



Highgate Cemetery Act 2022

2022 CHAPTER i

An Act to confer powers upon the Friends of Highgate Cemetery Trust to operate, maintain and conserve Highgate Cemetery and to extinguish rights of burial and disturb human remains in Highgate Cemetery for the purpose of increasing the space for interments and the conservation of Highgate Cemetery; and for connected purposes. [24 March 2022]

WHEREAS—

- (1) The London Cemetery Company (“LCC”) was incorporated by an Act of the sixth and seventh years of the reign of His Majesty King William the Fourth, entitled “An Act for establishing Cemeteries for the Interment of the Dead, Northward, Southward, and Eastward of the Metropolis, by a Company to be called “The London Cemetery Company” (“the 1836 Act”) and, under the powers of that Act, purchased lands formerly in the urban district of Saint Pancras, in the county of Middlesex, and now in the London Borough of Camden (“the Borough”) and constructed a cemetery (“the cemetery”) on a portion of the said lands:
- (2) Further provisions were made with regard to the cemetery and further powers were conferred on LCC by an Act of the sixth year of the reign of Her Majesty Queen Victoria, entitled “An Act for amending the Act establishing “The London Cemetery Company” and the London Cemetery Company Act 1911:
- (3) The cemetery is situated on that portion of the lands purchased by LCC under the 1836 Act which lies on the east and west sides of Swains Lane in the Borough:
- (4) The Friends of Highgate Cemetery Trust (“the Trust”) is now the registered proprietor of the cemetery, and operates and manages the cemetery as a public burial ground in accordance with the Trust's charitable objects:
- (5) In order that better use may be made of the land in the cemetery for burials, it is expedient that the Trust be authorised to extinguish certain rights of burial granted in graves in the cemetery and to disturb, or authorise the disturbance of, human remains interred in such graves and also in graves where no rights of burial exist, for the purpose of increasing the space for further interments in such graves and conserving the cemetery and to use appropriately or remove altogether from the cemetery memorials on such graves:
- (6) It is expedient that the other provisions contained in this Act should be enacted:
- (7) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Citation and commencement

This Act may be cited as the Highgate Cemetery Act 2022 and comes into force at the end of 28 days beginning with the day on which this Act is passed.

2 Interpretation

In this Act—

“the 1836 Act” means the Act of the sixth and seventh years of the reign of His Majesty King William the Fourth, entitled “An Act for establishing Cemeteries for the Interment of the Dead, Northward, Southward, and Eastward of the Metropolis, by a Company to be called “The London Cemetery Company”;

“burial” includes the interment of cremated remains and “right of burial” includes “right of interment” accordingly;

“the burial authority” means the Trust or another person to whom any or all of the benefit of the provisions of this Act and such related statutory rights have been transferred;

“the cemetery” means Highgate Cemetery referred to in the preamble to this Act, constructed under the 1836 Act;

“civil partner” includes former civil partner;

“Commonwealth war burial” means a burial of any member of the armed forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or of any other person for whose burial the Commonwealth War Graves Commission is responsible;

“Commonwealth war memorial” means any memorial erected, owned or maintained by the Commonwealth War Graves Commission;

“expired”, in relation to a right of burial, means that the right has ceased to exist, whether by reason of any fixed period for which the right was granted having ended or the right having been surrendered, forfeited or otherwise determined, or for any other reason other than the right having been extinguished in accordance with the provisions of section 4;

“grave” includes any grave space and any crypt, vault, catacomb, arch, brick grave, mausoleum, columbarium or other place of interment;

“the LCC” means the London Cemetery Company established under the 1836 Act;

“memorial” means any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone or tablet, and includes any wall, kerb or railing protecting, enclosing or marking a grave or grave space or memorial (including any permanent covering thereon), or any other commemorative object placed in the cemetery including vases, flower containers or other similar objects;

“protected grave” means a grave designated as a protected grave by the burial authority under section 6(3);

“public or common grave” means a grave in respect of which no right of burial has been acquired by or granted to, or has otherwise vested in, any individual or body other than a local authority or the burial authority;

“register of grants” means the register of grants of exclusive rights of burial, and of rights to erect or place memorials, maintained by the burial authority;

“registered address” means an address registered in the register of grants;

“registered number” means a number registered in the register of grants;

“registered owner”—

- (a) in relation to any right of burial means the person at the time in question named as the owner in the register of grants;
- (b) in relation to any memorial means the person at the time in question named in the said register as the person to whom the right to erect or place that memorial has been granted or if no such person is named, the registered owner of the right of burial in the grave in or on which the memorial is erected or placed; and
- (c) in relation to any right that has expired or been extinguished, means the last person so registered;

“relative”, in relation to any person, means any of the following—

- (a) that person's spouse;
- (b) that person's civil partner;
- (c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of that person or of that person's spouse or civil partner;

“spouse” includes former spouse; and

“the Trust” means the Friends of Highgate Cemetery Trust, a charitable trust with the company number 03157806.

3 Power to operate and maintain the cemetery

Subject to the provisions of this Act, the burial authority may do all such things as it considers necessary or desirable for the proper management, regulation and control of the cemetery.

4 Power to extinguish rights of burial

- (1) Subject to subsection (2) and section 6, where in respect of any grave space in the cemetery a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space, the burial authority may, by notice given in accordance with the provisions of this section, extinguish the right of burial in that grave space.
- (2) No right of burial granted after the passing of this Act for any period longer than 75 years is to be extinguished under this section.
- (3) For the purposes of subsection (2), any right of burial granted by the LCC having effect as if granted by the Trust under section 9 is not to be taken as having been granted after the passing of this Act.

Status: This is the original version (as it was originally enacted).

- (4) The power of the burial authority under subsection (1) to extinguish a right of burial in any grave space includes the power to remove any memorial in or on the grave space.
- (5) Before extinguishing a right of burial or removing any memorial under the powers of this section, the burial authority must—
- (a) publish a notice in a newspaper of their intention to do so once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days;
 - (b) publish such a notice and maintain that notice until the date specified under subsection (6)(b)—
 - (i) on the burial authority's website; or
 - (ii) by using a means of electronic publication that the burial authority considers equivalent for the purposes of drawing attention to the burial authority's proposals;
 - (c) display such a notice in a conspicuous position—
 - (i) at each of the principal entrances to the cemetery; and
 - (ii) so far as is reasonably practicable, at or near the grave; and
 - (d) serve such a notice upon—
 - (i) the registered owner of the right of burial at that person's registered address;
 - (ii) if different, the registered owner of any memorial proposed to be removed at that person's registered address;
 - (iii) the Commonwealth War Graves Commission; and
 - (iv) the Historic Buildings and Monuments Commission for England.
- (6) Each of the notices must—
- (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all grave spaces in respect of which it is proposed that rights of burial should be extinguished and stating whether it is proposed that any memorials should be removed;
 - (b) specify the date on which it is intended that the rights should be extinguished and any memorial removed, which date must not be earlier than six months after the date of the last of the publications, or the date on which the notice is first displayed, or the date on which the notice is served, whichever is the last; and
 - (c) state the effect of subsections (9) to (11), (13) and (14).
- (7) A notice under subsection (5)(b) must contain the name, where known, of the registered owner of the right of burial or memorial.
- (8) A notice under subsection (5)(a), (c) or (d) must include details of where the notice under subsection (5)(b) may be found and a statement that the notice under subsection (5)(b) contains the information described in subsection (7).
- (9) If notice of objection to the extinguishment of a right of burial in any grave space is given to the burial authority before the date specified under subsection (6)(b)—
- (a) by the registered owner of the right of burial and that objection is not withdrawn, the right of burial to which the objection relates must not be extinguished under this section, or

- (b) by any other person, and that objection is not withdrawn, any rights or memorial to which the objection relates must not be extinguished or removed unless the Secretary of State consents to the extinguishment.
- (10) An extinguishment under subsection (1) takes effect—
 - (a) where no notice of objection is given under subsection (9), on the date specified under subsection (6)(b),
 - (b) where notice of objection is given under subsection (9) and the objection is withdrawn, on the date specified under subsection (6)(b) or the day after the objection is withdrawn, whichever is later, or
 - (c) where the Secretary of State consents to the extinguishment under subsection (9)(b), on the day after that consent is given.
- (11) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified under subsection (6)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may dispose of it.
- (12) The burial authority must publish on its website or by other appropriate means, and make available on request, a policy setting out how it will exercise its powers under this section in relation to memorials.
- (13) As compensation for any right of burial extinguished under this section, the burial authority must on a claim being made by the registered owner of the right of burial within six months from the extinguishment of that right either—
 - (a) pay to the owner such sum representing the value of that right as may be agreed between the burial authority and the owner or, in default of agreement, determined by arbitration; or
 - (b) confirm in writing to the owner that the right of burial extinguished is to be revived and, if confirmation is given under this paragraph, the right of burial is deemed not to have been extinguished under subsection (1).
- (14) In any arbitration under subsection (13)(a), the reference must be to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party after giving notice in writing to the other party.

5 Power to disturb human remains

- (1) Subject to section 6, the burial authority may disturb or authorise the disturbance of human remains interred in a grave in the cemetery for the purpose of increasing the space for interments in the grave or conserving the cemetery where—
 - (a) the burial authority has extinguished rights of burial in the grave under section 4;
 - (b) the grave is a public or common grave; or
 - (c) any right of burial granted in relation to the grave has expired.
- (2) A person authorised by or under subsection (1)(b) or (c) to disturb human remains may remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed.

Status: This is the original version (as it was originally enacted).

- (3) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.
- (4) Any human remains disturbed under subsection (1) must be reinterred either in their original grave or in another grave within the cemetery.
- (5) Before disturbing any human remains, or removing any memorial, under this section the burial authority must—
 - (a) publish a notice in a newspaper of their intention to do so once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days;
 - (b) publish such a notice and maintain that notice until the date specified under subsection (6)(b)—
 - (i) on the burial authority's website; or
 - (ii) by using a means of electronic publication that the burial authority considers equivalent for the purposes of drawing attention to the burial authority's proposals;
 - (c) display such a notice in a conspicuous position—
 - (i) at each of the principal entrances to the cemetery; and
 - (ii) so far as is reasonably practicable, at or near the grave; and
 - (d) serve such a notice upon—
 - (i) the registered owner of any extinguished or expired right of burial or any memorial erected or placed in or on the grave space at that person's registered address;
 - (ii) the Commonwealth War Graves Commission; and
 - (iii) the Historic Buildings and Monuments Commission for England.
- (6) Each of the notices referred to in subsection (5) must—
 - (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in which it is proposed that the human remains are to be disturbed and stating whether it is proposed that any memorials should be removed;
 - (b) specify the date after which it is intended that the works proposed in the notice should be undertaken, which date must not be earlier than six months after the date of the last of the publications, the date on which the notice is first displayed, or the date on which the notice is served, whichever is the last; and
 - (c) state the effect of subsection (10).
- (7) A notice under subsection (5)(b) must contain, where known, the name of the registered owner of the right of burial or memorial and the name of any person whose remains are proposed to be disturbed.
- (8) A notice under subsection (5)(a), (c) or (d) must include details of where the notice under subsection (5)(b) may be found and a statement that the notice under subsection (5)(b) contains the information described in subsection (7).
- (9) A single notice may be used for the purposes of this section and section 4.
- (10) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the date specified in subsection (6)(b) by—
 - (a) the registered owner of the extinguished or expired right of burial;

- (b) the registered owner of a memorial erected or placed in or on any grave spaces specified under subsection (6)(a), whether or not the memorial itself is proposed to be removed;
 - (c) a relative of the person whose remains are proposed to be disturbed,and that objection is not withdrawn, the burial authority may not, subject to subsection (11), disturb or authorise the disturbance of those remains.
- (11) A burial authority may disturb or authorise the disturbance of human remains that are otherwise protected from disturbance under subsection (10) if—
 - (a) after the expiry of a period of 25 years from the date on which notice of objection in accordance with that subsection was last given, the burial authority has given further notice in accordance with subsections (5) and (6) in relation to the disturbance of those remains; and
 - (b) no notice of objection in accordance with subsection (10) is given in relation to that further notice or, if such notice of objection is given, it is withdrawn.
- (12) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified in subsection (6)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may dispose of it.
- (13) The burial authority must publish on its website or by other appropriate means, and make available on request, a policy setting out how it will exercise its powers under this section in relation to memorials.
- (14) A person authorised by or under subsection (1) to disturb human remains must comply with any directions given by the Secretary of State with respect to the removal and reinterment of any human remains in any case other than a case falling within subsection (16).
- (15) Subject to subsection (16), nothing in this section affects the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the interment of human remains.
- (16) Where the burial authority proposes to disturb any human remains in consecrated land, the burial authority may not exercise its powers under this section without first obtaining a faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains from consecrated land by any person under subsection (10) must be heard and determined by that consistory court.
- (17) The provisions of section 25 of the Burial Act 1857 (offence of removal of body from burial ground) do not apply to a removal carried out in accordance with the provisions of this section.

6 Further protection for certain graves

- (1) The burial authority must obtain the written agreement of the Commonwealth War Graves Commission before exercising the powers conferred by sections 4 and 5 in respect of—
 - (a) any grave in which there is a Commonwealth war burial, or
 - (b) any grave space in or on which there is a Commonwealth war memorial.

Status: This is the original version (as it was originally enacted).

- (2) The burial authority must obtain the written agreement of the Historic Buildings and Monuments Commission for England and the London Borough of Camden before exercising the powers conferred by sections 4 and 5 in respect of a protected grave.
- (3) The burial authority may from time to time, in consultation with or at the request of the Historic Buildings and Monuments Commission for England and the London Borough of Camden, designate a grave as a protected grave.
- (4) The burial authority may from time to time, following consultation with the Historic Buildings and Monuments Commission for England and the London Borough of Camden, revoke the designation of any grave as a protected grave.
- (5) The burial authority must maintain a record of any protected grave.
- (6) The record maintained under subsection (5) must at all reasonable times be available for consultation by any person free of charge.

7 Register of burials and other records

- (1) The burial authority must cause a register to be made of each burial in the cemetery.
- (2) The register maintained under subsection (1) shall include information as the burial authority sees fit and must include—
 - (a) the date of the burial;
 - (b) the registered number of the grave;
 - (c) the names, in full, and age of the person whose remains are buried;
 - (d) whether the burial space is consecrated;
 - (e) whether the grave is a public or common grave;
 - (f) the approximate location of the burial space in a manner that reasonably allows for its identification; and
 - (g) a record of any remains in the cemetery disturbed under the powers conferred by section 5, showing—
 - (i) the date of the disturbance;
 - (ii) the registered number of the grave;
 - (iii) the names, in full, of the person whose remains are disturbed;
 - (iv) the number of the entry in the register for the burial;
 - (v) particulars of the authority for disturbance; and
 - (vi) the registered number of the grave in which the remains are reinterred, its approximate location and the date of reinterment.
- (3) As soon as reasonably practicable after any burial or disturbance, the burial authority must complete the register in accordance with paragraphs (a) to (g) of subsection (2).
- (4) The burial authority must cause a record to be made of each memorial removed under this Act containing—
 - (a) a copy of any legible inscription on it;
 - (b) if it is intended to preserve the memorial within the cemetery, a statement showing where it has been taken; and
 - (c) if the memorial is disposed of, a statement of the details of its disposal,and the burial authority must deposit a copy of the record with the Registrar General of England and Wales.

- (5) The register and record maintained under subsections (2) and (4) must at all reasonable times be available for consultation by any person free of charge.

8 Byelaws

- (1) The Trust may make byelaws in relation to the operation and maintenance of the cemetery.
- (2) Without limiting the scope of subsection (1), the Trust may make byelaws for the purposes of regulating the use of the cemetery by members of the public and the conduct of burials in the cemetery.
- (3) Byelaws made under this section may make it an offence for any person to contravene, or fail to comply with, the provisions of the byelaws, and for such person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) In any proceedings for such an offence it shall be a defence for the person charged to prove—
- (a) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
 - (b) that the person had a reasonable excuse for the action or failure to act.
- (5) Byelaws made by the Trust under this section do not have effect until they are confirmed by the Secretary of State, and section 236 of the Local Government Act 1972 (procedure for byelaws) applies to their confirmation, as if the Trust were a local authority.

9 Repeals and savings

- (1) Subject to subsection (2), the following enactments are repealed so far as they relate to the cemetery—
- (a) the 1836 Act;
 - (b) the Act of the sixth year of the reign of Her Majesty Queen Victoria, entitled “An Act for amending the Act establishing “The London Cemetery Company””; and
 - (c) the London Cemetery Company Act 1911.
- (2) Sections 118 and 119 of the 1836 Act are repealed so far as they relate to the cemetery on the date on which byelaws made under section 8 come into operation.
- (3) The LCC shall cease to exist and all property and all rights, liabilities, interests, privileges and functions vested in the LCC in respect of the cemetery shall be vested in the Trust as if in all respects the Trust were the same person as the LCC.
- (4) Notwithstanding the repeals under subsection (1), anything done (or having effect as if done) by the LCC in connection with the operation, management or improvement of the cemetery, including without limitation the grant of any burial rights, has effect, so far as necessary for continuing its effect after the commencement of this Act, as if done by the Trust on the date it was done by the LCC.