

## UPKEEP OF BURIAL GROUNDS

### 1. Sensitivity

The need for sensitivity in dealing with a burial ground cannot be emphasised too strongly. In too many cases irredeemable harm has been done to the cause of the Gospel in a community because those accountable for the burial ground have not carefully considered the needs and emotions of those who will be personally affected. Many people have deep seated feelings about burial grounds, especially when their loved ones are buried there. Any changes are likely to cause great distress – sometimes out of all proportion to the change that is being proposed. It is therefore very important that any changes are handled by the church officers with discretion, dignity and sensitivity. The issues have as much to do with pastoral concerns as they do with statutory regulations.

### 2. Church Officers' Responsibility

Church officers are responsible for ensuring that all statutory requirements concerning burial grounds are complied with. They will have particular regard for the safety of the general public but will also wish to respect the wishes of the relatives of the deceased. A church's burial ground should be a priority on the church's agenda, ensuring that its maintenance is dealt with properly. There may be church members who are willing to keep the burial ground maintained. If this is not the case the church can perhaps come to some arrangement with a local person or the Local Authority.

### 3. Records of Burials

It is a statutory requirement that a record of burials is kept and this is best done by maintaining a register and a plan of the burial ground. The plan should show the details of each interment (the deceased's full name, age, former address, date and location of burial and officiating minister) and the depth of each grave, where that information is available. Existing records must be kept up to date, including those relating to cremations. If the records are inadequate or poorly maintained, or in fact non-existent, this must be attended to. A volunteer in the church or perhaps the local community family history group may be willing to help. The records should be kept in a fire proof safe and be readily available to those making enquiries.

### 4. Insurance

Church insurance policies normally provide cover for public liability in connection with burial grounds in the proximity of the chapel but it is wise to make sure that adequate insurance cover is in place.

### 5. Maintenance of Gravestones

The existence of adequate public liability insurance should not be regarded as a substitute for taking sufficient precautions to ensure the safety of the general public. Therefore church officers sometimes consider it prudent to move some or all of the gravestones to the perimeter or to lay them flat, though this causes the lettering to deteriorate quicker than normal.

Gravestones remain the property of the family of the deceased and such persons must therefore be consulted before any action is taken. Although it is not appropriate for headstones to be sold, where these or memorials are especially old, or illegible, the church might decide to break them up for disposal.

For a more detailed review on the management of burial grounds, please consult the following reports produced by the Ministry of Justice - *Managing the safety of Burial Ground Memorials: practical advice for dealing with unstable memorials* and *Memorial Safety Guidance: Frequently asked Questions and Answers*. Paper copies can be obtained from the office, or visit <http://www.justice.gov.uk/guidance/burials.htm>

### **5.1 Moving Gravestones: Public Consultation**

Once a decision has been taken, in principle, to move gravestones, notices should be displayed at the burial ground, on public notice boards (e.g. at public libraries) for at least two months; and in the local press for two consecutive weeks (see **5.2 Public Notices**) during the time the notice is displayed at the burial ground. Additionally, if any of the burials have taken place within 50 years reasonable efforts must be made to contact the relatives or personal representatives of the deceased. If representations are received in respect of such burials these should be considered very seriously, and accommodated within the church's action plan if at all possible. It would be very unwise simply to ignore them out of hand.

Where the remains were buried 100 years or more previously, the consent of the next of kin is usually dispensed with; however, the [Commonwealth War Graves Commission](http://www.cwgc.org) should always be notified as there might be war graves in the burial ground of which the church is unaware (for more information visit [www.cwgc.org](http://www.cwgc.org)).

### **5.2 Public Notices**

Public notices should be clearly dated and state:

- The location of the burial ground, with as much information as is necessary to allow the general public to recognise which burial ground is being referred to
- The person or persons in whose name the notice is being given, e.g. "the trustees of the XYZ Baptist Church"
- The course of action that is being proposed
- The name and contact details of the person from whom further details may be obtained
- The name and contact details of the person to whom representations should be made
- A statement covering the right of the relatives or representatives of the interred to remove the headstone or memorial and bodily remains.
- The length of the representation period, usually six to eight weeks

If there is no opposition, and before disposal or removal, the church must ensure that the headstones or memorials are photographed, the inscriptions recorded and a sketch plan made of the layout. The church must also provide the local District Council with a record of the removal with full details (e.g. inscriptions, dates etc), and details of the disposal or location(s) to which the headstones have been transferred.

In addition, certain species of lichen and moss are protected (Schedule 8 of the Countryside and Wildlife Act 1981), and it is possible that removal or disposal of the headstones may cause permanent harm.

### **5.3 Mutual Rights and Obligations**

If there are objections to the proposals to move gravestones, a conflict arises between the owners of the burial ground and the owners of the gravestones. Under those circumstances it would be unwise to proceed if the intention behind the proposals was simply to make grass cutting easier.

On the other hand, if the reasons were based on safety grounds the matter should not be left unresolved. It would be reasonable for the church officers to ask the owners of the gravestones to make them safe within a stated period (that period itself being reasonable) and to make it clear that if the matter has not been resolved to the satisfaction of the church officers within that period, the gravestones will be removed or laid flat.

### **6. Burial Rights**

It is unwise for churches to enter contractual obligations to allow people to be buried in chapel burial grounds because difficulties can arise if the burial ground is to be declared “closed”, for any reason (see **9. Closure of Burial Grounds**).

### **7. Scattering Ashes**

Applications will sometimes be received for consent to scatter or inter ashes at a burial ground (sometimes one which is disused). As the scattering or interment of ashes is not a burial, there is no reason why permission should not be given. However, it would be prudent to treat this in the same way as a burial, in so far that it be duly recorded.

### **8. Listed Buildings**

If your church premises are listed the restrictions on alterations to such buildings apply to the whole of the premises within the building’s curtilage, together with the burial ground if there is one (see **11. Building on a Burial Ground**). It is also possible that a particular memorial in the burial ground is itself listed (see **5.1 Moving Gravestones: Public Consultation**). If unsure regarding the listed status of your church and/or burial ground please consult your local planning authority.

### **9. Closure of Burial Grounds**

Most churches will wish to keep their burial grounds open indefinitely, out of respect for the desires of their members who wish to be buried there. Further, with the increasing problems arising from a “lack of space”, a burial ground can be a real asset. However, burial grounds of non-conformist chapels are, technically, not “consecrated” burial grounds but “private” burial grounds. Therefore if a church needs to close its burial ground it can do so, by passing a resolution at a church members’ meeting and giving public notice that the burial ground has been closed (see **5.2 Public Notices**). A certified copy of the resolution should be filed with the chapel deeds and documents. When a burial ground is declared disused, either in whole or in part, and while the burial ground remains under the management of the church, the records should be retained so as to be accessible for examination by the general public.

In cases where burial rights have been granted, the burial ground cannot be closed until the final burial right has been honoured. Whilst church officers will wish to respect the wishes of those persons who desire to be buried “at the chapel” they should also consider that further burials could delay the closure date for decades.

It is sometimes possible to arrange for a local authority to take over a disused burial ground, although experience has shown that they are not usually inclined to do so. In addition, a church remains accountable for the maintenance of the graves and boundary walls even if the burial ground has been closed and the church itself worships some distance from the locality.

## 10. Removing Human Remains

It is an offence to remove or to disturb human remains without observing proper procedures. Removal of human remains requires a licence that can be obtained from the Ministry of Justice, Coroners and Burials Division, (Telephone: 020 3334 6388, [coroners@justice.gsi.gov.uk](mailto:coroners@justice.gsi.gov.uk)). The licence contains particular conditions to be followed in regards to reburial elsewhere or cremation, which must be undertaken with all due sensitivity.

If there is the intention to restructure a disused burial ground, involving the disturbance of human remains, please see **11. Building on a Burial Ground**.

Bearing in mind that the clearance of a burial ground can be a very expensive exercise, your local undertaker may be able to assist, particularly in the case of small scale exhumations.

## 11. Building on a Burial Ground

It is worth noting at the outset that a church building which has interments within it does not constitute a burial ground.

When developing a former burial ground a Dispensation Order is required if building work is to be carried out in the actual designated burial ground. An Order is required even if no bodies have been buried within the burial ground. Guidance notes and an *Application Form for Development of a Former Burial Ground* can be obtained from the Ministry of Justice, Coroners and Burials Division, (Telephone: 020 3334 6388, [coroners@justice.gsi.gov.uk](mailto:coroners@justice.gsi.gov.uk) ).

It is generally illegal to erect any structure over a burial ground (albeit disused), although an extension to the chapel may be possible depending on the level of disruption that will be caused to the burial ground. However, provided correct procedures have been observed (see **5.1 Moving Gravestones: Public Consultation** and **5.2 Public Notices**), it should be possible to pave over or re-surface the burial ground so that it can be used, for example, for car parking, although it is necessary to follow the procedures in the Disused Burial Grounds (Amendment) Act 1981 first. The procedures involve notices similar to that described in connection with moving headstones. Work can begin only if either there have been no interments or if no objections have been received from relatives or representatives of those buried within the past 50 years.

If the proposed development simply involves the installations of service lines, but in doing so may disturb human remains, permission should be sought under Section 25 of the Burial Act 1857 to have these remains removed prior to the commencement of work (see **10. Removing Human Remains**). Similarly, if, during construction, human remains are discovered in an area that was not thought to have been used for burials work should cease without delay. The police must be made aware and a licence obtained from the Ministry of Justice before work can be resumed.

## 12. Selling Burial Grounds

The sale of burial grounds usually only occurs when a church has closed. The custodian trustees of the closing church must be provided with as much information as possible, especially a copy of the Burial Records, so that they, in turn, can make these available to the purchaser.

The sale will be subject to the provisions of the Disused Burial Grounds (Amendment) Act 1981. It will be the buyer's responsibility to look after the burial ground and make sure that all legal requirements are observed, which will include accessibility for visiting family members and others, usually on prior notice.