



Highgate Cemetery Act 2022

2022 CHAPTER i

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.
- (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

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- (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.

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- (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.

Commencement Information

II S. 5 in force at 21.4.2022, see [s. 1](#)

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