

Burial Grounds - Disused Burial Grounds and Closed Churchyards

A disused burial ground was defined in s. 4 of the Open Spaces Act 1887 (now repealed) as, “any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or order in council”. An order in council is made upon the representation of the Secretary of State under the Burial Act 1853 and the Local Government Act 1972.

The Disused Burial Grounds Act 1884 prohibited the erection of any buildings on a disused burial ground unless the ground had been sold or disposed of under the authority of an Act of Parliament. The prohibition did not apply to buildings for the enlargement of a church, chapel or other place of worship at the burial ground (The Disused Burial Grounds (Amendment) Act 1981 enables building to take place on disused burial grounds (not being consecrated) with appropriate safeguards).

By virtue of s. 6 of the Open Spaces Act 1906 an owner of a disused burial ground may convey, or grant a lease of, it to a burial authority for the purpose of (i) giving the public access to the ground (ii) preserving the ground as a public open space or (iii) improving and laying-out the ground as an open space.

Sections 9 and 10 of the 1906 Act require a burial authority which has acquired an estate or interest in an open space or burial ground, to hold and administer it in trust for the public enjoyment thereof and maintain it in a good and decent state. The burial authority may enclose the ground with railings, fences and gates and may drain it and generally improve it. Public seats may also be provided therein.

Under section 15 byelaws may be made for the regulation of the ground, for the days and time of admission to it and for preservation of order and prevention of nuisances.

The 1906 Act, s. 11 also lays down a procedure to be followed in the event of tombstones etc. being removed from disused burial grounds. Basically, the obligations are as follows: -

- at least three months before removing (or changing the position of) any tombstone etc. to record details of the stone (i.e. inscription thereon); to insert (at least three times) an advertisement in a local newspaper of the proposal; to post a notice on the church door (if there is one); and to give similar notice to known relatives of the deceased; and
- in the case of consecrated ground, to obtain a faculty from the Diocesan Authority.

The parochial church council (PCC) are required by s. 215 of the 1972 Act to maintain in decent order a closed Church of England churchyard. The PCC may serve written notice on the local council requesting it to take over the maintenance. If the local council receives such a request and does not wish to accept responsibility for future maintenance of the ground, the local council may in turn give notice to the district council and to the PCC accordingly, and the district council shall then assume responsibility after the expiry of three months.

It should be noted that the notice by the local council to the district council and the PCC declining responsibility for the churchyard must be given within three months of the PCC's initial request, otherwise the local council will become responsible for the future maintenance. Maintenance can be an onerous responsibility because the responsible authority must maintain the churchyard in decent order and must also keep the walls and the fences in good repair (s. 215).

Note that the law relating to churchyards attached to "the Church in Wales" is different.

Burial Grounds - Chapels

A burial authority may provide chapels-

- on any part of a cemetery which is not consecrated or set aside for the use of any particular denomination or religious body, if the authority is satisfied that the chapel is needed for the proper performance of funeral services;
- on any part of a cemetery which is consecrated or set aside (as above) but only at the request of members of the Church of England or other denomination and out of funds provided for that purpose otherwise than by the authority itself. Subsequent maintenance may only be carried out by the authority out of similar funds. (SI 1977 No 204, Art 6).

Where cemeteries of any two burial authorities join each other, those authorities may agree to jointly provide one chapel for use in connection with both grounds. A chapel may also be erected on either cemetery, or partly on one and partly on the other.

Any burial authority may equip and furnish its chapel, but chapels on consecrated ground can only be equipped out of funds provided otherwise than by the authority.

A burial authority may take appropriate measures to remove any danger to the public caused by the condition of any chapel including the removal of the building.