

STATUTORY INSTRUMENTS

1977 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 indorsement 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 11 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" with the names of both or one of the parents 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 LACAO 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).