

RUNNING OUT OF SPACE

The Legal and Practical Aspects of the Re-Use of Burial Sites

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QUESTION AND ANSWER

- 'Running out of space' – what does it mean?
- Are you 'cramming' or digging up flower beds?
- Do you have space for the next 25 years?
- Do you have or are you planning extensions?
- Are you reclaiming graves?
- What is preventing you from re-using graves?
- What legal powers are available to you?

CURRENT RESTRICTIONS

■ Burial Act 1857 (as amended)

“It is an offence for a body or any human remains which have been interred in a place of burial to be removed..”

- Faculty if consecrated ground
- Licence from the Secretary of State
- ...or specific power?

- Consecrated ground = Faculty
- Unconsecrated ground = Licence from the Secretary of State

LOCAL AUTHORITY CEMETERIES

- Local Authorities' Cemeteries Order 1977 .. but is this good enough?
- London Local Authorities Act 2007
- Problems for private cemeteries – the solution? A Private Act of Parliament or Legislative Reform Order

LIMITATIONS WITH FACULTY

- Extinguishment of the burial rights?
- Re Blagdon Cemetery [2002] Fam 299:

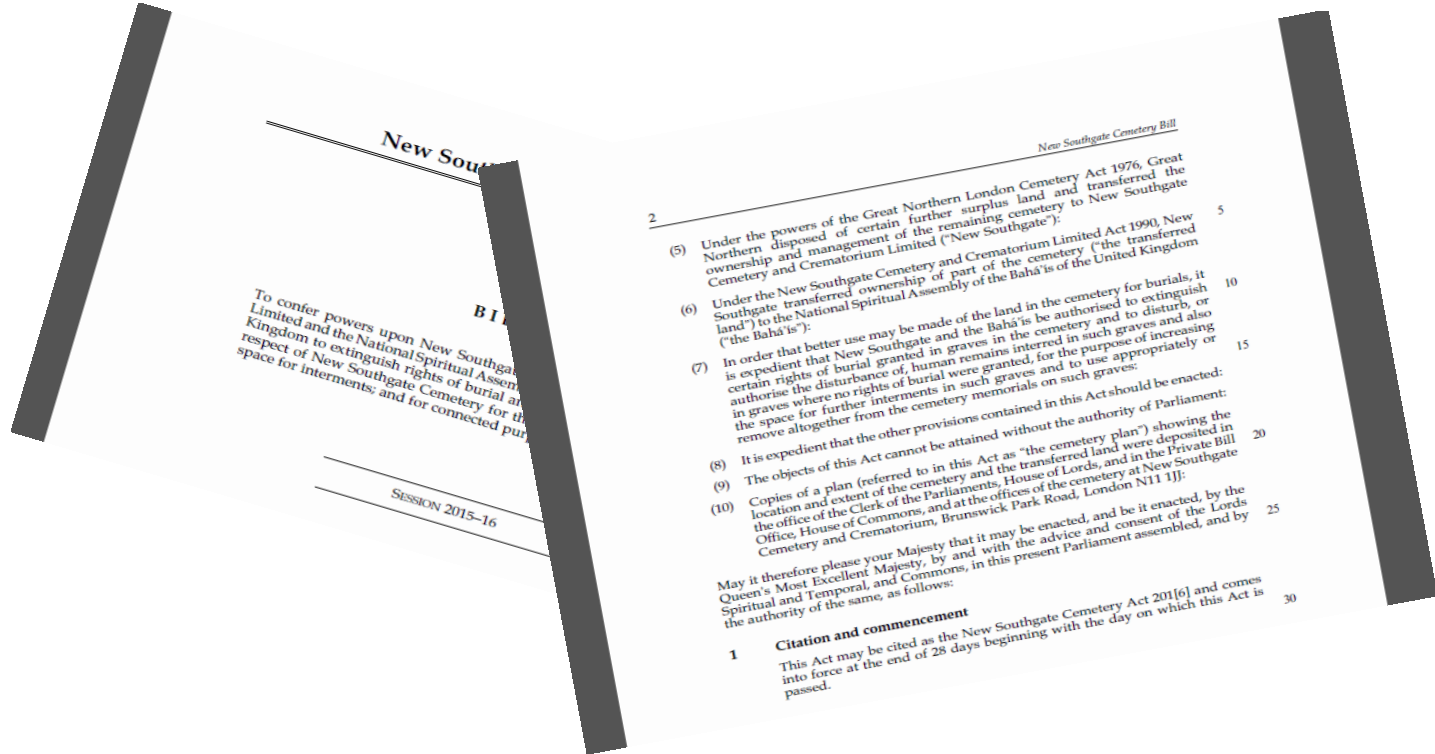
“the norm is permanence in relation to Christian burial. The question then arises as to how to determine the exceptional circumstances which would justify departure from the norm....”
- But... *Re St. Peter Terwick* [2017] ECC Chi 2 and *Re West Norwood Cemetery* [2012] Southwark Const Ct
- Listed building consent?

OTHER LIMITATIONS

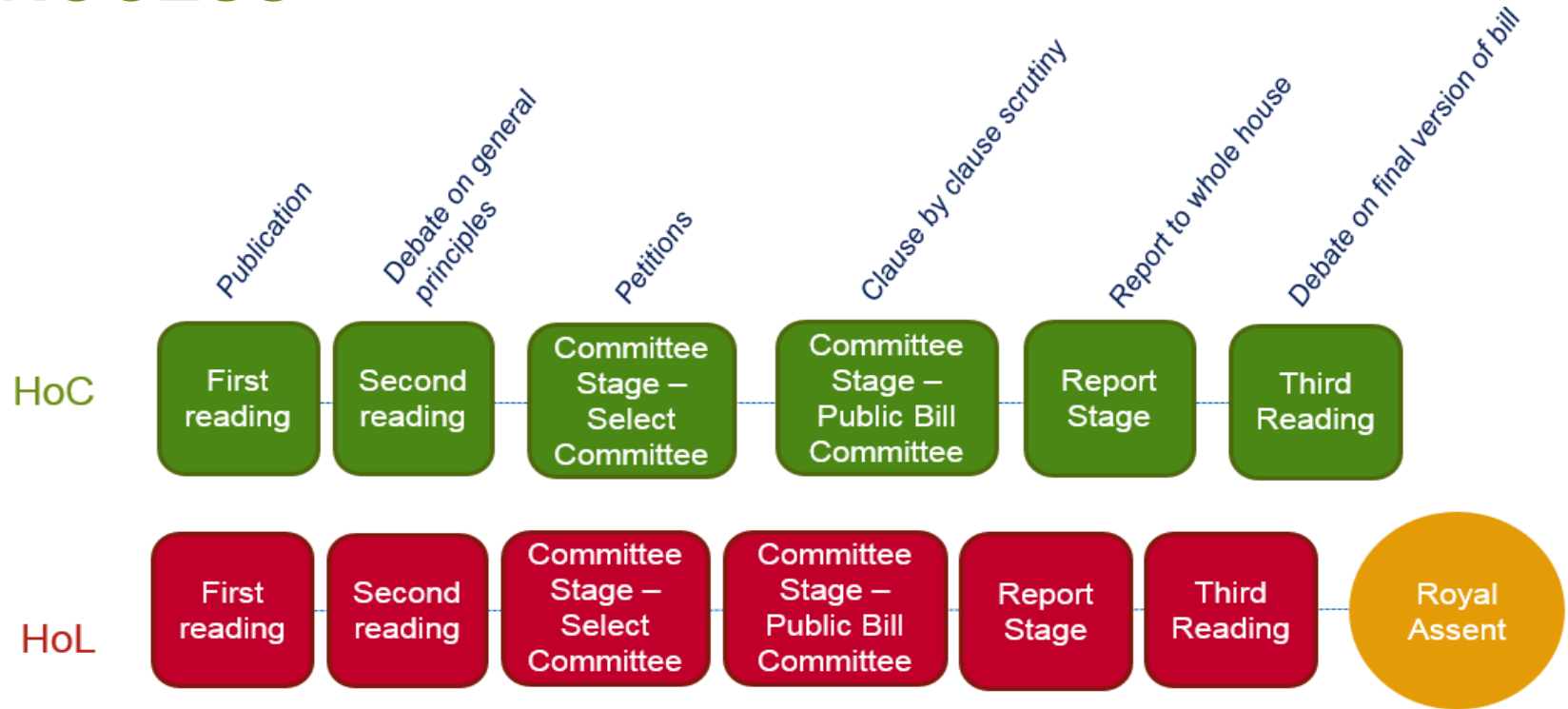
- Environmental Permitting (England and Wales) Regulations 2016
- Not all re-use is burial use - Disused Burial Grounds Act 1884:

It shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting house, or other places of worship.

“PRIVATE” ACT OF PARLIAMENT?



PROCESS



PARLIAMENTARY SCRUTINY



COMMITTEE PROCEEDINGS



POWERS IN THE BILL

3 Power to extinguish rights of burial

- (1) Subject to subsection (2), 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, in accordance with the provisions of this section, extinguish the right of burial in that grave space. 5

4 Power to disturb human remains

- (1) 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 where— 25
- (a) the burial authority has extinguished rights of burial in the grave under **section 3**; or
 - (b) the grave is a public or common grave.

LEGISLATIVE REFORM ORDER

- Legislative and Regulatory Reform Act 2006
- “Remove or reduce burdens resulting directly or indirectly from legislation.”
- Appetite for this seems quite low
- Other limitations – applicable to all bodies?



THANK YOU

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