



## Reuse of graves

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In some areas land for burial is scarce and some burial grounds have closed because they are full. The question of reuse of graves has been under consideration for some time as a means of addressing this problem.

In limited circumstances, London burial authorities may already reclaim and reuse old graves. In a Westminster Hall debate on burial grounds in February 2007, Harriet Harman, who was then Minister of State for Justice, stated that the then Government was supporting London boroughs in the reuse of burial grounds that are more than 75 years old.

In 2004, the previous Government consulted on a number of issues relating to burial law, including the issue of reuse of graves. The method suggested (the lift and deepen method) 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. The proposal to reuse graves had a mixed reception.

In 2007, Harriet Harman said that the previous Government was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards. However, in April 2009, Lord Bach, who was then Parliamentary Under-Secretary of State at the Ministry of Justice, said that the matter was still being kept under review.

In July 2012, Jonathan Djanogly, Parliamentary Under-Secretary of State at the Ministry of Justice, said that, after careful consideration, he had taken the view that introducing a policy of reusing graves was not critical at this time. He also said that the Government had committed to keeping the situation under review.

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# 1 Background

## 1.1 Why is reuse of graves being considered?

Provision of burial grounds is a matter for discretion by relevant local authorities, private companies, or various religious organisations, in the light of demand or tradition. In some areas there is now a scarcity of land available for burial and some burial grounds have closed because they are full. The question of reuse of graves has been under consideration for some time as a means of addressing this problem.

The [eighth report](#) of the Select Committee on Environment, Transport and Regional Affairs, published in 2001, argued for legislation to enable reuse (with safeguards):

127. It is the almost universal view of those in the burial industry that reuse is the only long-term solution not only to the lack of burial space, but also to the long-term financial viability of cemeteries. If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave reuse. ... For the reasons stated above, and assuming that the necessary safeguards are included, we are ourselves of the opinion that legislation should be introduced allowing burial to take place in reused graves.<sup>1</sup>

The website of the [Cemetery Research Group at the University of York](#) includes information about the proposal to reuse graves:

Difficulties with burial authorities running out of space for interment have led to discussion of appropriate strategies. Some options that have been discussed and rejected include:

- above-ground burial in mausolea: popular on the Continent, but only sustainable if niches are reused periodically, otherwise the space problem has simply been located above ground;
- more intensive use of existing space: many local authorities are already using space between graves, alongside paths and roads and even mounding additional earth on top of existing burials in order to create new graves;
- promote cremation: the UK already has one of the highest cremation rates in the world, following an aggressive, century-long, propaganda campaign by cremation organisations. This rate is unlikely to increase unless cremation was made compulsory, which is not an acceptable option.

One option that has had more widespread acceptance is the reuse of graves. Discussion of reuse options began in 1994, following a paper on the issue addressed to the conference of the (then) Institute of Burial and Cremation Administration by Ian Hussein, who was at that time the cemetery superintendent at the London Borough of Newham. Discussion of reuse focussed on the option of the 'lift and deepen' method. Under this method, graves are excavated to their deepest depth, with all remains – including bodes and any coffin furniture – placed in a casket and re-interred at the bottom of the grave. In 1994, over seventy burial authorities together funded research completed by Douglas Davies and Alistair Shaw on public response to the reuse of grave. The research team interviewed 1603 members of the public, and found that the

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<sup>1</sup> Para 127

majority of respondents would not object to this system if it was well-regulated, and if disturbance took place only after one hundred years.<sup>2</sup>

## 1.2 What is the current position on reuse of graves?

The general position is that buried human remains may not be disturbed without specific authority. Section 25 of the *Burial Act 1857* makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty.

Section 9 of the *Greater London Council (General Powers) Act 1976* enables burial authorities in London (as defined in the section and including borough councils), in specified circumstances, to reclaim and then reuse a grave where the rights of interment have not been exercised for 75 years and notice has been published:

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

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

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

(...)

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

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

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

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

(...)

(6) (a) If notice of objection to the extinguishment of a right of interment in any grave is given to the burial authority before the date specified under paragraph (b) of subsection (5) of this section by the registered owner of the right of interment or by any person who is able to satisfy the burial authority that he is the owner of such right, and that objection is not withdrawn, the right of interment to which the objection relates shall not be extinguished under this section, and if notice of any other objection to the extinguishment of any rights of interment or to the removal of any tombstone, and of the ground of any such objection, is given to the burial authority before the date so

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<sup>2</sup> At 9 August 2012

specified and is not withdrawn, any rights or tombstone to which such last-mentioned objection relates shall not be extinguished or removed without the consent of the Secretary of State for the Environment, Transport and the Regions:

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

Similar powers exist for the City of London Cemetery under section 6 of the *City of London (Various Powers) Act 1969*.

Under the *London Local Authorities Act 2007*, in certain circumstances, borough councils have power to disturb graves older than 75 years. The Explanatory Notes published with the Act set out the additional power this Act confers:

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

In a Westminster Hall debate on burial grounds in February 2007, Harriet Harman, who was then Minister of State for Justice, stated that the then Government was supporting London boroughs in the reuse of burial grounds that are more than 75 years old:

On the reuse of old burial grounds, we are moving forward innovatively. In the first instance, we are supporting London boroughs in the reuse, at their discretion, of burial grounds that are more than 75 years old. We must proceed with caution and sensitivity because people have deeply held feelings. We are taking the matter forward, but we are starting by looking at how it works in London. That may show that people are prepared to take what is often considered to be a drastic step.<sup>3</sup>

It has been reported in the press that some graves in London are being reused because of a shortage of burial space.<sup>4</sup>

## **2 Burial law and policy: the previous Government's consultation**

On 15 January 2004, the Home Office published a consultation paper, *Burial Law and Policy in 21<sup>st</sup> Century: the need for a sensitive and substantial approach*.<sup>5</sup> The consultation paper covered a number of issues relating to burial law including the issue of reuse of graves (Part D). It referred specifically to the shortage of burial space in London:

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.

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<sup>3</sup> [HC Deb 27 February 2007 c240WH](#)

<sup>4</sup> "RIP ... until you have to share your grave", *The Times*, 24 March 2007

<sup>5</sup> At that time the Home Office was responsible for burial matters. In 2005, responsibility was transferred to the Department for Constitutional Affairs, now the Ministry of Justice.

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. 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.

The London Planning Advisory Committee (LPAC) had recommended the reuse of graves:

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. 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. 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 ... 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>6</sup>

The Government asked for views on the reuse of graves:

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.<sup>7</sup>

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<sup>6</sup> p15, footnotes omitted

<sup>7</sup> Question 22, p15

### 3 How did the previous Government respond to the consultation?

The consultation period closed on 13 July 2004. On 7 April 2006, the Department for Constitutional Affairs (as it was then, now Ministry of Justice) published a [summary of responses](#) to the consultation.

The summary of responses indicated that a variety of opinions had been received in relation to the proposal to re-use graves:

Most respondents were in favour of pursuing a re-use option for burial grounds, varying from those who considered the practice should be implemented immediately to those who regarded it as very much a last resort which would need careful presentation and handling, or fuller consideration of the financial, logistical and safety implications. The 'lift and deepen' method was preferred, but additional options were proposed, and there was a degree of support for local decisions on the method to be used. There was, however, a substantial minority entirely averse to re-use, especially from the general public.<sup>8</sup>

On 5 June 2007, the Ministry of Justice published [Burial Law and Policy in the 21st Century The Way Forward Government Response to the Consultation carried out by the Home Office/DCA](#).

Announcing publication in a written Ministerial Statement, Harriet Harman said that the Government was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards:

One solution which the Government have been urged to consider is the reuse of burial grounds after a suitable lapse of time. It is a solution which can offer sustainable land use for the future, and the prospects of keeping burial facilities in good order and near to the communities they serve. It is an option which has received wide support.

The Government are now satisfied that it would be right to enable graves to be reused in this way, subject to appropriate safeguards. For example, no grave should normally be reused unless the last burial took place at least 100 years before. And families should have the opportunity to defer reuse of their relatives' graves for at least another generation.

We therefore intend to introduce measures which, using powers available under the Deregulation and Contracting Out Act 1994, will allow local authorities to reuse graves in their cemeteries, if they wish. At the same time, we will develop, in consultation with burial professionals and others, good practice guidance on the reuse of old burial grounds, the provision of burial space generally, and the maintenance of existing burial grounds.<sup>9</sup>

In March 2008, in answer to a written Parliamentary Question, Bridget Prentice, who was then Parliamentary Under-Secretary of State at the Ministry of Justice, said that work was progressing well on the practical details of how proposals to allow local authorities to reuse graves in their cemeteries would operate. At that time, she said that it was expected that an announcement would be made in the near future about how the initiative would be taken forward, including a public consultation exercise.<sup>10</sup>

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<sup>8</sup> p9

<sup>9</sup> [HC Deb 5 June 2007 cc 11-12 WS](#)

<sup>10</sup> [HC Deb 19 March 2008 c1194W](#)

However, in April 2009, Lord Bach, who was then Parliamentary Under-Secretary of State at the Ministry of Justice, indicated that this issue was still being kept under review:

Asked By The Lord Bishop of Southwell and Nottingham

To ask Her Majesty's Government what considerations led the Ministry of Justice not to proceed with the proposal to permit the re-use of graves.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, the Government announced in June 2007 that the case for re-using old graves had been accepted in principle. The matter is being kept under review.

The Lord Bishop of Southwell and Nottingham: My Lords, I thank the Minister for his reply, but this is a country where there are widespread conurbations and a shortage of green space. On 2 April the Parliamentary Under-Secretary of State wrote to the chairman of the Churches Funeral Group explaining that,

“after careful consideration, the Government has concluded that this is not the most appropriate time for taking these matters forward”.

Why, after eight years of discussion, is there a shortage of parliamentary time for legislation, or is there a more fundamental reason?

Lord Bach: My Lords, this remains a sensitive issue; that should not be a surprise to the House. Research indicates that a good proportion of individuals when asked are concerned and doubtful about the issue. I hope that the right reverend Prelate and others in the House agree that on issues such as this, it is important to take people with you to try to achieve consensus—...<sup>11</sup>

#### **4 What does the present Government intend to do?**

In December 2010, the Government confirmed, in a Lords written answer, that the issue of reuse of graves was still under consideration:

Asked by Lord Clement-Jones

To ask Her Majesty's Government whether they have considered any reform of burial law in order to permit reuse of old graves for burial and to ease the financial burdens placed on local authorities in administering public cemeteries.[HL4645]

The Minister of State, Ministry of Justice (Lord McNally): We are currently considering whether to permit the reuse of old graves as a solution to the shortage of burial space in some areas. We recognise that such arrangements could relieve local authorities from the costs of acquiring and developing new land for burials. Authorities in London are already permitted, under provisions within the London Local Authorities Act 2007, to reuse old private graves.<sup>12</sup>

In July 2012, Jonathan Djanogly, Parliamentary Under-Secretary of State at the Ministry of Justice, said that the issue of burial space is “routinely discussed at bi-annual meetings of the Burial and Cremation Advisory Group, which is chaired by the Ministry of Justice”.<sup>13</sup> He also stated that, in autumn 2011, he had taken the view that introducing a policy of reusing

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<sup>11</sup> [HL Deb 22 April 2009 cc1497-9](#)

<sup>12</sup> [HL Deb 3 December 2010 c491WA](#)

<sup>13</sup> [HC Deb 17 July 2012 c638W](#)

graves was not critical at this time, but that the Government had committed to keeping the situation under review.<sup>14</sup>

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<sup>14</sup> [HC Deb 16 July 2012 c544W](#)