



# Open Spaces Act 1906

## 1906 CHAPTER 25

### *POWERS OF LOCAL AUTHORITIES WITH RESPECT TO OPEN SPACES AND BURIAL GROUNDS.*

#### **9 Power of local authority to acquire open space or burial ground**

A local authority may, subject to the provisions of this Act,—

- (a) acquire by agreement and for valuable or nominal consideration by way of payment in gross, or of rent, or otherwise, or without any consideration, the freehold of, or any term of years or other limited estate or interest in, or any right or easement in or over, any open space or burial ground, whether situate within the district of the local authority or not; and
- (b) undertake the entire or partial care, management, and control of any such open space or burial ground, whether any interest in the soil is transferred to the local authority or not; and
- (c) for the purposes aforesaid, make any agreement with any person authorised by this Act or otherwise to convey or to agree with reference to any open space or burial ground, or with any other persons interested therein.

#### **10 Maintenance of open spaces and burial grounds by local authority**

A local authority who have acquired any estate or interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—

- (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose ; and
- (b) maintain and keep the open space or burial ground in a good and decent state, and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.

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## **11 Special provisions as to management of burial grounds and removal of tombstones**

- (1) A local authority shall not exercise any of the powers of management under this Act with reference to any consecrated burial ground unless and until they are authorised so to do by the licence or faculty of the bishop.
- (2) The playing of any games or sports shall not be allowed in any burial ground in or over which a local authority have acquired any estate, interest, or control under this Act, except that—
  - (a) in the case of a consecrated burial ground, the bishop by licence or faculty ; and
  - (b) in the case of any burial ground which is not consecrated, the persons from whom the local authority have acquired the estate, interest, or control in or over the same

may expressly sanction any such use of the burial ground, and may specify any conditions as to the extent or nature of such use.

- (3) In the case of any disused burial ground, at least three months before removing or changing the position of any tombstone or monument, a local authority shall—
  - (a) prepare a statement sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary, and shall cause this statement to be deposited with the clerk of the local authority, and to be open to inspection by all persons ; and
  - (b) insert an advertisement of the intention to remove or change the position of such tombstones and monuments three times at least in some newspaper circulating in the neighbourhood, and by that advertisement give notice of the deposit of the statement herein-before described, and of the place at which and the hours within which the same may be inspected ; and
  - (c) place a notice in terms similar to the advertisement on the door of the church (if any) to which the burial ground is attached, and deliver or send by post a notice to any person known or believed by the local authority to be a near relative of any person whose death is recorded on any such tombstone or monument.
- (4) In the case of a consecrated ground, no tombstone or monument shall be removed or its position changed without a licence or faculty from the bishop, and no application for such licence or faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid:

Provided that on an application for a licence or faculty nothing shall prevent the bishop from directing or sanctioning the removal or change of position of any tombstone or monument, if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal or change of position to the notice of some person having a family interest in the tombstone or monument.

- (5) A licence or faculty for the purposes of this section may be granted by the bishop of the diocese within which the consecrated burial ground is situate on the application of the local authority who have acquired any estate, interest, or control in or over the burial ground, and may be granted subject to such conditions and restrictions as to the bishop may seem fit.

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## **12 Powers over open spaces and burial grounds already vested in local authority**

A local authority may exercise all the powers given to them by this Act respecting open spaces and burial grounds transferred to them in pursuance of this Act in respect of any open spaces and burial grounds of a similar nature which may be vested in them in pursuance of any other statute, or of which they are otherwise the owners.

## **13 Provision for compensation**

No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space or burial ground shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same; and such compensation shall be paid by the local authority by whom the estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same were compensation for lands purchased and taken otherwise than by agreement or injuriously affected under the Lands Clauses Acts.

## **14 Power of county councils as to public walks or pleasure grounds**

A county council may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

## **15 Byelaws**

- (1) A local authority may, with reference to any open space or burial ground in or over which they have acquired any estate, interest, or control under this Act, make byelaws for the regulation thereof, and of the days and times of admission thereto, and for the preservation of order and prevention of nuisances therein, and may by such byelaws impose penalties recoverable summarily for the infringement thereof, and provide for the removal of any person infringing any byelaw by any officer of the local authority or police constable.
- (2) All byelaws made under this Act by any local authority shall be made—
  - (a) in the case of a county council other than the London County Council, subject and according to the provisions of section sixteen of the Local Government Act, 1888 ; and
  - (b) in the case of the London County Council, subject and according to the provisions of sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, as modified with respect to parks and open spaces by the London Council (General Powers) Act, 1890, and the London County Council (General Powers) Act, 1898 ; and
  - (c) in the case of the Common Council of the City of London, subject and according to the Corporation of London (Open Spaces) Act, 1878 ; and
  - (d) in the case of the council of a metropolitan borough, subject and according to the provisions of sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855 ; and
  - (e) in the case of a municipal borough or district or parish council, subject and according to the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health

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Act, 1875, and those sections shall apply to a parish council in like manner as if they were a local authority within the meaning of that Act, except that byelaws made by a parish council need not be under common seal.

- (3) The trustees or other persons having the care and management of any open space, who in pursuance of this Act admit to the enjoyment of the Open space any persons not owning, occupying, or residing in any house fronting thereon, shall have the same powers of making byelaws as are conferred on a committee of the inhabitants of a square by section four of the Town Gardens Protection Act, 1863, and that section shall apply accordingly.

## **16 Power of local authorities to act jointly**

Any two or more local authorities may jointly carry out the provisions of this Act and may make any agreement on such terms as may be arranged between them for so doing and for defraying the expenses of the execution of this Act, and any local authority may defray the whole or any part of the expenses incurred by any other local authority in the execution of this Act.

## **17 Expenses of local authorities**

The expenses of a local authority incurred in the execution of this Act may be defrayed—

- (a) in the case of a county council, out of the county fund ;
- (b) in the case of a metropolitan borough council, as expenses of that council;
- (c) in the case of the council of a municipal borough or urban district, as part of the general expenses incurred in the execution of the Public Health Acts ;
- (d) in the case of a rural district council, as special expenses incurred in the execution of the Public Health Acts, and such expenses shall in accordance with the provisions of those Acts be charged to the contributory place, or apportioned among the contributory places, on account of which the expense was incurred ;
- (e) in the case of a parish council, subject and according to the Local Government Act, 1894.

## **18 Borrowing**

A local authority may borrow for the purposes of this Act in the case of a county council as for the purposes of the Local Government Act, 1888; in the case of a metropolitan borough council as for the purposes of the Metropolis Management Acts, 1855 to 1893 ; in the case of a municipal borough or urban or rural district council as for the purposes of the Public Health Acts; and in the case of a parish council as for the purposes of the Local Government Act, 1894.