of plots, graves, and kerbsets

#### ***Identifying Plots***

- 6.3.14 Reclamation/re-use relies on cancellation of rights and notifications. The above ground assessment will have to consider the extent to which accurate identification of private plots is possible. In some cases where there has been memorial clearance, and particularly where plots are laid out on curves or irregular patterns, and/or where record keeping of burial plans has been poor, and/or where paths and other reference points in the landscape have been changed, it may not be possible to accurately identify plots. In such cases, all other factors being favourable, it may only be possible to rely on a proportion of plots (those clearly identifiable and, arguably, the plots to either side) being available for reclamation/re-use.

#### ***General Infrastructure***

- 6.3.15 In order to be accessible for burials, the path and carriageway infrastructure must be suitable. The path layout in older areas may not suit modern hearse and cortege sizes with tight corners and steep gradients. Similarly, paths may be too steep for

pallbearers, or for the ambulant disabled or the infirm. Paths may also be in poor condition. All these issues will need to be considered along with the implications and options of upgrading the infrastructure.

#### **6.4 Understanding Age Structure of Burials**

6.4.1 In order to plan for re-use it is necessary to know the age of the last burial within graves/plots (taking account of all burials and interments of cremated remains). At its simplest level re-use, planned for the short-term, will be focussed on public burial areas where it will be sufficient to know that the last burial in any chosen section or area is already 'old enough'. When considering private burial areas (which may have filled up more slowly over time and which may have been subject to numerous 2nd and 3rd interments), the matter becomes more complicated and it becomes useful to know what proportion of graves in any one area or section is old enough to re-use.

6.4.2 When planning a mid and longer term strategy, it will be necessary to know, at given dates in the future (perhaps 5, 10, or 15 years' time), what proportion of graves in any one area or section will become old enough to re-use, and to understand the availability/timing and capacity of sections.

6.4.3 This information will be arrived at from a review of the records as set out in section 7.0.

#### **6.5 Below Ground Assessment:**

6.5.1 Cancellation of rights under the 1976 Greater London General Powers Act requires having '*sufficient space for not less than one further interment*'. Authorities therefore need to have confidence that they can meet the provisions of Schedule 2 (part 1) of LACO. For earthen burial there shall be at least three feet below the level of the ground adjoining the grave, or 2 feet where the soil is 'suitable'. Authorities should also refer to guidance available from the ICCM on shallow graves (Appendix 12.2).

6.5.2 For private burials, records are usually kept of depth of interment. Often ranges from 4' to 12' are recorded. These depths may not be accurate, and in some cases they have been exaggerated. With the right soil conditions in many (if not most) cases coffins will have substantially disintegrated and remains may have migrated downward in any

case. Thus, in practice, available depth may or may not be a constraint to cancellation of rights and in turn re-use, and this will need to be investigated. Drawing on their experience as to the reliability of records (of recorded burial depths as compared to actual burial depths) it is likely that authorities may choose to progress with reclamation and subsequent re-use only where there is a 'safe margin' in terms of available depth.

- 6.5.3 Similar principles may apply for progressing reclamations only (as opposed to re-use) and some authorities may choose to offer single depth reclamations (rather than double depth) where there is insufficient certainty as to the depth available above earlier interments. For instance Brent offer only single depth reclamations for graves where recorded depths for previous interments are up to 7' and double depth where more than 7' is recorded. In practice upon re-opening a reclaimed grave sold for a single interment it may prove that double depth is available.
- 6.5.4 It will not only be necessary to understand the available depth but also the level of decomposition at the minimum age of burial proposed for re-use.
- 6.5.5 It is also essential to know whether there are any fundamental issues in terms of wet/groundwater conditions which would preclude re-use (see section 3.0)
- 6.5.6 Where burial areas adjacent are still in use then the grave-digging teams (and particularly older or retired gravediggers and supervisors) may have good first-hand knowledge of these aspects and efforts should be made to take advantage of this knowledge where available. Otherwise it may be necessary to conduct limited trial investigations aimed at establishing:
- general soil conditions;
  - depths to last interment.
- 6.5.7 Rodding exercises to ascertain approximate depth of last burial can be inconclusive or unreliable.
- 6.5.8 Trial pitting may give more reliable information but must be carried out with extreme care and sensitivity and without disturbance of human remains. In consecrated areas it is advised that contact is made with the diocese prior to trial pitting (see section 5.0). Trial pitting can then be cross referenced with records to ascertain any correlation.

6.5.9 Access for trial pitting may be difficult in kerbside areas. In some situations it may be possible to make use of Article 16 LACO, which makes provision for removal of kerbsides subject to certain limitations, exceptions and notifications (Schedule 3, see Appendix 3.1) (see also section 10.4).

### ***Protocol -Decomposition***

6.5.10 Rates of decomposition of human remains will vary according to soil types, aerobic/anaerobic conditions and moisture levels. They will also be influenced by depth of interment. Deep interments in heavy, wet clay soils take more time to decompose than shallower interments in lighter, drier soils. Trial pitting, as noted above and subject to the limitation of not disturbing any remains, may be necessary in order to establish general soil conditions and likely condition of remains in any given area.

6.5.11 It will be necessary to establish a 'Re-Use Protocol' which defines actions according to the status of remains encountered in any particular grave. This is further detailed in section 12.0 (see box 12.2). Having conducted trial pits and/or gathered accounts from current and older gravediggers it should be possible to establish whether or not re-use (in any given area) is likely to be possible taking account of such a protocol.

## **6.6 Re-Use of Public Graves in Consecrated Areas**

6.6.1 The re-use of graves within public burial areas under Faculty may be a commonly pursued form of re-use, not least because there are no rights to cancel nor associated notifications. These graves were not always marked, there is often little or no monumentation and the original layout is usually not easy to determine. Public grave plot sizes were often very small. For these reasons whilst new proposed burial layouts should endeavour to coordinate and align with the old, the layouts will not necessarily exactly correspond. These areas may offer the potential to be re-used with new back-to-back lawn burial layouts including areas for oversized burials. The re-use of these areas will need to be mindful of the possibility of:

- interments of recent cremated remains;
- graves where recent interments of still born babies or other interments have taken place;
- graves which may have had rights sold;
- visited graves.

6.6.2 In addition, in many older cemeteries the public graves are sited at the back (or in the centre) of sections landlocked by private graves. Access in these cases might only be possible by cancelling rights of graves around the periphery in order to create new access points. The feasibility of creating those access points may need looking into in detail early on.

## **6.7 Approaches to Re-Use: Area by Area or Grave by Grave**

6.7.1 One approach to re-use (and/or reclamation) of private graves under the 1976 and 2007 Acts could be to pick accessible and suitable graves that are old enough, on an ad hoc and opportunistic basis, as and where they are found across a cemetery - the *grave by grave* approach. The opposite approach would be to strategically and comprehensively re-use individual graves on an '*area by-area*' (or 'section by section') basis. The latter, forming a more comprehensive re-use of any one section, is likely to have the advantages of:

- enabling a more structured approach to preparation of a graves for re-use;
- making the administrative process (recording, notifications) streamlined;
- ensuring improvements to paths/infrastructure are well targeted;
- making management plans for the cemetery work effectively.

6.7.2 Progressive ad hoc re-use of suitably aged graves would have corresponding disadvantages and repeatedly re-sets the clock preventing comprehensive re-use of any given section in the future.

6.7.3 In practice the matter is unlikely ever to be clear cut and approaches will vary on a scale from being completely opportunistic (grave by grave), through to complete re-use of a whole area.

6.7.4 A highly mixed age structure (particularly as a result of intermediate infilling of the burial layout with recent graves) and/or recent interment of cremated remains; (see age structure – section 7.0 below) might frustrate a strategic approach as might having mixed/insufficient depths available (6.5 above). Nevertheless, wherever possible it is considered important not to resort to an opportunistic approach in the short term, complicating or preventing more efficient comprehensive re-use in the longer term.

## **7.0 Age Structure**

### **7.1 Deciding an Appropriate Age of Last Burial**

7.1.1 The Legislative basis (under the 1976 and 2007 Acts) set out that the minimum age of any grave permitted for re-use is 75 years old. For re-use of graves under Faculty there is no legal minimum 'Age of Last Burial', but in practice Faculty applications should reflect the parliamentary legislation i.e. working to a 75 year minimum. The age selected at which re-use might take place is termed here as the Age of Last Burial.

7.1.2 Political sensitivities might dictate that it would be better to re-use older graves wherever possible. However, there is likely to be pressure in most London Boroughs to provide burial space as soon as possible to meet demand. That pressure would point to re-using younger graves. A good starting point would generally be to set a 100 year old limit for the Age of Last Burial, then assess the implication/workability of that age limit (see below) and revise it downward toward the 75 year minimum.

7.1.3 Whatever age limit is chosen, there needs to be certainty of the ability to adhere to that limit, or at very least to have certainty that the 75 year minimum is not being transgressed. All Burial Authorities will need to be able to give public assurance in that regard.

### **7.2 Factors to consider**

7.2.1 The decision as to the age at which a grave may become suitable for re-use will be informed by an understanding of distribution of the ages of graves i.e. the Age Structure. This Age Structure needs to be understood at different levels: (i) the age of different cemeteries across the borough, (ii) the general age of different sections within any one cemetery and (iii) the age distribution of plots within any given section.

7.2.2 As noted above (section 6.0) there are advantages to adopting an 'area by-area' (or 'section by section') re-use policy involving comprehensive re-use of an entire



section (or re-use of a distinct and readily identifiable area such as an area bounded by paths). To plan such an approach entails finding out the Age Structure of these different areas/sections and assessing when they will be ready for re-use. The four key variables to consider here are:

- *Age of Last Burial-:* A starting limit for grave age might be set at a minimum of 100 years but could be as low as 75 years, as noted above.
- *Date for Re-use:* The Date for Re-Use will be the date, either now or in the future at which time enough graves are old enough to re-use any given area or section. The burial authority can therefore start planning ahead towards that date for re-use to commence in any one given area.
- *Proportion of Suitable Plots:* From a review of the records it should be possible to ascertain how many and what proportion of plots within any one area or section are older than the Age of Last Burial. There is no hard and fast guide to what proportion is optimum to enable re-use. A high proportion (such as where 90% or 95% graves are old enough within an area) would mean comprehensive re-use of the area will be possible. However, if it was decided to proceed where only 50% or 60% graves are old enough within a given area, that would mean re-use could happen sooner within that area. (see section 6.7 above). This would lead to more practical issues.
- *The Date of Last Burial* Working back from the proposed Date for Re-Use and subtracting the Age of Last Burial will give a Date of Last Burial.

**Box 7.1 Date of Re-Use, Age and Date of Last Burial**

Date for Re-Use	-	Age of Last Burial'	=	The Date of Last Burial
<i>e.g.</i>				
<i>2015 (proposed)</i>	-	<i>75 years</i>	=	<i>1940 (date of last grave)</i>
<i>2018 (proposed)</i>	-	<i>80 years</i>	=	<i>1938 (date of last grave)</i>

**Public Burial Areas – Selecting Age of Last Burial and Date for Re-Use**

7.2.3 Most public graves are not marked and it may be impossible to precisely identify individual plots. Where public graves within consecrated ground are proposed to be re-used under Faculty (and where there is a plot or grave register for public graves) the safe way to proceed will be to work on the basis that all graves in an

area/section must be older than the Age of Last Burial'. This makes the process potentially straightforward:

- identify and confirm the Public Burial area(s) on the ground and review all above ground factors (see section 6.0) .
- identify oldest sections/areas of public graves from grave/plot register;
- check if there have been later interments (for instance of cremated remain, or of still borns/babies, or of remains received from other burial grounds);
- for any one area or section identify the age, at the time of the survey, of the youngest interment;
- if at the time of the survey all graves are older than 100 years (Age of Last Burial), then proceed to plan for re-use of that area/section;
- if at the time of the survey not all graves are older than 100 years ascertain when (in the future) all graves will be older than the 100 years (Age of Last Burial);
- if that date is not too distant (given demands on burial space) then start planning for that as the date for re-use for that area/section;
- if that date is too far in the future then reconsider what the date for re-use would be if the Age of Last Burial were reduced to say 95 years, or to say 90 years etc (but not less than 75 years).
- having arrived at an appropriate Age of Last Burial and a target date for re-use, subtract one from the other to confirm what the Date of Last Burial will be in that area/section and double-check all records to check no burials took place in that area after that date;
- plan for re-use accordingly.

#### ***Private Burial Areas – Selecting Age of Last burial and Date for Re-Use***

7.2.4 The situation may be more complicated for areas with private burials. Here 2<sup>nd</sup>, 3<sup>rd</sup> and even 4<sup>th</sup> interments and/or interments of cremated remains within graves may have the effect of setting the clock back, making individual graves unsuitable for re-use, even though most of the rest of the section/area is suitable.

7.2.5 It is likely to be necessary to seek to re-use a section/area before every grave is older than the chosen Age of Last Burial and this will mean 'working around' younger graves on a selective basis. As noted in 6.7, it will be a matter of

judgement as to what proportion of graves could be worked around without making the whole scheme impractical. The process will therefore be to:

- identify and confirm the private burial area(s) on the ground, and review all above ground factors (see section 6.0).
- identify the oldest areas of private graves from the grave/plot register;
- check for later interments including cremated remains;
- for any one area/section, identify what proportion of graves are, at the time of the survey, older than an Age of Last Burial of say 100 years;
- repeat this for different projected dates for re-use in the future say in 5, 10, or 15 years' time considering Age of Last Burial at 100 years old;
- repeat again for different projected dates for re-use in the future say in 5, 10, or 15 years' time considering each at a different (younger) Age of Last Burial (say at 95, 90, and so on but not less than 75 years old);
- consider what would be a workable proportion of graves for re-use; for instance 80% or 90% of all graves;
- arrive at an appropriate Age of Last Burial at a given date for re-use, with a workable proportion of graves able to be re-used at that time. Confirm the date of Last Burial in that area/section and double check all records to ascertain which graves are suitable for re-use;
- plan for re-use on the selected date.

7.2.6 For some cemeteries, with homogenous age structures and where records are good, the consideration of these different variables may be straightforward, and it may be relatively clear at the outset which areas are going to be re-useable and when. In other cemeteries, it may be less clear which areas will be available for re-use and when. These difficulties may particularly apply where, in any given area/section, there has been:

- discontinuous periods of burial activity over time;
- a lot of intermediate infilling graves;
- numerous 3<sup>rd</sup> and 4<sup>th</sup> interments;
- widespread practice of interring cremated remains.

**Box 7.2 Example of Assessment of Age of Last Burial and Date of Re-Use**

An authority has three cemeteries. An initial appraisal has been made of environmental, historical, cultural, arboricultural, and other factors that will inform the Conservation Management Plan(s). The two oldest cemeteries have been set aside for more detailed study before re-use is considered. The third cemetery, 'Upper Cemetery', appears less constrained by these factors and is being considered for re-use. This cemetery dates from 1900 and all plots were-used by 1950 but the cemetery received 2<sup>nd</sup> interments until the 1970s and interments of cremated remains are still occurring.

- i A starting point is taken that 100 years will be considered as Age of Last Burial (100yr AoLB)
- ii The oldest section in the Upper Cemetery (Section 1) is divided into two parts.
- iii A review of the records in the Upper Cemetery reveals that if 2015 is given to be the Date for Re-Use only 60% of plots within the whole of Section 1 would be suitable (using 100yr AoLB)
- iv The records are reviewed more closely and it is evident that by 2015 the proportion of suitable plots old enough to re-use would be 75% in the west part of Section 1 and 45% of plots in the east part (at 100yr AoLB).
- v Reviewed again, at 90 years AoLB. records show 84% of plots in the west part of Section 1 and 52% of plots in the east part would be old enough to re-use in 2015.
- vi If the Date for Re-Use is put back to 2020 then the proportion of suitable plots old enough to re-use would be 96% in the west part of Section 1 and 75% in the east part (90 years AoLB).
- vii If the Date for Re-Use is pushed back further to 2025 (and at 90yr AoLB) then 99% the west part of Section 1 would be old enough to re-use and 92% of the east part.

It is therefore proposed to:

- viii Plan for a Date of Re-use of 2020 for Section 1 (west) with more than 90% of graves being suitable and old enough to re-use (at more than 90yr old).
- ix Plan for a Date of Re-use of 2025 for Section 1 (east) with more than 90% of graves being suitable and old enough to re-use (more than 90yr old).
- x Check on Dates of Last Burial those being 1930 (section 1 west) and 1935 (section 1 east).
- xi Commence detail review and planning.

### **7.3 Assessing Age Structure from Burial Records**

7.3.1 Different cemeteries and authorities have different ways of allocating plots and plot numbers, and different ways of recording burials. (see definitions Appendix 7.1). Different approaches will therefore be needed to assess both strategic and detailed planning of re-use.

7.3.2 At its simplest, checking of records will involve:

- compiling a comprehensive list of numbers of all private plots in any area proposed for re-use;
- compiling a comprehensive list of numbers of all public plots in any area proposed for re-use;
- for public burial areas, checking dates of last burial for all interments against plot numbers entered onto the Grave Register or Plot Register;
- checking against the Grave Register (or Plot Register) or Register of Purchase Graves for dates of all interments within private graves;
- double checking against any other separate registers as and where they exist, (e.g. interments of still born/babies, cremated remains, remains received from other cemeteries or graveyards or other developments);
- double checking against other separate registers for war graves entries.

#### ***Responsibilities and Resourcing***

7.3.3 Before commencing planning, the Burial Authority should first make every effort to be aware of all sources of information and records.

7.3.4 Ultimately the responsibility for checking records to both strategically plan for re-use and to carry out the detailed planning and administration of re-use will fall to the manager of Bereavement Services / Registrar who will need to assess what resources will be required to carry out this checking.

#### ***Use of Digitised Records***

7.3.5 Where burial records for a cemetery (or a complete part of that cemetery) have been digitised then there is likely to be scope for sorting and filtering of those records to plan for re-use at both a strategic and detailed level. It should be possible to

ascertain the general Age Structure and in particular to establish (for different areas/sections) the Proportion of Suitable Plots that would be available for re-use given any chosen Age of Last Burial for any one area for any given Date of Re-Use.

7.3.6 The precise way of going about this will depend on the type and format of the digital records and is best discussed with the company responsible for digitising the records or the provider of the management software.

## **7.4 Progressing Re-Use Where Burial Records are Problematic**

7.4.1 Problems may arise as follows.

- i In many cemeteries private plots were incrementally purchased/used in an almost random fashion (spatially), dotted here and there within the cemetery, but numbered sequentially as they were bought/used. In these cemeteries the spatial arrangement of plot numbering in any one area or section therefore appears random. If the burial records have not been digitised then, at strategic planning stage, a manual checking of all plot numbers within the purchase register/grave register to ascertain the age structure of any given section or area (taking into account 2nd, 3rd and cremated remains interments) is likely to be time consuming to the point of being unworkable.
- ii In some cemeteries, whilst all burials will have been recorded in the Register of Burials, a separate Grave Register (or Plot Register) may not have been kept for public (common) plots. In those instances whilst it may therefore be relatively easy to compile a list of the public plots appearing in any one area/section, it may be difficult (and unworkable) to manually compile a record of what interments have taken place in any one public plot from the paper records – because that would entail cross checking against every single entry in the burial register/and or day book.

7.4.2 In addition to the above, reviewing records may be complicated because:

- the way of recording burials may in many cases have changed over time meaning that there may be several types of records to consult;
- in some cases records will include a mixture of both digital and paper records;
- in some instances there may be separate records, (for instance for still born babies, or for re-interments of remains received from other sources).

7.4.3 If the problems noted above at 7.4.1 (i) and (ii) apply then it is strongly recommended that the Burial Authority have their records digitised. Exactly what fields are digitised will be a matter for each Burial Authority but as an absolute minimum for the strategic planning of re-use, a Burial Authority will need to have the following data fields entered:

- Plot number
- Section number
- Private or public (or war grave)
- Consecrated or unconsecrated
- Date of 1<sup>st</sup> interment
- Date of subsequent interments

7.4.4 This would enable the Burial Authority, (having first manually compiled a list of all plot numbers in any one section/area) to then filter/sort so as to be able to draw down a list for the dates of last burial in those graves. This would enable the process described in 7.2 to be undertaken.

7.4.5 To complete the detailed planning (see below) and to enable notification procedures to follow, the following data would also need to be entered:

- Name of deceased
- Owner of grave
- Last known address of grave owner

7.4.6 In practice it is not cost effective to go back several times to complete digital data entry so it is likely that authorities will have these fields digitally entered all at once. There may also be other benefits to having other fields completed at the same time (such as age of deceased/family details/other addresses) which are-useful for historical and genealogical reasons. It is beyond the scope of this guidance to look at these other options in detail, but there may be commercial or other pressures to have all such fields entered. What is critical is that whatever mechanism is chosen for digitisation/data entry, the Burial Authority should retain total control and access over the key elements of data necessary for strategic and detailed planning. They should also have the capacity to sort and filter the data to establish the Age of Last

Burial on a plot by plot and section by section basis and thus be able to work out the Proportion of Suitable plots at any given planned date for re-use.

### ***Sampling***

- 7.4.7 In many cases the Burial Authority may have already committed to digitising records but the digitising is not complete (or the authority may not be in a position to commit to full digitisation of the records). In such cases, and to enable a strategic approach to be considered (without the benefit of the full digitised records) a 'sampling' exercise can be undertaken.
- 7.4.8 The aim of the sampling is to get an area by area or section by section overview of the Age Structure, using information manually sampled from the records (e.g. by recording and correlating the age and section number of all burials within the Day Book having a surname beginning with the letter B). By sampling in this way consideration can be then be given to what might be an appropriate Age of Last Burial, and a target Date for Re-use can be set on a section by section basis.
- 7.4.9 Each cemetery and each Burial Authority will be different and a sampling exercise will need to be devised to suit. This approach of sampling would then need to be followed up with a full review of all the records, potentially by committing to full digitisation of the records, as above.



## 8.0 Conservation Management Planning

### 8.1 Character Based Approach

8.1.1 Good practice dictates that re-use takes place in the context of a well developed Conservation Management Plan (CMP), in which an assessment is made of the significance of the site in terms of its historic and cultural heritage alongside a consideration of the architectural, ecological, arboricultural, landscape, townscape and amenity value.

8.1.2 CMPs should take the form of form of a 'Character' based approach. In the context of a cemetery a character based approach:

- maps out area by area those areas with distinct and recognisable character;
- identifies what matters and why within the cemetery.

8.1.3 Essential guidance is given within:

- [Paradise Preserved](#), [English Heritage](#), (2007)
- [A Guide to Producing Park and Green Space Management Plans](#), [CABE Space](#), (2004)
- [Conservation Management Plans](#), Heritage Lottery Fund (2004) and, [Conservation Management Planning](#) [Heritage Lottery Fund](#) (2008)

8.1.4 Although not strictly applicable to municipal cemeteries there is some guidance within The Council for the Care of Churches "*The Churchyards Handbook (4th edition)*" (2001) which is useful in terms of Conservation Management Planning.

#### **Survey Work**

8.1.5 Within *Paradise Preserved*, English Heritage (EH) sets out that research and survey work to is likely to include:

- Documentary research and written descriptions.
- Architectural survey.
- Survey of funerary monuments and sculptures.
- Geological interest survey.
- Cultural/Biographical survey (of people buried).
- Landscape design survey.
- Ecological and habitat surveys.

- Tree survey.
- Survey of local community views and values.

8.1.6 *Paradise Preserved* then sets out a 3 step approach to preparing a CMP. Stage 1 is the Assessment stage and includes:

- Research and recording.
- Understanding the cemetery.
- Assessment of significance.
- Current burial uses.
- Defining of issues and constraints.
- Setting a vision for the cemetery.
- Conservation management policies.

8.1.7 Stage 2 relates to the preparation of a Management Plan and this includes

- Programming management work including prescriptions and standards.
- Maintenance checklists.
- Planning budgets and programme.
- Options appraisals and feasibility studies for new developments like new burial plots.
- Business planning.

8.1.8 The third stage of the process is the monitoring and review stage.

8.1.9 In practice, and in the context of re-use, the assessment of burial issues and the development of the options appraisals (8.1.6 and 8.1.7 above) will necessarily be interlinked with the development of a Cemetery Strategy described in section 6.0 and 7.0.

8.1.10 The Heritage Lottery Fund (HLF) guidance (2008) explains the process, with reference to a six- section approach:

- Section 1 sets out research and survey work which describes the cemetery, tells its history and tells how it has changed/is changing and how it is managed today. This might be entitled *Understanding the Site*
- Section 2 may be entitled a *Statement of Significance*. This explains 'what matters and why' within the cemetery and addresses both formal designations and listings, and an explanation of why people value the site.

- Section 3.0 sets out *Risks and Opportunities* to that which is significant within the cemetery.
- Section 4.0 sets out the *Conservation and Management Aims*.
- Section 5.0 sets out *Action Plan and Costs*.
- Section 6.0 sets out the process for *Adoption and Review* of the CMP.

8.1.11 The section headings set out in the HLF Guidance above provide a useful framework therefore for a CMP. In broad terms HLF sections 1-4 can be seen to relate to the EH Stage 1, whilst Sections 5 and 6 relate to EH Stages 2 and 3 respectively.

8.1.12 The scope and detail of coverage of a CMP will vary cemetery by cemetery, but in the context of a cemetery strategy involving reclamation and/or re-use, much of the material researched and the assessment will also directly inform, the Cemetery strategy (section 6.0). All CMPs will need to address as a minimum:

- Development of the cemetery, patterns of consecration
- Burial uses, layouts and arrangements
- Funerary monuments and sculptures
- Cultural and biographical heritage
- Landscape design
- Architecture
- Nature conservation
- Arboriculture
- Amenity and open space
- Public use and value
- Management and maintenance

8.1.13 Appendix 8.1 sets out typical headings for a CMP.

## **8.2 Development of the Cemetery, Patterns of Consecration**

8.2.1 The research and assessment for a CMP should consider how and when, the cemetery was developed, how and when different extensions were laid out, and which parts were consecrated.

### **8.3 Burial Uses, Layouts and Arrangements**

8.3.1 The CMP should consider and illustrate what types of burial plots have been laid out over time. Considerations should include whether sections are public or private, whether monumental/kerbset/headstone or lawn burial. The effects of later phases of burial (e.g. intermediate burials), monument clearances, and soil top up should be considered. Denominational areas, war graves, and other special burial areas should be identified.

### **8.4 Assessment of Funerary Monuments and Sculptures**

8.4.1 Some funerary monuments may be Listed and therefore carry statutory protection. All Listing should be researched. *Paradise Preserved* outlines that Listing may be considered where memorials:

- are the work of a noted architect, sculptor or designer;
- possess special qualities of design and execution;
- are part of a special group, or play a key visual role in the landscape;
- are of interest in their symbolism or iconography;
- have inscriptions of exceptional interest;
- are of interest because of their materials or construction or where these reflect regional specialities;
- commemorate figures of clear national interest (an indicator would be if the individual is included in the Oxford Dictionary of National Biography)

8.4.2 The CMP will need to record the general age, types, stylistic tradition of memorials on a section-by-section or area-by area basis.

8.4.3 Memorials that are locally distinctive or special, or are good examples of local tradition, or make a particular contribution to the character or layout of the cemetery should be recorded. Memorials that may have local cultural or biographical associations should similarly be identified. Reference could be made to the criteria used for listing (above) excepting that the test or threshold for being considered special would be lower being of local rather than national import.

8.4.4 This assessment will need to be carried out on a relatively broad brush basis during the initial development of the CMP. Further detailed work would then need to be carried out either as part of the refinement of the CMP and/or the delivery of the

cemetery strategy. This more detailed assessment of the significant memorials would also potentially include an assessment of whether individual memorials or monuments are suitable (or merit) restoration, or re-inscription or re-use (see 12.10 and Appendix 12.1).

8.4.5 The assessment of funerary monuments should also:

- Assess the general condition of memorials on a section by section basis.
- Highlighting particular areas where memorials are dilapidated.
- Identify current trends in condition, and factors affecting deterioration.
- Referencing any recent or ongoing memorial safety inspections.

8.4.6 There is a significant body of guidance on preservation of memorials including:

- [The Management of Memorials Summary Version](#), ICCM, (2007)
- [Caring for Historic Graveyards and Cemetery Monuments](#), English Heritage, (2012)

8.4.7 The council conservation officer should be aware of the listed structures and memorials and may have detailed condition reports. They may also have lists of non designated structures or memorials of local significance.

## **8.5 Cultural and Biographical Heritage Assessment**

8.5.1 It will be important to research and evaluate the cultural significance of the site and this may take account of:

- significant people buried within the cemetery of both local and national importance;
- particular memorials or groups of memorials which may have local significance (for instance, commemorating individuals connected with a noteworthy event, or a local movement or groups);
- trees, structures or features planted or erected in memory of locally significant people or events.

8.5.2 The council conservation officer may not necessarily have an understanding of the socio-cultural significance of the cemetery and in order to supplement research it may be necessary to make enquires with local historians, civic societies, amenity and friends' groups. The local studies library is usually a valuable source of information.

8.5.3 *The Oxford Dictionary of National Biography* (OUP) might also be referenced, it being a national record of men and women who have shaped British history and culture worldwide, offering concise, up-to-date biographies by specialist authors.

8.5.4 It will be useful to plot out actual locations of culturally significant graves. Over time full records including photographic records should be assembled of such graves.

## **8.6 Landscape Design**

8.6.1 Many Victorian, Edwardian and early 19<sup>th</sup> century cemeteries have been laid out with clear design intent. Wherever possible early layout plans should be sourced, and the original design rationale should be interpreted and understood clearly. *Paradise Preserved* gives useful references on early cemetery design. Others cemeteries particularly after the Edwardian era may have evolved over time in response to pragmatic constraints. Successive OS editions should be sourced and presented to assist in identifying change over time. Original features should be identified, and their value and contribution to the character of the cemetery should be assessed, along with their condition.

8.6.2 An assessment should then be made of the landscape value, landscape character and visual context of the site taking into account the potential changes that may come about as a consequence of re-use or reclamation, including any mitigation or landscape restoration measures that may be appropriate.

## **8.7 Architecture and Structures**

8.7.1 Many cemetery buildings, structures and monuments may be Listed where they exhibit particular qualities of design, sculptural qualities, historical interest (in respect of persons or epitaph), or rarity of material or type of material.

8.7.2 Other cemetery buildings, structures and monuments may be not be Listed but nevertheless may make a significant contribution to the character of the cemetery, or to the streetscape/townscape and may be considered locally significant.

8.7.3 As with funerary monuments the council conservation officer should be aware of Listed elements and may have detailed condition reports and/or lists of non designated structures or memorials of local significance.

8.7.4 Ideally a CMP should include condition reports on all significant structures, detailing condition and trends and risks to the heritage asset. Much of that assessment work will need to be done by appropriately qualified specialists. Where the focus of the CMP work is to inform cemetery strategy it is likely that in many instances a full and detailed survey and assessment of the built structures will follow on after an outline CMP has been developed addressing the broader burial landscape.

## **8.8 Nature Conservation Assessment**

8.8.1 Advice from the authority conservation officers should be sought at the outset. They should be in a position to indicate sensitivities with regard to nature conservation value including particular habitats and locally significant or protected flora and fauna. Cemetery officers themselves may also be aware of some of these. Reference will need to be made to:

- Listings and records and citations
- Biodiversity Action Plan (BAP) Priority Habitats and species ([London's Biodiversity Action Plan](#))
- Sites of Importance for Nature Conservation (SINC) (either of Sites of Metropolitan Importance, or Sites of Borough Importance )
- Other local designations which may be of material consideration in planning terms.

8.8.2 A handful of cemeteries include or lie near to [Local Nature Reserves \(LNR's\)](#) with statutory protection.

8.8.3 Survey work will include as a minimum:

- Desk survey.
- Walkover and Phase 1 Habitat surveys to JNCC standards.

8.8.4 Protected species surveys (e.g of bats, voles or reptiles) or additional surveys of badger sets or breeding birds or of other locally significant flora/fauna may be necessary where their presence may influence the assessment and recommendations within the CMP.

8.8.5 An assessment should then be made of the nature conservation value of the site taking into account the potential changes that may come about as a consequence of re-use or reclamation, including any mitigation measures that may be appropriate.

## **8.9 Arboricultural Assessments**

8.9.1 The council tree officer is likely to have information on trees on site. That information may need to be supplemented by means of a general tree survey considering:

- General species composition.
- General age structure.
- Historic planting and history/design.
- Special/distinctive/veteran/trees.
- Overall age structure.
- General condition.
- TPOs and/or statutory protection afforded through Conservation Area status.
- General safety and management issues.
- Constraints in terms of burial and re-use.

8.9.2 This outline survey may point to requirements for more detailed surveys including detailed surveys on tree condition, safety, and stability particularly in areas where there may be increased public access.

8.9.3 Detailed surveys and/or Arboricultural Impact Assessment (AIA) to standards set out in *BS5387 Trees in Relation to Design, Demolition and Construction. Recommendations* will be required wherever work is proposed that will involve a planning application. Whilst not technically required for the development of a CMP it may be economic to carry out survey work to the BS5387 if a planning application is likely.

8.9.4 The survey should be supported by a general assessment and should take account of any plans for re-use in the short, medium and long terms.

8.9.5 More detailed tree schedules including management prescriptions may be developed and included within the CMP as a working document and reviewed on a periodic basis.



## **8.10 Amenity and Open Space, Public Use and Value**

- 8.10.1 The CMP should reference Green Space Strategies or other similar strategies that may already be in place as relevant to the cemetery.
- 8.10.2 Existing surveys of the cemetery may already be available. Where not, public consultation and questionnaires on the use and value of the cemetery may need to be developed. The exact form of that consultation will require detailed consideration, skill and experience (see section 9.0). Guidance is available including 'toolkits' such as [Space Shaper CABE Space](#) (2007), but these will need to be used carefully and be supplemented in light of the particular character, and spiritual or religious value, inherent in the use of a cemetery as a place of burial and mourning.
- 8.10.3 Whether or not a cemetery is already being considered for a Green Flag Award or is working toward Green Flag Status, an assessment making reference to the 8 Green Flag Criteria can form a useful part of the CMP process, those being:
- i. A welcoming place
  - ii. Healthy, safe and secure
  - iii. Clean and well maintained
  - iv. Sustainability
  - v. Conservation and heritage
  - vi. Community involvement
  - vii. Marketing
  - viii. Management

## **8.11 Management and Maintenance**

- 8.11.1 The CMP should consider existing cemetery management and maintenance regimes, their effectiveness, their deficiencies and their strengths, taking in the broad scope of the CMP, for instance under the headings:
- i. Burial uses
  - ii. Funerary monuments and sculptures
  - iii. Cultural and biographical heritage
  - iv. Landscape structure

- v. Architecture and structures
- vi. Nature conservation
- vii. Arboriculture
- viii. Amenity uses

8.11.2 All these aspects will need to be considered in the light of, and informed by, the cemetery strategy. The CMP will not address the detail of how the bereavement service and burials, per se, are managed. However, the CMP will need to consider how all the aspects above will influence, and will be influenced by, the reintroduction of burial into parts of the cemetery.

## **9.0 Communication Plan**

### **9.1 Developing a Communication Plan**

9.1.1 Re-use and reclamation may be perceived in some quarters as contentious. The terms and processes are often poorly understood. People often wrongly assume space is available where there are graves with no memorials within cemeteries. Decisions on the possible introduction of re-use may become political. A key principle, therefore, is to ensure that discussion and decision making as to the future of burial provision takes place in the context of an informed understanding of the pros and cons of alternative courses of action.

9.1.2 A carefully considered Communication Plan by which to formally consult with the public, officers, councillors and other stakeholders will be required. This will be necessary both to inform and also to give validity to the development of the broader cemetery strategy (section 6.0). The formal adoption of that strategy by Council committee may, in turn, ensure the burial authority will be able to:

- continue to have burial capacity and thus be able to offer a service to the community;
- maintain revenue to offset costs so as to enable cemetery landholdings to be managed in the long term;
- maximise the chance of success of any planning applications that may be necessary in the delivery of the Strategy.

9.1.3 A Communication Plan should:

- explain clearly the predicted timescales as to when burial space will run out within the borough, explaining also the context of limited burial capacity across London;
- illustrate the potential range of options available (see 6.1.2) including re-use and reclamation amongst other options;
- explain re-use and reclamation processes;
- consider and present initial outline costs associated with options;
- wherever possible, set out clearly any risks associated with adopting and moving forward with the Strategy;
- explain the pros and cons in terms of the long-term sustainability of various options.

9.1.4 It will be necessary to use a variety of methods to gather a broad range of views about the future of burials in the borough. Communications teams/advisers within each council may be able to advise on options for consultation, including for instance:

- data gathering, user surveys, service user surveys;
- public meetings and/or on site open-day events;
- presentations and workshops at Friends' Groups, Church groups, pensioners' forums, civic societies and amenity groups;
- formal presentations to community councils;
- formal presentations to ward and portfolio councillors.

9.1.5 In addition, and depending on the scope of the Re-Use Strategy, it is likely to be necessary to conduct direct meetings with other stakeholders including;

- The Diocese and local clergy.
- Specific faith groups/multi faith forums.
- Funeral directors and Memorial Masons (see below).

It will usually be best to set up some form of liaison group with these stakeholders.

9.1.6 Also depending on the scope of the Re-Use Strategy, and the nature of the cemetery, other council officers will need to be consulted and informed as well as other stakeholders such as Commonwealth War Graves Commission, English Heritage and the Environment Agency.

9.1.7 All information presented should:

- be based upon the best available information, including up to date and accurate audit information (section 6.1);
- be informed by robust data on service users usage of the cemeteries;
- be clear as to the implications of not adopting various options (e.g. do nothing is not an option);
- be open to ideas that may not yet have been considered.

## **9.2 Funeral Directors and Stone Masons**

9.2.1 It will be especially important to work with funeral directors and masons (for instance through the auspices of a liaison group) consulting with them and keeping

them informed during the development of the strategy and this will include detailed presentations of all the alternatives. Re-use within a site which is already operational is likely to be welcomed by funeral directors who might otherwise have to take funerals some way out of the borough.

- 9.2.2 Having decided on a particular course of action; clear, concise and well-illustrated information will need to be produced and made available to funeral directors, and which they, in turn, can pass on to members of the public, explaining the burial options available.

### **9.3 The Press**

- 9.1.8 Adverse publicity may occur often as a result of misinformation or misinterpretation. The advice of communications teams/advisers within each council may be necessary in respect of press releases, and/or in making responses to press articles. There may be a general view that the introduction of re-use is disrespectful, and the local media may take the opportunity to run over-emotive 'anti' campaigns. Bringing the media early into the decision-making process is key, providing they can be given all the appropriate facts.

### **9.4 The Public**

- 9.4.1 Objections may come from a number of different quarters, which it is well to anticipate. Potential issues are highlighted below:
- Family tree/genealogists may have concerns about the possible loss of information on gravestones etc. The advantages of making detailed records of graves and inscriptions (where those graves/inscriptions will otherwise decay and be lost), should be highlighted. This may be particularly important where those details will potentially be made available via websites (see section 10.2). If the areas selected for re-use have limited above ground memorials, concerns from this group may be limited.
  - Local historians may express concerns about the possible impact on the historic integrity of the site. Managers should at this stage make reference to the Conservation Management Plan approach and highlight the benefit that ongoing income can bring in, enabling the maintenance, repair and restoration

of historic elements of the cemetery infrastructure including the selected restoration of monuments.

- Groups and individuals with interest in ecological conservation may have particular concerns where a site has become overgrown and/or its status for nature conservation has been formally recognised. Again the importance of progressing via a Conservation Management Plan needs to be stressed. Opportunities for positive changes in management or habitat mitigation measures should be explained.
- Civic and amenity groups may have concerns where a cemetery has become used principally for amenity rather than burial. It is for this reason that re-use might best be targeted at cemeteries that are clearly still regarded as places of burial rather than green open spaces. However, such an approach will not always be possible, and strategies may need to maximise and emphasise the amenity benefits of any site; for instance by making safe and opening up areas for use.
- 'Disrespect': some people may never like the concept of re-use, in the same way that some people will never like the idea of cremation. These are personal preferences. Some people may have religious reasons for disagreeing with re-use, and it should be made clear that no-one would be obliged to take a re-used grave.
- Neighbours may be concerned with change. Potentially, changes in views into a site, levels of activity on site and traffic movements must all be addressed and sensitive solutions should be communicated.

## **10.0 Preparing for Re-Use and Reclamation**

### **10.1 Administrative Preparation**

#### ***Set Up Administrative Procedures and Arrangements:***

- 10.1.1 Resources and staff time will need to be made available to check records, plan the detail of re-use, develop new records and burials plans, develop and then conduct notification procedures and plan for the preparation of the graves to be re-used.

#### ***Complete Record Check and Compile List of Graves Affected***

- 10.1.2 Having developed a general Re use Strategy (section 6.0) and conducted initial assessments to ascertain an appropriate age of last burial and suitable areas and dates for re-use (section 7.0), and having undertaken conservation management planning (section 8.0), the next stages will be to set up administrative arrangements.

#### ***Conduct Detailed Records Checks***

- 10.1.3 Every authority will need to approach the detailed records check differently according to the nature of their records. For any areas proposed for re-use a list will need to be compiled of graves affected. The full details for all those graves will need to be established, and names/addresses/other details made available to commence notifications (section 11.0). The Commonwealth War Graves Commission will need to be contacted early on in the planning process.

#### ***Above Ground Checks***

- 10.1.4 All the areas and each individual grave potentially affected should then be checked on site. A detailed plan of action to prepare areas for re-use can then be prepared. The approaches to monument recording (section 10.2), recording of plots (10.3), and any monument clearances (10.4) will need to be planned.

#### ***Commence Extinguishing of Rights***

- 10.1.5 Depending on programme/timescales the administrative procedures associated with extinguishing rights re-use and/or memorial clearance will then be progressed (section 11.0).

#### ***Develop New Burial Records***

- 10.1.6 Burial Plans will need to be revised or developed for areas to be re-used or reclaimed. If a new plan is created but using original plot numbering it needs to be

clearly noted with references made to the existence of previous interments (and including references to the existence of the original record plan). Similarly the original record plans will need to be clearly marked (for instance with a red dot) to state that the plots have been re-used or reclaimed.

- 10.1.7 For new layouts set (for instance out over public burials where the old and new layouts do not exactly coincide) entirely new plot numbering may be devised. The location of the consecrated graves intended for receipt of any reinterred remains shall be clearly recorded within the records.
- 10.1.8 Different layouts and plot numbering will therefore need to be devised on as appropriate to each cemetery.
- 10.1.9 Similarly it will be necessary to update the Plot Register and all associated records (see Appendix 7.1). Advice will need to be sought from suppliers of digital management systems in advance of embarking on this process.
- 10.1.10 An overriding principle is that of traceability. All records should clearly identify what has happened to which plots, old records must be kept, there should be a clear link between old and new plots and no record data should be compromised.

#### ***Training of Operatives and Administrative Staff***

- 10.1.11 It is likely at this point that operative will need to be trained; for instance, addressing the re-use protocol, the condition and handling of human remains, dealing with artefacts, access to and shoring of graves and handling and stability of monuments (section 12.8).
- 10.1.12 Having set up administrative procedures these will need to be communicated with all administrative staff involved.

#### ***Review and Adopt Rules and Regulations***

- 10.1.13 It will be necessary to review existing cemetery rules and regulations (and potentially fees) to address re-use and/or reclamation issues. Included may be such matters as:
- size of plots (under re-use);



- restrictions on gardens/kerbed areas/kerbsets where converting to lawn layout;
- provisions and conditions on incorporation of inscriptions (to those previously interred);
- special stipulations in respect of monuments where they are to be restored, reversed or re-inscribed;
- any new fees arrangements for exclusive rights;
- fees for restored/re-inscribed memorials.

10.1.14 In many cases, and in order to enhance the character of the cemetery, it may be appropriate to introduce different codes for memorialisation. For instance, introducing Heritage Areas where memorials are permitted only in accordance with Church of England style memorial codes (see example appendix 10.1). This would have been considered as part of the CMP process.

10.1.15 All regulations must be *reasonable and qualified* and shall not be contrary to any legislation. Formal adoption of any changes to rules and regulations is likely to be necessary and or scrutiny by the legal section.

#### ***Prepare Information for Funeral Directors and Masons***

10.1.16 Throughout this process it is essential to consult with, and communicate feedback to, funeral directors and memorial masons (section 9.0). It will be particularly important to set out in clear and accessible terms as to the different types of graves being offered.

10.1.17 Where memorial restoration, reversal and re-inscription is planned (see 12.6) specific information may need to be prepared highlighting what memorials are likely to be available, in what locations, at what cost and with what conditions attached. Where memorials are being offered as part of re-use or reclamation it is good practice to set out that the memorial upon restoration and re-inscription is transferred to the purchaser of the rights to the grave who is then *custodian* (not the new owner) of the memorial, for the period of the rights. It may be necessary to produce packs with bespoke detailed information on a plot/memorials and the offer being made.

## **10.2 Monument Recording**

10.2.1 Wherever monuments are removed under schedule 3 of LACO and under subsection 9 of the 1976 Act, there is a legal requirement to keep a record of the detail of that removal and a record of all legible inscriptions on the monument.

10.2.2 There are a variety of ways of carrying this out and recording inscriptions may take the form of simple transcription through to detailed photography. Section 12.1 gives further detail on methods. Whichever option is chosen, the advantages recording the monuments for posterity before they deteriorate altogether, whilst also making those records accessible (and more accessible than through visiting the site itself) should be maximised and pursued.

## **10.3 Recording of Graves and Plots**

10.3.1 Wherever monuments are removed there is a requirement to record locations. There needs to be certainty of not only where the graves sit next to one another but also exactly where they sit within the cemetery relative to paths and other features. In some cases the statutory Burial Plan will be accurate enough to meet this requirement in other cases the Plan may be inaccurate, or diagrammatic, or may not be to an accurate scale. In some instances, features such as paths may have been removed or altered. These factors can make locating graves accurately on site difficult, if not impossible, and once memorials have been removed accurate location of plots may not be possible, preventing re-use. The most effective way to address this is to accurately survey the site in advance of any clearance by means of a digital topographic survey. In commissioning that survey work consideration should be given to:

- ensuring the survey is available in digital and hard copy;
- ensuring that at the same time as recording the plots, other features that can be used to locate the plots e.g. paths and significant monuments, should be recorded;
- extending the survey to include other features such as trees, boundaries and drainage that may be useful for proposing adaptations to infrastructure (see 11.5, 11.6 below);
- recording extents of consecrated/un-consecrated areas.

10.3.2 At the time of the survey it may also be advisable to place permanent marker stations (proprietary ground anchor-markers, or flush masonry markers) at set distances around any section to be cleared. These should then be topographically surveyed and left in place to enable plot locations to be accurately set out after clearance of memorials.

10.3.3 This surveying process will feed into the creation new burial records (11.1). Where a cemetery management software system is in use, or being considered, the provider of that system should be contacted with regard to compatible ways of surveying/recording existing graves. This might enable plots recorded in the survey to be transferred and incorporated directly onto the Burial Plan within the digital management software (for instance by recording all plots as a 'closed polyline' in the survey).

#### **10.4 Monument Clearance**

10.4.1 The approach taken to preparing for reclamation and re-use will depend on whether an area is public graves (for re-use under Faculty) or private. Where private graves are being considered the approach will be influenced by:

- the nature, type and condition of (private) memorials;
- the degree to which restoration and re-inscription is possible/proposed;
- the degree to which re-use and/or reclamation can be comprehensive (area by area) as opposed to opportunistic (grave by grave) (see section 6.7).

10.4.2 Where an area does not include burials or monuments of cultural/heritage significance, and where appropriate in terms of the Conservation Management Plan, it is likely to be advantageous to remove poor quality and poor condition monuments/memorials in order to be able to gain access to graves. This will particularly be the case where dense kerbsets make access for preparation, grave-digging, the funeral and subsequent visitation very difficult or unsafe. Any monument clearance should however be approached with caution, care, and sensitivity.

10.4.3 There is likely to be an advantage in converting any layout that is currently 'head to toe' to become 'head to head' lawn burial. This will enable box mowing of the wider lawn strips between the memorials and more manageable long-term maintenance.

10.4.4 There are two legal methods by which kerbsets and monuments may be removed:

- through the provisions of the 1976 Act;
- through the use of article 16(2) and schedule 3 of LACO 1977.

- 10.4.5 The use of LACO may have advantages in some circumstances. Memorial removal may be progressed significantly before (and independently of) reclamation and/or re-use. In doing so it could also enable more comprehensive preparation of an area or section, even where a proportion of graves within that area are ineligible for re-use or reclamation due to lack of available depth or other factors. Part of that preparation under LACO could also be the import of soil material to bring level of graves up to the level of adjoining ground, so as to gain a safe and even lawn surface after removal of kerbsets and landings. The use of article 16(2) of LACO is subject to the extensive conditions set out in Schedule 3 to the Order (see Appendix 3.1).
- 10.4.6 It is a requirement of any clearance under LACO that an accurate record plan be kept of any graves where memorials have been cleared. In any case, being able to accurately locate private graves is an essential prerequisite of reclamation and/or re-use (see topographic survey - 10.3 above).
- 10.4.7 It is also a requirement of both LACO and the 1976 Act that inscriptions on any monument removed shall be recorded. These processes are addressed below.
- 10.4.8 Where removal of the memorials takes place under the 1976 Act there is a requirement to keep the memorials so as to be available to the legitimate owner of the memorial for a period of 3 months after the reclamation notification date. In practice it is likely to be easiest to leave the memorials in situ for three months after the notification date, thus avoiding storage and removal costs (Figure 10.1). There is also a requirement under the 1976 Act that the grave is marked with some form of memorial or marker, but that requirement (at section 9 subsection 10 of the Act) is not prescriptive and is subject to interpretation. In practice any new memorial stone to the new person(s) buried in the grave erected following its reclamation will carry the grave (and section) number thus enabling the grave to be located and traced or cross-referenced back to the records of the original person(s) buried in the grave.
- 10.4.9 The Commonwealth War Graves Commission must be notified, and nothing in article 16(2) of LACO confers authority to clear or alter memorials under the control of the Commission.

10.4.10 In addition, any areas proposed for clearance and which are consecrated will require Faculty approval.

10.4.11 In some cases removal of private memorials around the site proposed for re-use may be required to gain access for re-use (see 12.5).

***Clearance – Kerbset Only***

10.4.12 In some circumstances consideration might be given to removing the landings and kerbsets of memorials, whilst seeking to retain the headstone (or head plate) element. Such clearance has been practised widely before now for management reasons, albeit not always successfully. In the context of reclamation or re-use the advantages of such an approach might be:

- that the character of that part of the cemetery could be retained to a limited extent (at least initially);
- that where a grave is not available for re-use or reclamation (due to depth or other reasons), the grave would still be marked by part of the original memorial;
- that all other grave locations (to be reclaimed or re-used) would also be adequately marked so as to be readily located at the time of re-use;
- this approach may give the opportunity to pursue and offer restoration, reversal and re-inscription of the more distinctive headstones;
- this approach could be taken as an opportunity to convert a head to toe layout to a head to head (back to back) layout.

10.4.13 Disadvantages to this approach include that:

- the removal of the landing and kerbset (leaving the headstone) usually compromises the stability of the headstone which then needs to be re-secured (with associated costs) to NAMM standards;
- work to re-secure the headstone is likely to be abortive for all graves to be re-used/reclaimed because the headstone would need to be either removed and destroyed, or removed/restored/re-inscribed, and replaced at the point of re-use or reclamation.

***Clearance - Incremental***

10.4.14 Where it is decided to progress with clearance of memorials in advance of re-use (including kerbsets, landings and headstones) then the opportunity exists to create an even surfaced lawn burial with a head to head arrangement. In some cases it

may be practical to prepare a large area or section comprehensively in this way. It may however, be deemed a more sensitive approach to clear and prepare only limited numbers of graves sufficient to meet demand for reclamation or re-use, such as on a 3 or 6 month cycle.

### **Access**

- 10.4.15 Where re-using or reclaiming old graves there may be situations where densely spaced kerbsets surrounding an area proposed for re-use/reclamation prevent good access to it. This may be exacerbated by the presence of other features such as embankments or boundaries that 'landlock' the proposed re-use site.
- 10.4.16 In some cases, removal of derelict and dilapidated memorials from the private graves being proposed for re-use will in itself be sufficient to gain access. In other cases (for instance where a public area proposed for re-use lies inaccessible behind rows of private graves) it may be necessary to seek to remove several of those private memorials and/or extinguish rights in order to create a means of access. This would be achieved either through section 16(2) of LACO or, where appropriate, through the 1976 Act. Such potential access routes should be investigated early on.

## **10.5 Infrastructure**

- 10.5.1 Section 6.3 outlines how strategic consideration should be given to upgrades and repair of infrastructure in advance of re-use. These elements will need to be designed, planned, costed and implemented in advance of re-use: Works might include:
- Modifications to the path layout in order to accept modern hearse and cortege sizes.
  - Additional paths or access ways in place of paths that may be too steep or too narrow for pallbearers, or for the ambulant disabled or the infirm.
  - Resurfacing of paths in poor condition.
  - Renewal or upgrade of boundaries to improve security and/or reduce overlooking by neighbours and/or to improve aesthetics.
  - Extension of water supplies and placing of standpipes or water troughs.
  - Surface drainage of paths or burial areas.
  - Renewal of site furniture and updating of signage.

- 10.5.2 As noted above, advice should be sought as to any planning requirements for entirely new paths or infrastructure.
- 10.5.3 Full and proper account will need to be taken in respect of any potential impacts upon trees or nature conservation value, and this may entail:
- advance arboricultural surveys to BS5837.
  - specific nature conservation surveys (desk/walkover/phase 1 habitat mapping) followed by protected species surveys in accordance with standard guidance where necessary.
- 10.5.4 Works should be approached in a coordinated way, informed by the Conservation Management Plan. Specialist design and planning advice may need to be sought.

#### ***Memorial Rafts***

- 10.5.5 Where original private plots are generously proportioned see figure 12.1, or where public plots are to be re-used then it is likely to be advantageous to provide lawn burial with use of memorial 'rafts' or 'bearers'. Various types of raft detail might be considered including:
- gravel rafts with or without buried proprietary 'shoes' to secure memorials;
  - interlocking pre-cast concrete rafts at surface or gravel dressed;
  - concrete rafts at surface.
- 10.5.6 New rafts would usually be implemented as part of the general infrastructure preparation. Whichever detail is to be used, consideration must be given to the type of memorial to be used and the character of the cemetery, noting that often the more modern approaches using exposed concrete may not fit well with the character of older cemeteries and do not always suit sloping sites.
- 10.5.7 For re-use of private graves it is essential that new and old plots accurately coincide. Laying out of rafts in advance of re-use might only take place if the original layout is generous enough (with plots longer than 9') and if this accuracy can be guaranteed. In practice, many historic layouts based on 9' x 4' plots will not have enough room for a raft. In those cases the new grave would be aligned with the old and the new memorial would be placed on the grave (having allowed for settlement), rather than on an undisturbed raft adjacent.

## 10.6 Vegetation and Planting

10.6.1 New planting may be necessary in association with re-use in order to:

- mitigate visual and/or nature conservation effects of clearance of undergrowth and vegetation;
- visually integrate areas brought into re-use;
- screen views to and from neighbours.

10.6.2 Planting will need to be designed, implemented and managed cognisant of the aims and objectives set out in the CMP. In some cases it may be possible to research, and where appropriate, design new planting to reflect the original design intent.

10.6.3 Tree planting should be considered with care and mindful of long term management issues where trees are sited right next to new graves or paths. Where possible space should be identified early on in the planning of re-use for replacement tree planting.



## **11.0 Administration of Re-Use and Reclamation**

### **11.1 Notification for Reclamation and Re-Use Under the 1976 and 2007 Acts**

11.1.1 The 2007 Act requires the authority to initially cancel rights of interment of graves under the 1976 Act. This requirement gives rise to a single notification process for both reclamation of graves and their subsequent use without disturbing previously buried remains, and the re-use of graves with the disturbance of previously buried remains. The notification process is reproduced at 11.1.6 below.

11.1.2 It should be noted that the criteria for the selection of graves for reclamation or re-use is contained within the 1976 Act and requires only those graves where sufficient space for not less than one further interment and where the last burial took place at least 75 years ago can be selected and hence this criteria applies to the 2007 Act.

11.1.3 Whilst the notification process is the same for both reclamation and re-use the notices required for publication under the Act(s) differ.

11.1.4 The notice in respect of reclamation and use of available depth under the 1976 Act makes mention of this Act only (see example at Appendix 11.1) whilst reuse under the 2007 Act requires mention of both Acts i.e. the 1976 Act in respect of the cancellation of right and the 2007 Act to proceed to re-use and the disturbance of previously buried remains (see example at Appendix 11.2)

11.1.5 The notice must be served on the registered owner of burial rights and the letter accompanying the notice will similarly differ depending on whether reclamation or re-use is intended (See Appendices 11.3 and 11.4 respectively).

11.1.6 The notification process is as follows:

- Publish a notice of intention on two successive weeks in a newspaper circulated in Greater London.
- Display a similar notice in a conspicuous position at every entrance to the cemetery.
- Serve a notice on the registered owner of burial rights and registered owner of any memorial (if not the same person).
- The notice must be served on the Commonwealth War Graves Commission.

- The notice must specify the date on which the rights are to be extinguished. This should be at least 6 months after the date of the last publication of the notice in a newspaper, or the notice is first displayed at the cemetery entrance, or the notice served on the registered owner; whichever is the later.
- The notice must explain that owners can object to their rights being extinguished and that they may retain their rights.
- Any memorials removed after the expiry of the 6 months notification period remain the property of the owner. However, if the owner does not claim the memorial within 3 months following the expiry of the 6 months notification period, it may be put to another use as deemed appropriate or destroyed.

## **11.2 Notification for Reclaiming Reserved/Pre-Purchased Graves under LACO (1977)**

- 11.2.1 Under the LACO (1977) burial authorities also have the authority to cancel rights of burial and 'reclaim' reserved graves purchased at least 75 years ago but in which no burials have taken place.
- 11.2.2 The notification process, Part III of Schedule 2 of LACO means:
- Serving notice on the owner of the rights of their liability to determination.
  - The owner is given 6 months from the date of the service of the notice to notify the authority in writing of his/her intention to retain their rights.
  - Should no notification be received from the owner the rights can be cancelled.
- 11.2.3 It should be noted that LACO makes provision for "the specified circumstances", in respect of any owner or person where any communication addressed to him/her at his/her last recorded address has been returned to the burial authority as undeliverable or his/her last recorded address is that of premises which no longer exist. In these specified circumstances the authority may instead:
- Display the notice in a conspicuous position at the entrances to the cemetery.
  - Publish the notice on two successive weeks in the newspaper or newspapers which, in their opinion, would secure the best publicity in the area served by the cemetery.
- 11.2.4 It is likely that the specified circumstances will arise during the initial notification process in 11.2.2 above. Therefore, it is recommended that consideration be given to combining with the requirements of 11.2.3 at the outset.

### **11.3 Notice Procedures – Re-Use of Public Graves under Faculty**

11.3.1 There is no legal requirement for notification of relatives of the deceased within consecrated public areas proposed for re-use under Faculty. However as set out in section 5.0 and Appendix 5.1 notices will have been agreed with the Diocese as part of the Faculty procedure. A notice will typically take the form set out in Appendix 11.7. Notification will generally involve:

- The Council will place a public notice within a newspaper circulating in Greater London in each of two successive weeks with an interval between the dates of publication of not less than six clear days.
- The Council will also display the same notice on the cemetery notice board and display the same notice at appropriate places within the sections of the cemetery intended for re-use for the period of [*recommended minimum 12 months from date of notice/or as agreed under the terms of the Faculty*].
- Should any relative of any deceased person buried within a grave situated within the sections come forward within the notification period [the Council] will not re-use the said grave and will offer the exclusive right of burial to such relative.
- The total notification period will be for a [*recommended minimum 12 months or as agreed under the terms of the Faculty*] from the date of publication of the notice in the paper or from the display of notices on site (whichever the later).

### **11.4 General Advice**

11.4.1 It is advised that notices served on the owners of rights of burial are sent via recorded delivery and that any returned 'unknown' are filed.

11.4.2 Notices placed at the entrances to a cemetery should be regularly checked to ensure that they remain in place and have not deteriorated during the notification period. It is advisable to photograph notices in position with a camera recording the time and date on the image in case there is any doubt as to notices having been displayed.

## 12.0 Technicalities of Re-Use

### 12.1 Recording and Archiving Pre-Implementation

12.1.1 In order to meet requirements under schedule 3 of LACO and/or subsection 9 of the 1976 Act, where monuments are removed it is best practice to methodically record the following for each grave/monument:

- cemetery name, plot number, section;
- name and date of 1st interment;
- name and date of subsequent interment(s);
- written transcript of inscription on main headstone;
- written transcript of other inscription on other part(s) of monument;
- description of monument (style, features, material, condition, mason);
- date of removal;
- destination/place of re-erection; or,
- the detail of disposal.

12.1.2 This detail should ideally be recorded in a separate ledger to the plot or burial ledger, such as a *'Register of Memorials Removed'*.

12.1.3 It is also good practice to photograph the monument, side-on from each side/elevation, and to take a record photograph of the monument in its setting, prior to removal of monuments around it.

12.1.4 Special or distinctive monuments are unlikely to be removed on account of the assessment process (see 12.10 below), but there may be instances where a monument has some distinctive elements (features, carving or relief) but is in such poor condition that its removal is justified. In which case the distinctive elements should be separately photographed.

12.1.5 The basic information should ideally be stored in digital format in a manner that can be subsequently digitally filtered and/or be exported or linked to cemetery management systems. Some authorities have facilities to make this material, including record photographs, available on-line either directly through the authority or through commercial genealogy web service companies. (In which case contact should be made with the service providers to find out the best format for records.)

## 12.2 New Burial Layouts

12.2.1 Re-use will involve the implementation of new burial layouts. The relationship between historic and new burial layouts will need careful consideration. The approach will differ in relation to:

- i. Re-use of public grave areas in consecrated ground under Faculty
- ii. Re-use of private graves under the Acts

### ***Re-Use of Public Grave Areas on Consecrated Ground Under Faculty***

12.2.2 Before deciding on new burial layout and preparation of a new grave plan consideration must be given to the dimensions of the existing grave spaces. In many old cemeteries public grave spaces were of smaller dimensions than currently in use, therefore a new grave plan might not mirror the original. In such cases the creation and overlaying of a new plan will inevitably cause overlap of graves and hence the full exhumation of the skeletal remains of each deceased individual will not be possible. However, these graves may still be re-used under Faculty, with any remains removed placed in the designated grave.

12.2.3 Also, the mid-feathers between graves will be of varying widths and in some instances will not be present at all. This gives rise to an additional safety issue for those preparing graves for re-use due to the potentially decreased stability and higher risk of collapse of excavations. It is advised that the state and nature of the ground is investigated, the risks assessed and the inclusion of close shoring incorporated. Where ground is of an unstable nature due to lack of adequate mid-feathers it may be appropriate to limit new burials to two per grave.

### ***Re-Use of Private Graves Under the Acts***

12.2.4 Generally, private graves differed from public graves in respect of the space allocated and 8' (or 9') x 4' was widely adopted as a standard by many burial authorities (see section 6.3.9). These dimensions allowed for a full kerbset memorial measuring 6' 6" x 2' 6" to be erected centrally within the grave space and thus leaving grass pathways between memorials.

***Plate 12.1 Re-Use of Public Graves Under Faculty***



***Area of public graves being prepared for re-use under faculty***



***New plot layout over old public grave areas***

- 12.2.5 If historic plots were of 8' x 4' size (or greater) then depending upon soil type and methods of excavation and shoring it should be possible to excavate modern grave sizes within the original plots, centred on the original graves (Figure 12.1), with the new memorial being placed on undisturbed ground. These could be installed either as a lawn memorial (with memorial headstone/plate dowelled over a plinth and a foundation) or as monolith (consisting of a single headstone/headplate set directly into the ground).
- 12.2.6 Whilst plots of 8' x 4' or smaller may continue to be adequate, (and hence a new plan would replicate the previous plan), any memorial is likely to need to be placed on the backfilled grave. Such installation can lead to problematic subsidence (which is why current best practice involves a strip of undisturbed ground remaining at the head end on which to erect the memorial). If, due to plot size, it is necessary to place memorials on the disturbed ground then:
- best practice will need to be followed in terms of achieving good compaction of the backfill as appropriate to local conditions, i.e. allowance of a period for settlement, re-compaction and topping up at the end of that period, and use of appropriately designed foundations;
  - monolith headstones are likely to be more suited and less liable to subsidence in these instances (Figure 12.2);
  - traditional kerbsets could be used, albeit this will introduce additional long term maintenance costs and access issues (Figure 12.2).
- 12.2.7 Alternatively where historic plots are assessed as being too tight to allow for workable mid/head/toe feather with modern grave dimensions, consideration might therefore be given to the use every other row in order to align the memorial over the undisturbed ground (Figure 12.3) or every other column of graves (Figure 12.4) as may be appropriate.
- 12.2.8 Wherever plots are undersized relative to optimum or normal working practice the most modern, space efficient forms of shoring should be used, with training as necessary.

### ***Casket and Oversized Burials***

- 12.2.9 Use of oversized burials and/or burials using large caskets may not be possible on historic private plot areas because of the size constraints. If alternate rows are

being left unused that may be an opportunity to designate remaining rows for casket/oversize burials (Figure 12.3)

### ***Accommodating Retained (Old) Kerbsets Within New Layout***

- 12.2.10 In some instances it may be necessary, on account of age or other factors, to leave a grave/graves undisturbed with original kerbset set within a new layout. Alternatively it may be desirable to retain individual or groups of kerbsets on account of cultural or historic value. Careful consideration should then be given as to how the new layout works around the retained kerbset(s) in terms of access, ground levels, aesthetics and cemetery character. In some instances certain memorial types are prescribed by the Commonwealth War Graves Commission (for instance kerbsets) and any scheme for re-use will need to be cognisant of the fact that a war grave (that is not re-used), may be set within an area of graves that are otherwise to be re-used, and will continue to be marked by that type of prescribed memorial.
- 12.2.11 In some cases it may be desirable, on account of aesthetics and/or cemetery character, to retain or allow use of new kerbsets along entire rows, for instance at the back or front of any one section (Figure 12.2).

### ***Pattern of Use for New Burials***

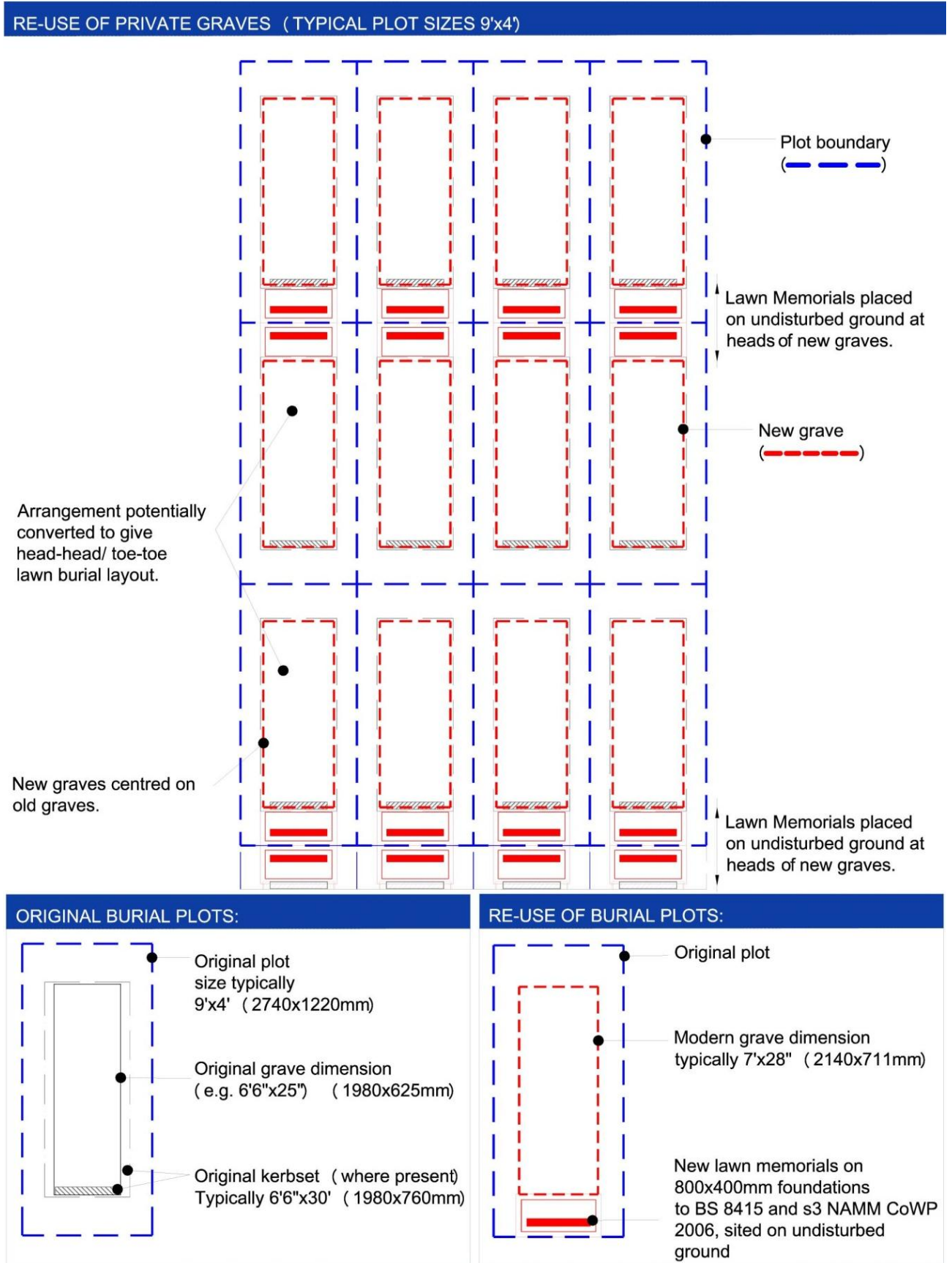
- 12.2.12 Cemetery managers sometimes alternate the timing of burials rows by row or grave by grave along rows. This is done in order to minimise disturbance to lawns and to maximise available graveside space for grave-digging and the funeral. Depending upon the form of burial layout chosen (above) where the original plot size is particularly tight, only just accepting modern grave sizes, it may similarly be necessary to carefully manage the pattern of plot use, potentially even revisiting a section to infill alternate plots so as to maximise the opportunity for settlement and stabilisation.

### ***Muslim Burial***

- 12.2.13 In Muslim burial, graves are orientated perpendicular to Qibla (Mecca) (also known as Qiblah, Kiblah, Kible or Kibla). This may preclude the re-use or reclamation of many existing private graves for use by Muslim groups. There may therefore be more scope for earmarking specific areas for Muslim burials in the case of consecrated public graves where the precise orientation of plot layout for re-used graves is more flexible. (See also Appendix 12.3)



**Figure 12.1 Re- Use of Private Graves: Typical Historic Plots**



**Figure 12.2 Re- Use of Private Graves: Small Historic Plots**

**RE-USE OF PRIVATE GRAVES SMALL PLOT SIZES ( Smaller than 8'x4')**

Where original plot sizes are only just able to accommodate modern grave dimensions, the memorial may need to be sited on disturbed ground.

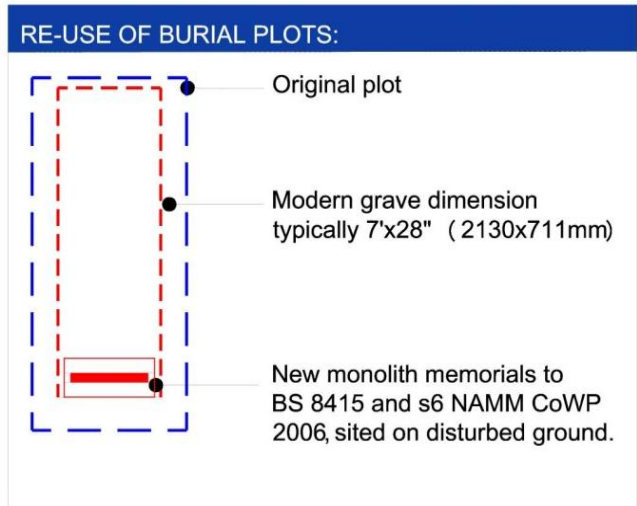
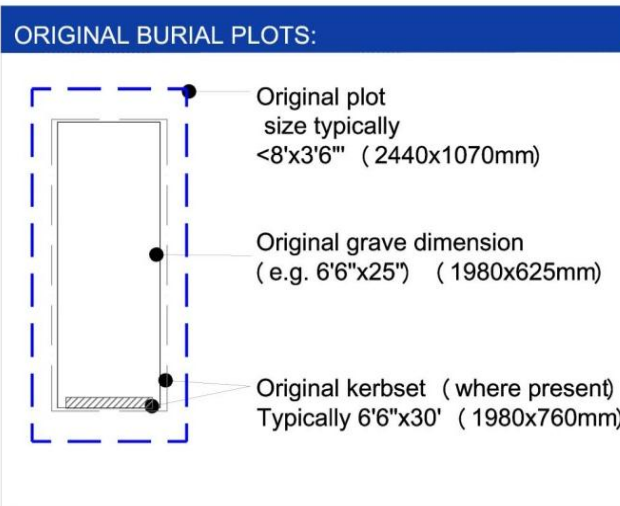
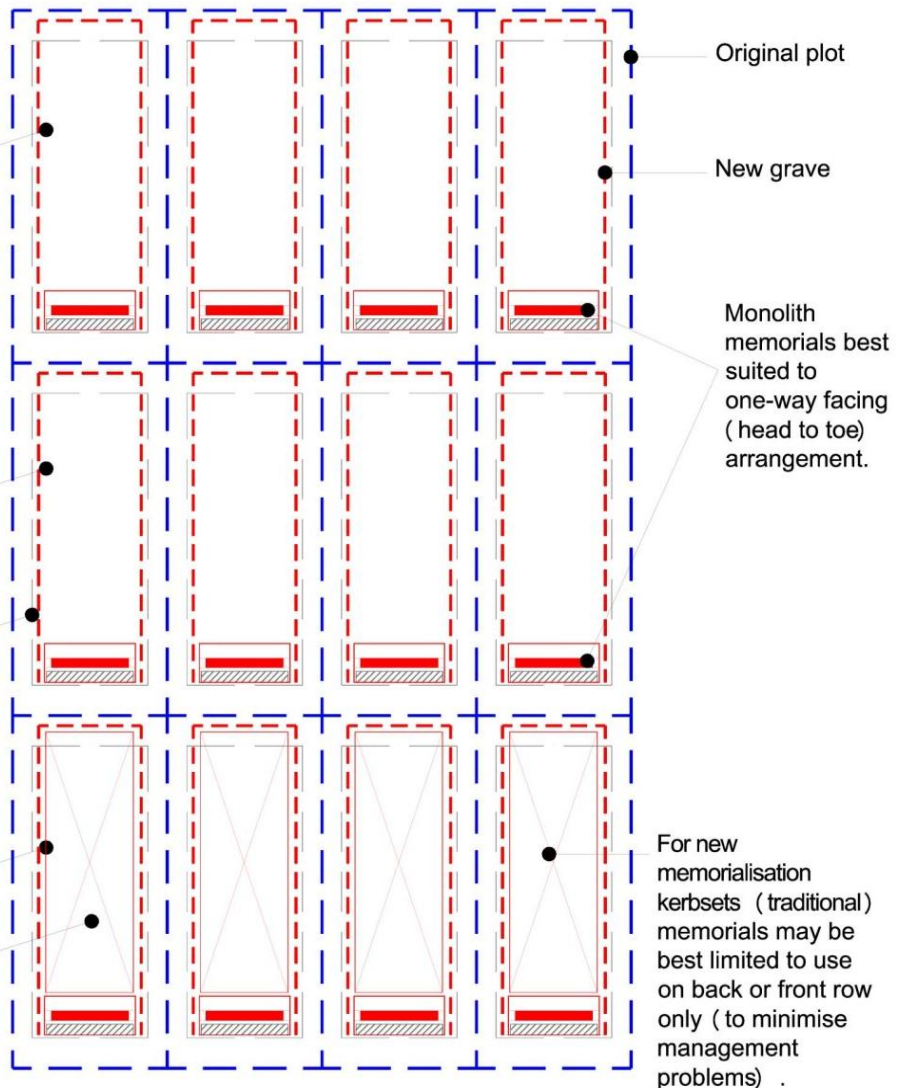
Row re-used or reclaimed

Row re-used or reclaimed

Original kerbsets removed

Row re-used or reclaimed

New graves centred on old graves



**Figure 12.3 Re- Use of Private Graves: Very Short Historic Plots**

**RE-USE OF PRIVATE GRAVES SMALL (SHORT) PLOT SIZES (Significantly shorter than 8'x4')**

Where original plot sizes are too small to readily accommodate modern grave dimensions, a bespoke layout solution, appropriate to the site will be required.

Row re-used or reclaimed

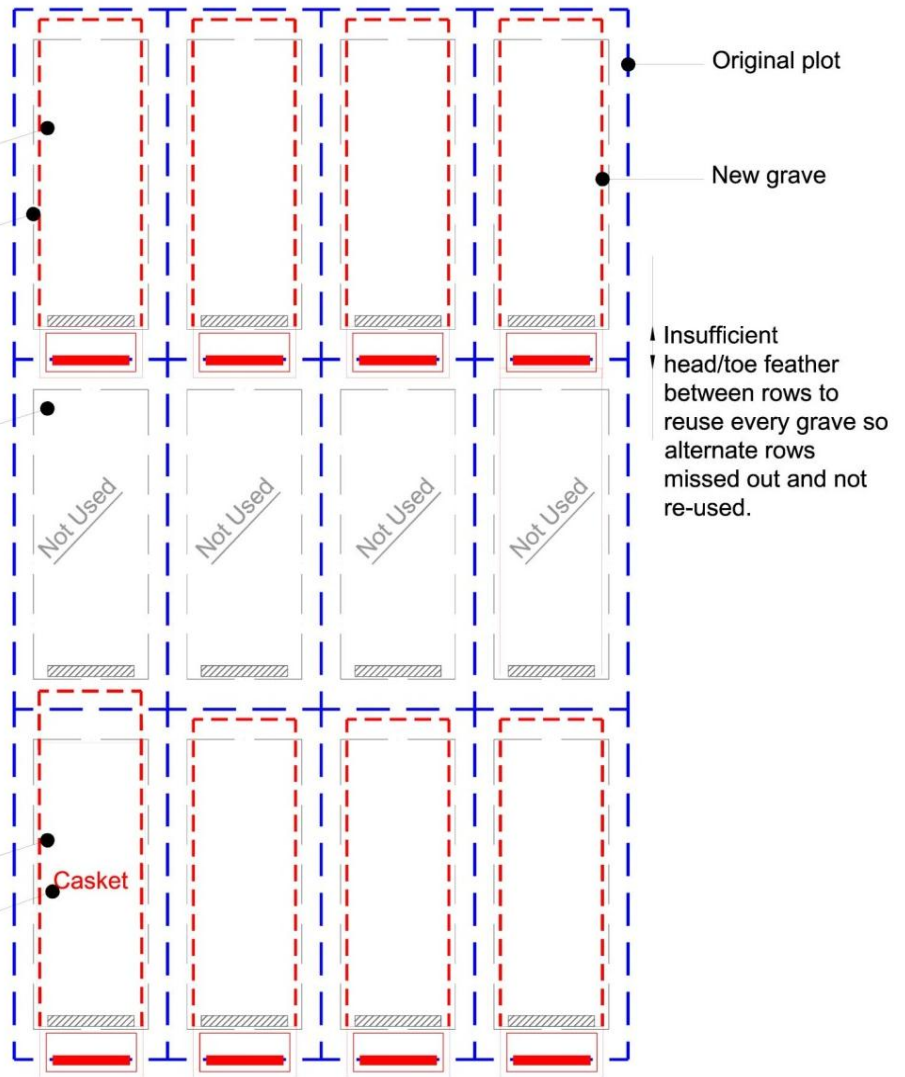
Original kerbsets removed

Row not re-used or reclaimed

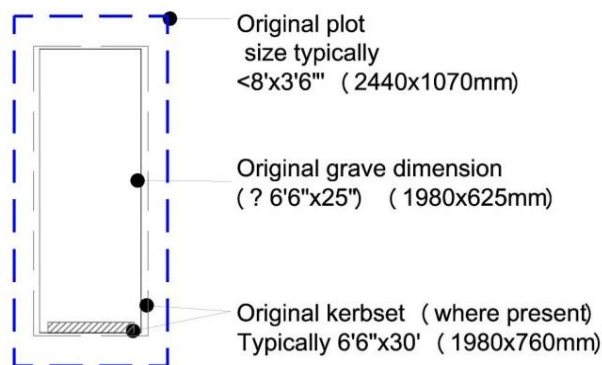
It may be necessary to leave alternate rows un-used due to insufficient head/toe feather.

Row re-used or reclaimed

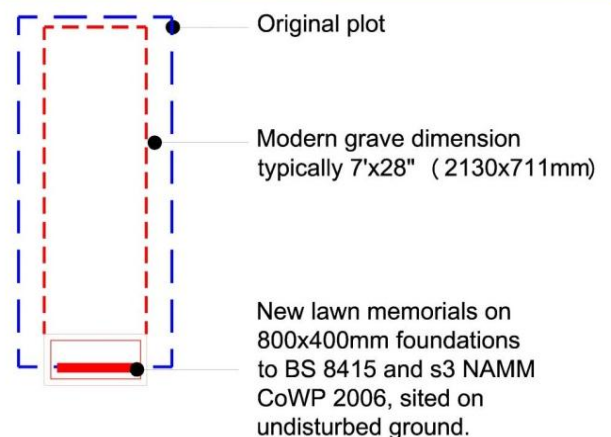
If leaving out adjacent rows there may be an opportunity to designate certain graves for larger/casket burials.



**ORIGINAL BURIAL PLOTS:**



**RE-USE OF BURIAL PLOTS:**



**Figure 12.4 Re- Use of Private Graves: Very Narrow Historic Plots**

**RE-USE OF PRIVATE GRAVES SMALL (NARROW) PLOT SIZES (Significantly narrower than 8'x4')**

Where original plot sizes are too small to readily accommodate modern grave dimensions, a bespoke layout solution, appropriate to the site will be required.

Row re-used or reclaimed

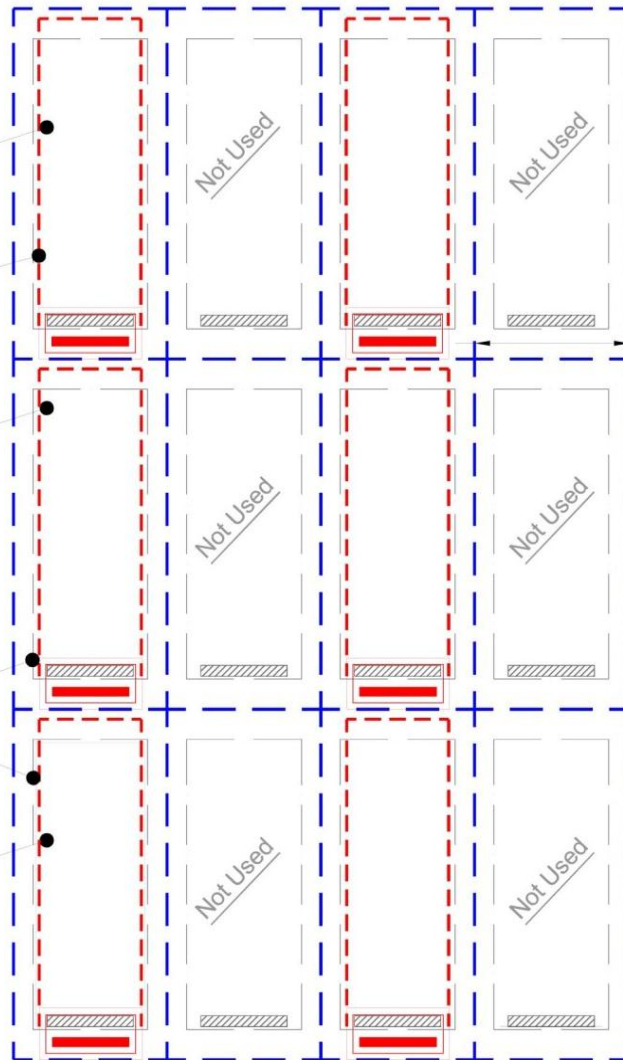
New grave

Row not re-used or reclaimed

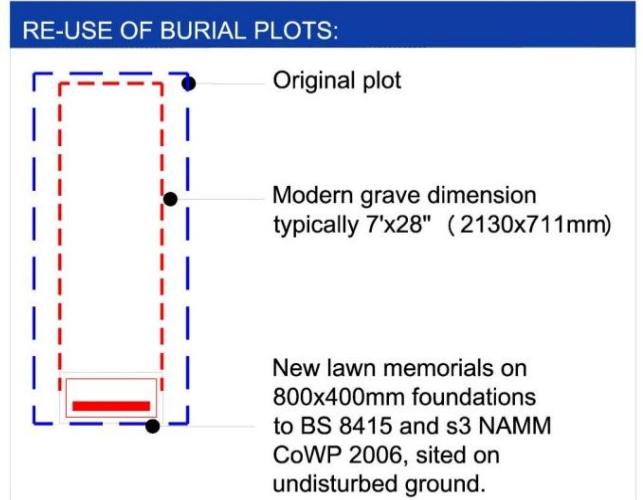
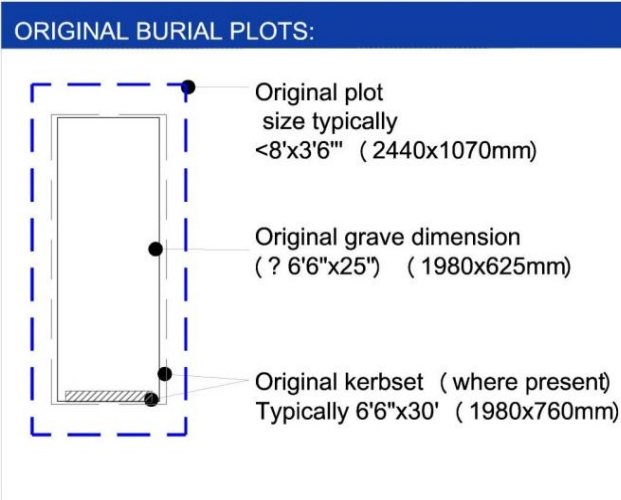
It may be necessary to leave alternate columns un-used due to insufficient mid feather.

Original kerbsets removed

Row re-used or reclaimed



Insufficient mid feather to reuse every grave along a row so alternate graves 'missed out' and not re-used.



### **12.3 Re-Use – Opening**

- 12.3.1 The process of grave re-use will differ slightly in each cemetery according to a range of factors and depending on whether the re-use is of public as opposed to private graves. The re-use process for public graves at the City of London resembles a re-open, with the first stages of the dig completed the day prior to the interment as Box 12.1.

#### ***Box 12.1 Re-Use Process, Public Graves City of London***

*Stage One* The grave will be dug by machine and all soil removed to a dumper until the driver/spotter reaches the depth of the last known interment, or changes to the soil configuration indicate that burial has taken place. At this point, the dig is terminated until early the following morning.

*Stage Two* Further digging takes place with the gravedigger removing earth by the bucket load onto a grave board. Each load is sifted by hand. The operative places all remains in a container, which in the case of the City of London, comprises a hessian sack.

*Stage Three* The container is placed in the designated grave, and covered with soil. All sifted soil is added to the dumper, to be returned to the grave. Interment proceeds as would be the case with a re-open.

#### ***Burial Depths***

- 12.3.2 In any system of re-use, three possible approaches to burial depths can be taken, as set out in Box 12.2.
- 12.3.3 Where a Burial Authority is seeking to maximise land use, the decision may be taken to dig new graves to the maximum depth consistent with due regard for health and safety.

## Box 12.2 Burial Depths

*a) Digging to a depth suitable for an optimal number of burials to allow future reclamation without disturbance (e.g. allow for 4 interments) Full disinterment/re-interment of all remains encountered.*

*Advantages:*

This approach equates to a deeper than usual re-open; trained staff and equipment should be available for this depth of dig.

Maximise ease of reclamation in the long term without disturbance.

*Disadvantages:*

There is a risk that deeper burials will be in a lower state of decay as a consequence of restricted air flow.

There may be a possible health and safety risk, and the need for additional training for deeper disinterment.

*b) Digging only to the depth required by the new purchaser of the grave (usually double depth). Full disinterment/re-interment of all remains encountered.*

*Advantages:*

This approach equates to a re-open; trained staff and equipment will already be available for this depth of dig.

*Disadvantages:*

Some purchasers of graves may have some concerns about 'other' remains in the same grave.

There is some compromise in terms of traceability for public graves re-used under Faculty, in introducing uncertainty as to which remains have stayed within a grave and which removed to the designated grave.

### 12.4 Designated Graves for Re-Interment by Faculty

12.4.1 Designating graves for re-interment of remains is only applicable when re-using public graves in consecrated ground under Faculty.

12.4.2 Designated graves must be allocated within the same consecrated section being re-used. These graves must be identified on the cemetery plan and a record maintained for each that indicates the original graves from which remains were transferred.

12.4.3 The following recommendations are made:

- The depth of a designated grave is a matter for local decision and will be dependent on soil type and ground conditions.

- Adequate shoring must remain in place during the period of use and progressively removed as the grave is filled.
- Whenever remains are placed in a grave they or their container must be covered with soil so that they are not visible.
- A designated grave should be adequately covered, preferably with a lockable cover, when not in use.
- Visual inspections should be made regularly to check the integrity of the grave, shoring and lockable cover.

12.4.4 Designated graves can be sited at the end of a row. Alternatively where layouts do not correlate (due to differences in old and new plot size) the two layouts could be aligned on a similar axis, a defined area of historic plots of known numbering could be selected for re-use and a single designated grave could be used to receive all the remains being transferred from that given areas, thus enabling robust traceability.

## **12.5 Handling and Storage of Memorials**

12.5.1 Careful consideration must be given to the handling, storage and/or destruction of redundant memorials during the early planning stage, as removal, relocation or destruction will form the initial action prior to any re-use taking place. Factors such as available storage space and noise, will be dependent on local circumstances.

12.5.2 A record of the action taken in respect of each individual memorial must be made together with photographic details of the inscription.

12.5.3 The action considered appropriate must only be commenced after the closing date for notification with recommendations being made as follows.

- *Handling:* Whether memorials are to be stored, re-erected or destroyed, it is important that they are removed from their respective graves in a careful and sensitive manner. Even those memorials that are to be destroyed should be treated with care as those persons undertaking the task will be in public view.
- *Storage:* Where space permits, the decision could be made to store memorials for a period following the closing date for notification. Whilst it is

unlikely that these memorials will be claimed following the closing date their storage nevertheless provides an additional buffer against criticism.

## **12.6 Disposal of Memorials**

12.6.1 It is advised that the destruction of each memorial does not take place on its grave space and that affected memorials are handled as in 'Handling' above and removed to a central location for destruction, out of public view.

12.6.2 The resulting fragmented masonry should be disposed of carefully and discreetly using an appropriate route and registered waste carrier. Memorials should be broken to a size where inscriptions are not legible. Temporary use of a mobile crusher may be an appropriate solution in some instances subject to noise, waste licencing and other considerations, all of which may be best discussed with the authorities planning Environmental Health officers.

## **12.7 Devising Ethical Standards for Handling Remains and Artefacts**

12.7.1 Under any system of grave re-use, the public need to be assured that the treatment of human remains and artefacts recovered from graves will be handled sensitively and with respect.

12.7.2 As a Burial Authority, it is likely that your department has already devised an ethical statement of your intent to deal with members of the public in an appropriate manner, and this could be amended or adapted accordingly.

12.7.3 The following elements, as set out in Box 12.3, should form the basis of any 'ethics' statement.



### **Box 12.3 Basis of Ethics Statement**

- i Re-use will only take place in Public Grave areas where consecrated and as permitted by Faculty.*
- ii Private Graves areas shall only be re-used where legal procedures are followed in full (and, where consecrated as permitted by a Faculty);*
- iii No disinterment activity likely to cause distress to members of the public will be openly on view at any time;*
- iv Only skeletal and coffin material fragments will be disturbed during the process of re-use, which will IN NO CIRCUMSTANCES include the disturbance of any human remains that are not fully decomposed nor remains within an intact coffin;*
- v All remains and artefacts encountered in the process of disinterment – including any potentially valuable items such as jewellery – will be respectfully placed in an appropriate container prior to re-interment in the designated public grave or the original private grave;*
- vi No remains or artefacts will be removed and relocated in any place (other than for public designated graves as noted above);*
- vii Remains and artefacts removed from a grave will not be cremated prior to re-interment;*
- viii Remains and artefacts will be recorded in terms of depth found and given an appropriate classification;*
- ix The process of re-use will be undertaken by a Senior Cemetery operative who has had specific training and is subject to an appropriate level of supervision.*

*For Re Use under Faculty:*

- x Remains will be placed respectfully in the designated grave as close as possible to the disinterment site,*
- xi A secure, lockable cover will be used for the designated grave during the time in which it is in use;*
- xii The designated grave will be maintained in good order by the burial authority*

12.7.4 The City of London uses a seven-point classification scheme for each grave which has been dug for re-use (See Box 12.4).

**Box 12.4 Example Grave Re-use Protocol City of London Cemetery**

1. All excavations in the pilot grave re-use area will be undertaken with due care and diligence due to the likelihood of human skeletal remains being disturbed. Where possible this work will be undertaken before the cemetery grounds are open to the public, although there will be occasions, particularly during busy periods, where work will need to proceed during normal opening hours. Grave diggers shall be aware of the need to maintain dignity at all times in the disturbance of skeletal remains and the potential for visitors attending nearby graves being offended. Therefore, work will cease whilst visitors are in close proximity to the grave being excavated.
2. Any disturbance of human remains shall be logged by the gravedigger on the digging order/papers and the Senior Cemetery Operative advised. The details recorded shall include the depth at which any remains were found (this depth must be measured from the level of the adjoining ground).
3. Details of the remains found shall be recorded using a six point scale (full details set out below). This information will be recorded on the grave diggers interment paper:
  - '0' No remains found.
  - '1' Small fragments of skeletal remains found.
  - '2' Significant skeletal remains found.
  - '3' Significant skeletal remains and fragments of coffin found.
  - '4' clearly defined but damaged coffin and significant skeletal remains found.
  - '5' fully intact coffin found.
  - '6' remains that are not fully decomposed.
4. Points 5 & 6 on the scale above are shown in red as at these points re-use of the grave will not proceed and the grave will be back-filled. Any remaining depth may be used for burial provided the previous coffin / non-decomposed remains are not disturbed.
5. Any grave artefacts found during the excavation will also be recorded using an asterisk on the grave digging papers together with a brief description of the item(s)

found. Artefacts that have no value should be treated in the same manner as those that do e.g. gold or silver items. The pilot grave reuse area consists of public / common graves from the time of the Great Depression and it is, therefore, unlikely that any grave artefacts with any financial value will be found. However, any artefacts found shall be recorded and reinterred in a designated nearby grave together with any skeletal remains found. This information will then be recorded in a separate ledger.

6. All remains that are disturbed will be re-buried in a designated grave in the pilot area as near as possible to the excavated grave.
7. All staff required to undertake the excavation of graves in the pilot re-use area will receive an induction training course ensuring full understanding of this protocol and any other guidance issued in respect of the work required.
8. The Senior Cemetery Operatives shall be responsible for ensuring the day-to-day implementation of the re-use work in accordance with this protocol under the guidance of the Landscape & Services Manager. The Superintendent and Registrar shall monitor the pilot programme and undertake adhoc inspections as he considers appropriate – the findings of which shall be recorded.
9. The pilot scheme shall only take place within the designated area as detailed within the Faculty granted.
10. A photographic record of any significant findings during the pilot programme shall be undertaken.

## **12.8 Staff Training**

- 12.8.1 Not all staff will have been involved in an exhumation, and so may not be directly familiar with the handling of human remains. Specialist training is advisable. Other aspects of re-use may also require specific staff training.
- 12.8.2 The ICCM will be producing a specialist re-use COTS training module for both management and operational aspects and addressing The Code of Safe Working Practice for Cemeteries (covering safe practice in the event of a grave being re-opened).

## 12.9 Health and Safety

12.9.1 The process of re-use in terms of digging and shoring should be subject to a generic risk assessment that is applicable in the case of grave re-opens addressing:

- *Exhumation*
- *Safe Working Practice*

12.9.2 However, re-use brings the gravedigger into contact with human remains, and burial authorities are required to make a suitable and sufficient assessment of the risks that are posed from possible exposure to biological agents such as bacteria and viruses. Archaeologists note that the highest risk encountered in dealing with human burials is the sealed lead coffin, which may still contain soft tissue. Interment in mausolea and brick-lined vaults may also prove to be hazardous. However, re-use by Faculty focuses on the re-use of public areas, where brick lining and the use of lead coffins is highly unlikely, and for private graves, under the re-use protocol, graves with sealed coffins would not be re-used. Further information is available from the ICCM exhumation training course and guidance document.

12.9.3 In most cases the risk of infection from the deceased is low, particularly given the length of time before disturbance takes place. However, note should be taken of the following:

- *Smallpox*

*This virus was commonplace in London, and was the cause of at least one major epidemic in 1871-2, when 9,698 smallpox deaths were recorded. Smallpox can survive for long periods following interment, where skin and soft tissue have been preserved. However, the risk of gravediggers coming into contact with this material is low. Initial digging in the grave would take place mechanically, and any visual evidence of intact or substantially undecayed coffin material would immediately halt any continued dig in that grave. Immediate backfilling would take place.*

- *Anthrax*

*Anthrax is a livestock disease, and is spread through the release of spores from infected animals and their products. The spores may remain alive for many years, even under airless conditions, and may be present in horse-hair*

*stuffing within coffin pillows, pads and linings. However, it should be noted that even over the last two centuries the incidence of this disease is extremely low. In almost all cases, infection was caught through skin lesions.*

- *Tetanus*  
*All cemetery operatives should be routinely immunised against tetanus, the spores of which can be found in the soil and infect individuals through broken skin. Immunisation should take place at least every ten years.*

### **Local Environmental Health Officer**

12.9.4 In the case of exhumations, the Ministry of Justice may inform the local environmental health officer (EHO) who may attend the exhumation. In the case of re-use, the burial authority may be advised to send a copy of their re-use protocols and risk assessment to the EHO for comment. Each local authority environmental health office operates with different priorities, and may not necessarily be proactive in this area. However, it is commonsense to keep the environmental health office fully informed in case public safety fears emerge as a consequence of public consultation.

## **12.10 Memorial Panel Process / Heritage Advisory Board**

12.10.1 Prior to commencing re-use or reclamation within areas where there are culturally or historically significant graves and/or significant or distinctive memorials and/or memorials which, whilst not significant in themselves, contribute to a valued character of a cemetery). It will be necessary to carry out a detailed assessment of the graves and memorials involved and this might be done through structured process and with the assistance of a *Memorial Panel* or a *Heritage Advisory Board*

12.10.2 The *Memorial Panel* or a *Heritage Advisory Board* set up to carry out this detailed survey and assessment work including individuals such as:

- an officer with appropriate training within the bereavement services;
- the council Conservation Officer;
- a diocesan representative;
- a representative from the local civic or historical society;
- representative(s) from local specialist memorial masons with specialism in conservation and repair.

12.10.3 An example assessment protocol (based around the City of London approach is given at Appendix 12.10.

12.10.4 In terms of the options for memorials the assessment would identify whether individual memorials are suitable (or merit):

- i. partial or full restoration (with no associated re-inscription, reclamation or re-use) as part of the Conservation Management Plan programme;
- ii. restoration, reversal and re-inscription, with the restored monument then being made available to the new owner of the re-used/reclaimed grave (and with that owner becoming the new custodian of the memorial);
- iii. removal and restoration a particular memorial in whole or in part (but without retention of the original inscription) for potential re-sale to new custodians for re-use in specified parts of the cemetery (but without necessarily being used on the original grave).
- iv. salvage of parts for repairs
- v. removal and destruction of the memorial.

12.10.5 In practice option (iii) above might enable certain attractive or distinctive memorials to be given a new lease of life so as to maintain and/or enhance parts of the cemetery with a particular historic character.

12.10.6 The mechanism and conditions and costs associated with restoring/re-inscribing memorials and making them available to new custodians will need to be considered. For instance at the City of London the new owners of rights to a grave being reclaimed/re-used are offered custody (and become Custodians) of the memorial at costs that are set to cover the expense involved in restoration.

**Plate 12.2 Restoration, Reversal, Re-inscription of Monuments: City of London**



**Monuments restored, re-inscribed and reversed on reclaimed graves:  
City of London Cemetery**

## **12.11 Integration of Re-Use into Existing Provision**

12.11.1 During the development of the Re-Use Strategy (section 6.0) and the CMP work (section 8.0) and finally in the detailed planning for re-use and reclamation, consideration will need to be given to the following:

- How operations will work where there are multiple cemetery sites run by the service and where facilities (chapels/offices/yards/workshops/staff welfare) are based at different sites, potentially distant from areas proposed for re-use?
- Whether burial of cremated remains in existing older graves proposed for re-use should continue to be permitted and, if not, what alternatives should be offered?
- Whether and how fees scales should be reviewed?
- Whether and how purchase periods for exclusive rights should be reviewed?
- Whether and how regulations should be reviewed?
- How information on the services offered (including website information, printed material and/or directional signage) will be brought up to date and made available?
- Whether specific provision needs to be made for different faith groups? (see also Appendix 12.3)



# Technical Guidance on the Re-Use and Reclamation of Graves in London Local Authority Cemeteries:

## Appendices



London Environment Directors Network (LEDNET)  
Cemeteries, Crematoria and Burials Provision (CCBP) Sub-Group

## **APPENDICES**

Appendix 1.1	Glossary
Appendix 3.1	Excerpt 1857 Burial Act
Appendix 3.2	Local Authorities Cemetery Order (LACO) 1977
Appendix 3.3	Greater London (General Powers) Act 1976 Section 9
Appendix 3.3	London Local Authorities Act 2007 Section 74
Appendix 5.1	Example Documentation: Faculty Application
Appendix 7.1	Typical Burial Records
Appendix 8.1	Conservation Management Plan: Typical Headings
Appendix 10.1	Typical Heritage Memorial Area Regulations
Appendix 11.1	Notice of Extinguishing Rights under 1976 Act
Appendix 11.2	Notice of Extinguishing Rights under 1976 Act and Re-Use under 2007 Act
Appendix 11.3	Letter: For use with Notice of Extinguishing Rights under 1976 Act
Appendix 11.4	Letter: For use with Notice of Extinguishing Rights under 1976 Act and Re-Use under 2007 Act
Appendix 11.5	Notice of Extinguishing Rights in Reserved Graves under LACO
Appendix 11.6	Letter: For use with Notice of Extinguishing Rights in Reserved Graves under LACO
Appendix 11.7	Notice of Re-use of Public Graves under Faculty
Appendix 12.1	Heritage Panel Process: Memorial Assessment Categories And Criteria.
Appendix 12.2	ICCM: Policy Relating to Shallow Depth Graves.

Glossary

1976 Act	<i>The Greater London Council (General Powers) Act 1976 .TBC.</i>
2007 Act	<i>The London Local Authorities Act 2007</i>
LACO 1977	<i>The Local Authorities Cemetery Order (LACO) 1977 (Statutory Instrument No 204)</i>
<i>Burial Acts</i>	A series of acts passed between 1852 and 1906, defining the terms under which <i>burial boards</i> would operate. The Burial Acts were in force until 1974.
<i>Burial board</i>	Agency appointed under the <i>Burial Acts</i> and comprising between three and nine members elected by the local ratepayers. Burial Boards were empowered to take out loans repayable from the rates to lay out cemeteries.
<i>Burial ground</i>	This text uses burial ground as a term for burial space intended to serve non-Anglicans for example, Roman Catholics or Quakers.
<i>Burials Office</i>	Administrative office within the <i>Home Office</i> , dealing with burial issues – including churchyard closures and inspections – until 1900.
<i>Burial Right(s)</i>	The right to burial in a <i>purchased</i> or <i>private grave</i> , purchased from the owner of the cemetery. No interment can take place within a <i>purchased</i> or <i>private grave</i> without the permission of the owner of the burial right. The ‘burial right’ is defined in a legal document noting the location of the grave within the cemetery, and can be bought, sold and gifted like any other property although the land itself remains in the control of the cemetery owner. Also referred to as <i>Exclusive Rights of Internment</i> . Burial Rights are normally owned by the heir, or next of kin or to the deceased.
<i>Cancellation of Rights</i>	Cancellation of <i>Burial Rights</i> held by the owner of a grave, through legal process either involving LACO 1977 (where the exclusive right to burial has not been exercised) or through the 1976 Act where more than 75 years has elapsed since the last burial.
<i>Cemetery</i>	Burial space generally including consecrated and unconsecrated sections, subject to civic legislation, and intended to serve the entire parish or community.
<i>Chapel of ease</i>	A building for worship located away from the principal parish church, for the convenience of worshippers.
<i>Church Commission</i>	Manages the buildings and property of the Church of England. The Church Commissioners were created in 1948 and inherited the functions of the Governors of Queen Anne’s Bounty, which funded church building, and the <i>Ecclesiastical Commissioners</i> .
<i>Churchyard</i>	Consecrated parish burial space sometimes but not always surrounding a church, owned by the Church of England and subject to canon law. In this report churchyards are distinguished from cemeteries.

<i>Common Grave</i>	See <i>Public Grave</i> .
<i>Consecration</i>	A ritual and legal act, dedicating for holy use an object, building or place. Where ground is consecrated for burial, the land falls under the authority of the Anglican Bishop.
<i>Conservation Management Plan</i>	A document outlining the historical, cultural, and environmental assets of a site, and the significance of those assets, along with the risks to, and means of managing, those assets.
<i>Curbset</i>	see <i>Kerbset</i>
<i>Chambers</i>	Pre fabricated receptacles that may contain one or more interment, below-ground, placed individually or combined into an interlocking/integrated system. Sometimes also referred to as <i>vaults</i> . Used to expedite burial process and/or to overcome difficult ground conditions and/or to enable burial in a sealed system where there would otherwise be insufficient depth of soil cover to meet statutory requirements. May be integrated so as to combine with above-ground <i>mausolea</i> or burial vaults.
<i>Cremated Remains</i>	Ashes from a cremation that may be <i>interred</i> and in doing so may have certain legal protections from disturbance (as opposed areas used for surface <i>strewing</i> or <i>scattering</i> of cremated remains which do not carry protection from disturbance)
<i>Diocese</i>	The geographical area over which a Church of England <i>bishop</i> exercises authority. The bishop is subject to canon law, but until 1969 could exercise a great deal of personal influence over the tenor of Church activity in his diocese. As a consequence, there has been variation between dioceses on some aspects of Church of England churchyard management. After 1969, bishops were obliged to consult with representatives of laity and clergy.
<i>Ecclesiastical Commission</i>	The administrators of Church of England property from 1836 to 1948, when it was superseded by the <i>Church Commissioners</i> . The Ecclesiastical Commissioners dealt with matters relating to churchyard management, including fee setting.
<i>Faculty</i>	Formal permission required from the diocese for substantive changes to church property at the local level. Faculty was required make substantive changes to the churchyard, including the clearance of monumentation; the reservation of grave spaces could only take place by faculty.
<i>General Board of Health</i>	Created by the Public Health Act in 1848 in order to administer the Act, and in operation during the passage of the Burial Acts in 1852 and 1853. The General Board of Health ceased to function in 1854, and burial functions devolved to the <i>Home Office</i> .
<i>Grave</i>	Essentially, a hole in the ground with space for a number of coffins – one on top of another, with soil between each coffin. The number of coffins in each

	grave depends on the depth to which the grave was dug originally. In cemeteries, the grave is located within a defined <i>plot</i> .
<i>Grave, bricked</i>	Grave where the walls have been lined with brick.
<i>Grave, Common</i>	See <i>Public Grave</i> .
<i>Grave, Private</i>	See <i>Public Grave</i> .
<i>Grave, Public</i>	See <i>Public Grave</i> .
<i>Grave, Purchased</i>	See <i>Public Grave</i> .
<i>Grave, Ordinary</i>	See <i>Public Grave</i> .
<i>Grave, unpurchased</i>	See <i>Public Grave</i> ..
<i>Home Office</i>	Government office with primary responsibility for burials until the Burial Act 1900 transferred the majority these functions to the <i>Local Government Board</i> . However, the Home Office retained responsibility for aspects of burial legislation until the transfer of those functions to the Department of Constitutional Affairs in 2005. This department was renamed the Ministry of Justice in 2007.
<i>Interment</i>	Burial, or the ritual act of placing a dead person or animal, and/or objects into the ground
<i>Kerb</i>	Memorial unit usually of raised stone used as edging around a grave.
<i>Kerbset</i>	Full traditional memorial including a kerb edging and memorial stone
<i>Lawn Memorial</i>	A memorial consisting of a head plate, horizontal plinth and foundation
<i>Lawn Burial</i>	An arrangement of plots and memorials without kerbsets and with strips of mown lawn between the memorials.
<i>Local Government Board</i>	Government agency that took over control of the sanitary, planning and environmental aspects of burial in 1900. This agency became the Ministry of Health in 1919. These functions were transferred to the Minister of Local Government and Planning in 1951, renamed in the same year as Minister of Housing and Local Government.
<i>Mausoleum</i>	Free-standing building or structure containing above-ground receptacles for coffins and sometimes sited over below-ground vaults.
<i>Memorial Plate</i>	The upright part of a memorial on which the inscription is usually cut
<i>Memorial Headstone</i>	See <i>Memorial Plate</i>
<i>Memorial Stone</i>	Headstone footstone, book, cross etc including base or bases if prt of the design
<i>Monolith Memorial</i>	A memorial headstone consisting of a single upright piece of masonry, usually set up to 1/3 into the ground in a foundation or foundation shoe
<i>Mound</i>	Level platform of earth standing about one foot above the grave, on which commemorative objects were placed, including headstones.
<i>Mounding</i>	See <i>Soil Top up</i>
<i>Non-parishioner</i>	A person not regarded as being a parishioner, and who for that reason can be denied burial in the churchyard or cemetery, or charged a higher fee.

<i>Order in Council</i>	A simple legislative enactment using a framework defined by statute. Churchyards were closed by individual orders in council.
<i>Ordinary</i>	A Bishop or Archbishop.
<i>Ordinary Grave</i>	See <i>Public Grave</i>
<i>Parish council</i>	Brought into being by the Local Government Act, 1894 and in rural areas replacing the <i>vestry</i> as the principal agency of local government.
<i>Parish</i>	The basic unit of Church of England administration, and may contain one or more settlements, under the care of a priest. For much of the nineteenth century the parish was the principal administrative unit of both Church and local government, and had officers with specific civic and Church responsibilities elected from the body of local ratepayers. Successive enactments have severed the links between the Church of England and local government.
<i>Parishioner</i>	Through the nineteenth century, a parishioner was defined as someone who had been born in a particular <i>parish</i> , and/or who paid rates there. Parishioners had rights and responsibilities within their own <i>parish</i> , for example, the right to welfare and to burial, which did not translate to other parishes.
<i>Parochial church council</i>	The 'management' arm of a local Anglican church, established in 1921 to replace the ancient <i>vestry</i> system and with responsibilities for <i>churchyard</i> management.
<i>Private Grave</i>	A grave in which the burial right has been purchased for a defined length of time. Also termed a 'purchased' grave.
<i>Plate</i>	See <i>Memorial Plate</i>
<i>Plot</i>	A portion of land containing a <i>grave</i> . Each <i>cemetery</i> will be organised into a series of plots. In the nineteenth century, 9ft by 4ft was the plot size recommended for sanitary burial, to ensure sufficient space between interments. As the nineteenth century progressed, churchyard extensions were also sometimes divided into plots.
<i>Public Grave</i>	A grave in which the burial right is retained by the owner of the cemetery, and in which one or more unrelated individuals may be buried. Also termed unpurchased or 'public' grave.
<i>Registrar</i>	Essentially the legal officer of the diocese, with responsibility for matters such as conveyancing and dealing with applications for <i>faculty</i> .
<i>Registrar General</i>	Registrar to the Ministry of Justice (MOJ) (previously Home Office)
<i>Re-open</i>	A 're-open' – often used as a noun in this context – is burial in a grave in which there has been a previous interment. This process does not disturb any previous burials.

<i>Re-use of Graves</i>	Burial into graves where those graves have been previously been used for burials at least 75 years prior to the new burial, at depths where it may be necessary to disturb human remains.
<i>Reclamation of Graves</i>	Burial into graves where those graves have been previously been used for burials at least 75 years prior to the new burial, but at depths where it will not be necessary to disturb human remains
<i>Rights</i>	See <i>Burial Rights</i>
<i>Soil Top up</i>	A process of importing or distributing soil over existing burial areas to raise levels so as to achieve sufficient depth to enable new burials to take place in or over those graves without recourse to disturbance of existing remains
<i>Sentence of Consecration</i>	A legal document recording that a <i>consecration</i> has taken place and defining, in an enclosed map, the area that has been consecrated.
<i>Traditional Memorial</i>	See <i>Kerbset</i>
<i>Vault</i>	Built structure, located under the ground – including under the floor of a church – capable of receiving a number of coffins. Vaults can be extremely elaborate and contain internal ‘furniture’ such as shelving or be simple functional repositories.
<i>Vestry</i>	Principal agency of local government until 1894, comprising a body of elected ratepayers. Although the vestry had close connections with the Church of England, it could include ratepayers of other denominations.

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**Appendix 3.1**  
**Articles and within Local Authorities Cemetery Order (LACO) 1974**  
**and LACO 1977 (Statutory Instrument No 204)**

**(Summary of Provisions)**

**LACO 1977 gives burial authorities wide ranging powers of management:**

**Article 3.-(1)** Provides that a Burial Authority may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery.

**Article 4.-(1)** Sets out a statutory obligation for the Burial Authority to maintain cemeteries within their care.

Under the following articles the Burial Authority may:

**Article 5:** -allocate different areas of the cemetery for the use of different Christian denominations or other religious groups and may also apply to the Church of England for the Bishop to formally consecrate parts of the cemetery.

**Article 6:** -provide chapels.

**Article 7:** -provide a mortuary in connection with burials in a cemetery.

**Article 10:** -grant exclusive rights of burial and memorial rights, subject to such terms and conditions as they think proper.

**Article 14:** -remove unauthorised memorials

**Article 15:** -charge such fees as they think proper

**Article 16:** Provides a Burial Authority certain powers in relation to memorials including partial or full removal, (subject to requirements of Schedule 3).

**Article 9:** Requires a Burial Authority to maintain a record of any disinterment(s)

**Article 23:** Sets out that nothing in the Order  
*'shall be construed as authorising the disturbance of human remains'*.

**Under Sections 9 and 11:**

Burial Authorities are required to:

- Maintain a record of burials
- Maintain a plan showing the number and location of each grave
- Maintain a record of the granting and transfer of exclusive rights
- Issue Deeds of exclusive rights
- Maintain a record of exhumations
- Store all records securely to preserve them from loss or damage

**Schedule 2 Part 1:**

- Specifies minimum depths of interments/coffins

**Schedule 2 Part 3:**

- Sets out that Burial Authorities may under certain conditions cancel rights granted before 1st April 1974

**Schedule 3:**

- Sets out limits, and obligations in respect of making changes to/removal of memorials.

## Local Authorities Cemetery Order

(LACO) 1977 (Statutory Instrument No 204)

### BURIAL, ENGLAND AND WALES

#### The Local Authorities' Cemeteries Order 1977

<i>Made</i>	<i>5th January 1977</i>
<i>Laid before Parliament</i>	<i>18th January 1977</i>
<i>Coming into Operation</i>	<i>10th March 1977</i>

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 sections 214(3) and 266(2) of the Local Government Act 1972 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 1977 and shall come into operation on the 30th day following the day on which it has been approved by a resolution of each House of Parliament.

#### ***Interpretation***

- 2.-(1) The Interpretation Act 1889 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) the placing in a vault of human remains, cremated human remains, or the bodies of stillborn children or the cremated remains thereof;

"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 or by or under any local Act for the provision and maintenance of cemeteries;

"cemetery" means a cemetery provided and maintained by a burial authority;

"computer" means any device for storing and processing information [Inserted by The Local Authorities Cemeteries (Amendment) Order 1986 art 2(2)]

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

"grave" includes a walled grave, but subject to the provision of article 16(2) does not include a vault;

"the order of 1974" means the Local Authorities' Cemeteries Order 1974;

"the specified circumstances", in respect of any owner or person, are where-

any communication addressed to him at his last recorded address has been returned to the burial authority (whether as such or otherwise) as undeliverable; or

his last recorded address is that of premises which no longer exist;

"tombstone" includes kerbs;

"vault" means a chamber provided for the reception of human remains or cremated human remains, together with the access thereto;

"walled grave" means a grave the sides of which are lined with walls; and

“the Welsh Church Act” means the Welsh Church Act 1914, and “the area subject to the Welsh Church Act” means the area in which the Church of England was disestablished by that 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 section 2(2) or (3) of the Burial Act 1900 or to article 6(1)(b) of the order of 1974.

(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) Any reference in this order to a right to place and maintain a tombstone or other memorial includes a right to place a tombstone or other memorial.

(6) Any reference in any provision of this order other than paragraph 5, 11 or 14 of Schedule 3 (as to which provision is made in paragraph 19 of that Schedule) 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, and the reference in article 10(1)(c) to a right described in (a)(i) includes a reference to any similar right so granted.

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

(8) 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.

(9) Any reference in this order to a numbered article or Schedule shall, unless the reference is to an article or Schedule of a specified order, be construed as a reference to the article or Schedule bearing that number in this order.

(10) Any reference in any article, Schedule or Part of a Schedule of this order to a numbered paragraph shall, unless the reference is to a paragraph of a specified article, Schedule or Part of a Schedule, be construed as a reference to the paragraph bearing that number in the first-mentioned article, Schedule or Part of a Schedule.

### ***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 relating to any chapel provided as mentioned in article 6(1)(b); or

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

(3) Where in the exercise of the powers conferred by paragraph (1) a burial authority enter into any agreement with the rural dean or the representatives of a particular denomination or religious body in relation to the management of any part of a cemetery, or where any such agreement has been entered into under paragraph (1) of article 3 of the order of 1974 or enactments replaced by that paragraph-

(a) the first-mentioned paragraph shall have effect subject to the provisions of the agreement; and

(b) article 16 shall not be construed as empowering any departure from such provisions.

### ***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 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).

(2) Schedule 1 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), 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) shall satisfy themselves that a sufficient part of the cemetery remains unconsecrated and not set apart for the use of particular denominations or religious bodies.

(3) Paragraph (1)(a) 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 was performed between that time and 1st April 1974 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 for 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 setting apart for the use of a particular Christian denomination of the part of a cemetery in which any burial is to be effected, 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.

### ***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), provide a chapel for the performance of funeral services according to the rites of the Church of England or other particular 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 use.

(3) A burial authority may provide a chapel as mentioned in paragraph (1)(b) only at the request of members of the Church of England or other particular 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 particular denomination or religious body at whose request a chapel was provided as mentioned in paragraph(1)(b), 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) 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 as mentioned in paragraph(1)(b), only out of funds provided for the purpose otherwise than by the authority.

(7) Where a chapel provided as mentioned in paragraph (1)(b) 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).

(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.

#### ***Plan and record of cemetery***

9.-(1) A burial authority shall maintain a plan showing and allocating distinctive numbers to-

(a) all graves or vaults in which burials are made after the coming into operation of this order or are known to have been made before that event; and

(b) the grave spaces subject to the specified rights.

(2) A burial authority shall also maintain records, by reference to the numbers in the plan, of-

(a) the burials made after the coming into operation of this order in any graves or vaults; and

(b) the specified rights existing in any graves or vaults, or grave spaces, and the names of the grantees thereof as recorded in the register maintained under Part 11 of Schedule 2 or in the registers described in paragraph 2(b) of the Part.

(3) In this article "the specified rights" means-

- (a) the rights granted by the burial authority or any predecessors of theirs under article (10)(1) or under article (9)(1) of the order of 1974; and
- (b) the rights granted under section 33 of the Burial Act 1852, section 40 of the Cemeteries Clauses Act 1847 or a corresponding provision in any local act.

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

**10.-(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 or vault, or is acting at the request of such a relative and that it is impractical for him, or 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 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 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 as mentioned in article 6(1)(b), only at the request of persons appearing to the burial authority to be representative of the Church of England or other particular 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) Subject to paragraph (3), a right under paragraph (1), other than a right described in (a)(ii), 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) Where-

- any exclusive right of burial in any grave space; or
- any right to construct a walled grave or vault together with the exclusive right of burial therein,

granted under paragraph (1) or under article 9(1) of the order of 1974 for a period exceeding 75 years has not been exercised before the expiration of 75 years from the date of the grant, the burial authority may 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 of the right notifies the authority in writing of his intention to retain it.

Where the burial authority are entitled to serve a notice under this paragraph in respect of any right, but the specified circumstances exist in respect of the owner of the right, they may instead-

- (a) display the notice in conspicuous positions at the entrances to the cemetery; and
- (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,

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

(4) A burial authority may from time to time extend the period of any grant under paragraph (1) or under paragraph (1) or article 9 of the order of 1974 or any enactment replaced by that provision

(subject, if they think fit, to any modifications of its terms or conditions ) for up to 100 years from the date on which the extension is granted.

(5) The burial authority may, at the expiration of the period of any grant under (b) or (c) of paragraph (1) or under (b) or (c) of paragraph (1) of article 9 of the order of 1974 or any enactment replaced by those provisions, or of any extension of such period-

(a) move to another place in the cemetery; or

(b) remove from the cemetery, for preservation elsewhere or for destruction, any tombstone or other memorial which has not been removed from the cemetery by the owner of the right to place and maintain it in the cemetery.

(6) No body shall be buried, or cremated human remains interred or scattered, in or over any 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.

This paragraph shall not extend to the body, or remains, of-

the person who immediately before his death was the owner of the right; or

any other person specified in the deed of grant or in an endorsement thereon made at the request of the owner for the time being of the right by the officer appointed for that purpose by the burial authority.

(7) A burial authority shall also have the power to agree with any person, on such terms and 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 shall have effect as if it had been entered into under this paragraph.

(8) Rights granted under paragraph (1) or under paragraph (1) or article 9 of the order of 1974 or enactments replaced by that paragraph shall be exercisable subject to and in accordance with the provisions of Part 1 of Schedule 2.

The provisions of Part 11 of that Schedule shall have effect with respect to grants under paragraph (1), the extension of the period of such grants and grants made under paragraph (1) or article 9 of the order of 1974 or any enactment replaced by that paragraph and the registration of, and other matters concerning, rights granted under any such paragraph or enactment.

The provisions of Part 111 of the said Schedule shall have effect for the purpose of enabling a burial authority to terminate the rights and agreements described in paragraph 1 thereof.

### **Registration of burials and disinterments**

***(Article 11 was amended by The Local Authorities Cemeteries (Amendment) Order 1986 to allow the maintenance of registers on computer. The following Article contains the amended wording)***

**11.-(1)** A burial authority shall maintain a register of all burials in a cemetery in a book or books provided for the purpose, or in a computer.

**(2)** Where the register of burials is maintained in a book-

**(a)** the book shall be of good and durable paper and be strongly bound and if it is the second or any subsequent book to be provided it shall be numbered accordingly; and

**(b)** the pages in which entries are to be made in any book provided after the coming into operation of this order shall be numbered and shall be printed in columns, including columns headed-

Number/ Date of burial/ Names in full/ Age/ Address/ Grave or vault number/ Other particulars/  
Signature of person directing or making entry,

and in entry spaces of such uniform depth as the burial authority shall consider sufficient: provided that in a book provided within 12 months following the coming into operation of this order-

- (i) the headings of any column of a page may be altered in manuscript so as to comply with this sub-paragraph; and
- (ii) the column headed "other particulars" may be omitted.

(3) As soon as is reasonably practical after any burial in the cemetery the officer of the burial authority appointed for that purpose shall, in durable black ink, number an entry space in the register and enter the burial therein.

(4) Where the burial is that of the body of a still-born child or of the cremated remains thereof the words "Still-born child of" shall be written in the column headed "Names in full", the column headed "Age" shall be left blank and the address of the parents or parent shall be entered in the column headed "Address".

(5) Where the burial is the interment of cremated remains the entry shall record that it is such.

(6) Where the burial is the re-interment of disinterred remains the entry shall record that it is such and the previous place of burial.

(7) Subject to paragraphs (4) to (6) the burial shall be entered in accordance with the headings to the columns in the book.

(8) Where the register of burials is maintained in a computer the burial shall be entered in the computer so as to ensure that any document produced by the computer in relation to that burial contains the same information as would have been recorded if the burial had been entered in a book.

(9) A burial authority shall maintain a record of any disinterments in a cemetery made after the coming into operation of this order, showing-

- (a) the date of disinterment;
- (b) the number of the grave or vault;
- (c) the names, in full, of the person whose remains are disinterred;
- (d) the book, page and entry number of the entry of the burial;
- (e) particulars of the authority for disinterment; and
- (f) if the remains are re-interred in the same cemetery, the number of the grave and the date of the re-interment; or
- (g) if the remains are to be re-interred elsewhere or cremated, the place and date of proposed re-interment or cremation.

(10) As soon as is reasonably practical after any disinterment, the officer of the burial authority appointed for the purpose shall complete the record as regards items (a) to (e) and (g) in paragraph (9) and, where the burial was entered in a book, add to the entry in the register of burials, in durable ink of a colour readily distinguishable from black, a reference to such a record. As soon as is reasonably practical after any re-interment in the same cemetery, the said officer shall complete the record as regards item (f) in paragraph (9).

(11) The register of burials and record of disinterments shall at all reasonable times be available for consultation by any person free of charge.

**11A. -(1)** A burial authority may charge such fees as they think proper for the making by them of searches in, and the provision of certified copies of entries in, a register of burials or a record of disinterments.



(2) For the purpose of paragraph (1), a document produced by a computer shall be deemed to be a certified copy of an entry in the register or record if it is accompanied by a certificate signed by a person occupying a responsible position in relation to the operation of the computer-

- (a) identifying the document and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; and
- (c) stating that-

(i) the document was produced by the computer during a period in which the computer was used regularly to store or process information for the purpose of maintaining burial records;

(ii) during that period there was regularly supplied to the computer information of the kind contained in the document or of the kind from which the information so contained was derived;

(iii) throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of the period was not such as to affect the production of the document or the accuracy of its contents; and

(iv) the information contained in the document reproduces or is derived from information supplied to the computer in the ordinary course of activities.

#### ***Storage of records***

12. The following, namely-

the plan maintained under article 9(1);

the records maintained under article 9(2);

the register of burials maintained under article 11(1);

any register of burials in the cemetery maintained before the coming into operation of this order;

the record of disinterments maintained under ~~article 11(5)~~ article 11(9); [amended LCAO art 2(4)]

the register maintained under Part 11 of Schedule 2;

the registers described in paragraph 2(b) of the said Part 11; and

the records of memorials made and kept under paragraph 16 of Schedule 3,

shall be stored so as to preserve them from loss or damage and be in the charge of the officer of the burial authority appointed for that purpose.

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

13. 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.

#### ***Cost of removal of unauthorised memorials***

14. 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.

#### ***Fees and other charges***

**15.-(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 and maintain a tombstone or other memorial in a cemetery otherwise than in a chapel provided as mentioned in article 6(1)(b); 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 or priest 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 any burial in a cemetery except for services rendered by him.

***Maintenance of graves, etc.; removal of memorials and levelling, etc.***

**16.-(1)** A burial authority may-

- (a) put and keep in order any grave or vault, or any tombstone or other memorial, in a cemetery; and
- (b) level the surface of any grave, consisting wholly or substantially so of earth or grass, to the level of the adjoining ground.

In respect of any grave levelled by them in exercise of the powers set out in (b), 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,

provide at their own expense such identification mark as they consider adequate.

**(2)** A burial authority may, subject to and in accordance with the provisions of Schedule 3-

- (a) remove from the cemetery and destroy-
  - (i) any tombstone or other memorial on a grave of which all material particulars are illegible or which is dilapidated by reason of long neglect;
  - (ii) any kerbs surrounding a grave (whether containing any commemorative inscription or not) together with the foundation slabs of such kerbs;
  - (iii) any tombstone or other memorial, not falling within (i) or (ii), on a grave, except where the owner of the right to place and maintain it in the cemetery has, before the date specified in the notice under paragraph 3 of Schedule 3 as the date before which the carrying out of the proposals will not be commenced, requested that it shall be re-erected in the cemetery or elsewhere;
  - (iv) any surface fittings not falling within (i), (ii) or (iii), or any flowering or other plants, on a grave; and
  - (v) any railings surrounding a grave, a tombstone or other memorial on a grave or a grave space;

- (b) alter the position on a grave of, or re-erect at another place in the cemetery or elsewhere, any tombstone or other memorial on a grave;
- (c) level the surface of any grave, other than a grave described in paragraph(1)(b), to the level of the adjoining ground;
- (d) alter the position of any railings surrounding a grave or vault, a tombstone or other memorial or a grave space;
- (e) re-erect at another place in the cemetery a memorial other than one on a grave or vault or in a chapel provided as mentioned in article 6(1)(b).

Any reference to a grave in (a), (b) or (c) or in Schedule 3 other than paragraph 1 thereof includes a reference to a vault constructed wholly or substantially so below the level of the ground adjoining the vault.

### ***Rites of the Church of England***

**17.-(1)** The incumbent or priest in charge 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 church yard of the ecclesiastical parish and shall be entitled to such fee as may be established by an order framed under section 2 of the Ecclesiastical Fees Measure 1962 for the time being in operation or, if no fee is so established, to such amount as may be fixed by the burial authority under article 15 as the fee payable in respect of services rendered by ministers of religion at their request.

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

### ***Offences in cemeteries***

**18.-(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 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***

**19.** Every person who contravenes-

- (a) any prohibition under article 5(6);
- (b) article 10(6);
- (c) article 18;
- (d) Part 1 of Schedule 2

shall be liable on summary conviction to a fine not exceeding £100 and in the case of a continuing offence to a fine not exceeding £10 for each day during which the offence continues after conviction therefor.

## **Commonwealth War Graves Commission**

**20.-(1)** In this article-

“the Commission” means the Commonwealth War Graves Commission;  
and

“Commonwealth war burial” means a burial of any member of the forces of His Majesty fallen in the war of 1914-1921 or the war of 1939-1947.

**(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 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)** Any right described in article 10(1) may also be granted to the Commission and in relation to any such right-

The words “Subject to paragraph (3),” and “and not exceeding 100 years” in article 10(2);  
article 10(3);  
the words “for up to 100 years from the date on which the extension is granted” in article 10(4);  
article 10(5); and  
the words “for a period not exceeding 100 years from the date of the agreement” in article 10(7),

shall not have effect.

**(5)** Before their first exercise of the powers conferred by the article 10(5) or 16(2) in relation to any particular cemetery, the burial authority shall notify the Commission.

**(6)** The powers described in article 10(5) or 16(2) shall not be exercisable in respect of-

any grave, vault, tombstone or other memorial provided or maintained by or on behalf of the Commission; or  
any other grave or vault containing a Commonwealth war burial,

except with the consent in writing of the Commission.

**(7)** Part 111 of Schedule 2 shall not apply to the Commission.

## **Isles of Scilly**

**21.** If, under section 265(2) of the Act, the Council of the Isles of Scilly become a burial authority for the purposes of section 214 of and Schedule 26 to the Act-

**(a)** this order shall have effect as if the words “the Council of the Isles of Scilly,” had been inserted after “City of London,” in the definition of “burial authority” in article 2(2); and

**(b)** the enactments specified in Schedule 3 to the order of 1974 are hereby repealed to the extent mentioned in that Schedule in their application to the Isles of Scilly.

## **Repeals etc.**

**22.-(1)** Paragraph 10 (application of section 15 of the Public Health Act 1936) of Schedule 26 to the Act is hereby repealed.

**(2)** Except in its application to operations commenced before the coming into operation of this order, any enactment which makes provision for the matters described in article 16 is hereby repealed in so far as it makes such provision in respect of cemeteries.

**(3)** Section 53 (depth of burials) of the Manchester Corporation Act 1950 is hereby repealed.

(4) The order of 1974 is hereby revoked. Its revocation shall have the like effect as if it and this order were Acts of Parliament to which section 38(2) of the Interpretation Act 1889 applied.

**General saving**

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

**SCHEDULE 1**

Article 4

**ACCESS TO CEMETERIES**

1. A burial authority may construct such roads to a cemetery as they think fit and, subject to paragraph 2, 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.

**SCHEDULE 2**

Article 10

**BURIAL RIGHTS, RIGHTS TO ERECT MEMORIALS, AND AGREEMENTS**

**PART 1**

**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 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 a 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 brick, 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 may 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 permit, with such flowering or other plants, or in such other manner, as may be permitted.
8. Where the burial authority permit uncoffined burials, any reference in this Part to a coffin includes a reference to the wrappings of an uncoffined body.

## **PART 11**

### **PROVISION AS TO GRANTS, EXTENSION OF THE PERIODS THEREOF AND MATTER CONCERNING RIGHTS**

- 1.-(1) A grant under article 10 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 or of a grant made under article 9(1) of the order of 1974 or any enactment replaced by that provision shall also be in writing signed by such an officer.
2. A burial authority shall-
  - (a) maintain a register of all rights granted by them or any predecessor of theirs under article 10(1) or under article 9(1) of the order of 1974, 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 provisions of section 229 of the Act, preserve registers of the rights granted under section 33 of the Burial Act 1852, section 40 of the Cemeteries Clauses Act 1847, or a corresponding provision in any local Act, maintained by them before 1st April 1974 or transferred to them by any order made under section 254 of the Local Government Act 1972.
3. Rights to which paragraph 2 applies may be assigned by deed or bequeathed by will.
4. A burial authority shall, subject to such investigation as they think proper, record particulars of any assignment or transmission of any such right notified to them in the register maintained or preserved under paragraph 2.
5. A register under paragraph 2 shall at all reasonable times be available for inspection by any person free of charge.
6. A burial authority may charge such fees as they think proper for the making by them of searches in, and the provision of certified copies of entries in, a register under paragraph 2.

## **PART 111**

### **DETERMINATION OF CERTAIN RIGHTS AND AGREEMENTS**

- 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 1st April 1974 and to the rights and agreements made or entered into between 31st March 1974 and 28th June 1974 which were validated by article 7 of the Local Authorities etc. (Miscellaneous Provision)(no.3) Order 1974-
  - (a) all rights in respect of any grave space granted under a provision falling within paragraph 2(b) of Part 11 in perpetuity, or for a period exceeding 75 years from the date of the grant;
  - (b) any other right to place and maintain a tombstone or other memorial so granted; and

(c) 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 rights described in paragraph 1(1)(a) or (b) have not been exercised, the burial authority may, at any time after the expiration of 75 years beginning with the first day on which any such rights were granted, serve notice on the owner of the rights of their liability to determination under this paragraph, and the rights shall determine by virtue of the notice unless, within 6 months of the date of the service, the owner notifies the authority in writing of his intention to retain them.

(3) In the case of any agreement described in paragraph 1(1)(c), 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 the service, that person notifies the authority in writing of his intention that the agreement should continue in force.

2. Where a burial authority are entitled to serve a notice under sub-paragraph (2) or (3) of paragraph 1 in respect of any rights or agreement, but the specified circumstances exist in respect of the owner of the rights or, as the case may be, the person entitled to the benefit of the agreement, they may instead-

(a) display the notice in conspicuous positions at the entrances to the cemetery;  
and

(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,

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 paragraph.

### **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 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 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 an 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;

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 that 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 its 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 the 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 the 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 the 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.

### ***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 relation 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 relation made objection under paragraph 11 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-paragraphs (a) of article 9(1) of the order of 1974 or any enactment replaced by that sub-paragraph.

***General saving***

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

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Greater London Council (General Powers) Act 1976 Section 9

**9 Power to extinguish rights of interment in cemeteries**

(1) Where in respect of any grave which contains sufficient space for not less than one further interment and which is situated in any cemetery a right of interment has not been exercised for seventy-five years or more from the date of the latest interment in the grave or, if there has been no interment in the grave, from the date of the grant of the right of interment in the grave, a burial authority may, in accordance with the provisions of this section, extinguish the right of interment in that grave and use the grave for other interments:

Provided that no right of interment granted after the passing of this Act for any period longer than seventy-five years shall be extinguished under this section.

(2) The power of a burial authority under subsection (1) of this section to extinguish a right of interment in any grave in which there has been an interment shall include power to remove any tombstone in or on the grave.

(3) Where a right of interment has been granted in a grave in any cemetery before the passing of this Act, any grant of a right to erect or place a tombstone in or on that grave made by a burial authority after the passing of this Act for a period longer than seventy-five years shall be expressed as being subject to the power of the burial authority to remove the tombstone in accordance with the provisions of this section.

(4) Before extinguishing a right of interment in, or removing any tombstone from, any cemetery under the powers of this section a burial authority shall—

(a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in Greater London with an interval between the dates of publication of not less than six clear days;

(b) display a like notice in a conspicuous position at every entrance to the cemetery; and

(c) serve a notice thereof upon the registered owner of the right of interment and on the registered owner of any tombstone affected at their registered addresses.

(5) Each of the notices referred to in the last foregoing subsection shall—

(a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in respect of which it is proposed that rights of interment should be extinguished and stating whether it is proposed that any tombstones should be removed;

(b) specify the date on which it is intended that the rights should be extinguished and any tombstones removed, which date shall not be earlier than six months after the date of the later of the two publications, or the date on which notice is first displayed, or the date on which notice is served, whichever is the later; and

(c) state the effect of subsections (6), (7) and (8) of this section.

(6)

(a) If notice of objection to the extinguishment of a right of interment in any grave is given to the burial authority before the date specified under paragraph (b) of subsection (5) of this section by the registered owner of the right of interment or by any person who is able to satisfy the burial authority that he is the owner of such right, and that objection is not withdrawn, the right of interment to which the objection relates shall not be extinguished under this section, and if notice of any other objection to the extinguishment of any rights of interment or to the removal of any tombstone, and of the ground of any such objection, is given to the burial authority before the date so specified and is not withdrawn, any rights or tombstone to which such last-mentioned objection relates shall not be extinguished or removed without the consent of the [Secretary of State for the Environment, Transport and

the Regions]: Provided that, if there has been no interment in the grave, a notice under this subsection may be given only by the registered owner of a right of interment in that grave or by any person who is able to satisfy the burial authority that he is the owner of such right.

(b) If any person giving notice under paragraph (a) of this subsection as the owner of a right of interment fails to satisfy the burial authority that he is such owner as he claims to be, the question shall be determined on the application of either party by the registrar who shall have power to make an order confirming whether or not the person who has given the notice is the owner of such a right and as to the payment of the costs of the application.

(7) Any tombstone removed by the burial authority under this section shall remain the property of the registered owner thereof but, if such owner does not claim and remove it within a period of three months after the date specified under paragraph (b) of subsection (5) of this section, the burial authority may put the tombstone to such use as they deem appropriate or they may destroy it.

(8) As compensation for any right of interment extinguished under this section the burial authority shall, on a claim being made with six months from the extinguishment of that right by the registered owner of the right of interment or by any other person who has satisfied the burial authority that he is the owner of such right, or who has been determined by the registrar to be such owner, pay to him such sum representing the value of that right as may be agreed between the burial authority and the registered owner or such other person or, in default of agreement, determined by arbitration.

(9) The burial authority shall cause a record to be made of each tombstone removed under this section containing—

(a) a copy of any legible inscription on it; and

(b) if it is intended to preserve the tombstone, a statement showing where it has been taken to; and shall deposit a copy of the record with the Registrar General.

(10) Where a tombstone is removed by the burial authority under this section, they shall at their own expense erect or fix in an appropriate position on the grave in substitution therefor a memorial stone or tablet.

(11) In this section—“burial authority” means—

(a) a borough council;

(b) a joint committee appointed under section 102 of the Act of 1972 and authorised to exercise powers under section 214 of and Schedule 26 to the Act of 1972, or under any other enactment relating to the provision and maintenance of cemeteries, being a joint committee any member of which is appointed by a borough council; or

(c) a burial or cemetery board established under any enactment and authorised to exercise such powers as aforesaid, being a board of which at least one of the constituent authorities is a borough council;

“cemetery” means a cemetery provided and maintained by a burial authority but does not include the cemeteries in the borough of Southwark known as the Nunhead (All Saints) Cemetery, the Camberwell Old Cemetery and the Camberwell New Cemetery;

“registered owner” in relation to—

(a) any right of interment, means the person at the time in question registered as the owner in the register of grants of rights of interment maintained by the burial authority under the Cemeteries Clauses Act 1847 or otherwise; and (b) any tombstone, means the person at the time in question named in the said register as the person to whom the right to erect or place that tombstone has been granted, or, if no such person is named, the registered owner of the right of interment in the grave in or on which the tombstone is erected or placed;

“registered address” means any address of the registered owner contained in the said register;

“the registrar” means the registrar of the consistory court of the diocese in which the cemetery in question is situated;

and any reference to a right in interment includes a reference to a right of burial.

(12) The powers conferred by this section shall not, except with the agreement of the Commission, be exercised by the burial authority in respect of any grave in which there is a Commonwealth war burial.

**London Local Authorities Act 2007 Section 74**  
**(Summary of Provisions)**

**Section 74 of the 2007 Act** enables the disturbance of human remains in certain graves, in cases where a burial authority wishes to deepen the grave to enable more burials to take place. Under the City of London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976, burial authorities are already able, if conditions are met, to carry out burials in existing graves without disturbing human remains. They may only do so in respect of graves in respect of which they have extinguished a registered right of burial. The 1969 and 1976 Acts provide that the burial authority is not entitled to extinguish any rights of burial until at least 75 years after the last burial in the grave, and after having made efforts to notify the holder of the right of burial, and allow objections to be made.

**Section 74** will only apply in relation to a grave where a registered right of burial or interment has been extinguished by the burial authority under either the 1969 Act or the 1976 Act. The burial authority would be able to disturb human remains for the purpose of deepening the grave to allow further burials to take place. No human remains may be disturbed under the Section if they have been interred for a period of less than 75 years. Any remains disturbed must be reinterred in the same grave.

**Subsection (4)** sets out the procedure which the burial authority must follow before disturbing any human remains, and that includes publication of notices of their intention to do so, and serving notice of their intention to do so on the registered owner of the right of burial (if the right has not yet been extinguished). If objections are made by the registered owner of the right of burial, or the registered owner of a tombstone which is to be removed, or by a relative of the person whose remains are proposed to be disturbed, then the burial authority is not able to exercise its powers under the Section for a period of 25 years.

**Subsection (8)** provides that the burial authority must comply with any directions given by the Secretary of State with the respect to the removal and reinterment of human remains.

**Subsections (9) and (10)** make special provision about graves in consecrated land

## London Local Authorities Act 2007 Section 74

### **74 Power to disturb human remains**

(1) Where a burial authority has extinguished—

(a) a right of burial in a grave space under section 6 (power to extinguish rights of burial in cemetery lands) of the Act of 1969; or

(b) a right of interment in respect of a grave under section 9 of the Act of 1976,

the burial authority may disturb or authorise the disturbance of human remains interred in the grave for the purpose of increasing the space for interments in the grave.

(2) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.

(3) Any human remains disturbed under subsection (1) above must be reinterred in the grave.

(4) Before disturbing any human remains under this section the burial authority shall—

(a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in Greater London with an interval between the dates of publication of not less than six clear days;

(b) display a like notice in a conspicuous position at every entrance to the cemetery;

(c) serve a notice thereof upon the registered owner of—

(i) the right of burial (if the right has not yet been extinguished),

(ii) the right of interment (if the right has not yet been extinguished);

(iii) any relevant tombstone,

at that owner's registered address; and

(d) serve a notice thereof on the Commonwealth War Graves Commission.

(5) Each of the notices referred to in subsection (4) above shall—

(a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in which it is proposed that the human remains are to be disturbed;

(b) specify the date after which it is intended that the work should be undertaken, which shall not be earlier than six months after the date of the later of the two publications, the date on which the notice is first displayed, or the date on which the notice is served whichever is the last; and

(c) state the effect of subsection (7) below.

(6) A single notice may be used for the purposes of this section and—

(a) subsection (3) of section 6 of the Act of 1969; or

(b) subsection (4) of section 9 of the Act of 1976,

(which provide for the giving of notice and making of objections in the case of the proposed extinguishment of rights of burial and interment and the proposed removal of tombstones), as the case may be.

(7) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the date specified in paragraph (b) of subsection (5) above by—

(a) the registered owner of the right of burial or interment, as the case may be;

(b) the registered owner of a relevant tombstone;

(c) a relative of the person whose remains are proposed to be disturbed,

and that objection is not withdrawn, the burial authority may not exercise its powers under this section for a period of 25 years, beginning with the date of the publication of the first notice under subsection (4)(a) above.

(8) The burial authority shall comply with any directions given by the Secretary of State with respect to the removal and reinterment of any human remains in any case other than a case falling within subsection (10).

(9) Nothing in this section shall in any way affect the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the interment of human remains.

(10) Where the burial authority proposes to disturb any human remains in consecrated land the burial authority may not exercise its powers under this section without first obtaining a Faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains from consecrated land by any person under subsection (7) above shall be heard and determined by that consistory court.



(11) The provisions of section 25 of the Burial Act 1857 (c. 81) (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the provisions of this section.

(12) In this section—

- “the Act of 1969” means the City of London (Various Powers) Act 1969 (c. xxxix);
- “the Act of 1976” means the Greater London Council (General Powers) Act 1976 (c. xxvi);
- “burial authority” means—
  - (a) a borough council;
  - (b) the Court of Common Council of the City of London;
  - (c) a joint committee appointed under section 102 of the Local Government Act 1972 (c. 70) and authorised to exercise powers under section 214 of and Schedule 26 to that Act, or under any other enactment relating to the provision and maintenance of cemeteries, being a joint committee any member of which is appointed by a borough council; or
  - (d) a burial or cemetery board established under any enactment and—
    - (i) authorised to exercise such powers as are mentioned in paragraph (c) above; and
    - (ii) of which at least one of the constituent authorities is a borough council;
- “civil partner” has the same meaning as in the Civil Partnership Act 2004 (c. 33) and includes former civil partner;
- “registered owner”—
  - (a) in relation to any right of burial or interment, means the person at the time in question named in the register of grants of rights of burial or interment, as the case may be, maintained by the burial authority under the Cemeteries Clauses Act 1847 (c. 65) or otherwise;
  - (b) in relation to any relevant tombstone means the person at the time in question named in the said register as the person to whom the right to erect or place that tombstone has been granted, or, if no such person is named, the registered owner of the right of interment or burial in the grave in or on which the tombstone is erected or placed;
- “registered address” means any address of the registered owner contained in the said register;
- “relative”, in relation to any person, means any of the following—
  - (a) his spouse;
  - (b) his civil partner;
  - (c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of his or his spouse or civil partner;
- “relevant tombstone” means a tombstone erected or placed in or on a grave in respect of which the powers of this section are intended to be exercised, whether or not the tombstone is itself intended to be disturbed;
- “spouse” includes former spouse.



**Example Letter Applying for Faculty the Re-Use of Graves:**

The Diocesan Secretary

Diocese of ###

##Address

Dear Sir,

**APPLICATION FOR FACULTY TO RE-USE ORDINARY GRAVES AT [## CEMETERY]**

This applications refers to [cemetery], situated at [address], and opened in [date].

I have attached a plan of [cemetery] with the areas intended for re-use – the Consecrated sections X, Y and Z - outlined in red.

The date ranges for the burials in these sections are:

Section X: 18##-18##

Section Y: 18##-18##

Section Z: 19##-19##

These sections are bordered by private graves on which some have memorials erected. It is not intended to disturb these graves or memorials which will be preserved in situ.

The proposal is as follows:

*Main Intention*

The main intention of the proposal is to provide new burial space in an area of London where the same is almost depleted. The nearest alternative place of burial at [A] has no new burial space, and the other alternative cemetery at [B] is nearing capacity. The [applying borough] considers that the importance of providing local burial space to the bereaved is paramount.

*The Process of Re-use*

- Draft new grave plans will be prepared for the areas of public graves situated in the centres of the sections (Section photographs attached).
- When excavating the graves any skeletal remains uncovered will be collected, placed in small containers and re-buried in communal graves within the same consecrated section.
- The new graves will be excavated to a depth of 6 feet 6 inches to allow for two burials in each grave.
- Note that the soil type at [cemetery] is ### and the likelihood of uncovering anything but minimal skeletal remains is unlikely. However, the attached protocol

indicates the steps taken to assess each grave as it is excavated [protocol attached, as at Appendix X]

- All new burials will be registered and recorded as required by the law with all historic records for the sections concerned being preserved in perpetuity.

### *Notification*

In addition to conditions contained in a Faculty that the Chancellor might grant, [the Council] will place a public notice within [##### newspaper circulating in Greater London] in each of two successive weeks with an interval between the dates of publication of not less than six clear days.

[The Council] will also display the same notice on the cemetery notice board and display the same notice at appropriate places within the sections [X, and Y, Z] intended for re-use for the period of (xx months).

Should any relative of any deceased person buried within a grave situated within the sections come forward within the notification period [the Council] will not re-use the said grave and will offer the exclusive right of burial to such relative.

The total notification period will be for a [##12 months (optimum) / 3 months (minimum)] from the date of publication of the notice in the paper or from the display of notices on site (whichever the later).

### *Conservation Management Plan*

The planned re-use programme has reflects the outcomes of a Conservation Management Plan which has identified areas of historic and natural importance at the site.

### *Local consultation*

Re-use will take place following consultation with local clergy, funeral directors and memorial masons. The [Council] will also consult with appropriate local amenity groups including: ##name groups##.

I trust that the above information will assist in your decision making process however I will be able to provide further information on request.

Kindest regards,

### Bereavement Service Manager

Attached Notice dated ##/##/##

## Appendix 7.1 Typical Burial Records

Record keeping is governed by the provisions of sections 9 and 11 of the Local Authorities Cemeteries Order 1977 (Statutory Instrument No 204) ('LACO'). Record keeping varies from cemetery to cemetery even within one authority and differing systems are used through time. The minimum requirements for burial records are:

- Plan maintained under article 9(1);
- Records maintained under article 9(2) – Register/Record of graves;
- Register of burials maintained under article 11(1);
- Any register of burials in the cemetery maintained before the coming into operation of this order;
- The record of disinterments maintained under article 11(5);
- Registers of grants as described in para 2(b), Part II, Schedule 2;
- Records of memorials removed under Article 16 and Schedule 3.

It should be noted that Article 12 of LACO requires the safe storage of the above records in a manner that will prevent loss or damage.

Records may be either paper records, eg bound registers in which entries are written by hand, or computer records using software that is commercially available or developed in-house. Some authorities have had their original paper records scanned so that the originals can be stored in safe conditions in an off-site archive. Scanned records can be made available for genealogical purposes via the internet, which can also create an income stream for the authority.

Typical Registers and Records include:

- i. *Register of Burials* usually including entries as follows:  
burial entry no./ name /description of person buried Male-Female-Child /age of deceased/ abode/date of burial/ceremony performed by/ place of burial and no of grant (private/ordinary)/ no. of grave/no. of section (or square)/ consecrated/unconsecrated/ receipt/remarks.
- ii. *Grave Register*- Records interments in each grave usually including No. of grave /name of person buried (1<sup>st</sup> interment) and late abode/ no. of Section/ depth of grave/ subsequent interments/ memorial (type). May also take form of Register of Purchased Vaults and Graves including no of grant date of

seal. order/date of order/ name of purchaser and abode (see below) (may also be known as *Plot Register*)

- iii. *Burial Plans*: these record the position of plots in layout form each annotated with plot number. The plans may/may not do not distinguish between private /public graves and or consecrated/unconsecrated ground. Often paginated by Section or Square

Other Records may Include

- i. *Register of Purchased Vaults and Graves* or the: Records the purchase of Private graves usually including No. of order/date of order/ name of purchaser and abode/name of person buried and late abode/no. of grave/no. of Section/ depth of grave/ subsequent interments/ memorial (type)/no of grant date of seal.
- ii. *Index Book* or *Day Book*: Transcribed from the Register of Burials and arranged first in date order but sorted alphabetically (by surname). Entries likely to include: date/surname/Christian name/age of deceased/no of grave/no of section/ ground (consecrated/unconsecrated)/ Ordinary or Private

**Conservation Management Plan: Typical Headings**

**Executive Summary**

**Section 1 Introduction**

- 1.1 Context
- 1.2 Location
- 1.3 Aims of the Conservation Management Plan
- 1.4 Structure of this Report

**Section 2 Understanding the Site**

- 2.1 Introduction- Research and Survey Work
- 2.2 Historic Development of the Cemetery, Patterns of Consecration
- 2.3 Burial Uses, Layouts and Arrangements
- 2.4 Funerary Monuments and Sculptures
- 2.5 Cultural and Biographical Heritage
- 2.6 Landscape Design
- 2.7 Architecture
- 2.8 Nature Conservation
- 2.9 Arboriculture
- 2.10 Amenity and Open Space
- 2.11 Use Surveys and Value
- 2.12 Current Management

**Section 3 Statement of Significance**

- 3.1 Introduction - 'What Matters and Why' Within the Cemetery
- 3.2 Character Areas
- 3.3 Historic Significance Local and National Context, Special or Distinctive Layouts and Arrangements
- 3.4 Funerary Monuments and Sculptures
- 3.5 Cultural and Biographical Heritage
- 3.6 Landscape Design
- 3.7 Architecture
- 3.8 Nature Conservation
- 3.9 Arboriculture
- 3.10 Amenity and Open Space
- 3.11 Public Use and Value

## **Section 4 Risks and Opportunities**

- 4.1 Current Condition and Trends
- 4.2 Implications of the Burial Strategy by Character Area
- 4.3 Funerary Monuments and Sculptures
- 4.4 Cultural Heritage
- 4.5 Landscape Design
- 4.6 Architecture
- 4.7 Nature Conservation
- 4.8 Arboriculture
- 4.9 Amenity and Open Space
- 4.10 Public Use and Value
- 4.11 Infrastructure
- 4.12 Current and Future Management

## **Section 5 Conservation and Management Aims**

- 5.1 Vision for the Cemetery
- 5.2 Burial Strategy and Character Areas
- 5.3 Conservation Management Policies for Features and Character Areas

## **Section 6 Action Plan and Costs**

- 6.1 Short Term Plan
- 6.2 Medium Term Plan
- 6.3 Long Term Plan

## **Section 7 Adoption and Review**

- 7.1 Next Steps
- 7.2 Adoption
- 7.3 Review Period



Typical Heritage Memorial Area Regulations

To be read with Regulations ##### Cemetery

1. These Regulations shall apply to all areas designated as being Heritage Memorial Areas within ##### cemetery and are to be read alongside and in conjunction with the 'Cemetery Fees and Regulations' adopted #####/#####/##### by the ##### Council.

2. Subject to paragraph 1, all new memorials within a *Heritage Memorial Area* within ##### Cemetery must be authorized by officer of ##### Council. That authorization shall follow only where the following stipulations are met:

(a) at least ## months have elapsed since the most recent of the deaths being commemorated;

(b) the form of the memorial is either :

- i a vertical headstone, or
- ii a vertical headstone on a horizontal stone base, or
- iii a horizontal stone slab (in designated areas only),
- iv a simple timber cross;

(c) the memorial is adequately secured in the ground to NAMM approved standards so as to ensure that it is stable;

(d) in the case of any or all stone memorials,

- i it is of natural stone (either sandstone, limestone, granite not darker than Rustenberg grey, or slate), and
- ii it does not have a highly polished reflective finish;

(e) in the case of a memorial consisting of a vertical headstone, with or without a horizontal stone base,

- i the height of the vertical stone above ground level is between 500 mm (1ft 8 in) and 1200 mm (4 ft);
- ii the width if between 500 mm (1ft 8 in) and 900 mm (3 ft);
- iii its thickness is, in the case of a slate memorial, between 40 mm (1 1/2 in) and 150 mm (6 in) or, in any other case, between 75 mm (3 in) and 150 mm (6 in);
- iv any foundation slab is located so that its upper surface is either flush with the surrounding ground level or at least 300 mm (12 in) beneath it;

(f) in the case of a memorial consisting of a vertical headstone on a horizontal slab,

- i the base is an integral part of the design,
- ii where it incorporates a receptacle for a flower vase, there is provision for no more than one such vase;
- iii where it incorporates a receptacle for a flower vase, the base does not project more than 200 mm (8 in) beyond the face of the vertical stone; and
- iv in any other case, it does not project more than 100 mm (4 in);

(g) in the case of a memorial consisting of a horizontal slab,

- i shall only be permitted in designated areas within ##### cemetery
- ii it is no more than 600 mm (2 ft) wide and 1800 mm (6 ft) long, and
- iii its upper surface is flush with the surrounding ground;

(h) the inscription on the memorial contains at least:

- i the name of the deceased;
- ii the date of his or her death;
- iii the date of birth or the age at death,
- iv the plot and section number

(i) any factual material in the inscription must be accurate and:

- i the inscription or artwork must be incised into the stone and, if painted, no more than one colour shall be used; and
- ii the memorial shall contain no advertisement or trademark other than the name or mark of the mason which, if included, shall be at the base of the side or rear face of the stone and no more than 13 mm (1/2 in) high.

(j) where a plot occupies an older private plot where the rights have been extinguished under the provisions of the Greater London (General Powers) Act 1976 (and there is a requirement to include an inscription to any person previously interred within that grave) then an inscription on the reverse of any new or restored memorial shall include, in respect of the person or persons previously interred, at least:

- i the name(s) of the deceased;
- ii the date(s) of his or her death;
- iii the date(s) of birth or the age at death,
- iv the plot and section number

3. No other memorial shall only be introduced without the authority of the Officer appointed by the burial authority.

4. Notwithstanding compliance with paragraph 2, the Officer shall not approve a proposed memorial if he or she considers that it is:

- i likely to be controversial for some reason;
- ii is in any way inappropriate,

and in considering whether to approve a proposed memorial the officer shall have regard to the current version of the Conservation Management Plan for the cemetery.

5. "Officer" means the ##### of ##### Council or his or her authorized representative.

**By order of #####**

**Bereavement Officer**

**##### Council**

**Date ##/##/##**

TO BE CHECKED BY YOUR COUNCIL SOLICITOR

# Notice of Extinguishing Exclusive Rights of Burial under the Greater London Council (General Powers) Act 1976

## ##### [Cemetery], #### [Postcode]

Under the GLC (General Powers) Act 1976 the London Borough of [ *Council* ] has been granted powers to extinguish the rights of burial in any grave which contains sufficient space for not less than one further interment, where such a right has not been exercised for 75 years from the date of the latest interment in the grave or, if there have been no interments from the date of the grant of the right of interment.

In order to comply with the Act the [ *Council* ] has served notice upon registered owners of the rights of interment and on the registered owners of any tombstone affected at their registered addresses for the following graves:

**Section** [## *section/square or area number*]  
 Grave No [ *number* ] Family name – [ *surname* ]  
 Grave No [ *number* ] Family name – [ *surname* ]  
 [etc]

**Section** [## *section/square or area number*]  
 Grave No [ *number* ] Family name – [ *surname* ]  
 Grave No [ *number* ] Family name – [ *surname* ]  
 [etc]

The Council intends to extinguish the rights on these graves on [Date]...(that being at least 6 months from date of serving the notice). After this date all existing rights will be deemed to be extinguished unless the Council has been notified in writing of an objection by the owner of the grave or a next of kin with a legal claim on the exclusive right of burial in the grave.

Any tombstones to these graves (where present) are to be removed but will remain the property of the owner and available to be reclaimed by the owner for a further 3 months from the date above, after which the Council may make use or dispose of them. Compensation may be payable to any legitimate owner in respect of, and proportionate to, the loss of any rights to the graves concerned.

If you are the current owner of one of the above graves or believe know the whereabouts of these families, please contact [ *contact details for Bereavement Services manager or Officer* ]

Date [###/#####]

## [day] of ##[month] ##### [year]



TO BE CHECKED BY YOUR COUNCIL SOLICITOR

**Notice of Extinguishing Exclusive Rights of Burial**  
under the  
**Greater London Council (General Powers) Act 1976**  
and  
**Notice of Intention to Re Use Graves**  
under the  
**London Local Authorities Act 2007**  
**##### [Cemetery], ####[Postcode]**

Under the GLC (General Powers) Act 1976 the London Borough of [ Council ] has been granted powers to extinguish the rights of burial in any grave which contains sufficient space for not less than one further interment, where such a right has not been exercised for 75 years from the date of the latest interment in the grave or, if there have been no interments from the date of the grant of the right of interment.

Under the LLA Act 2007 the London Borough of [ Council ] has been granted powers to re-use any grave where such a right has previously been extinguished under the GLC (General Powers) Act 1976 providing the date of the latest interment in the grave is older than 75 years from the date proposed for re-use.

In order to comply with the terms of the above Acts the [ Council ] has served notice upon registered owners of the rights of interment and on the registered owners of any tombstone affected at their registered addresses for the following graves:

**Section** [## section/square or area number]  
Grave No [number]} Family name – [surname]  
Grave No [number]} Family name – [surname]  
[etc]

**Section** [## section/square or area number]  
Grave No [number]} Family name – [surname]  
Grave No [number]} Family name – [surname]  
[etc]

The Council intends to extinguish the rights on these graves on [###/###/###Date].(that being at least 6 months from date of serving the notice). After this date all existing rights will be deemed to be extinguished unless the Council has been notified in writing of an objection by the owner of the grave or a next of kin with a legal claim on the exclusive right of burial in the grave.

Any tombstones to these graves (where present) are to be removed but will remain the property of the owner and available to be reclaimed by the owner for a further 3 months from the date above, after which the Council may make use or dispose of them. Compensation may be payable to any legitimate owner in respect of, and proportionate to, the loss of any rights to the graves concerned.

The Council intends to re-use these graves on [###/###/### Date]...(that at least 12 months from date of serving the notice) unless the Council has been notified in writing by a relative of a person buried in one of the graves noted. Under the 2007 Act a relative is given as the spouse or civil partner to the person buried or any lineal ancestor or descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of their spouse or civil partner).

If you are the current owner of one of the above graves or a relative to a person buried in one of these graves or if you believe you know the whereabouts of the owners or relatives, please contact [ contact details for Bereavement Services manager or Officer ]

Date [###/#####]

## [day] of ##[month] ##### [year]



## TO BE CHECKED BY YOUR COUNCIL SOLICITOR

Dear Mr ???? or Mrs???,

**Notice of Extinguishing the Rights of Interment Grave No ###  
Greater London Council (General Powers) Act 1976 (Section 9)**

Our records indicate that you are the registered owner of grave no. ### and that there have been no burials in this grave for over 75 years.

Under the GLC (General Powers) Act 1976 the [Council] has been granted powers to extinguish the rights of burial in any grave which contains sufficient space for not less than one further interment, where such a right has not been exercised for 75 years from the date of the latest interment in the grave or, if there have been no interments from the date of the grant of the right of interment. Once existing rights have been extinguished, the grave may then be used for other interments

Under the terms of the Act [Council] is hereby:

- A Publishing a notice of the Council's intention to reclaim graves under the GLC 9 General Powers) Act 1975 in each of two successive weeks in [The Evening Standard /newspaper circulating in Greater London] with an interval between the two dates of publication of not less than six clear days;
- B Displaying a similar notice in conspicuous positions at each of the principal entrances to the cemeteries; and
- C Serving notice upon any Registered Owners of the rights of interment and on the Registered Owners of any memorial or tombstone affected at their registered addresses.

[Council] hereby give you notice of the intent to extinguish any burial and memorial rights for grave no. #####. A copy of the notice is enclosed with this letter. The notice specifies the graves affected and the date on which it is intended the rights should be extinguished.

The Council intends to extinguish all private rights over the grave on [Date]. After this date all existing rights will be deemed to be extinguished unless the Council has received an objection in writing from the owner of the grave or a next of kin with a legal claim to the exclusive right of burial in the grave.

Any tombstones to the graves concerned (where present) are to be removed. They will remain the property of the owner and available to be reclaimed by the owner for a further 3 months from the date above, after which the Council may make use or dispose of tombstone.

Compensation may be payable to any legitimate owner in respect of, and proportionate to, the loss of any rights to the graves concerned.

Should you wish to contact the Council to discuss the content of this letter then please refer to contact details below.

Yours sincerely

**Bereavement Services Manager**

For and On behalf of [Council]

[contact details for Bereavement Services manager or Officer ]





## TO BE CHECKED BY YOUR COUNCIL SOLICITOR

Dear Mr ???? or Mrs???,

**Notice of Extinguishing the Rights of Interment and Re Use of Grave No #####  
Greater London Council (General Powers) Act 1976 (Section 9) and  
London Local Authorities Act 2007 (Section 74)**

Our records indicate that you are the registered owner of grave no. ### and that there have been no burials in this grave for over 75 years.

Under the GLC (General Powers) Act 1976 the [Council] has been granted powers to extinguish the rights of burial in any grave which contains sufficient space for not less than one further interment, where such a right has not been exercised for 75 years from the date of the latest interment in the grave or, if there have been no interments from the date of the grant of the right of interment. Under the LLA Act 2007 the [Council] has been granted powers to re-use any grave where such a right has previously been extinguished providing also that the date of the latest interment in the grave is older than 75 years from the date proposed for re-use.

Under the terms of the Acts [Council] is hereby:

- A Publishing a notice of the Council's intention to extinguish any rights over the grave under the GLC 9 General Powers) Act 1975 and to then re-use the grave under the LLA Act 2007 in each of two successive weeks in [*The Evening Standard /newspaper circulating in Greater London*] with an interval between the two dates of publication of not less than six clear days;
- B Displaying a similar notice in conspicuous positions at each of the principal entrances to the cemeteries; and
- C Serving notice upon any Registered Owners of the rights of interment and on the Registered Owners of any memorial or tombstone affected at their registered addresses.

[Council] hereby give you notice of the intent to extinguish any burial and memorial rights to grave no. ##### and to subsequently re-use the grave. A copy of the notice is enclosed with this letter. The notice specifies the graves affected and the date on which it is intended the rights should be extinguished.

The Council intends to extinguish all private rights over the grave on [Date]. After this date all existing rights will be deemed to be extinguished unless the Council has received an objection in writing from the owner of the grave or a next of kin with a legal claim to the exclusive right of burial in the grave.

Any tombstones to the graves concerned (where present) are to be removed. They shall remain the property of the owner and available to be reclaimed by the owner for a further 3 months from the date above, after which the Council may make use or dispose of the tombstone. Compensation may be payable to any legitimate owner in respect of, and proportionate to, the loss of any rights to the graves concerned.

The Council intends to make the grave available for re-use no sooner than [Date]. Should you wish to contact the Council to discuss the content of this letter then please refer to contact details below.

Yours sincerely

**Bereavement Services Manager**

For and On behalf of [Council]

[contact details for Bereavement Services manager or Officer]



TO BE CHECKED BY YOUR COUNCIL SOLICITOR

# Notice of Extinguishing Exclusive Rights of Burial under the Local Authorities Cemeteries Order 1977

**##### [Cemetery], #####[Postcode]**

Under the Local Authorities Cemeteries Order 1977 the London Borough of [ *Council* ] has been granted powers to extinguish the rights of burial in any grave that was purchased in reserve 75 years or more ago and the right has not been exercised by the registered owner since the date of the grant.

In order to comply with the Order the [ *Council* ] has served notice upon registered owners of the rights of interment at their registered addresses for the following graves:

**Section** [## *section/square or area number*]

Grave No [ *number* ] Family name – [ *surname* ]

Grave No [ *number* ] Family name – [ *surname* ]

[**etc**]

**Section** [## *section/square or area number*]

Grave No [ *number* ] Family name – [ *surname* ]

Grave No [ *number* ] Family name – [ *surname* ]

[**etc**]

The Council intends to extinguish the rights on these graves on [Date]....(that being at least 6 months from date of serving the notice). After this date all existing rights will be deemed to be extinguished unless the Council has been notified in writing of an objection by the owner of the grave or a next of kin with a legal claim on the exclusive right of burial in the grave.

If you are the current owner of one of the above graves or believe know the whereabouts of these families, please contact [ *contact details for Bereavement Services manager or Officer* ]

Date [#####]

## [day] of ##[month] ##### [year]



## TO BE CHECKED BY YOUR COUNCIL SOLICITOR

Dear Mr ???? or Mrs???,

**Notice of Extinguishing the Rights of Interment Grave No ###  
Local Authorities Cemeteries Order 1977 (Article 10)**

Our records indicate that you are the registered owner of grave no. ### which was purchased in reserve and that there have been no burials in this grave since the date of purchased.

Under the Local Authorities Cemeteries Order 1977 the [Council] has been granted powers to extinguish the rights of burial in any grave that was purchased in reserve 75 or more years ago and not yet used for burial. Once existing rights have been extinguished, the grave may then be used for other interments

Under the terms of the Order [Council] is hereby:

- A Publishing a notice of the Council's intention to reclaim graves under the Local Authorities Cemeteries Order 1977 in each of two successive weeks in [The Evening Standard /newspaper circulating in Greater London] with an interval between the two dates of publication of not less than six clear days;
- B Displaying a similar notice in conspicuous positions at each of the principal entrances to the cemeteries; and
- C Serving this notice upon any Registered Owners of the rights of interment at their registered addresses.

[Council] hereby give you notice of the intent to extinguish any burial rights for grave no. #####. A copy of the notice is enclosed with this letter. The notice specifies the graves affected and the date on which it is intended the rights should be extinguished.

The Council intends to extinguish all private rights over the grave on [Date]. After this date all existing rights will be deemed to be extinguished unless the Council has received an objection in writing from the owner of the grave or a next of kin with a legal claim to the exclusive right of burial in the grave.

Compensation may be payable to any legitimate owner in respect of, and proportionate to, the loss of any rights to the graves concerned.

Should you wish to contact the Council to discuss the content of this letter then please refer to contact details below.

Yours sincerely

**Bereavement Services Manager**

For and On behalf of [Council]

[contact details for Bereavement Services manager or Officer ]



TO BE CHECKED BY YOUR COUNCIL SOLICITOR

# Notice of Intention to Re Use Graves

under the

**Faculty ##### as granted by the Bishop of #####**  
**at**  
**##### [Cemetery], ##### [Postcode]**

Under the terms of Faculty ##### as granted by the Bishop of ##### and dated ##### the London Borough of [ Council ] has been granted powers to re use public (common) graves within the consecrated area of ##### cemetery as detailed below .

The earliest date proposed for re-use is ##### (recommended minimum 12 months from date of notice / or as agreed under the terms of the faculty) .

The following graves/ (graves as per the attached schedule) are affected: (use separate schedule if necessary)

**Section [## section/square or area number]**  
 Grave No [number]} Family name – [surname]  
 Grave No [number]} Family name – [surname]  
**[etc]**

**Section [## section/square or area number]**  
 Grave No [number]} Family name – [surname]  
 Grave No [number]} Family name – [surname]  
**[etc]**

Any tombstones to these graves (where present) are to be removed but will remain to be reclaimed by any relative of the deceased for a further 3 months from the date above, after which the Council may make use or dispose of them. .

A relative is given as the spouse or civil partner to the person buried or any lineal ancestor or descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of their spouse or civil partner).

If you are a relative to a person buried in one of these graves or if you believe you know the whereabouts of the owners or relatives, please contact

[ contact details for Bereavement Services manager or Officer ]

Date [#####]      ## [day] of ##[month] ##### [year]





HERITAGE BOARD/MEMORIAL PANEL PROCESS: GRAVE & MEMORIAL ASSESSMENT CATEGORIES AND CRITERIA				
Main Category	Sub-Cat	Primary Criteria	Secondary Criteria	Options
1	A1	Listed memorial or funerary monument	Re inscription of memorial associated with re-use/reclamation of grave would <i>not</i> be appropriate Restoration/renovation costs justified.	Restore without associated re-use/reclamation of grave
1	A2	Listed memorial or funerary monument	Re inscription of memorial associated with re-use/reclamation of grave would <i>not</i> be appropriate Restoration/renovation costs <i>not</i> justified at present.	Stabilise keep under review
1	B1	Memorial to a person of very significant local historical interest or of clear national interest (e.g. persons in the Oxford Dictionary of National Biography)	Re inscription of memorial associated with re-use/reclamation of grave would <i>not</i> be appropriate and Restoration/renovation costs justified using restoration funds.	Restore without associated re-use/reclamation of grave
1	B2	Memorial to a person of very significant local historical interest or of clear national interest (e.g. persons in the Oxford Dictionary of National Biography)	Re inscription of memorial associated with re-use/reclamation of grave would <i>not</i> be appropriate But Restoration/renovation costs <i>not</i> justified at present.	Stabilise keep under review
1	C1	Other distinctive memorials not Listed but of local interest i being the work of a noted architect, sculptor/designer; or ii possessing special qualities of design and execution; or iii part of a special group, or playing a key visual role in the landscape; or iv of interest in their symbolism or iconography; or v with inscriptions of exceptional interest; vi of interest because of their materials or construction or where these reflect regional specialities; and In reasonable condition	Re inscription of memorial associated with re-use/reclamation of grave is possible and appropriate (by removal of original inscription and re inscription or by reversal and re-inscription) and Restoration of memorial is viable funded from costs recharged to new custodian	Restore and make available to new custodian ready for re inscription.
1	C2	As C1 above and in reasonable condition	Re inscription of memorial associated with re-use/reclamation of grave not possible/appropriate without loss of integrity. but viable to stabilise and restore using restoration funds	Restore without associated re-use/ reclamation of grave

1	D	As C1 above but in poor condition	Not viable to restore using restoration funds	Stabilise only and keep under review. Re-categorise to Category 4 where condition/stability deteriorates
2	E	Memorial <i>not</i> of high heritage significance, but in good condition and with inscription to at least one person legible	Re inscription of memorial associated with re-use/reclamation of grave would be possible and Restoration of memorial is viable funded from costs recharged to new custodian	Restore and make available to new custodian ready for re inscription.
2	F	As E	Re inscription of memorial associated with re-use/reclamation of grave would be possible but Restoration of memorial would <i>not</i> be viable funded from costs recharged to new custodian	Stabilise leave insitu, or If re-use/reclamation of grave is paramount then remove and potentially re use components Replace with new memorial in accord with heritage memorial code as appropriate
2	G	As E	Reversal and re-inscription of memorial associated with re-use/reclamation of grave <i>not</i> possible due to design.	Stabilise leave insitu, or If re-use/reclamation of grave is paramount then remove. Replace with new memorial in accord with heritage memorial code as appropriate
3	H	Memorial <i>not</i> of high heritage significance but stable and in reasonable condition. with no legible inscription or inscription in poor condition and incapable of being restored.	Re inscription of memorial associated with re-use/reclamation of grave would be possible and Restoration of memorial is viable funded from costs recharged to new custodian	Restore and make available to new custodian ready for re inscription.
4	I	Memorial not of high heritage significance and either unstable and/or in dilapidated condition.	Does not merit Beyond repair at reasonable cost	If grave is purchased and grave re-used or subject to reclamation then new memorial erected in accord with heritage memorial code.

**Institute of Cemetery & Crematorium Management**

**Policy relating to  
Shallow Depth Graves**



**Issued by the Institute of Cemetery and Crematorium Management  
ICCM National Office, City of London Cemetery, Aldersbrook Road, Manor Park, London, E12 5DQ**

**May 2004**

# ICCM Policy

## Shallow Graves

### INTRODUCTION

The ICCM has identified a growing problem in respect of numbers of shallow graves being encountered when reopening takes place. The possible causes of this problem would include:

- Failure to excavate to required depth at time of last burial
- Error in entering information on grave digging orders
- Collapse of grave immediately prior to last interment with no adequate action being taken
- Lack of or poor checking and recording procedures
- Incomplete or dilapidated records
- Un-trained staff

It has become evident that many cemetery managers have inherited an historic problem that they are required to deal with as each shallow grave is encountered. Having said this it could be construed as negligence should proper procedures not be put in place which are designed to prevent the problem increasing and maintain complete compliance with burial law and the expectations of the bereaved.

In order to empower cemetery managers to deal with the whole issue of shallow graves this policy is divided into two sections namely:

1. Preventing The Occurrence of Shallow Graves
2. Dealing With The Inherited Problem

### 1. Preventing The Occurrence of Shallow Graves

The Local Authorities Cemeteries Order 1977 (LACO) contains the following requirements in respect of depths of burials and protection of previously buried remains. It should also be remembered that Section 25 of the Burial Act 1857 advises that the disturbance of buried human remains without lawful authority is a misdemeanour. This fact is reinforced by a general saving contained in Article 23 of LACO which states "Nothing in this order shall be construed as authorising the disturbance of human remains".

#### **PART 1 of SCHEDULE 2 of LACO states, in relation to the exercise of rights:**

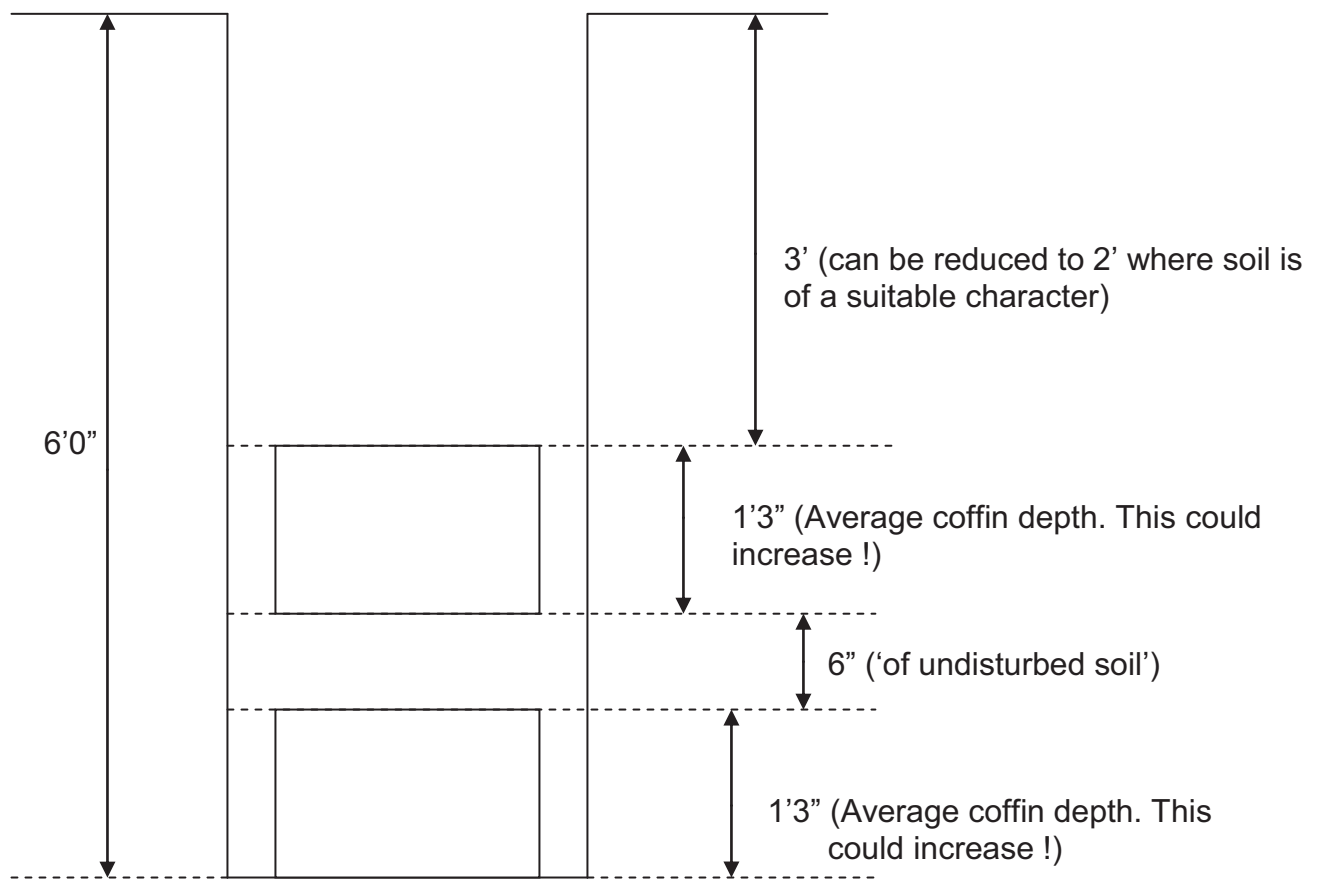
1. *No burial shall take place, no cremated human remains shall be scattered and no tombstone or other memorial shall be placed in a cemetery, and no additional inscription shall be made on a tombstone or other memorial, without the permission of the officer appointed for that purpose by the burial authority.*
2. *No body shall be buried in 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.*

**(Note: The definition of 'suitable character' was produced some years ago in a Memorandum of the then Ministry of Health. The appropriate text of this Memorandum is contained in Appendix 1)**

3. *No body shall be buried in a grave unless the coffin is effectively separated from any coffin interred in a 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.*

The limits imposed by Schedule 2 can be explained diagrammatically as follows:



**The above example illustrates the MINIMUM depth that must be achieved for two burials and it is recommended that this minimum depth for new graves is increased in order to build in a contingency against future unknown factors. It should be noted that the average coffin depth used in the above example could be greater in some instances especially where casket burial takes place.**

It is advisable to request the depth of each coffin to be buried in addition to length and width dimensions.

By using the above model and adding for contingency for unknown factors it is possible to confidently excavate all new graves to a depth that will ensure that sufficient depth remains for the second interment. The same principles can be applied to new graves for more than two burials.

### Checking Procedure

A checklist can be added to grave digging orders and interment notices (examples attached as Appendix 2) with each step being initialled by the persons carrying out checks as detailed in the following:

LACO requires that a plan of the cemetery is maintained and shows the locations of individual graves, the grave numbers and the rights attached to each grave.

Before a new grave is excavated its location must be checked against the cemetery plan. In order to prevent further error the record of graves and register of grants must be checked to ensure that the particular grave has not already been allocated. It could be possible that the grave was previously allocated and the cemetery plan was not updated.

The actual location within the cemetery must next be identified using the cemetery plan. The number of the grave to be excavated can be checked via the numbering of graves on either side and by referencing from the rows in front and behind. The grave space must be accurately measured and marked so as to coincide with the cemetery plan and a marker bearing the grave number (wooden stake or similar) should be inserted centrally at the head end of the grave.

Where graves are pre-marked on a continuous concrete bearer or where you have previously installed individual headstone foundations the marker must be placed centrally within the grave space immediately in front of the bearer or foundation.

Before digging commences a senior operative / foreman / sexton or other competent person must check the location.

On completion of the excavation the person that originally allocated the grave from the cemetery plan should check the grave again.

## 2. Dealing with the Inherited Problem

### General

A shallow grave will only be encountered at the time of reopening for a further interment and therefore time in which to resolve the problem will be limited. A desire to meet with the needs of the bereaved should not outweigh the need to comply with burial law and under no circumstances should a burial be carried out in an earth grave where full compliance with LACO will not be achieved.

The registered grave owner or executor or nearest surviving relative should be informed of the situation at the earliest possible time.

In circumstances where compliance with LACO cannot be achieved for earth burial there is provision within Part 1 of Schedule 2 of the Order that can assist. **NOTE: The user of this policy must note that 6(a) below should not be interpreted as recommending pouring concrete into a shallow earth grave and over the coffin that has been committed. The remainder of this policy must be read and understood in order to adopt the proper legal method.**

### PART 1 of SCHEDULE 2 of LACO further states:

*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 brick, 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.*

When considering 6(a) above it is apparent that embedding in concrete relates only to burials in existing walled graves or vaults however a walled grave or vault may be constructed within a shallow depth grave. Once this is done however, there would be little point in embedding in concrete when taking 6(b) into account.

## Recommended Code of Practice

1. Excavate to maximum depth achievable leaving 6" of soil above the last coffin buried.
2. Ensure that the length and width of the excavation are sufficient to allow the construction of the walls of a cell or compartment and allow the coffin free passage at the committal.
3. Construct a solid foundation in the bottom of the grave by either the preparation of footings around the perimeter of the bottom of the grave or by inserting a pre-formed concrete foundation slab. Alternatively a layer of dry mix concrete can be spread over the bottom of the grave.
4. Construct 4.5" brick walls around the inside the grave (alternatively a proprietary pre-formed concrete sleeve can be lowered into the grave).
5. Ensure that there are no gaps in the mortar between bricks.
6. Carry out the interment with the coffin coming to rest within the brick cell or compartment formed.
7. Seal the top of the cell or compartment by bedding concrete slabs of at least 2 " in thickness onto mortar ensuring that no gaps exist.
8. Backfill remaining depth with soil.

In order to remain within the requirements of LACO the cell or compartment must be constructed in such a manner so as to **prevent, as far as may be practicable, the escape of any noxious gas** from the interior of the cell or compartment.

## **APPENDIX 1 Extract from a Memorandum of the Ministry of Health Memorandum on the Sanitary Requirements of Burial Grounds**

*The soil of a burial ground should be preferably of an open porous nature, with numerous close interstices, through which air and moisture may pass in a finely divided state freely in every direction. In such a soil decay proceeds rapidly, and the products of decomposition are absorbed or oxidised. The soil should be easily worked, yet not so loose as to render the work of excavation dangerous through the liability to falls of earth. It should be free from water or hard rock to a depth of not less than 4 feet 3 inches if only one interment is to be made in each grave. This would allow 1 foot 3 inches for depth of coffin and 3 feet for cover of earth above the coffin. If more than one interment in a grave is contemplated the soil should be free from water or hard rock to a proportionately greater depth, allowance being made for a layer of earth not less than 6 inches in thickness between any two coffins. If the soil is not naturally free from water, it may be found necessary to drain the site to the required depth, and hence the site should be sufficiently elevated above the drainage level of the locality, either naturally, or, by filling it up to the required level with suitable earth.*

*A dense clay is laborious to work and difficult to drain; by excluding moisture and air it retards decay, and it retains, in a concentrated state, the products of decomposition, sometimes to be discharged into graves in the vicinity, or sometimes to escape through cracks in the ground to the surface. A loose stony soil, on the other hand, may allow the passage of effluvia, and of imperfectly purified drainage water.*

(The above memorandum obviously received attention when the Local Authorities Cemeteries Order (LACO) was being drafted as there are obvious similarities in the above advice and Part 1 of Schedule 2. LACO does indicate 2 feet of soil of a suitable character above the last coffin).

**Grave Digging Order**

Date of Burial			
Time			
*NEW / REPOEN *			
Grave Section & Number			
Depth to be Excavated			
*Coffin / Casket* Dimensions	Length	Width	Depth

**\*Delete those inappropriate**

If Reopen, Type of Memorial Present
To be removed by *CEMETERY STAFF / MEMORIAL MASON *
Name on Memorial

**Checklist**

ITEM	INITIALS
Location checked against cemetery Plan	
Location double checked by Supervisor / Foreman	
Pre interment check – location and depth	

Depth recorded at pre interment check	
---------------------------------------	--

**Interment Notice Checklist**

The following checklist can be added to the interment notice and utilised for both manual and computerised recording systems:

Item	Initials
Plan marked	
Register of Grants / Purchased Graves checked	
Transfer of ownership completed (if required)	
Grave digging order issued	
Register of Burials completed	
Register / Record of Graves Completed (depth entered)	
Register of Grants / Purchased Graves Completed (new graves only)	
Deed prepared (new graves only)	



## Faith Considerations – Re-used and Reclaimed Graves

### Consecrated Status

- Consecrated status does not dictate that re-used graves in that area cannot be used for non-Christian faiths.
- The Church/Diocese is unlikely to have an objection to the re-use/reclamation of graves in a consecrated area for use by non-Christians, however this should be discussed with the Diocese at planning stage and made clear in the Faculty application.
- There is precedence for consecrated ground being used for burials of non-Christian faiths.

### Christian Faith

- People of Christian faith may not object to burial taking place within reclaimed or re-used graves, and effectively both processes have been the norm in churchyards and church cemeteries for hundreds of years.
- When developing a Cemetery Strategy involving re-use or reclamation, it should be made clear to local church groups that spaces planned will involve reclaimed or re-used graves.
- Where people are being offered reclaimed or re-used graves, this should be made clear to them.

### Non-Christian Faiths

- Whilst practitioners of non-Christian faiths may not object to burial taking place within consecrated ground, it is nevertheless best practice to advise other faith groups where the ground is consecrated.
- As noted above, when developing a Cemetery Strategy involving re-use or reclamation, it should be made clear to people of all faiths during the consultation process that spaces being planned will involve reclaimed or re-used graves. Practitioners of non-Christian faiths may not object to burial taking place within reclaimed or re-used graves however it is important to take account of all views on the matter.
- Similarly, (and as noted above for people of Christian faith), where people are being offered reclaimed or re-used graves, this should be made clear to them.

### Muslim Burial

Some specific considerations relating to Muslim burial include the following:

- Graves are orientated perpendicular to Qibla (Mecca) (also known as Qiblah, Kiblah, Kible or Kibla).
- There is a tradition, albeit not universal, for single depth burial.
- There are special requirements in terms of preparing the body, shrouding, and burial which may require special facilities on site, depending on local custom. A safe and sheltered space for prayer, with some protection from the elements is essential. Simple, accessible, ablution facilities are required. Many Muslim burial areas will therefore have associated with them enclosures or structures, sometimes fully covered, with ablution facilities (and sometimes toilet facilities), along with ample hard-standing for prayer.
- Exact arrangements for the grave may vary according to local custom. There is a tradition to make an earth mound a little higher than the ground (and not level with the ground) so as to distinguish the grave and enable it to be respected. Placing of a

marker, such as a stone, is not prohibited but there is direction that states that such stones should be as simple as possible. The laying of flowers is also discouraged. However, local traditions may have evolved to include lawn memorials or even full kerb-sets. Construction of any structure on top of graves is not allowed.

- Muslim burial areas are ordinarily only used by those of Muslim faith (rather than being multi-faith burial areas).
- From a faith perspective Muslim graves can be re-used as soon as bodies 'turn to dust'. However, as with other faith groups, there are cultural sensitivities surrounding reclamation and re-use of graves, and a gap of at least a generation is considered a minimum – this accords with the legal minimum of 75 years that needs to have elapsed before re-use takes place.
- Re-use of consecrated areas is compatible with use for Muslim burial, subject to the full clearance/removal of human remains at/from the depth of the new Muslim burial. It should also be made clear to all people concerned that where re-use occurs, in most instances, older human remains will continue to be in place at deeper depths, (below) the new Muslim burials.

Planning space for Muslim burial should therefore include:

- discussion and agreement with local Imams and/or local Muslim Forums as well as with specialist Muslim Funeral Directors at an early stage in the development of any strategy for re-use/reclamation and burial provision;
- a clear explanation of the re-use process;
- a detailed consideration as to the orientation of grave plots. It is likely that the requirement to orientate perpendicular to Qibla precludes re-use or reclamation of many existing private graves (which in most cases will not have a correct orientation). This might be a significant limitation on re-use and reclamation for the purpose of providing space for Muslim burials. There may therefore be more scope for earmarking specific areas for Muslim burials in the case of consecrated public graves (where the precise orientation of plot layout for re-used graves is more flexible);
- specific consideration in terms of the provision of prayer space, especially if there is no other sheltered nor hard-paved facility on site; and,
- specific consideration in terms of the provision of ablution facilities.



