



Ministry of
JUSTICE

Burial Law and Policy in the 21st Century The Way Forward

Government Response to the Consultation carried out by the
Home Office/DCA



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Contents

Introduction	4
The case for uniform legislation	5
Provision of burial grounds	6
Needs assessment	6
Which tier of government	7
Funding	8
Central records	8
Regulation	9
Disposal of the dead	10
Compliance and enforcement	10
Exhumation or disturbance after burial	12
Re-use of graves	16
Alternative solutions or approaches	23
Additional funding streams	24
Other comments	24
Annex - Ministerial Statement	25

Introduction

In 2004, the Home Office issued *Burial law and policy in the 21st century: the need for a sensitive and sustainable approach*, a public consultation paper inviting views on a wide range of issues concerning the provision and maintenance of burial grounds, and the legislative framework within which burials and exhumations are conducted.

Nearly 400 responses were received from burial professionals and their representative organisations, other interested bodies, and members of the public. Their views were analysed and summarised, and the post-consultation report was published in April 2006.

Since then, the Government has considered the responses in more detail, has held a series of workshops to discuss the views expressed and possible ways forward, and has consulted further within and outside Government. In the light of that work, decisions have been taken on all the issues canvassed.

This publication sets those decisions out in the order they were raised in the consultation paper. For ease of reference, they are listed with summaries of the responses from consultees.

In most cases, the Government has concluded that it agrees with the majority of responses. For example, the case for enabling the re-use of old graves, keeping local authority responsibilities for burial grounds at their present levels, and improving through advice, rather than regulation, the way in which burial grounds are provided and maintained, have all been accepted. In a few cases, the Government has decided that the favoured course of action would not be justified on grounds of cost or practicality, and does not intend to pursue the proposals (for example, the creation of new statutory obligations to provide burial facilities or statistical data, and the development of new inspection or enforcement arrangements). In a number of other cases, the Government believes that there may be additional work required in order to refine the proposals, assess costs or other implications, or to develop practical implementation solutions. (This includes the handling of remains of archaeological interest, the regulation of the development of disused burial grounds, and the maintenance of old churchyards.)

The Government has given consideration to how it will now move forward. A free-standing burial Bill could provide a comprehensive legislative framework to regulate burials, exhumations and cemeteries. However, this would entail further detailed work which would take some time yet to complete. Given the Government's full Parliamentary timetable, there could in any event be no guarantee that such a Bill could be brought forward in the short to medium term. In the meantime, there is growing evidence of shortages of burial space in some areas.

In the circumstances, the Government has decided to proceed by utilising existing legislation wherever possible (for example, to enable old graves to be re-used), by developing appropriate new advice and guidance (for example, to encourage more efficient and effective provision and maintenance of burial grounds), and to introduce other necessary changes to primary legislation as and when opportunities arise. The Government's plans in this respect were announced by the Rt Hon Harriet Harman QC MP in a statement on 5th June 2007, a copy of which is annexed to this document.

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>The case for uniform legislation</p> <p>1. The Government believes that any review of current burial law needs to address the case for legislation applying to all burial grounds consistently, even if some burial grounds, such as Church of England churchyards, were to continue to be subject to relevant ecclesiastical law. It would accordingly welcome views on:</p> <ul style="list-style-type: none"> • whether there should be a single statute to establish the broad framework in which burial grounds should operate • what aspects that broad framework might or ought to include (and what might be better left to other areas of law, such as planning) • whether there should be exceptions for different providers, or different types of burial ground, and, if so, what those exceptions might be. 	<p>So far as the case for uniform application of burial legislation was concerned, there was overwhelming agreement in principle, but diversity in detail and some dissension as to scope. It was recognised that, if not allowing for exceptions, the legislation would need to be broad and flexible.</p>	<p>The Government believes that there remains a strong case for burial legislation to apply in a broadly uniform way, and for opportunities to be taken to remove or resolve relevant anomalies and omissions in existing legislation. However, it is equally important for any such legislation to regulate only essential aspects of burial practice and burial ground services (including the law in relation to exhumation), leaving other matters to local discretion wherever appropriate. It is not the Government's intention to introduce burial legislation in relation to matters which are already well-regulated (such as health and safety and public health).</p> <p>The Government believes that ecclesiastical law should still apply in relation to burial and exhumation in consecrated land but that the Government and Church of England should work more closely together towards more consistent provisions.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>Provision of burial grounds</p> <p>2. The Government would welcome views on whether provision of burial grounds should be left to the market, or whether there should be a statutory obligation on burial authorities to provide burial facilities.</p>	<p>Respondents were generally in favour of a duty on local authorities to ensure adequate provision of burial facilities within a mixed economy.</p>	<p>Whilst the Government understands the reasons why many people are in favour of creating a new duty to provide burial facilities, this would have significant practical and resource implications, and may give rise to inefficiencies in the use of public funds. For many years, services have been provided in response to demand by the public and private sectors, and the Church of England and Church in Wales and other faiths and religions, and there is no evidence to suppose that there is any lack of willingness to continue to do so.</p> <p>There may well be a case for provision of burial facilities to be better co-ordinated, but this is not a matter that requires new legislation.</p>
<p>Needs assessment</p> <p>3. The Government invites views on whether any change to the existing discretionary powers of local authorities to provide burial grounds should be based on a requirement to make an assessment of local needs, for example, every 10 years (geared to statements in their local plan); to take account of all local existing non-municipal burial facilities (and any re-useable sites, if appropriate – see Part D); to ensure adequate provision for particular cultural and faith needs, and for diversity of demand. The Government does not believe that diversity can necessarily be achieved at the lowest tier of local government, and that the aim should therefore be to provide adequate diversity of provision at district/London borough level.</p>	<p>There was little disagreement with the proposed approach involving the assessment of local needs, but there was some variation of views on frequency of such assessments. There was very general agreement on the need to link to this work to local planning procedures.</p>	<p>The Government is satisfied that assessments of local needs for burial services, including the needs for particular cultures and faiths, can be undertaken without the need for new legislation.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>4. The Government would welcome comments on the practicalities of requiring such needs assessments, their frequency and scope, and the implications for practice in relation to the compulsory purchase of land. It would also be helpful to receive views on how parish, town and district Councils, local authorities in Wales, Church of England and Church in Wales diocesan and other religious authorities, might work together to provide an appropriate level and variety of burial facilities for all their communities.</p>	<p>See Question 3 previous page.</p>	<p>In the light of responses received, the Government considers that there is scope for guidance for burial ground providers of all kinds to improve the way facilities can be provided with better co-ordination. It therefore intends to develop appropriate guidance on this and other aspects relating to the future provision of burial facilities.</p>
<p>Which tier of government?</p>		
<p>5. If diversity of provision is important, but it is not feasible to provide such diversity within first tier local authorities, is there a case for restricting the power to establish burial grounds to district level authorities only, or even to county level councils (or unitary authorities in Wales)? Or can adequate, diverse, local facilities be provided through consortia of district level authorities? Or would some other tier of government, or other mechanism, be appropriate?</p>	<p>There was very little support for a regional approach to burial ground provision. The need for close links and accountability to local communities was stressed by first and second tier councils and others. Doubt about the capability of first tier councils was strongly refuted, but there was a recognition of a need for different tiers of local government (and perhaps other providers) to work more closely together and facilitate eg training.</p>	<p>The Government is not satisfied that the case has been made for changes to the tier of local authority which may provide burial facilities. Any inadequacy of provision is a matter which can be addressed through guidance rather than organisational change. (See also Question 4).</p>
<p>6. Views on the viability and practicality of leaving responsibility for local authority burial grounds within first tier councils are invited. Views would also be appreciated on the potential benefits of larger scale burial authorities, for example, economies of scale in terms of training and developing expertise.</p>	<p>See Question 5 above.</p>	<p>The Government believes that many first tier councils are able to provide an excellent service for their communities. In most cases, the benefits of economies of scale should be realisable through joint working with neighbouring or higher authorities, and such an approach should be encouraged through appropriate guidance. (See also Question 4).</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
Funding		
<p>7. The costs of ensuring adequate provision of burial facilities are not strictly an issue for consideration within a consultation exercise on burial law, but views on the financial implications for first or second tier local authorities of any obligatory provision of burial facilities would be welcome.</p>	<p>The financial implications for any obligation to provide burial facilities was generally viewed as a burden to be addressed through fees, local or general taxation, although some parish and town councils were confident that burial grounds could be run at cost.</p>	<p>The Government has no plans to make the provision of burial grounds obligatory.</p>
Central records		
<p>8. The Government believes that while the information required can normally be expected to be provided voluntarily by the various cemetery managers, statutory authority to obtain the data would be desirable and a statutory obligation to report on the opening of cemeteries would provide an essential mechanism to ensure that central information was up to date. Views on the need for such provisions are invited.</p>	<p>The proposal for a statutory obligation to provide information to central government about burial grounds was widely accepted, with some suggestions that the data should be collated at local level and others that existing data should be used wherever possible.</p>	<p>Experience of the recent survey of burial grounds indicates that data is unlikely to be provided in a consistent and timely way unless the need to do so is underpinned by a statutory duty. However, there is no significant evidence to suggest that the need for such data would justify the costs of collating and publishing it.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>Regulation</p> <p>9. The Government would welcome views on the case for additional regulation of the detailed aspects of cemetery operations set out in the above paragraphs, and in particular on the appropriate mechanisms for referral or appeal or any local decisions. One possibility would be for such referrals to be made to the Home Office (now the Ministry of Justice), as is already the case in some instances, but alternatives might be more effective, such as a dedicated tribunal or other body.</p>	<p>With regard to the regulation of cemetery operations, the scope of existing regulations was felt to be about right. Where considered necessary, the Home Office (now the Ministry of Justice) was generally considered to provide the right home for appeals, but existing and alternative machinery also found some favour.</p>	<p>The responses revealed insufficient evidence of a need which might justify the cost of any new appeals machinery to deal with concerns or complaints about local decisions or practice.</p> <p>So far as the regulation of memorials is concerned, there would appear to be no reason why most problems could not be dealt with through advice and guidance. Inconsistent or inadequate record-keeping is a question of compliance and enforcement.</p> <p>The present system of burial and memorial rights gives rise to a number of difficulties which may be alleviated in part by revision of statutory provisions and in part by improved administrative practices. The Government proposes to take this forward through further discussion with burial professionals.</p> <p>No consensus view has emerged on the need to amend the existing provisions regarding the handling of cremated remains, and the Government considers there to be no need to do so.</p> <p>The Government proposes to keep under review the level of penalties for existing offences and any need to create additional offences.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
Disposal of the dead		
<p>10. The Government would welcome views on whether a statutory obligation to bury or otherwise dispose of those who have died should be created. If so, on whom should such an obligation be placed, within what period of time, and what exceptions should there be (for example where the remains are required as evidence for a court case)?</p>	<p>The proposal to create a statutory duty to dispose of the dead was generally supported, although the provisions of the Public Health (Control of Disease) Act 1984 were quite often regarded as sufficient.</p>	<p>The Government believes that there would be benefits in making clearer the responsibilities of the family and/or the executor of the estate of the deceased, although further work would be required to determine what those responsibilities should be and how they might be enforced.</p>
Compliance and enforcement		
<p>11. The Government believes that there should be scope for improving the standards of maintenance, restoration and safety in burial grounds through more precise definitions, reinforced through more effective staff training and enforcement measures, underpinned by guidance and new funding schemes. Views are invited on whether this is the right approach, whether new legislation alone will deliver the benefits required, or whether funding issues need to be resolved before substantial progress can be expected.</p>	<p>There was overwhelming support for the need for guidance and training, and additional or ring-fenced funding, in order to improve standards of maintenance, restoration and safety in burial grounds.</p>	<p>The Government is satisfied that there is scope to improve maintenance, restoration and safety standards through guidance rather than legislation (See Question 4). In particular, it will be important to link this work more closely to the Government's initiative for 'cleaner, safer, greener' communities.</p> <p>So far as any question of licensing cemeteries is concerned, the proposal raises wide-ranging issues regarding the nature of central Government's responsibilities for burial grounds, as well as the implications where a licence might be granted or refused. The Government believes that burial grounds are essentially local amenities for which local communities should be responsible and exercise control through existing planning, public health and democratic mechanisms.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>12. The Government considers that, on the whole, service standards can be improved by guidance rather than regulation, especially where it may take time for standards to be established and bedded in. But views would be welcome on whether it would be helpful or constructive to place obligations on burial ground managers to take account of guidance on these issues in planning for the future, or to consult relevant experts, for example, on the options available for developing the environment of their sites.</p>	<p>Some practical suggestions were made on how to maintain or drive up standards through encouragement and peer pressure. There was virtually no support for additional legislation.</p>	<p>The Government agrees with respondents that improvements can best be achieved through guidance (See Question 4) and training. Work to review training opportunities for burial professionals is now in hand.</p>
<p>13. The Government does not believe that it would be the task of an inspectorate to undertake all these functions, although, if such a body was established, it might well contribute to policy development, standard setting, training and research needs. Views would, however, be welcome on:</p> <ul style="list-style-type: none"> • whether compliance with regulation and good practice would be dependent on the availability of a field force to provide a local presence of experience and expertise • where that resource should be drawn from • whether a standing body would be needed or whether it would be feasible to draw on existing sources • what frequency of inspections might be required • what size of any standing body might be needed • whether all burial grounds should be subject to inspection, or whether some should be exempt (and if so, which ones and why). 	<p>Respondents were broadly evenly split between those who considered inspection of burial ground to be fundamental to ensure standards and regulations were observed, and those who regarded dedicated inspection as wholly unjustified. There was some support for a middle way using existing resources and mechanisms.</p>	<p>Most burial ground operators are local authorities, which are subject to local democratic accountability and the oversight of the Local Government Ombudsmen. For non-local authority burial grounds, the Government believes there to be scope for self-regulatory schemes for dealing with concerns and complaints, and intends to explore the prospects for developing effective voluntary arrangements.</p> <p>The Government is not therefore persuaded that an inspection function, or a dedicated inspectorate, is the most appropriate or cost-effective way to ensure compliance with burial law or to deal with individual complaints.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>14. Views are invited as to whether the case for an inspectorate has been made out, whether the costs are likely to justify the benefits and whether the costs might more appropriately be recovered from the industry, rather than from the taxpayer, perhaps through a system of licensing cemeteries.</p>	<p>See Question 13 on the previous page.</p>	<p>See response to Question 13.</p>
<p>Exhumation or disturbance after burial</p>		
<p>15. The Government believes that it is right to continue to protect buried human remains from unauthorised disturbance. Where statutory provision has been made for remains to be exhumed or removed, it is important that the remains should be treated at all times with dignity and respect, however old the remains might be. The Government believes that disturbance may be justified only in limited circumstances:</p> <ul style="list-style-type: none"> • in the interests of justice (for example, exhumation on the order of a coroner) • for personal reasons by the next of kin of the deceased • on grounds of public health or nuisance • in the public interest (in connection with site developments which have public or other planning consent) • for scientific purposes (eg for archaeological research) or • for other exceptional reasons (the case for exhumation for the purpose of re-use of old graves is discussed at page 15). 	<p>The existing approach to the authorisation of single exhumations was generally supported, with most in favour of central licensing arrangements.</p>	<p>In the light of responses received, there would seem to be general agreement that the current grounds for disturbing buried remains are widely accepted and that there is no strong argument to make major changes.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>16. The Government would welcome views on whether these grounds are too narrow (or too wide).</p>	<p>See Question 15 on the previous page.</p>	<p>See Question 15 on the previous page.</p>
<p>17. The Government would welcome views on the case for licensing the disturbance of all human remains, cremated or otherwise, which have been interred or otherwise given a permanent resting place.</p>	<p>The need to licence the disturbance of cremated remains was less clear cut, and there was a degree of support for local authorisation, delegated either to the local authority or, in certain circumstances, to the coroner. There was very little support for unregulated removal or disturbance of old remains for archaeological purposes, although there was a degree of support for lighter regulation in such cases.</p>	<p>The Government is satisfied that the disturbance of all human remains should generally require specific authority in order to maintain public confidence. Existing legislation provides the Secretary of State with a wide discretion and proposals to depart from current practice (eg not to require the consent of the next of kin in certain circumstances) could be adopted without the need for new legislation, although such proposals would benefit from further discussion and consideration. Proposals for more specific standards for the conduct of exhumations could be accommodated through the development of an industry code of practice, and licences made conditional on compliance. The Government would wish to discuss such proposals with the industry to assess practicalities and costs.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>18. The Government would welcome views on whether:</p> <ul style="list-style-type: none"> • authority to licence the exhumation of remains should be retained centrally by the Home Office (now the Ministry of Justice) • such authority might be delegated to the local burial authority/burial ground manager • the criteria for the grant or refusal of licences should be regulated in statute • there should be a formal appeal mechanism • fees should be charged or chargeable • procedures and criteria should be more closely aligned with those relating to Bishops' Faculties • archaeological remains should be subject to the same regulation or be unregulated or more lightly regulated. 	<p>See Question 17.</p>	<p>The Government believes that authority to authorise the exhumation of human remains, cremated or otherwise, should generally remain a matter for central government where removal is for private, personal reasons, or where questions arise of public or national interest, or international relations. This is because the number of applications is relatively small and decision-taking by a central authority can be more consistent and build on its own experience.</p> <p>In contrast, the large number of local burial authorities would individually deal with very few applications, lack familiarity with criteria and procedures, and be liable to introduce delay and inconsistency.</p> <p>The Government proposes to consider sympathetically the case for setting out the criteria for granting or refusing applications, but is not persuaded that a formal appeal system is required for the very small number of applications which are currently refused.</p> <p>There is a good case in principle for charging fees for licences, as was previously done for many years, but further consideration needs to be given to the practicalities, including a legislative opportunity.</p> <p>The Government acknowledges the differences in approach to exhumation applications between itself and the Church of England authorities. It therefore proposes to explore the scope for a more consistent approach, in particular where there is an overlap of the State and ecclesiastical jurisdictions.</p> <p>Separate arrangements are proposed for the regulation of the excavation of human remains for archaeological purposes.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>19. It would also be helpful to have views on:</p> <ul style="list-style-type: none"> • what the criteria should be for the grant of licenses or faculties • how old buried remains might need to be to justify any relaxation of the regulation of their disturbance. 	See Question 17 page 12.	Other than in the case of remains of archaeological interest, the Government does not propose to relax the way in which the exhumation of human remains is regulated. Suggestions as to what criteria should be adopted when considering applications were helpful and would benefit from discussion with practitioners and stakeholders.
<p>20. Views are invited on the case for the delegation of authority for the removal of remains in these circumstances and to whom such authority might be delegated.</p>	See Question 17 page 12.	The Government is not persuaded that authority should normally be delegated, other than to enable old burial grounds to be re-used (see Question 22).
<p>21. The Government believes that statutory provision to require the removal of remains before a burial site is developed reflects a proper balance between the need for respect towards those who have died, sensitivity towards the bereaved and their descendents, and the interests of public and private sector developers. However, views would be welcome on:</p> <ul style="list-style-type: none"> • whether the existing legislation might be rationalised for general application • whether there is sufficient protection of the interests of those who have died and their families, for example in relation to the ability to prevent development, or to have the costs of re-burial deferred, or to restrict making the graves inaccessible • whether the notice arrangements (two weeks) or the time allowed to make private arrangements for re-burials (two months) are too short or too long • whether there might be circumstances in which the prescribed procedures should be disapplied, for example because the site or the remains are so old. 	How best to approach the development of burial grounds for non-burial purposes attracted more varied responses, generally in favour of more support and consideration for relatives of the deceased affected. A number of responses queried whether development of burial grounds for commercial reasons should be permitted at all, while others suggested that such developments should not be permitted for at least a prescribed number of years after the last burial on the site. Conversely, some proposed that older burial grounds need not be given any special protection.	The Government intends to work with the construction industry and other interested groups to identify ways in which the existing legislation might be changed, if the opportunity arises, in the interests of achieving more consistency in approach and more sensitivity towards relatives and descendants of the deceased.

Consultation Paper Question	Summary of respondents' responses*	Government response
Re-use of graves		
<p>22. Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be further tested, in particular, so as to gauge public concerns and acceptability, and to determine the practicality and economics of any new approach, having regard to the need for any exceptions and safeguards. Comments are therefore invited on the principle as to whether the disturbance of remains would be justified in the interests of preserving and funding local, viable burial grounds, and reducing demands for new land for burials.</p>	<p>Most respondents were in favour of pursuing a re-use option for burial grounds, varying from those who considered the practice should be implemented immediately to those who regarded it as very much a last resort which would need careful presentation and handling, or fuller consideration of the financial, logistical and safety implications. There was, however, a substantial minority entirely averse to re-use, especially from the general public.</p>	<p>The Government has been persuaded that the re-use of graves is in principle justified and constitutes a prudent and proportionate response to the need for burial space. It has therefore decided to introduce arrangements, under existing legislation, to enable local authorities to authorise the excavation of old graves using exhumation licences.</p>
<p>23. Comments are invited on the potential impact of re-using graves on the character of a burial ground and how any adverse effect might be mitigated. Views would also be welcome on how tombstones and memorials should be dealt with where graves were to be re-used (for example, new or additional memorials, additional names on existing memorials or the details of the further burials to be recorded in books of remembrance).</p>	<p>There was general agreement that re-use of burial grounds would need to be accompanied by proper record keeping of the graves affected, but views were divided on how best to deal with the original memorials.</p>	<p>It is clear that public support for the re-use of old graves will be dependent in part on how such policies are put into practice. While it will be important for decisions on these matters to be taken locally, public confidence is likely to be upheld if there is a broad framework of guidelines which promotes consistency of approach within existing resources. Work on devising an appropriate regulatory framework, and practical guidance, is in hand and will be informed by the outcome of relevant pilot studies.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>24. The Government would welcome views on whether the age of the grave should be the appropriate criterion to determine whether a grave might be re-used. If so, is 100 years the appropriate length of time? Should it be longer, or shorter? And, if so, on what basis? Should there be any linkage to the time granted for exclusive rights of burial? Or to the 50 years from the date of burial which, under the Disused Burial Grounds (Amendment) Act 1981, qualifies the next of kin to prevent the development of a burial ground? Should re-use depend on a shortage of burial space in the particular local area?</p>	<p>There was a range of views on the age of the remains to which re-use might be applied, including the view that age was not necessarily the most important factor. Few respondents gave views on the economic viability of re-use.</p>	<p>The lapse of time since the last burial is a key factor in the acceptability of re-using old graves. The Government believes that 100 years should normally be the minimum time to elapse before a grave can be re-used, but there is a case for 75 years where available space is particularly short. Such decisions are ones that can properly be taken within the local community, provided there is democratic accountability or other effective opportunity to express views or objections.</p>
<p>25. Alternatively, might a more scientific approach be adopted which determined that only graves containing skeletal remains were used? Would this be practical? (Decomposition would mainly depend on local soil conditions, might not be accurately predictable and might involve a period of time considerably longer or shorter than 100 years.)</p>	<p>Nearly all agreed that it would be impractical to limit re-use to remains known to be skeletal.</p>	<p>There was very little support for this approach and the Government does not propose to recommend that decisions to re-use grounds should be made on this basis.</p>
<p>26. The Government believes that, if graves are to be re-used, the 'lift and deepen' method would be the preferred approach. Views are invited on any foreseen disadvantages of this method, or advantages of alternative methods.</p>	<p>The 'lift and deepen' method was preferred, but additional options were proposed, and there was a degree of support for local decisions on the method to be used.</p>	<p>There was widespread support for the 'lift and deepen' technique, which offers a number of practical advantages, not least the re-assurance that remains will continue to be buried where the deceased, or their family, wanted them to be laid. The Government remains satisfied that this is the method to be preferred in most cases.</p>
<p>27. It would also be helpful to have views on whether particular methods of re-using graves should be prescribed, or whether burial ground managers should be free to adopt whatever method appeared appropriate according to local circumstances.</p>	<p>See Question 26 above.</p>	<p>The Government does not propose to restrict the options open to burial ground operators, provided such decisions are taken subject to democratic accountability or other local consultation processes, and the views of the families or descendants have properly been taken into account.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
28. The Government would welcome comments on any or all of these factors.		
<p>29. The Government believes that local consultation about any re-use of graves would be essential but that it would be important for such exercises to be undertaken on a consistent basis. Comments are invited on the need for consultation and what might properly be addressed in such consultation, including:</p> <ul style="list-style-type: none"> • best estimates of remaining burial space and demand • details of any additional burial grounds already earmarked or acquired, and reasons why it is not proposed to use them • details of any local burial facilities which will not be subject to a re-use scheme • proposed criteria for exempting graves or cemeteries from re-use, or details of graves and cemeteries already identified for exemption • proposed method of re-use • implications for burial charges. 	<p>There was general agreement on the need for local consultation about re-using burial grounds , broadly along the lines proposed in the consultation paper, although some suggested that public consultation would merely flush out opposition, and that a public information campaign was needed.</p>	<p>The Government has given careful consideration to the responses on the question of the need for local public consultation. It has come to the conclusion that while many burial authorities may feel that this is an appropriate prior step to take before embarking on the re-use of local burial grounds, such a wide and time-consuming exercise may not be necessary in all cases, nor cost-effective, and that a more focused requirement to consult relatives affected, key organisations with a proper interest (such as English Heritage and Natural England and in Wales Cadw and the Countryside Council for Wales) and e.g. local faith representative bodies, would represent a satisfactory minimum approach.</p> <p>In any event, the Government believes that there is likely to be benefit from the provision of guidance on good practice on the way any consultation is conducted and intends to issue such guidance following discussion with burial professionals and other relevant organisations.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>30. Comments on whether and how such consultation might usefully be undertaken jointly with other burial ground providers would be appreciated.</p>	<p>See Question 29 on the previous page.</p>	<p>See Question 29.</p>
<p>31. The Government would welcome views on the proposed exceptions to any re-use arrangements, in particular:</p> <ul style="list-style-type: none"> • whether the exceptions proposed are the right ones, or whether there should be others • whether it would be right to enable exceptions, in effect, to be purchased • whether the criteria for identifying exceptions are sufficiently clear, or flexible, to be effective • whether the need for sustainable land use is such that exceptions should not be permitted in any circumstances. 	<p>Most respondents recognised the need for exceptions to re-use in certain cases. There were no suggestions that burial space was so short that exceptions could not be accommodated.</p>	<p>The Government is satisfied that, on present evidence, exemptions in respect of individual graves or particular parts of burial grounds can be accommodated without significantly reducing the amount of land available for re-use.</p>
<p>32. The Government would find it helpful to learn what importance ought to be attached to the introduction of good cemetery practices prior to any adoption of a re-use regime.</p>	<p>No clear position emerged on the need for preparatory measures before re-use could be adopted. Some regarded preparatory regulations and authorisation as essential, while others regarded this as unnecessary additional bureaucracy.</p>	<p>See Question 23.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>33. The Government would welcome views on:</p> <ul style="list-style-type: none"> • whether there is a need for additional regulatory arrangements before any re-use schemes might be introduced • what such arrangements might require (for example, regular inspection of cemeteries to assess general compliance with burial legislation or one-off inspections to determine suitability or competence to operate a re-use scheme) • whether they might need to cover all burial bodies (including churches and private cemetery owners) • how best they might be put in place (for example, a new Government inspectorate, self-regulation or the development of other regulatory bodies for the purpose). 	See Question 23.	See Question 23.
<p>34. The Government proposes that, were it to be persuaded that the re-use of graves should be established, it would be right to leave decisions about whether to use such graves entirely to the individuals and families concerned. However, it would seem appropriate to ensure that the public was properly informed about the nature of any grave or grave space that might be purchased, both as to the fact that the grave had been previously used and that it would be expected to be re-used again in due course. It would also be important to ensure that information about the availability of any virgin burial facilities was provided in response to enquiries or applications to purchase a grave.</p>	There was near universal agreement that families should be told where re-used graves were offered, although some considered that this might deter applicants and negate the case for seeking to re-use burial grounds.	See Question 23.

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>35. Should the practice of closing Church of England churchyards which are full by Order in Council be changed?</p> <ul style="list-style-type: none"> • If so, in what circumstances should decisions be made? Where a churchyard is full, on what criteria should it be decided whether it should be closed or provision made for re-use? In particular, what weight should be attached to the importance of the churchyard as an open space and the conservation of its character, including existing monuments? • Should there be a procedure for declaring a churchyard full without formally closing it, so that special steps may be taken for its future use? • Where a churchyard is full, should the Church of England and Church in Wales authorities be given statutory powers to require the relevant local authority to provide the cost of preparing the ground for re-use? • Should there be provision for reopening closed churchyards at the request of the church authorities? If so, in what circumstances should such decisions be made and on what criteria? 	<p>It was generally felt that the existing arrangements for closing Church of England churchyards when full with the option of transferring maintenance responsibility to the local authority should cease, although there were minority views on the effects of such changes.</p>	<p>The Government believes that it would be right to consider, in conjunction with all interested parties, the scope for improving the existing arrangements for closing churchyards. It has also opened discussion with the Church of England on the prospects for legislative measures to enable closed churchyards to be re-used, where desired.</p>

Consultation Paper Question	Summary of respondents' responses*	Government response
<p>36. To what extent should special provision be made on theological, pastoral or other grounds for the re-use for burials of land, which has been consecrated for Christian burials by the Church of England or Church in Wales but which is part of a municipal or private cemetery rather than a churchyard, or for re-use of land set aside for burials according to any other particular religious tradition?</p>	<p>There was little support for making an exception for consecrated land.</p>	<p>The Government believes that whether old burial land should be re-used is essentially a matter for decision by the landowner. Where part of such land has been set aside for use for particular Christian denominations or other faiths, it would be consistent to regard any objections to re-use from the local representative body for the denomination or faith in question as paramount.</p>
<p>37. The Government takes the view that unauthorised disturbances of human remains is, and should remain, a serious matter; that there is a continuing need for buried remains to be protected within the criminal law and that there is widespread public support for such protection. Views on whether the re-use of graves would be likely to undermine respect for the dead and, if so, suggestions as to how this might be mitigated, would be welcome.</p>	<p>In general, the re-use of graves was not thought likely to undermine respect for the dead, if change was introduced in an appropriate way.</p>	<p>The Government has noted that the majority of respondents did not feel that the re-use of old graves, properly and sensitively implemented, should undermine respect for the dead, and believes that, provided re-use is introduced in an appropriate manner, there is no reason why local burial authorities should not be enabled to take such decisions.</p>

Other issues raised by respondents

Alternative solutions or approaches	Government response
<p>One or two respondents recommended that disposal options should be limited in future to cremation. A number of local authority respondents urged further consideration to be given to mausoleums or above-ground vaults which could be covered and landscaped. Others argued that there was no need to wait for changes to the law and that steps could be taken now to provide for the re-use of graves in grants of exclusive rights of burial, and to dig graves to their maximum depth.</p>	<p>The Government does not accept that there should be undue restrictions on the ways in which families should be allowed to dispose of the remains of their relatives, especially where there may be religious or cultural considerations, and that more choice in disposal options, subject to considerations of public health and decency, should be encouraged.</p>
<p>A further alternative advanced by one respondent was the adoption of pre-cast vaults which could achieve a higher density of burial.</p>	<p>See above.</p>
<p>A number of respondents recommended crematoria to be included in any review or consideration of burial capacity, i.e. that disposal options and facilities generally should be considered. Another respondent pointed out that some burial land might be saved if cremated remains could only be scattered and not buried.</p>	<p>The Government considers that cremation capacity should not necessarily be taken into account in assessing adequacy of burial facilities, nor that the burial of cremated remains should be prohibited in the interests of saving burial space. These may, however, be matters for local burial authorities to take into account if they wish.</p>
<p>One private sector respondent suggested that, without re-use of old graves, it might be better to design areas as new parks or recreation grounds from the outset, which could be used initially and for a limited period as a burial ground, and then revert to their original purpose, rather than try to convert what had been designed as burial grounds.</p>	<p>The Government welcomes ideas such as this as examples of new thinking towards the provision of burial land and green space. However, such solutions are unlikely to be suitable in all areas and the implications would need to be considered carefully by the local burial and planning authorities.</p>

Additional funding streams	
<p>One respondent considered that those interested in family history would be prepared to pay more for the relevant information and that this income should be directed to the upkeep of the graves. Another from the voluntary sector felt that voluntary 'friends' of cemeteries should also be able to charge for access to burial records. However, there were also calls for the information to be provided freely.</p>	<p>Decisions on additional sources of funding to meet the cost of related services are essentially matters for individual burial ground operators, whether in the public or private sector.</p>
Other comments	
<p>One private sector respondent felt that the issues raised in the consultation paper ought to be considered by a new body consisting of representative organisations with the assistance of professional consultants.</p>	<p>The Government considers that its consultation process with practitioners and other stakeholders has to date been an effective and constructive exercise which has assisted decisions to be taken on the future arrangements for the provision of burial facilities. It sees no reason to alter this approach, although the option to engage consultants to consider any particular issues in future has not been ruled out.</p>
<p>Another individual respondent considered that the provision of burial services was too bureaucratic and that more weight needed to be attached to the emotional needs of the bereaved. Families needed the opportunity to exercise more choice in working through their grief and restrictions on mineralization were unjustified. They needed to be empowered rather than constrained by conventional considerations. It was also suggested that there was a need to be more flexible as regards eligibility for funeral payments or even that the basic cost of all funerals should be met by the Government.</p>	<p>The Government is keen to encourage more choice for the bereaved and believes that burial authorities are becoming more open to providing a range of services sensitive to the needs of the bereaved.</p> <p>The Government does not, however, accept that the cost of funerals should fall on taxpayers.</p>

* From Burial law and policy in the 21st century: Response to consultation CP(R) DCA/HO 1/05

Annex - Ministerial Statement

In 2001, the Government undertook to conduct a review of burial law, a survey of burial grounds, and certain other initiatives, in response to the recommendations of the eighth report on cemeteries by the Environment Sub Committee of the Environment, Transport and Regional Affairs Select Committee.

Following preparatory groundwork, in 2004, the Home Office issued a public consultation paper on burial law reform and in 2006 we published a report on the responses. The survey of known burial grounds in England and Wales was also undertaken. Nearly 10,000 completed questionnaires were received.

Although most people now opt for cremation, about 150,000 people are still buried in cemeteries and churchyards every year. Millions of graves are extant throughout England and Wales. It is right to expect sustainable, high standard, burial facilities for our communities. Yet, in some areas there are difficulties in finding sufficient, local, space for new graves. Maintaining existing old burial grounds can also present particular problems.

One solution which the Government has been urged to consider is the re-use of burial grounds after a suitable lapse of time. It is a solution which can offer sustainable land use for the future, and the prospects of keeping burial facilities in good order and near to the communities they serve. It is an option which has received wide support.

The Government is now satisfied that it would be right to enable graves to be re-used in this way, subject to appropriate safeguards. For example, no grave should normally be re-used unless the last burial took place at least 100 years before. And families should have the opportunity to defer re-use of their relatives' graves for at least another generation.

We therefore intend to introduce measures which, using powers available under the Deregulation and Contracting Out Act 1994, will allow local authorities to re-use graves in their cemeteries, if they wish. At the same time, we will develop, in consultation with burial professionals and others, good practice guidance on the re-use of old burial grounds, the provision of burial space generally, and the maintenance of existing burial grounds.

The 2004 consultation paper raised a number of other issues, in particular regarding the case for modernising the law relating to the regulation of burial and burial grounds. Details of the Government's response to these issues have been published today. In general, we propose to introduce effective and affordable changes where legislative opportunities arise, and we will keep the need for further measures under review. In the meantime, there appears to be scope for making certain administrative and procedural improvements, and we propose to work with burial professionals to promote practical changes where they will improve the services available for bereaved people.

Work on the responses to the burial ground survey of England and Wales has now been completed and a report on the findings has also been published today. The survey results indicate that less than three-quarters of burial grounds now have room to accept new burials, with only about 20 per cent of all designated burial land as yet unused. Burial grounds with unused burial space predict that the median time remaining until their land will be fully occupied by graves is about 25 to 30 years.

There is considerable regional variation in these values, and, while the survey results do not reflect trends and issues at a very local level, they suggest that there is particular pressure on burial space in predominantly urban areas, and that there will generally be increasing pressure over the next 10-20 years.

Our survey has provided us, for the first time, with an essential factual basis on the number, size and usage of burial grounds. This will help inform future policy and operational development.

Finally, concerns have been expressed in recent years about the action taken by some local authorities to make safe unstable memorial stones in their cemeteries. It is essential that gravestones and cemeteries are

maintained in a decent and respectful way. Last March, in conjunction with Government colleagues, and the chairmen of the Health & Safety Commission and of the Local Government Association, I issued advice to all authorities on how managers should strike a more sensitive and proportionate balance between their responsibilities for ensuring safety in their burial grounds and the needs of visitors and memorial owners.

I believe that our recent work and all the measures now proposed will go a long way to improve, modernise and secure local burial facilities for all those who seek a dignified resting place for their relatives and the preservation of our rich inheritance.

Harriet Harman

Harriet Harman
Minister of State
Ministry of Justice

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