



**Home Office**

BUILDING A SAFE, JUST  
AND TOLERANT SOCIETY

# BURIAL LAW AND POLICY IN THE 21st CENTURY:

THE NEED FOR A SENSITIVE AND  
SUSTAINABLE APPROACH

January 2004

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# Foreword by the Home Secretary



All of us, at some time in our lives, have to face the death of a loved one. It is an experience we cannot avoid.

Burial provides a last resting place, and it is important that cemeteries are well managed and accessible, as they make a contribution to the comfort and consolation, which, in bereavement, we would all wish to experience.

Our burial law is out of date and needs reform. This is a sensitive and important issue, and the Government wishes to provide opportunities for informed debate about the provision and maintenance of burial grounds in the future. That is why we have launched this consultation paper.

*Burial Law and Policy in the 21st Century* covers the practicalities of legislation, regulation and burial procedures. Those who are concerned about these issues, whether from their personal or professional experience, will want to read it. We have attempted to deal with difficult issues in as sensitive a way as possible, but inevitably some direct language is necessary, in order to make the meaning clear. This consultation is part of a process of ensuring that those who have died, and those who are bereaved, are treated with respect, so we hope that readers will be able to accept it in that light.

This consultation process has been launched in recognition of the importance of burial law. We hope for the widest possible participation from faith groups, other interest groups, professionals in the field, as well as members of the public.

A handwritten signature in black ink that reads "David Blunkett". The signature is written in a cursive, slightly slanted style.

David Blunkett

# INTRODUCTION

This consultation paper is designed to address some of the issues which have arisen from the report on cemeteries by the Environment Subcommittee of the House of Commons Select Committee on the Environment, Transport and Regional Affairs<sup>1</sup>. One of the recommendations of that report was that there should be a review of the legislation surrounding burial and cemeteries. In its response<sup>2</sup>, the Government agreed that there was a need for all aspects of burial law to be reviewed, and proposed that the issues to be considered included rationalisation of regulation across the public and private sectors, the management of cemeteries, enforcement of the legislation, and exhumation or disturbance after burial.

Some of the issues which fall to be considered are largely technical, and can be taken forward without the need for public consultation at this stage. The main aspects on which the Government would wish to have views are the provision of burial grounds, their regulation (including standards), and the disturbance of existing burials (particularly for the purposes of re-using old graves). This paper is accordingly divided into four parts, together with a summary and a list of questions for consultation. Part A sets out the background and seeks views on the case for uniform legislation. In Part B, the case is discussed for change to the way in which burial grounds are provided. Part C considers the need for regulation and standard setting. Part D explores the varied issues surrounding the protection of buried remains, and the case for enabling old burial grounds to be re-used. Guidance on how to respond to this document is set out in Annex B, a list of the questions posed is at Annex C, a list of consultees is given in Annex D, and consultation criteria are included in Annex E.

This consultation exercise forms the initial stage of a review of burial law and cemetery provision. Any proposals which result will be informed by a regulatory impact assessment, as outlined in the Cabinet Office document “Better Policy Making:

a Guide to Regulatory Impact Assessment”. These proposals will be issued for further consultation.

This consultation paper relates to the law and arrangements in England and Wales only

## Summary of Main Issues

The main policy issues on which views are sought are summarised in this part of the paper.

### Part A

Existing legislation relating to burial and exhumation does not apply evenly to all providers of burial grounds, and there are inconsistencies in the way the exhumation of buried remains is regulated. The Government believes that there is scope for applying burial law more consistently across the various public and private sector providers and that this would result in a better understanding of the law, improved compliance with the regulations, and a better service, and wider choice, for the public seeking to use burial facilities. The fact that Church of England and Church in Wales burial grounds are subject to ecclesiastical law would not appear to present an obstacle to that approach. (In the case of the Church in Wales, following disestablishment there remains a faculty system which does not have the statutory force of Church of England Measures). This part of the paper invites views on the case for revising the law for the sake of consistency and any need for exceptions. It also highlights some of the advantages and disadvantages which may have to be taken into account.

### Part B

Provision of burial grounds is at present a matter for discretion by relevant local authorities, private companies, or various religious organisations, in the light of demand or tradition. Although the absence of an obligation to provide burial facilities

<sup>1</sup> Eighth Report, 21 March 2001 HC 91-1

<sup>2</sup> The Government Reply to the Eighth Report from the Environment, Transport and Regional Affairs Committee, Section 2000-2001 HC91 Cmnd 5281

does not appear to have disadvantaged the public over the years, there are indications that relying on demand alone may not be the most efficient way to provide the level and choice of service which the public needs. This may be particularly so when there are no special provisions or dispensations for the establishment of new burial grounds, and applications therefore have to be considered against competing demands for use of limited land space.

The Government believes that there may be a case for placing an obligation on local authorities regularly to assess their communities' needs for burial facilities, and to plan to address any under-provision, whether simply in volume, or whether also in diversity of facilities available.

Whether it is practical for town and parish councils, who may be burial authorities in their own right, to assume responsibility for such assessments and for taking action accordingly is for consideration. The Government believes that such authorities may be too small realistically to be expected to provide full diversity of burial facilities. It may therefore be more sensible to plan on placing that responsibility on second tier Councils. Even so, there are arguments for burial facilities to be planned on a broader scale and this may justify the creation of larger burial authorities on a regional level, where resources, expertise and training might more easily and efficiently be brought together.

The Government recognises that in order to support the development of appropriate burial facilities more, and more detailed, information is likely to be required. One way to achieve this might be to create a new statutory requirement to notify the Government of the opening of all new burial grounds. Views on this and the need for detailed statistics to be reported centrally are invited.

## **Part C**

The burial process (including depth of burial, record keeping, burial rights, and maintenance arrangements) is already subject to regulation, even if such regulation is inconsistent across all types of burial grounds. Equally, the management of burial grounds is regulated, to a lesser degree, at least in respect of local authority cemeteries. This part of the consultation paper identifies what is

currently subject to regulation and invites views on whether the balance is right, or whether more, or less, regulation is required. The Government would particularly welcome views on the need for mechanisms to challenge local decisions.

The standards of conditions and service within burial grounds are generally expressed, if at all, in imprecise terms, and existing arrangements for enforcing compliance are ineffective. The Government believes that there is scope for improvement and invites views on how this might be achieved, including through improved clarity of standards, guidance, training, funding, and more effective enforcement. So far as the latter is concerned, support has been expressed for a standing inspectorate. Views are sought on whether the case for such a body has been made, and whether it would likely to be cost effective.

## **Part D**

This part of the consultation paper addresses the regulation of the exhumation of buried human remains, whether undertaken for personal reasons or in order to clear the burial ground for other purposes. The existing provisions are set out and views invited on the need or desirability for more consistency in approach.

A crucial issue in this context is the question of whether existing burials should be disturbed to enable old graves to accommodate new burials (re-use). Views are invited on both the principle and practice of re-using old burial grounds, together with the implications and economics if these proposals were pursued. The Government is very conscious of the sensitivities surrounding the re-use of old graves and we would need to be persuaded of the public acceptability of such a change.

## PART A: UNIFORM LEGISLATION

### Background

Historically burial was a responsibility of the established Church and was provided for in churchyards, normally adjacent to the parish church that also provided the focus for the ongoing Christian worship of the local community. This pattern was disrupted in the nineteenth century, partly because the growth of large new urban populations meant that many old churchyards were filled, and partly because of a growing preference by many for burial on land not controlled by the Church of England. As a result, burial places were increasingly provided by local authorities and by commercial cemetery companies. From the end of the nineteenth century burial has increasingly been superseded by cremation. However, the burial of cremated remains is now provided for both in churchyards and in cemeteries.

It was and still is normal for cemeteries to include a part consecrated by the Church of England or the Church in Wales. Such consecrated land also enjoys protection under faculty jurisdiction. The distinction between consecrated and unconsecrated burial land remains fundamental to English and Welsh burial law. It is therefore important to consider whether any changes made in the law will alter the practical consequences of whether land is consecrated or unconsecrated. Consideration should also be given to how land set aside for Christian burial of all denominations may best be treated. Also, the modern diversity of faiths means that any special requirement for burial of those from other religious traditions should be carefully considered.

The law relating to burial (including exhumation and the disturbance of human remains) is not to be found within a single statute or coherent body of legislation. It has evolved in a piece-meal fashion in response to the social and public health concerns of the day, with little apparent regard for setting the broad framework for the provision of burial facilities, determining service standards, or regulating burial practice or

procedure. In particular, throughout the latter half of the nineteenth century a raft of burial laws was enacted. These sought to get to grips with the public health problems arising from the substantial population increase and urbanisation of British society, together with the evolving role of local authorities. These Acts then remained untouched until local government was subject to major reform in the 1970s. Most (but not all) of the nineteenth century legislation was repealed and replaced with enabling powers resulting in the Local Authorities' Cemeteries Order 1977 (LACO), which set the general parameters under which municipal cemeteries operate today. LACO allows considerable management discretion to such cemeteries, but otherwise regulates matters such as:

- Provision of chapels, mortuaries and biers
- Plans and record keeping, registration of burials and disinterments, and storage of records
- Grant of exclusive burial rights, rights to erect memorials and agreements for maintenance of graves and memorials
- Fees and other charges
- Maintenance, including removal of memorials
- Depth of burial and special provisions in relation to walled graves and vaults
- Offences and penalties

More details are contained at Annex A.

An important element of the legislation relating to burial consists of the regulation of the exhumation of buried human remains. It is an offence to exhume, or otherwise disturb buried human remains<sup>3</sup> unless legal authority has been obtained. Where remains are to be exhumed from land consecrated according to the rites of the Church of England, permission takes the form of a faculty from the diocesan consistory court. If such remains are to be reburied in consecrated land a faculty is generally sufficient. In virtually all other cases of exhumation, a licence must be obtained from the Home Office, unless otherwise

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<sup>3</sup> s.25, Burial Act 1857

permitted by other legislation<sup>4</sup>. (In the case of the Church in Wales, the Diocesan Courts cannot authorise exhumation from consecrated land via faculty and a Home Office licence is required).

In practice, permission to exhume is granted sparingly, and is usually restricted to the relocation of remains for family reasons or removal for necessary infrastructure development. The legislation appears to apply however old the remains may be, and licences are accordingly issued for the exhumation of remains for archeological purposes.

The nineteenth-century legislation that provided for new burial grounds seems to have envisaged that they would in due course become public open spaces (for which provision was made in the Open Spaces Acts 1887 and 1906). It was also recognised that old churchyards which had been closed because they were full could appropriately be used as public open spaces and powers were introduced to transfer responsibility for their maintenance to local authorities, although such provision was specifically excluded from those areas subject to the Welsh Church Act of 1914. Disused burial grounds might be subject to limited development – to provide additional places of worship or the enlargement of existing buildings – but otherwise the land, and the remains, were to be undisturbed. Within the present century, a variety of legislation to permit the removal of human remains without recourse to Home Office licences, or, in the case of consecrated ground, a faculty, has been introduced for building and development purposes, with similar, but not identical, provisions. There is, however, no provision in secular law for old burials to be disturbed to enable new burials to be carried out (church practice until the middle of the nineteenth century), and the Home Office does not issue licences for that purpose<sup>5</sup>.

While LACO is generally seen to meet most modern requirements for the regulation of practice and procedure in local authority cemeteries (other than exhumation), it does not apply to Church of England or Church in Wales churchyards or other religious burial grounds, nor to private cemeteries. Church of England and Church in Wales churchyards will be subject to ecclesiastical law, which broadly tends to reflect

secular practice as far as possible, but other cemeteries will be subject to a variety of generally old private Acts, or to none<sup>6</sup>. The unrepealed provisions of the nineteenth century Burial Acts retain some regulation of general application, for example the power to inspect burial grounds and to close them to further burials, but this by no means offers a consistent or effective framework. Existing regulations appear to intend, in various ways, to encourage standardisation, provide consumer protection, and uphold public health and public order, without establishing the broader environment in which it is envisaged that burial services should operate, and without providing effective mechanisms for delivering the service to the standards required. For example, if works are required to be carried out in a non-local authority burial ground for safety reasons, failure to comply will result in the costs being transferred to the local authority. Similarly, if a churchyard is closed to further burials, or a private burial ground becomes no longer commercially viable, responsibility can normally be transferred to the local authority, either under mandatory provisions in statute (Church of England churchyards), or in the absence of any other alternative (in other cases).

Current burial legislation is accordingly:

uneven in application (by not governing all burial grounds);

inconsistent (eg different requirements for record keeping for municipal and non-municipal burial authorities; different procedures and policies in relation to buried remains);

lacking in clear purpose (particularly whether or not burial facilities should be provided, on what scale and to what standards); and

ineffective (enforcement powers are unwieldy and in practice bear disproportionately on local authorities).

## The case for change

As a matter of good governance, the laws applying to burial grounds are in need of review and

<sup>4</sup> Since cremation was legalised under the Cremation Act 1902, the Home Office has taken the view that buried human remains include buried cremated remains, and issues licence for their removal accordingly eg. under the Disused Burial Grounds (Amendment) Act 1981, or on a coroner's warrant.

<sup>5</sup> Though faculties for this purpose may be issued by the diocesan consistory court in respect of consecrated land.

<sup>6</sup> Private companies will be subject to normal company law, while the Registration of Burials Act 1864 creates a general obligation to keep registers of all burials in any cases where such a requirement is not otherwise provided for in any other legislation.

reassessment. However, since the enactment of the Burial Acts, and even since the introduction of LACO, there have been important social changes which also need to be taken into account, including:

the adoption of cremation as the preferred funeral option (about 70% of funerals are cremations);

the increase in demand and awareness of different cultural and faith requirements, and public expectations of wider service availability (eg in the evenings and for most days of the week);

the development of alternative burial arrangements (woodland and other 'green' burials);

the involvement of the voluntary sector in burial ground maintenance ("Cemetery Friends"); and

an increasing appreciation of the actual or potential amenity value of burial grounds (as urban green spaces; wild life reserves; or cultural and historical heritage).

A fundamental problem facing all burial grounds and those wishing or needing to provide burial facilities is the need to maintain them in perpetuity without the income to do so from what is a diminishing asset (the income from existing grave purchasers is rarely sufficient to generate adequate income indefinitely and there is usually insufficient funding from the sale of remaining grave plots). How burial grounds are to be maintained in the future is a key question which is linked with issues about the provision of new burial grounds, the protection of buried remains, and wider questions about the best use of land and competition for land use. Any changes to address these problems will require legislation to implement them and the issues are therefore addressed in Parts B and D of this consultation document.

### **Question 1:**

The Government believes that any review of current burial law needs to address the case for legislation applying to all burial grounds consistently, even if some burial grounds, such as Church of England churchyards, were to continue to be subject to relevant ecclesiastical law. It would accordingly welcome views on:

- a) Whether there should be a single statute to establish the broad framework in which burial grounds should operate;
- b) What aspects that broad framework might or ought to include (and what might be better left to other areas of law, such as planning);
- c) Whether there should be exceptions for different providers, or different types of burial ground, and, if so, what those exceptions might be.

The issues to take into account might include:

The benefits or disbenefits from uniform regulation (eg standardisation and uniform provision to increase public understanding, access and choice, but which may discourage innovation or niche provision);

Implications for bureaucracy (who to supervise and enforce);

Additional costs, and how they should be resourced (eg existing unregulated burial grounds would be likely to incur additional costs which will either have to be recovered through increased burial fees or compensation);

The reasons for exceptions, if any, and which providers, or which types of burial ground, ought to be exempt (eg burial grounds managed by religious orders, burial grounds on private land containing a limited number of family burials, burial grounds no longer used or usable etc).

## PART B: PROVISION OF BURIAL GROUNDS

Although it is the public law duty of the Church of England and, to a certain extent, of the Church in Wales, to provide for burials in open churchyards, there is at present no statutory requirement on any public authority or private undertaking to make available a place for burial. The opportunity for the public to bury those who have died in ground set aside for this purpose is therefore dependent on the exercise of the discretionary powers of parish (and equivalent) and district authorities to provide burial grounds, or the responsiveness of the private sector to demand, or on any pastoral obligations of non-established churches or religious bodies.

Provision of burial grounds is also dependent on the normal application of planning legislation. No dispensation in relation to burial grounds is provided, nor are there any financial incentives or relaxation of financial burdens. At the same time, there are no additional planning or other requirements or regulatory procedures placed on the establishment of burial grounds (although regard will be had for environmental protection). In contrast with cremation legislation<sup>7</sup>, there is no obligation to notify any local or central government authority that a cemetery has been opened (or closed). The development of new burial grounds (including single graves on private land - “back garden burials”, woodland burials and “green” burial sites) is largely unregulated.

### Question 2:

The Government would welcome views on whether provision of burial grounds should be left to the market, or whether there should be a statutory obligation on local authorities to provide burial facilities.

In considering any changes, regard would need to be had for the practicalities of requiring the provision of burial grounds. Given the wide variety of potential providers, it would not seem efficient or feasible to require them all (the two

tiers of local authority, private companies and religious bodies) to provide a prescribed quantity of grave spaces (eg as a proportion of the population of their catchment areas). However, local authorities are already advised to take account of social needs when making their development plans, and this could include consideration of the need to provide sites for cemeteries<sup>8</sup>. If such advice is not a sufficiently robust means to ensure that burial facilities are available, consideration might be given to requiring local authorities to carry out a local needs assessment at appropriate frequencies.

The need for burial facilities may not be uniform. In particular, it would seem desirable to take account of particular religious needs or alternative burial options, including ‘green’ burials and varied cemetery types (eg formal, wildlife etc).

### Question 3:

The Government invites views on whether any change to the existing discretionary powers of local authorities to provide burial grounds should be based on a requirement to make an assessment of community needs, for example, every 10 years (geared to statements in their Local Plan); to take account of all local existing non-municipal burial facilities (and any re-useable sites, if appropriate – see Part D); to ensure adequate provision for particular cultural and faith needs, and for diversity of demand. The Government does not believe that diversity can necessarily be achieved at the lowest tier of local government, and that the aim should therefore be to provide adequate diversity of provision at district/London borough level.

It would not necessarily fall to individual local authorities to provide the facilities, or any shortfall, directly. There would seem to be no reason why they should not encourage potential providers to develop suitable facilities. Given local

<sup>7</sup> Cremation Regulations 1930, Regulation 1.

<sup>8</sup> The Office of the Deputy Prime Minister has previously issued good practice guidance for local authorities assessing the needs of their communities (paragraphs 4.13 – 4.15 of Planning Policy Guidance Note 12: Development Plans, December 1999, DETR).

burial authorities' existing powers to fund other suppliers of burial facilities for their communities, there would not appear to be any need for new legislation to give effect to such an approach. But there might be a need to consider the need for any relaxation of existing planning controls.

**Question 4:**

The Government would welcome comments on the practicalities of requiring such needs assessments, their frequency and scope, and the implications for practice in relation to the compulsory purchase of land. It would also be helpful to receive views on how parish, town and district Councils, local authorities in Wales, Church of England and Church in Wales diocesan and other religious authorities, might work together to provide an appropriate level and variety of burial facilities for all their communities.

**Question 5:**

If diversity of provision is important, but it is not feasible to provide such diversity within first tier local authorities, is there a case for restricting the power to establish burial grounds to district-level authorities only, or even to county-level councils (or unitary authorities in Wales)? Or can adequate, diverse, local, facilities be provided through consortia of district level authorities? Or would some other tier of government, or other mechanism, be appropriate?

It is important that burial facilities are provided locally, but that is not to say that they necessarily have to be provided by the first tier of local government, or that that is the most efficient way to deliver burial services. In most parish and town councils, responsibility for any burial grounds is merely one amongst many others for the Clerk. Consequently, knowledge and expertise in providing burial grounds is limited, as will be the resources available.

**Question 6:**

Views on the viability and practicality of leaving responsibility for local authority burial grounds within first tier councils are invited. Views would also be appreciated on the potential benefits of larger scale burial authorities, for example economies of scale in terms of training and developing expertise.

**Question 7:**

The costs of ensuring adequate provision of burial facilities are not strictly an issue for consideration within a consultation exercise on burial law, but views on the financial implications for first or second tier local authorities of any obligatory provision of burial facilities would be welcome.

The Environment Select Committee recommended that, in the absence of central data on the number and capacity of burial grounds in England and Wales, the Government should undertake a survey to gather the information required to assist with policy development. The Home Office undertook to conduct such a survey and the necessary measures are in hand. But the Home Office has no general powers to require information from cemetery managers, and in the interests of maintaining any central database it would seem appropriate to make provision for annual or other returns to be made to the Government and, on the model of the arrangements in relation to crematoria, for the opening and closing of cemeteries to be reported to the Government.

**Question 8:**

The Government believes that while the information required can normally be expected to be provided voluntarily by the various cemetery managers, statutory authority to obtain the data would be desirable and a statutory obligation to report on the opening of cemeteries would provide an essential mechanism to ensure that central information was up to date. Views on the need for such provisions are invited.

## PART C: REGULATION

Part A of this consultation paper considered the case for uniform regulation across the public and private sectors. This Part addresses the particular issues that might benefit from regulation, or deregulation.

### Burial process

While authority to bury a body is subject to standard regulation (requiring a certificate from the registrar of births and deaths or, where the death has been referred to the coroner, the coroner's burial order)<sup>9</sup> the provision of graves and the burial process is much less regulated, allowing considerable discretion to the burial authority.

#### *Depth of burial*

The normal minimum depth of burials in municipal cemeteries may be reduced in circumstances which can lead to abuse<sup>10</sup>. Subject to technical advice, it may be appropriate to establish a single agreed minimum depth of burial and plot size, which may be easier to enforce.

#### *Plans and record keeping, registration of burials and disinterments, and storage of records*

Although LACO makes detailed provision for burial records<sup>11</sup>, there is some evidence that grave plans are uneven in quality and accuracy and might benefit from more detailed prescription. The registration of burials and disinterments is generally comprehensive, but the fees charged for copies of entries are normally determined locally. Consideration might be given to providing powers for the Government to prescribe maximum fees chargeable, though any such constraints may simply reduce funds which could otherwise be channelled towards site maintenance.

### Cemetery management

In general, burial authorities enjoy wide powers for the management, regulation and control of a cemetery. While there would not appear to be a general need to interfere with local decisions and accountability, advisory guidance on matters such as service standards, maintenance levels, promotion of cultural, historical and environmental values, diversity of provision, and staff training and qualifications, might benefit from powers to enforce standards in particular cases.

#### *Provision of separate areas for burial*

At present, decisions on setting aside part of a burial ground for use by particular denominations or religious bodies is discretionary for municipal cemeteries. Proposals for burial authorities to assess local burial needs should ensure that such needs are met but mechanisms to require such provision, perhaps on the application of a particular religious body or community, might be considered.

#### *Provision of chapels*

Municipal cemeteries may provide chapels for general use or use by particular denominations or religious bodies (at the expense of that denomination or body). This discretionary provision might benefit from a mechanism for any refusal to agree to their provision to be appealed.

#### *Mortuaries*

While the provision of a mortuary might be for local decision, it may be desirable for mortuary standards and procedures, in addition to those already covered by statutory requirements, to be in accordance with best practice, and enforceable on that basis.

<sup>9</sup> If a body is brought for burial from outside England and Wales, and the death does not need to be reported to the coroner, a certificate of 'no liability to register' will be needed from the registrar of births and deaths

<sup>10</sup> Under LACO Schedule 2, paragraph 2, a minimum depth of three feet is required, or two feet above the top coffin to natural soil level depending on soil conditions.

<sup>11</sup> Under LACO Articles 9, 11 and 12.

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

The terms and conditions on which such grants are made are normally for local decision,<sup>12</sup> but may lead to dispute, particularly between different family members and especially where inadequate checks have been made as to the entitlement of applicants for burials to be carried out. The solution may lie in improved regulation, or best practice guidance.

### *Fees and charges*

While fees and charges may properly be for local resolution, it may be appropriate to consider the case for the prescription of maxima (although this may affect the ability of the burial authority to maintain its burial grounds indefinitely) and for clearer information to the public (see also paragraph 34 above).

### *Maintenance, including removal of memorials*

Existing regulations relating to the maintenance of graves and memorials, levelling and the removal of tombstones and kerbstones in local authority cemeteries are comprehensive, as is the legislation covering conservation areas, listed buildings and registered landscapes. However, recent experience of measures taken to address the dangers of unstable memorials has indicated that there may be a need to review owner notification arrangements and other aspects of responding to threats to public safety. These issues are currently subject to separate consideration<sup>13</sup>, but views on the need for additional legislation, if any, would be welcome.

### *Offences and penalties*

No known problems exist with the scope of the matters which constitute an offence in municipal cemeteries, but it would be helpful to learn whether the existing penalties<sup>14</sup> appear to provide an adequate deterrent or whether there are any difficulties in securing a conviction. There may be scope for rationalisation amongst all types of burial grounds in respect of offences and penalties, as much as in any other matter.

#### **Question 9:**

The Government would welcome views on the case for additional regulation of the detailed aspects of cemetery operations set out in the above paragraphs, and in particular on the appropriate mechanisms for referral or appeal of any local decisions. One possibility would be for reference to be made to the Home Office, as is already the case in some instances<sup>15</sup> but alternatives might be more effective, such as a dedicated tribunal or other body.

### **Responsibilities for making arrangements for those who have died**

In considering the regulation of the burial process, it may be relevant to note that the obligation to bury, or otherwise dispose of, those who have died is unclear. As a matter of common law, responsibility for arranging and the cost of the funeral falls to the executor of the deceased's estate or, in the absence of a will, to the deceased's personal representative. But that does not create an unambiguous responsibility for the disposal. Under the Public Health (Control of Diseases) Act 1984, local authorities are required to make suitable arrangements for the burial or cremation of those who have died if it appears that such arrangements will not otherwise be made<sup>16</sup>, but this is clearly a default mechanism. There are other options for disposal, for example removal abroad<sup>17</sup>, burial at sea, or donation for anatomical training and research<sup>18</sup>, but these do not provide a definitive or comprehensive framework for the disposal of the deceased, nor are there any prescribed time limits for action to be taken.

#### **Question 10:**

The Government would welcome views on whether a statutory obligation to bury or cremate those who have died should be created. If so, on whom such an obligation should be placed, within what period of time, and what exceptions should there be (for example where the remains are required as evidence for a court case)?

<sup>12</sup> Subject, in the case of local authority cemeteries, to a maximum period of 100 years.

<sup>13</sup> By a working party of the Burial and Cemeteries Advisory Group

<sup>14</sup> Under the provisions of LACO, on summary conviction for all offences, a fine not exceeding £100 may be imposed, with £10 per day for any continuing offence after conviction.

<sup>15</sup> In respect of objections to the removal of tombstones, under paragraph 10 of Schedule 3 of LACO.

<sup>16</sup> NHS Trusts have assumed a similar, non-statutory, responsibility in respect of such deaths in hospitals.

<sup>17</sup> Subject to the authority of the coroner, under the Removal of Bodies Regulations 1954.

<sup>18</sup> Under the provisions of the Anatomy Act 1984.

However, the disposal of the dead raises issues wider than those relating just to burial law. For example, consultees might wish to comment on the absence of provision to make legally binding directions on the disposal of one's body (other than for anatomical dissection and research), or to raise the problem of resolving disputes between relatives as to the manner of the body's disposal. These aspects would appear to be beyond the scope of burial law, but views are invited as to whether they would need to be addressed if a statutory obligation to dispose of the dead was created.

## Standards

Regulation of burial grounds addresses issues of minimum levels of service. There are many other initiatives and developments which may serve to raise standards and enhance the service which burial grounds provide for their communities. In the context of burial law, consideration needs to be given to whether standards can be better achieved through creating new statutory requirements rather than through advice and guidance. It may also be necessary to consider whether there are any legislative provisions which inhibit the achievement of desirable standards.

Maintenance standards for burial grounds are already set in some statutory provisions (eg in relation to walls and fences etc<sup>19</sup>). But these provisions are subject to interpretation as to scope and the actual level of maintenance required<sup>20</sup>. Coupled with ineffective enforcement provisions, there is little indication that the existing provisions make a difference.

But maintenance is only likely to improve if a range of steps are taken to encourage attention. These may include facilitating funding, providing practical guidance, and generating a management culture which is committed to achieving its goals.

Similar considerations apply in relation to restoration standards, and safety issues.

### Question 11:

The Government believes that there should be scope for improving the standards of maintenance, restoration and safety in burial grounds through more precise definitions,

reinforced through more effective staff training and enforcement measures, underpinned by guidance and new funding schemes. Views are invited on whether this is the right approach, whether new legislation alone will deliver the benefits required, or whether funding issues also need to be resolved before substantial progress can be expected.

There are a variety of ways in which service standards may be improved for visitors and users of burial grounds. These will include extending opening times, offering more visitor facilities, providing better site information and catering for particular cultural and faith needs (where appropriate). It is also important to increase diversity of provision wherever possible so that local communities have a choice of burial options, and a range of burial environments which can enhance the experience both for the bereaved and the casual visitor.

Much of this can be achieved through the adoption of best practice, and working co-operatively with other burial grounds providers (see under Part B). Training and guidance for staff, and effective management skills, will go a long way to achieve these standards without the need for significant additional funds. Even where funding is limited, higher standards can be planned and implemented over time, as funds allow.

### Question 12:

The Government considers that, on the whole, service standards can be improved by guidance rather than regulation, especially where it may take time for standards to be established and bedded in. But views would be welcome on whether it would be helpful or constructive to place obligations on burial ground managers to take account of guidance on these issues in planning for the future, or to consult relevant experts, for example, on the options available for developing the environment of their sites.

<sup>19</sup> Section 215 of the Local Government Act 1972

<sup>20</sup> The common law position relating to maintenance standards in churchyards has been addressed in Legal Advisory Commission opinions.

## Enforcement

Under the Burial Act 1855, the Home Office has powers to undertake the inspection of burial grounds with a view to requiring work to be carried out, or to close the site to further burial (for example, on public health grounds). These powers have, in recent years, been exercised only rarely when the need has arisen in individual cases. In the absence of standing inspectorate arrangements, inspections have been carried out by the Home Secretary's appointment of an appropriate person as and when required. There is therefore no existing inspectorate structure, or Home Office staff, with relevant experience or expertise.

The Environment Select Committee considered that a permanent inspectorate would offer a number of benefits as a force to:

- ensure compliance with relevant legislation;
- respond to complaints;
- set standards for maintenance and service provision;
- commission and oversee relevant research programmes;
- organise seminars and training;
- develop and disseminate good practice;
- develop cemetery policy.

### Question 13:

The Government does not believe that it would be the task of an inspectorate to undertake all these functions, although, if such a body was established, it might well contribute to policy development, standard setting, training and research needs. Views would, however, be welcome on:

- whether compliance with regulation and good practice would be dependent on the availability of a field force to provide a local presence of experience and expertise;

where that resource should be drawn from;

whether a standing body would be needed or whether it would be feasible to draw on existing sources;

what frequency of inspections might be required;

what size of any standing body might be needed;

whether all burial grounds should be subject to inspection, or whether some should be exempt (if so, which ones and why).

Bearing in mind that there are believed to be over 25,000 burial grounds in England and Wales, an inspectorate would need to consist of at least 25 full-time inspectors if each were to inspect every site at least once every five years. The costs of such an inspectorate might therefore easily exceed £2m.

### Question 14:

Views are invited as to whether the case for an inspectorate has been made out, whether the costs are likely to justify the benefits, and whether the costs might more appropriately be recovered from the industry, rather than from the taxpayer, perhaps through a system of licensing cemeteries.

## PART D: EXHUMATION OR DISTURBANCE AFTER BURIAL

### Individual cases

The Burial Act 1857 makes the removal of buried human remains an offence unless a Home Office licence, or in relevant circumstances, a faculty from the diocesan consistory court, has first been obtained. These provisions offer discretionary powers to regulate the disturbance of human remains in a wide range of circumstances. Home Office practice in considering applications is to grant licences provided the consent of the burial ground manager, the grave owner, and the next of kin (normally interpreted as for probate purposes) is forthcoming, there are no known legitimate objections, and the application is for personal family reasons. However, there are no statutory constraints on the exercise of the Secretary of State's discretion and licences may be issued in circumstances where not all the consents are available. The consent of the next of kin is usually dispensed with where the remains were buried 100 years or more previously, and applications involving archeological remains are normally granted without consents other than from the landowner (unless the exhumation appears to be in connection with the development of the site, where other legislation may apply).

Home Office licences will not be required where other legislation may make removal compulsory, usually in connection with site development. The Disused Burial Grounds (Amendment) Act 1981 requires the removal of burials where a building is to be erected on the burial ground (unless a dispensation order is issued by the Home Office where the development work will not disturb the remains), while the Pastoral Measure 1983 and regulations under the Town and Country Planning Acts<sup>21</sup>, respectively, make similar provisions in relation to Church of England churchyards subject to a redundancy scheme or certain pastoral schemes, and to burial grounds acquired by local and certain other authorities. A number of private and local Acts have comparable provisions where development work is expected to disturb buried remains (eg the Channel Tunnel Rail Link Act 1996).

These provisions are generally aimed at regulating (rather than preventing or restricting) the way in which human remains (and memorials) are cleared from burial grounds which are to be developed for non-burial purposes, although, uniquely, the 1981 Act provides that objections from the next of kin of those buried within the preceding 50 years will be fatal to development applications.

It is consistent with this legislative framework that human remains are not gratuitously disturbed. Unless Parliament has expressly authorised such removals through the Disused Burial Grounds (Amendment) Act and similar measures, licences have never been granted for what might be described as commercial purposes - such as enlarging a grave so that it may take additional, unrelated burials, or to enable old burial grounds to be used more efficiently. Although exhumation has been allowed to release old burial grounds for building and road developments, burial grounds have never been cleared for re-use as burial grounds, and remains have never been re-located within existing burial grounds simply to free up space for new burials<sup>22</sup>.

#### Question 15:

The Government believes that it is right to continue to protect buried human remains from unauthorised disturbance. Where statutory provision has been made for remains to be exhumed or removed, it is important that the remains should be treated at all times with dignity and respect, however old the remains might be. The Government believes that disturbance may be justified only in limited circumstances:

in the interests of justice (for example, exhumation on the order of a coroner);

for personal reasons by the next of kin of the deceased;

<sup>21</sup> The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950.

<sup>22</sup> In the case of Church of England churchyards, it is understood that faculties may be occasionally issued for re-use, subject to public rights of consultation.

on grounds of public health or nuisance;

in the public interest (in connection with site developments which have public or other planning consent);

for scientific purposes (eg for archeological research);

for other exceptional reasons (the case for exhumation for the purpose of re-use of old graves is discussed below).

**Question 16:**

The Government would welcome views on whether these grounds are too narrow (or too wide).

Whether licences are required for the disturbance of remains in mausolea is unclear, although it has been Home Office practice to issue licences for this purpose on application, subject to the usual consents being obtained. Similar issues arise in connection with cremated remains which may be contained within columbaria<sup>23</sup> where licences have not generally been thought to be required.

**Question 17:**

The Government would welcome views on the case for licensing the disturbance of all human remains, cremated or otherwise, which have been interred or otherwise given a permanent resting place.

So far as the removal of individual remains is concerned, applications are made centrally to the Home Office and are processed administratively, normally within 10 working days. No fee is charged (provision to do so was repealed in 1992). There are no statutory appeal provisions, although application might always be made for a decision to be challenged by way of judicial review (applications are in fact rarely refused).

In the case of an exhumation from consecrated ground, applications for a faculty are considered judicially by the chancellor of the relevant diocese. Ecclesiastical case law is more restrictive as to the

criteria for the grant of a faculty, a fee is charged whether the application is successful or not, and the decision may take some weeks to be made. More importantly, there is a degree of overlap, whereby both a faculty and a Home Office licence is required in certain circumstances (where, for example, the remains are to be removed from consecrated ground to unconsecrated ground). In the case of the Church in Wales, exhumation from consecrated land cannot be authorised by the grant of a faculty and a Home Office licence is required.

**Question 18:**

The Government would welcome views on whether:

authority to licence the exhumation of remains should be retained centrally;

such authority might be delegated to the burial authority/burial ground manager;

the criteria for the grant or refusal of licences should be regulated in statute;

there should be a formal appeal mechanism;

fees should be charged, or chargeable;

procedures and criteria should be more closely aligned with those relating to faculties;

whether archeological remains should be subject to the same regulation, or be unregulated, or more lightly regulated;<sup>24</sup>

**Question 19:**

It would also be helpful to have views on:

what the criteria should be for the grant of licences or faculties;

how old buried remains might need to be to justify any relaxation of the regulation of their disturbance.

<sup>23</sup> Columbaria are above-ground niches for holding cremated remains in containers.

<sup>24</sup> Outside recognised burial grounds. Archeological remains in churchyards are strictly protected through the faculty system or, in the case of Cathedrals, the Care of Cathedrals Measures

One of the arguments for delegating authority for the disturbance of buried remains is that the need for exhumation in certain cases will not readily allow reference to the Home Office, for example, where a burial has been placed in the wrong grave and corrective action needs to be taken immediately. In such cases, it might be sensible for authority for the exhumation to be granted at a more local level. Similar arguments may arise where remains are discovered accidentally outside recognised burial grounds.

**Question 20:**

Views are invited on the case for the delegation of authority for the removal of remains in these circumstances, and to whom such authority might be delegated.

### Mass clearance of burial grounds

The removal of multiple remains under statutory authority is broadly similar whether the applicable legislation is the Disused Burial Grounds (Amendment) Act 1981, the Pastoral Measure 1983 or other public general, private or local Acts. The exhumation of the remains is required, and must be carried out in accordance with such directions as the Home Office may give, unless the remains will not be disturbed by the development work, in which case they may be left undisturbed (even if they then become inaccessible) if the Home Office issues a dispensation order. The procedures normally require public notices to be given, allow relatives to make their own arrangements for re-burial if they wish (with varying provisions for defraying their expenses), and makes arrangements also for the disposal of headstones and other memorials.

The Disused Burial Grounds (Amendment) Act 1981, however, also provides that objections by relatives of the deceased buried within 50 years of the proposed development will prevent the development from taking place.

**Question 21:**

The Government believes that statutory provision to require the removal of remains before a burial site is developed reflects a

proper balance between the need for respect towards those who have died, sensitivity towards the bereaved and their descendants, and the interests of public and private sector developers. However, views would be welcome on:

whether the existing legislation might be rationalised for general application;

whether there is sufficient protection of the interests of those who have died and their families, for example in relation to the ability to prevent development, or to have the costs of re-burial reimbursed, or to restrict making the graves inaccessible; and

whether the notice arrangements (two weeks) or the time allowed to make private arrangements for reburials (two months) are too short or too long;

whether there might be circumstances in which the prescribed procedures should be disapplied, for example because the site or the remains are so old.

### Re-use of graves

There have long been powers to make best use of existing grave spaces. ‘Common’ or ‘public’ graves are dug to provide a number of unrelated interments within the same grave space, which may be used over a period of years until it is full. ‘Private’ or ‘family’ graves are those where exclusive rights of burial have been granted, formerly in perpetuity, but now generally for a limited period.<sup>25</sup> Such graves may also contain a number of sequential burials, but only with the consent of the person holding the right of burial. Burial is usually confined to members of the same family, or to more distant relatives, as determined by the holder of the burial rights. Such graves may also be “re-used”, or, more accurately, fully used, where the exclusive rights of burial have expired or have been terminated and there is still space for additional burials within the grave. Expiry occurs after the specified number of years for which the rights have been granted, usually between 50 and 100 years. The rights may, however, be terminated by burial authorities in advance in circumstances prescribed in the relevant legislation, normally after 75 years<sup>26</sup>.

<sup>25</sup> Rights of burial may be granted under Article 10 of the Local Authorities’ Cemeteries Order 1977 for a maximum period of 100 years, except in the case of grants to the Commonwealth War Graves Commission which may still be without limit.

<sup>26</sup> Article 10 and Schedule 2 to the Local Authorities’ Cemeteries Order 1977, as amended. Similar provision has been made in certain private Acts.

Some seven years ago, the London Planning Advisory Committee (LPAC), working in conjunction with relevant burial authorities and their representatives in London, carried out research into the existing capacity for burials in the Greater London area<sup>27</sup>. According to this research, the Inner London Boroughs were then estimated to have, on average, only some 7 years' burial capacity remaining. The Outer London Boroughs were thought to have sufficient capacity to last a further 18 years<sup>28</sup>. These average capacities concealed wide variations: some Boroughs had virtually no capacity for additional burials. It was for this reason that local authorities began to explore the prospects for burial land outside Greater London, or for using land within Greater London which was otherwise providing alternative amenities.

In the light of the research findings, LPAC suggested that, rather than continually to seek new land for burial as existing cemeteries fill up, the more effective solution might be to re-use existing burial grounds as part of a managed and co-ordinated approach to the provision of local burial facilities<sup>29</sup>. This approach was also seen as a way of reversing the need to locate new cemeteries further and further away from the communities they served. In addition, by enabling cemeteries to become a renewable resource, they might go some way to relieve local taxpayers of the constant financial demands of existing cemetery maintenance.

The re-use of old graves in cemeteries was therefore recommended as a way to:

- (a) relieve pressure on open land, particularly in London;
- (b) provide burial facilities closer to the relevant communities; and
- (c) generate income to maintain existing cemeteries.

Although various models might have been considered, the method of re-use recommended

by LPAC was the so-called 'lift and deepen' practice<sup>30</sup>. This involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials. Since old remains would occupy less room, and the grave itself would be dug, wherever possible, deeper than has commonly been the practice (perhaps to 3.1 metres, allowing a further three burials above), it was said that, in practice, the grave could be used indefinitely if the cycle were repeated.

For the purposes of re-use, it was proposed that only common earth graves, or earth graves for which any exclusive rights of burial had expired or been terminated (see above) would be used. It was also envisaged that only burials of 100 years of age or older would be considered for this practice. This would be to ensure, as far as practicable, that the remains had been reduced to skeletal material, and that there would be no immediate descendants of the deceased<sup>31</sup>.

The Environment Select Committee has endorsed the case for the re-use of graves, which it concluded could provide local, accessible burial space, secure a constant income for the burial authority, and might assist in the maintenance of old memorials.

**Question 22:**

Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be tested, in particular, so as to gauge public concerns and acceptability<sup>32</sup>, and to determine the practicality and economics of any new approach, having regard to the need for any exceptions and safeguards. Comments are therefore invited on the principle as to whether the disturbance of remains would be justified in the interests of preserving and funding local, viable burial grounds, and reducing demands for new land for burials.

<sup>27</sup> Planning for Burial Space in London, 1997, by the London Planning Advisory Committee in association with the Confederation of Burial Authorities, the Institute of Burial and Cremation Administration, and the Corporation of London.

<sup>28</sup> Reserves of non-denominational burial space only. The calculations exclude burial spaces:  
 - in denominational cemeteries;  
 - set aside for Jewish, Roman Catholic and Muslim burials in non-denominational cemeteries;  
 - in private cemeteries;  
 - in existing private graves;  
 - in cemeteries outside the relevant London Borough and some distance away;  
 - in any new cemeteries.

<sup>29</sup> *Planning for Burial Space in London, 1997* – see footnote 27.

<sup>30</sup> Brick or vault graves are unlikely to be appropriate for re-use in this way.

<sup>31</sup> The length of time necessary for remains to be reduced to a skeleton depends on ground conditions and the type of coffin used. There will be no certainty that only skeletal remains will be present after 100 years in all cases, but the time scale proposed seems like to be effective in most cases.

<sup>32</sup> See also page 17 and research on public attitudes already carried out.

The re-use of graves gives rise to other issues in addition to the disturbance of human remains. Re-use might fundamentally alter the character of the burial ground if graves are to be regularly, even if infrequently, re-opened for further burials (though that is the existing practice for ‘family’ graves until they have been filled). Arguably, it would be more difficult to develop a burial ground as a nature reserve, or haven for tranquillity and reflection, if the graves were being re-used.

Questions also arise in regard to any tombstones or other memorials. It has suggested that they, too, might be re-used, with additional names added as further burials were carried out. Alternatively, they might need to be removed altogether, with the loss, at least in situ, of the historical and cultural information they bear. In this context it should be noted that in April 2002, English Heritage and English Nature published “Paradise Preserved”<sup>33</sup>, which drew attention to the importance of understanding and evaluating the significance of old memorials, and the question of the necessary skills and resources required to maintain them.

**Question 23:**

Comments are invited on the potential impact of re-using graves on the character of a burial ground, and how any adverse effect might be mitigated. Views would also be welcome on how tombstones and memorials should be dealt with where graves were to be re-used (for example, new or additional memorials, additional names on existing memorials or the details of the further burials to be recorded in books of remembrance).

If the case for re-using graves were to be established in principle, consideration would need to be given to how the practice might be implemented. This includes which graves might be suitable for (or precluded from) re-use; what re-use practice to permit or prescribe; the impact of re-use on the amenity value of a burial ground; and the economics of operating a re-used burial ground rather than virgin land.

**Question 24:**

The Government would welcome views on whether the age of the grave should be the appropriate criterion to determine whether a grave might be re-used. If so, is 100 years the appropriate length of time? Should it be longer, or shorter? And if so, on what basis? Should there be any linkage to the time granted for exclusive rights of burial? Or to the 50 years from the date of burial which, under the Disused Burial Grounds (Amendment) Act 1981, qualifies the next of kin to prevent the development of a burial ground? Should re-use depend on a shortage of burial space in the particular local area?

**Question 25:**

Alternatively, might a more scientific approach be adopted which determined that only graves containing skeletal remains were used? Would this be practical? (Decomposition would mainly depend on local soil conditions, might not be accurately predictable, and might involve a period of time considerably longer or shorter than 100 years.)

The alternative to ‘lift and deepen’ would be to remove the remains completely for re-burial at another site (in effect, in ossuaries) or for cremation (though cremation of skeletal remains is not always practical).

Retention of the remains within the original grave might be more acceptable to descendants since the burial would be in the same location. The practice would also simplify record keeping for cemetery managers (who would, as now, be required to maintain proper and complete records of the location of all burials).

**Question 26:**

The Government believes that, if graves were to be re-used, the lift and deepen method would be the preferred approach. Views are invited on any foreseen disadvantages of this method, or advantages of alternative methods.

<sup>33</sup> “Paradise Preserved; an introduction to the assessment, evaluation, conservation and management of historic cemeteries” English Heritage and English Nature, April 2002.

**Question 27:**

It would also be helpful to have views on whether particular methods of re-using graves should be prescribed, or whether burial ground managers should be free to adopt whatever method appeared appropriate according to local circumstances.

The case for re-use rests primarily on land shortages and sustainable land use. The former arises because of the demand which is said to exist for burial facilities to be close to the communities they serve<sup>34</sup>. Although this might appear desirable, public demand for such facilities is not known. Research into the extent of the visiting of cemeteries<sup>35</sup> suggests that 20% - 75% of people, depending on the degree of the kinship, never visit graves, but it is not clear whether the distance to the place of burial is an influencing factor.

There is a clearer case for re-use as a means to achieve sustainable land use. The present practice of providing land for burials without the prospect of re-using that land inevitably means that more and more land must be put to this use. Sooner or later, the amount of land devoted to burials may come to be seen as disproportionate, particularly as the population increases. Burial grounds are not necessarily without value: they can offer an open space amenity and important ecological habitats. But this might properly be seen as a by-product of their fundamental purpose, and that planning the use of a finite resource needs to consider competing demands rather than be entirely demand-led. A strategy for the sustainable use of land would be consistent with Government policies for the environment.

Whether re-use of graves would in fact achieve sustainable use of the land may be open to question. In recognition of potential public concerns, any re-use proposals would have to be subject to a number of exceptions and qualifications (see below). These may have the effect of reducing the number of re-useable grave spaces which might otherwise become available, possibly to a significant extent. Furthermore, the relative costs of providing re-used graves, as opposed to the purchase of new land for burials, has not been assessed (and may not be readily assessable).

The economic arguments in favour of the re-use of graves depend to a large degree on the accuracy or predictability of a number of assumptions:

- a steady proportion of cremations to burials;
- a steady or falling death rate;
- the number or proportion of graves that have not yet been fully used;
- the number or proportion of graves which might be suitable for re-use (allowing for proposed exemptions);
- the depth to which graves may be realistically dug (and the number of burials they may therefore accept);
- the amount of unused burial ground at present available within burial grounds;
- the availability and cost of new land for burial purposes; and
- the relative costs of re-using old graves rather than developing new burial sites.

**Question 28:**

The Government would welcome comments on any or all of these factors.

According to research<sup>36</sup>, some 70% of the public might be prepared to accept (or at least not object to) the need to re-use graves after an appropriate period of time. There are a number of known reasons for objections. These include:

- religious beliefs;
- environmental concerns; and
- loss of cultural heritage.

To meet these concerns, a number of complementary proposals have been made:

<sup>34</sup> Select Committee report paragraph 16.

<sup>35</sup> *Re-using Old Graves*, 1995, Davies and Shaw, University of Nottingham.

<sup>36</sup> *Re-using Old Graves*, 1995 – see footnote 35.

### (a) Local consultation

It has been suggested that re-use should not be adopted without prior local public consultation and local authority consent. This would provide the local community with an opportunity to express its views about any proposals to adopt a re-use strategy in the local area. Consideration would need to be given to whether the consultation process should be at parish level, in the area subject to joint burial authorities, or at district and London borough level, and decisions taken by the relevant local council. Consideration would also need to be given to whether the outcome should be binding on any non-municipal cemeteries. Alternatively, those responsible for non-municipal burial grounds (denominational burial grounds other than Church of England churchyards and private cemetery owners) might make their own decisions, either in the light of responses to a local authority consultation exercises, or a similar consultation exercise which they mount. The position of Church of England churchyards would also need to be taken into account in respect of how the future needs of the area are to be met.

#### Question 29:

The Government believes that local consultation about any re-use of graves would be essential, but that it would be important for such exercises to be undertaken on a consistent basis. Comments are invited on the need for consultation and what might properly be addressed in such consultation, including:

best estimates of remaining burial space and demand;

details of any additional burial grounds already earmarked or acquired, and reasons why it is not proposed to use them;

details of any local burial facilities which will not be subject to a re-use scheme;

proposed criteria for exempting graves or cemeteries from re-use, or details of graves and cemeteries already identified for exemption;

proposed method of re-use; and  
implications for burial charges.

#### Question 30:

Views on whether and how such consultation might usefully be undertaken jointly with other burial ground providers would be appreciated.

### (b) Exceptions

It is generally recognised that re-use would be inappropriate in cases of graves of historical importance, or where damage might be caused to memorials of cultural and heritage value. However, it is less clear that there will necessarily be common agreement on which particular graves ought to be protected, and whether there may need to be more specific criteria to be used in identifying them. It is for consideration whether lists of specific graves and memorials to be protected, or at least the proposed criteria, should be provided in connection with a public consultation exercise.

War graves constitute a particular class of grave which, at least in municipal cemeteries, enjoy special protection by virtue of certain powers and exceptions granted to the Commonwealth War Graves Commission<sup>37</sup>. It is not proposed that war cemeteries, or individual war graves, should be subject to a re-use regime.

Whether individuals or families should be able to 'opt out' of any local re-use scheme, and on what grounds, is also for consideration.

A number of old burial grounds, although disused and neglected, have become a haven for wildlife, both flora and fauna, in areas which are otherwise urban and hostile to local plants and animals. Other such old burial sites have been deliberately maintained for this purpose. There may be concern that the re-use of graves in such sites would disturb or destroy important ecological habitats, that their loss would be to the detriment of the local community and the wider environment, and that such sites should be exempted from re-use arrangements on that account. In practice, if parts of such burial

grounds could be brought back into use, it might be possible to manage the site as a whole more effectively as a wildlife area.

Other old burial grounds may have become public amenities under the provisions of the Open Spaces Acts. In these cases, the grave mounds may have been levelled and tombstones cleared away to enable the public to enjoy a green park or cultivated gardens. Subject to legislation (the Open Space Acts currently prohibit any further use of the sites as burial grounds), it might be possible to contemplate these old sites being brought back into use. However, unless proper and detailed records of the burials had been kept it might not be feasible to identify the locations of the graves and the identities of those interred. This could make the re-use of such sites impractical.

**Question 31:**

The Government would welcome views on the proposed exceptions to any re-use arrangements, in particular:

whether the exceptions proposed are the right ones, or whether there should be others;

whether it would be right to enable exceptions, in effect, to be purchased;

whether the criteria for identifying exceptions are sufficiently clear, or flexible, to be effective; and

whether the need for sustainable land use is such that exceptions should not be permitted in any circumstances.

**(c) Improved cemetery practices**

Responsibility for the general management of municipal cemeteries (including use of the available land) rests with the individual burial authorities. Practice and procedures will therefore vary from place to place. In order to provide public assurance that, prior to the introduction of any re-use scheme, the existing burial land has been used most efficiently, it has been proposed that cemetery managers should be encouraged:

to dig new public and private graves to the maximum practical depth to enable more burials to take place than might otherwise be the case;

to maximise use of existing underused graves (without disturbing remains);

to ensure that cemetery records are in a state to demonstrate clearly the extent to which existing land has been used, and fully used; and

to introduce appropriate cemetery business plans, which both record effective management of existing facilities and set out how the burial authority proposes to manage demand and supply of burial facilities in future years.

These measures are proposed not only for good practice but also to provide assurance that re-use would only be introduced where there is a local popular mandate and where all existing local burial land has been used and can be accounted for; and that graves and memorials of historical and cultural value would be protected.

**Question 32:**

The Government would find it helpful to learn what importance ought to be attached to the introduction of good cemetery practices prior to any adoption of a re-use regime.

**(d) Regulation**

It has been suggested that any decision to permit the re-use of graves, either nationally or locally, should be accompanied by more effective, independent, regulatory arrangements. This would be with a view to ensuring that the work of the burial authorities was subject to the oversight of a specialist body, that burial legislation and good practice were consistently observed, and that public confidence could be maintained. This would require a new regulatory regime, together with the necessary resources to enforce it. (See also the discussion in Part C regarding proposals for an inspectorate.)

**Question 33:**

The Government would welcome views on:

whether there is a need for additional regulatory arrangements before any re-use schemes might be introduced;

what such arrangements might require (for example, regular inspection of cemeteries to assess general compliance with burial legislation or one-off inspections to determine suitability or competence to operate a re-use scheme);

whether they might need to cover all burial bodies (including churches and private cemetery owners); and

how best they might be put in place (for example, a new Government inspectorate, self-regulation, or the development of other regulatory bodies for the purpose).

to be no obvious measures to be taken, either by the Government, or by the burial authorities themselves, to make the use of 're-used' graves more acceptable to those members of the public who have objections. Use is likely to be determined by personal preferences, cultural or religious practices, means and availability of local alternatives.

**Question 34:**

The Government proposes that, were it to be persuaded that the re-use of graves should be established, it would be right to leave decisions about whether to use such graves entirely to the individuals and families concerned. However, it would seem appropriate to ensure that the public was properly informed about the nature of any grave or grave space that might be purchased, both as to the fact that the grave had been previously used, and that it would be expected to be re-used again in due course. It would also be important to ensure that information about the availability of any virgin burial facilities was also provided in response to enquiries or applications to purchase a grave.

**Other considerations**

Public acceptance goes beyond the question of disturbing buried remains. There is also a question of whether the public would wish, or be prepared, to be buried or have relatives buried in graves which had used for been previous burials. Since many burials already take place in 'public' graves, where the lower burials will be unrelated, there may not be any overriding public reluctance to inter the deceased in graves where human remains have been re-sited more deeply to enable further burials to take place. But there is a continuing demand for 'private' graves, where the members of the same family can be buried together, and this may indicate that there could be a degree of reluctance to have to share a grave. There may also be resistance, on cultural and religious grounds, to using graves which are more than one burial deep.

There would be absolutely no question of making the use of 're-used' graves compulsory. Those who do not wish to use them would be free to make arrangements for burial elsewhere (as long as traditional cemeteries are available). There appear

**Re-use of churchyards, closed churchyards and consecrated burial grounds**

Under existing burial legislation, Church of England churchyards may be closed to further burials by Order in Council. Once closed by such Orders, no further burials may take place in the churchyard (apart from the burial of cremated remains or, where exceptions have been made, burials in existing walled graves or vaults, or in existing earthen family or reserved graves, where there is sufficient room). There is no provision for reversing the effects of closure Orders.

In accordance with an agreement reached with the church and local authorities some years ago, one of the reasons for closure (and the most usual one) is that there is no further room for new burials. Any decision to permit the disturbance of existing remains to enable graves to be re-used invites consideration about whether the lack of further room for burials in a churchyard could still be

regarded as a valid reason for closure if it were possible to re-use churchyard graves.

Since closure enables a Church of England church, in accordance with the statutory provisions, to have the maintenance responsibility for the churchyard transferred to the local authority, there is financial advantage to the church in continuing the current administrative agreement. On the other hand, if graves could be re-used, an income to the church could be restored which might, in turn, be made available for the future maintenance of the churchyard (although consideration would need to be given to the archeological interest of old churchyards, long closed).

**Question 35:**

Should the practice of closing Church of England churchyards which are full by Order in Council be changed?

If so, in what circumstances should decisions be made? Where a churchyard is full, on what criteria should it be decided whether it should be closed or provision made for reuse? In particular, what weight should be attached to the importance of the churchyard as an open space and the conservation of its character, including existing monuments?

Should there be a procedure for declaring a churchyard full without formally closing it, so that special steps may be taken for its future use?

Where a churchyard is full, should the Church of England and Church in Wales authorities be given statutory power to require the relevant local authority to provide for the cost of preparing the ground for reuse?

Should there be provision for reopening closed churchyards at the request of the church authorities? If so, in what circumstances should such decisions be made and on what criteria?

**Question 36:**

To what extent should special provision be made on theological, pastoral or other grounds for the reuse for burials of land, which has been consecrated for Christian burials by the Church of England or Church in Wales but which is part of a municipal or private cemetery rather than a churchyard, or for reuse of land set aside for burials according to any other particular religious tradition?

**Protection of buried human remains**

As explained above, it is generally an offence to disturb human remains without a licence from the Home Office. A re-use policy, however, may appear to signal that the disturbance of human remains is no longer seen as important, regrettable, or justify criminal sanctions, and that existing procedures to obtain Home Office licence might be relaxed.

**Question 37:**

The Government takes the view that unauthorised disturbances of human remains is, and should remain, a serious matter, that there is a continuing need for buried remains to be protected within the criminal law, and that there is widespread public support for such protection. Views on whether the re-use of graves would be likely to undermine respect for the dead and, if so, suggestions as to how this might be mitigated, would be welcome.

# **ANNEX A - LOCAL AUTHORITIES CEMETERIES ORDER 1977**

The Local Authorities' Cemeteries Order 1977 contains a wide range of provisions. Their main provisions are set out below.

## **General powers of management**

Burial authorities are given wide powers for the management, regulation and control of a cemetery.

## **Layout, repair and access**

Burial authorities may enclose, lay out and embellish a cemetery as they see fit, and must keep it in good order and repair, together with its buildings, walls and fences.

## **Consecration**

There is discretionary provision to set aside part of a cemetery for consecration or use by particular denominations or religious bodies.

## **Provision of chapels**

There is a discretionary provision to provide a chapel, and such chapels may be provided for use by the Church of England or other denominations or religious bodies on application and where funded other than by the burial authority

## **Provision of mortuaries and biers**

There is a discretionary provision to provide mortuaries and biers.

## **Sharing facilities**

Facilities may be shared with other burial authorities etc.

## **Plan and record of cemetery**

Plans of all graves, vaults and grave spaces subject to burial rights are required

## **Burial rights**

Burial rights may be granted, either exclusively or otherwise, in a grave or grave space. Similar rights may be granted in relation to tombstones etc. Rights may not exceed 100 years.

Where the right to burial or to construct a walled grave or vault has not been exercised for 75 years, the right may be extinguished subject to compliance with due notice procedure.

## **Registration of burials and disinterments**

Registration details are to be taken and recorded in the prescribed manner.

## **Storage of records**

Prescribed records are to be stored safely.

## **Objections to inscriptions**

A Bishop of the Church of England may object to inscriptions on tombstones in a consecrated part of the cemetery.

## **Removal of unauthorised memorials**

The cost of the removal of unauthorised memorials may be recovered against the person responsible of their personal representative.

## **Fees and other charges**

Fees may be charged as the discretion of the burial authority for burials, memorials and inscriptions.

## **Maintenance of graves and removal of memorials**

Graves and memorials may be maintained, and the surface of any grave levelled, with a identification mark if required. Tombstones and memorials may be removed.

## **Rites of Church of England**

The local priest is under an obligation to perform funeral services for parishioners in the cemetery as he is in respect of any churchyard, and is entitled to the relevant fee.

## **Offences in cemeteries**

Offences include creating a disturbance, committing any nuisance, interfering with any burial, interfering with a grave, or playing any game or sport, or entering or remaining in a cemetery when it is closed to the public.

## **Penalties**

On summary conviction for all offences, a fine not exceeding £100 may be imposed, with £10 per day for any continuing offence after conviction

## **Commonwealth War Graves Commission**

Burial authorities may grant the Commission the right to provide any structure, tree, plant or other feature. No action may be taken in respect to such structures or features without the consent of the Commission. Certain other dispensations and rights in relation to the Commission are also provided.

## **Schedule 1**

Makes provision regarding access roads.

## **Schedule 2**

Detailed arrangements for burial rights, rights to erect memorials and maintenance agreements

## **Schedule 3**

Detailed provision as to the removal of memorials and levelling

## **ANNEX B - HOW TO RESPOND TO THIS CONSULTATION PAPER**

This consultation seeks your views on the detailed proposals contained in this document. Specific points on which comments are sought are set out at throughout each chapter and are summarised in Annex C

The closing date for responses to this consultation is **13th July 2004**.

Responses can be sent by post, fax or e-mail to:  
Fiona Pembroke, Coroner Section, Communities Group, Home Office, 5th Floor, Allington Towers, 19 Allington Street, London SW1E 5EB.  
Tel:020 7035 5532. Fax: 020 7035 5590.e-mail:  
**Fiona.Pembroke@homeoffice.gsi.gov.uk**

Respondents should indicate clearly where they are responding on behalf of a group or organisation.

Respondents should also indicate clearly if they wish all or part of their responses to remain confidential to the Home Office. Otherwise the Home Office reserves the right to make such responses, in whole or in part, publicly available. Where a response is made in confidence, a statement that can be published, summarising the submission but excluding the confidential parts should accompany it.

A list of organisations to whom a copy of this consultation paper is being sent is at Annex D, but views are invited from anyone with an interest in the regulation of burials and burial grounds.

This document may be photocopied. Additional hard copies can be obtained from the address above and it is also available on the HO website at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

This consultation is being conducted in accordance with the Government's Code of Practice on Written Consultation (November 2000). The criteria contained within the Code are reproduced in Annex E.

## ANNEX C - QUESTIONS ON WHICH VIEWS ARE SOUGHT

### Question 1:

The Government believes that any review of current burial law needs to address the case for legislation applying to all burial grounds consistently, even if some burial grounds, such as Church of England churchyards, were to continue to be subject to relevant ecclesiastical law. It would accordingly welcome views on:

- a) Whether there should be a single statute to establish the broad framework in which burial grounds should operate;
- b) What aspects that broad framework might or ought to include (and what might be better left to other areas of law, such as planning);
- c) Whether there should be exceptions for different providers, or different types of burial ground, and, if so, what those exceptions might be.

### Question 2:

The Government would welcome views on whether provision of burial grounds should be left to the market, or whether there should be a statutory obligation on local authorities to provide burial facilities.

### Question 3:

The Government invites views on whether any change to the existing discretionary powers of local authorities to provide burial grounds should be based on a requirement to make an assessment of community needs, for example, every 10 years (geared to statements in their Local Plan); to take account of all local existing non-municipal burial facilities (and any re-useable sites, if appropriate – see Part D); to ensure adequate provision for particular cultural and faith needs, and for diversity of demand. The Government does not believe that diversity can necessarily be achieved at the

lowest tier of local government, and that the aim should therefore be to provide adequate diversity of provision at district/London borough level.

### Question 4:

The Government would welcome comments on the practicalities of requiring such needs assessments, their frequency and scope, and the implications for practice in relation to the compulsory purchase of land. It would also be helpful to receive views on how parish, town and district Councils, local authorities in Wales, Church of England and Church in Wales diocesan and other religious authorities, might work together to provide an appropriate level and variety of burial facilities for all their communities.

### Question 5:

If diversity of provision is important, but it is not feasible to provide such diversity within first tier local authorities, is there a case for restricting the power to establish burial grounds to district-level authorities only, or even to county-level councils (or unitary authorities in Wales)? Or can adequate, diverse, local, facilities be provided through consortia of district level authorities? Or would some other tier of government, or other mechanism, be appropriate?

### Question 6:

Views on the viability and practicality of leaving responsibility for local authority burial grounds within first tier councils are invited. Views would also be appreciated on the potential benefits of larger scale burial authorities, for example economies of scale in terms of training and developing expertise.

**Question 7:**

The costs of ensuring adequate provision of burial facilities are not strictly an issue for consideration within a consultation exercise on burial law, but views on the financial implications for first or second tier local authorities of any obligatory provision of burial facilities would be welcome.

**Question 8:**

The Government believes that while the information required can normally be expected to be provided voluntarily by the various cemetery managers, statutory authority to obtain the data would be desirable and a statutory obligation to report on the opening of cemeteries would provide an essential mechanism to ensure that central information was up to date. Views on the need for such provisions are invited.

**Question 9:**

The Government would welcome views on the case for additional regulation of the detailed aspects of cemetery operations set out in the above paragraphs, and in particular on the appropriate mechanisms for referral or appeal of any local decisions. One possibility would be for them to be made to the Home Office, as is already the case in some instances but alternatives might be more effective, such as a dedicated tribunal or other body.

**Question 10:**

The Government would welcome views on whether a statutory obligation to bury or otherwise dispose of those who have died should be created. If so, on whom such an obligation should be placed, within what period of time, and what exceptions should there be (for example where the remains are required as evidence for a court case)?

**Question 11:**

The Government believes that there should be scope for improving the standards of maintenance, restoration and safety in burial grounds through more precise definitions, reinforced through more effective staff training

and enforcement measures, underpinned by guidance and new funding schemes. Views are invited on whether this is the right approach, whether new legislation alone will deliver the benefits required, or whether funding issues also need to be resolved before substantial progress can be expected.

**Question 12:**

The Government considers that, on the whole, service standards can be improved by guidance rather than regulation, especially where it may take time for standards to be established and bedded in. But views would be welcome on whether it would be helpful or constructive to place obligations on burial ground managers to take account of guidance on these issues in planning for the future, or to consult relevant experts, for example, on the options available for developing the environment of their sites.

**Question 13:**

The Government does not believe that it would be the task of an inspectorate to undertake all these functions, although, if such a body was established, it might well contribute to policy development, standard setting, training and research needs. Views would, however, be welcome on:

- whether compliance with regulation and good practice would be dependent on the availability of a field force to provide a local presence of experience and expertise;
- where that resource should be drawn from;
- whether a standing body would be needed or whether it would be feasible to draw on existing sources;
- what frequency of inspections might be required;
- what size of any standing body might be needed;
- whether all burial grounds should be subject to inspection, or whether some should be exempt (if so, which ones and why).

**Question 14:**

Views are invited as to whether the case for an inspectorate has been made out, whether the costs are likely to justify the benefits, and whether the costs might more appropriately be recovered from the industry, rather than from the taxpayer, perhaps through a system of licensing cemeteries.

**Question 15:**

The Government believes that it is right to continue to protect buried human remains from unauthorised disturbance. Where statutory provision has been made for remains to be exhumed or removed, it is important that the remains should be treated at all times with dignity and respect, however old the remains might be. The Government believes that disturbance may be justified only in limited circumstances:

in the interests of justice (for example, exhumation on the order of a coroner);

for personal reasons by the next of kin of the deceased;

on grounds of public health or nuisance;

in the public interest (in connection with site developments which have public or other planning consent);

for scientific purposes (eg for archeological research);

for other exceptional reasons (the case for exhumation for the purpose of re-use of old graves is discussed below).

**Question 16:**

The Government would welcome views on whether these grounds are too narrow (or too wide).

**Question 17:**

The Government would welcome views on the case for licensing the disturbance of all human remains, cremated or otherwise, which have been interred or otherwise given a permanent

resting place.

**Question 18:**

The Government would welcome views on whether:

authority to licence the exhumation of remains should be retained centrally;

such authority might be delegated to the burial authority/burial ground manager;

the criteria for the grant or refusal of licences should be regulated in statute;

there should be a formal appeal mechanism;

fees should be charged, or chargeable;

procedures and criteria should be more closely aligned with those relating to faculties;

whether archeological remains should be subject to the same regulation, or be unregulated, or more lightly regulated;

**Question 19:**

It would also be helpful to have views on:

what the criteria should be for the grant of licences or faculties;

how old buried remains might need to be to justify any relaxation of the regulation of their disturbance.

**Question 20:**

Views are invited on the case for the delegation of authority for the removal of remains in these circumstances, and to whom such authority might be delegated.

**Question 21:**

The Government believes that statutory provision to require the removal of remains before a burial site is developed reflects a proper balance between the need for respect

towards those who have died, sensitivity towards the bereaved and their descendants, and the interests of public and private sector developers. However, views would be welcome on:

whether the existing legislation might be rationalised for general application;

whether there is sufficient protection of the interests of those who have died and their families, for example in relation to the ability to prevent development, or to have the costs of re-burial reimbursed, or to restrict making the graves inaccessible; and

whether the notice arrangements (two weeks) or the time allowed to make private arrangements for reburials (two months) are too short or too long;

whether there might be circumstances in which the prescribed procedures should be disapplied, for example because the site or the remains are so old.

#### **Question 22:**

Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be tested, in particular, so as to gauge public concerns and acceptability, and to determine the practicality and economics of any new approach, having regard to the need for any exceptions and safeguards. Comments are therefore invited on the principle as to whether the disturbance of remains would be justified in the interests of preserving and funding local, viable burial grounds, and reducing demands for new land for burials.

#### **Question 23:**

Comments are invited on the potential impact of re-using graves on the character of a burial ground, and how any adverse effect might be mitigated. Views would also be welcome on how tombstones and memorials should be dealt with where graves were to be re-used (for example, new or additional memorials, additional names on existing memorials or the details of the further burials to be recorded in books of remembrance).

#### **Question 24:**

The Government would welcome views on whether the age of the grave should be the appropriate criterion to determine whether a grave might be re-used. If so, is 100 years the appropriate length of time? Should it be longer, or shorter? And if so, on what basis? Should there be any linkage to the time granted for exclusive rights of burial? Or to the 50 years from the date of burial which, under the Disused Burial Grounds (Amendment) Act 1981, qualifies the next of kin to prevent the development of a burial ground? Should re-use depend on a shortage of burial space in the particular local area?

#### **Question 25:**

Alternatively, might a more scientific approach be adopted which determined that only graves containing skeletal remains were used? Would this be practical? (Decomposition would mainly depend on local soil conditions, might not be accurately predictable, and might involve a period of time considerably longer or shorter than 100 years.)

#### **Question 26:**

The Government believes that, if graves were to be re-used, the lift and deepen method would be the preferred approach. Views are invited on any foreseen disadvantages of this method, or advantages of alternative methods.

#### **Question 27:**

It would also be helpful to have views on whether particular methods of re-using graves should be prescribed, or whether burial ground managers should be free to adopt whatever method appeared appropriate according to local circumstances.

#### **Question 28:**

The Government would welcome comments on any or all of these factors.

#### **Question 29:**

The Government believes that local

consultation about any re-use of graves would be essential, but that it would be important for such exercises to be undertaken on a consistent basis. Comments are invited on the need for consultation and what might properly be addressed in such consultation, including:

best estimates of remaining burial space and demand;

details of any additional burial grounds already earmarked or acquired, and reasons why it is not proposed to use them;

details of any local burial facilities which will not be subject to a re-use scheme;

proposed criteria for exempting graves or cemeteries from re-use, or details of graves and cemeteries already identified for exemption;

proposed method of re-use; and

implications for burial charges.

### **Question 30:**

Whether and how such consultation might usefully be undertaken jointly with other burial ground providers would be appreciated.

### **Question 31:**

The Government would welcome views on the proposed exceptions to any re-use arrangements, in particular:

whether the exceptions proposed are the right ones, or whether there should be others;

whether it would be right to enable exceptions, in effect, to be purchased;

whether the criteria for identifying exceptions are sufficiently clear, or flexible, to be effective; and

whether the need for sustainable land use is such that exceptions should not be permitted in any circumstances.

### **Question 32:**

The Government would find it helpful to learn what importance ought to be attached to the introduction of good cemetery practices prior to any adoption of a re-use regime.

### **Question 33:**

The Government would welcome views on:

whether there is a need for additional regulatory arrangements before any re-use schemes might be introduced;

what such arrangements might require (for example, regular inspection of cemeteries to assess general compliance with burial legislation or one-off inspections to determine suitability or competence to operate a re-use scheme);

whether they might need to cover all burial bodies (including churches and private cemetery owners); and

how best they might be put in place (for example, a new Government inspectorate, self-regulation, or the development of other regulatory bodies for the purpose).

### **Question 34:**

The Government proposes that, were it to be persuaded that the re-use of graves should be established, it would be right to leave decisions about whether to use such graves entirely to the individuals and families concerned.

However, it would seem appropriate to ensure that the public was properly informed about the nature of any grave or grave space that might be purchased, both as to the fact that the grave had been previously used, and that it would be expected to be re-used again in due course. It would also be important to ensure that information about the availability of any virgin burial facilities was also provided in response to enquiries or applications to purchase a grave.

**Question 35:**

Should the practice of closing Church of England churchyards which are full by Order in Council be changed?

If so, in what circumstances should decisions be made? Where a churchyard is full, on what criteria should it be decided whether it should be closed or provision made for reuse? In particular, what weight should be attached to the importance of the churchyard as an open space and the conservation of its character, including existing monuments?

Should there be a procedure for declaring a churchyard full without formally closing it, so that special steps may be taken for its future use?

Where a churchyard is full, should the Church of England and Church in Wales authorities be given statutory power to require the relevant local authority to provide for the cost of preparing the ground for reuse?

Should there be provision for reopening closed churchyards at the request of the church authorities? If so, in what circumstances should such decisions be made and on what criteria?

**Question 36:**

To what extent should special provision be made on theological, pastoral or other grounds for the reuse for burials of land, which has been consecrated for Christian burials by the Church of England or Church in Wales but which is part of a municipal or private cemetery rather than a churchyard, or for reuse of land set aside for burials according to any other particular religious tradition?

**Question 37:**

The Government takes the view that unauthorised disturbances of human remains is, and should remain, a serious matter, that there is a continuing need for buried remains to be protected within the criminal law, and that there is widespread public support for such protection. Views on whether the re-use of graves would be likely to undermine respect for the dead and, if so, suggestions as to how this might be mitigated, would be welcome.

## ANNEX D - LIST OF CONSULTEES\*

Association of Private Crematoria & Cemeteries  
Beckenham Crematorium & Cemetery  
Board of Deputies of British Jews  
Bristol General Cemetery Company  
Brookwood Cemetery  
Cemetery Research Group  
Chartered Institute of Environmental Health  
Church Commissioners  
Commonwealth War Graves Commission  
Confederation of Burial Authorities  
Construction Industry Council  
Co-operative Funeral Service  
Council for British Archaeology  
Council for the Care of Churches  
Council for the Protection of Rural England  
Cremation Society  
Cruse Bereavement Care  
Department for Culture Media and Sport  
Department for the Environment Food and Rural Affairs  
East London Cemetery Company  
Ecclesiastical Judges Association  
Ecclesiastical Law Society  
English Heritage  
English Nature  
Environment Agency  
Federation of Burial and Cremation Authorities  
Friends of Highgate Cemetery  
Greater London Authority  
Health and Safety Executive  
Home Office  
Institute of Burial and Cremation Administration  
Joint Nature Conservation Committee  
Kensal Green Cemetery  
Local Government Association  
London Planning Advisory Committee  
Manor Park Cemetery Company  
Memorial Awareness Board  
National Assembly for Wales  
National Association of Bereavement Services  
National Association of Funeral Directors  
National Association of Local Councils  
National Council of Hindu Temples  
National Federation of Cemetery Friends  
Natural Death Centre  
Office of the Chief Rabbi  
Office of the Deputy Prime Minister  
Open Spaces Society  
Peter Mitchell Associates  
Privy Council Office  
Royal Institute of British Architects  
Royal Town Planning Institute  
Rural Development Commission  
Sikh Council for Inter-Faith Relations  
Society of Allied and Independent Funeral Directors  
Society of Local Council Clerks  
The Association of Burial Authorities  
The British Institute of Funeral Directors  
The Countryside Agency  
The Countryside Commission for Wales  
The Cremation Society of Great Britain  
The Crematorium Company  
The General Assembly of Unitarian and Free Christian Churches  
The Law Commission  
The Law Society  
The Muslim College  
The Muslim Council of Britain  
The National Association of Memorial Masons  
The Churches' Group on Funeral Services at Cemeteries & Crematoria  
The Royal Commission on the Historical Monuments of England  
The Scottish Executive  
The Twentieth Century Society  
The Victorian Society  
Town and Country Planning Association  
Turfsoil Limited  
Union of Muslim Organisations  
Welsh Development Agency  
Welsh Local Government Association  
York Cemetery Trust

**\* We recognise that this is not a comprehensive list, and therefore welcome comments from any interested party.**

## **ANNEX E - THE CONSULTATION CRITERIA**

This consultation is being conducted in accordance with the Government's Code of Practice on Written Consultation (November 2000). The criteria contained within the Code are reproduced below and apply to all UK national public consultations on the basis of a document in electronic or printed form.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

**Any procedural observations or comments about the consultation process should be sent to Bruce Bebbington, Home Office Consultation Co-ordinator, Room 950/4 Queen Anne's Gate, London, SW1H 9AT. (email: Bruce.Bebbington@homeoffice.gsi.gov.uk)**

Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

Documents should be made widely available, with the fullest use of electronic means (thought not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.

Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

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