

DIOCESE OF ROCHESTER

MAINTENANCE OF OLD BURIAL GROUNDS

(From the Department of the Environment)

1. The notes in Part A below summarise the statutory powers available to local authorities under which they may assist or take responsibility for the maintenance of old burial grounds. The exercise of the powers is at the discretion of local authorities and entirely a matter for agreement between individual authorities and the owners of burial grounds. Authorities with definite proposals under consideration will, of course, need to consult the actual text of the Acts.
2. Part B is applicable to churchyards only and sets out the circumstances in which the responsibility for maintenance can be automatically transferred to local authorities.

PART A

3. Local Government Act 1972 - financial contributions

Under section 214(6) of the Local Government Act 1972 a burial authority may contribute towards any expenses incurred by any other person in providing or maintaining a cemetery in which the inhabitants of the authority's area may be buried.

4. Open Spaces Act 1906 - care, management and control

Under section 9 of the Open Spaces Act 1906 all local authorities (i.e. county councils, London boroughs, district and parish councils) may

- a. acquire by agreement, with or without payment, the freehold of or more limited interest in, and
 - b. undertake the entire or partial care, management or control (whether or not any interest in the soil is transferred to them) of any burial ground whether in use or partly or wholly disused. By section 10 the ground would be for use in trust by the public as open space and the local authority would have power to lay it out and improve it (but see below as to the removal of tombstones and monuments).
5. The powers of the 1906 Act are not given to a local authority as a burial authority. In the Department's view, if a local authority undertake
- a. only partial care, management and control, this may be compatible with the continuance of burials by the owners of the burial ground.
 - b. the entire care, management and control of a burial ground, burials should cease unless in the exercise of acquired rights. Section 13 protects rights of a profitable or beneficial nature which, the Department are advised, include acquired rights of burial. If any burial rights are affected as a result of the exercise of powers under section 10, compensation would be payable under section 13.
6. A local authority cannot exercise any powers of management under the 1906 Act in relation to consecrated ground without the Bishop's prior authorisation (section 11(1)).
7. Section 11(3) permits the removal of tombstones and monuments in a disused burial ground only (i.e. one no longer used for interments whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or an order in council). If the ground is consecrated, a licence or faculty must first be obtained from the Bishop (section 11(4)). The local authority, at least three months before moving any tombstones or monuments, must prepare and

deposit for public inspection a statement of the names and dates on the tombstones to be moved; give notice of the proposals at least three times in a local newspaper and to any person known or believed to be a near relative of a person commemorated on the tombstone; and place a notice of the proposals on the door of any church attached to the burial ground.

8. The playing of any games or sports must have the prior authorisation of the Bishop if the ground is consecrated or of the owner or former owner if the ground is not consecrated (section 11(2)).

PART B

Churchyards of the Church of England - Local Government Act 1972 Section 215*

9. Section 215(1) of the Local Government Act 1972 provides that, where an Order in Council has been issued for the discontinuance of burials in a churchyard, the parochial church council shall maintain such churchyard in decent order and its walls and fences in good repair.
10. Section 215(2) provides that a parochial church council which is liable to maintain a churchyard closed by an Order in Council, may:-
 - a. if the churchyard is in a parish having a separate parish council, serve a written request on that council to take over the maintenance of the churchyard;
 - b. if the churchyard is in a parish not having a separate parish council, serve such a request on the chairman of the parish meeting, or
 - c. if the churchyard is in England elsewhere than the City and the Temples and is not in any parish, serve such a request on the council of the district or London borough in which the churchyard is situated;

and subject to what is said in paragraph 11 below, the maintenance of the churchyard shall be taken over by the authority on whom the request is served or the parish meeting as the case may be, three months after service of the request.

11. If a request is served on a parish council or the chairman of a parish meeting and, if that council or meeting so resolve and, before the expiration of the said three months, give written notice of the resolution to the council of the district and to the parochial church council maintaining the churchyard, the council of the district and not the parish or parish meeting, are required to take over the maintenance of the churchyard at the expiration of the said three months.
12. A parochial church council therefore continues to be responsible for the maintenance of a churchyard after it has been closed by an Order in Council but where they serve a written request on the local authority or parish meeting their obligations in the matter are automatically transferred to the authority or meeting three months after service of the request. A parish council or a parish meeting have the option, however, of transferring the responsibility for maintenance to the district council provided that they resolve to do so and given written notice of their resolution to the district council and to the parochial church council before the three months have expired.

*This section does not apply to the City of London.

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