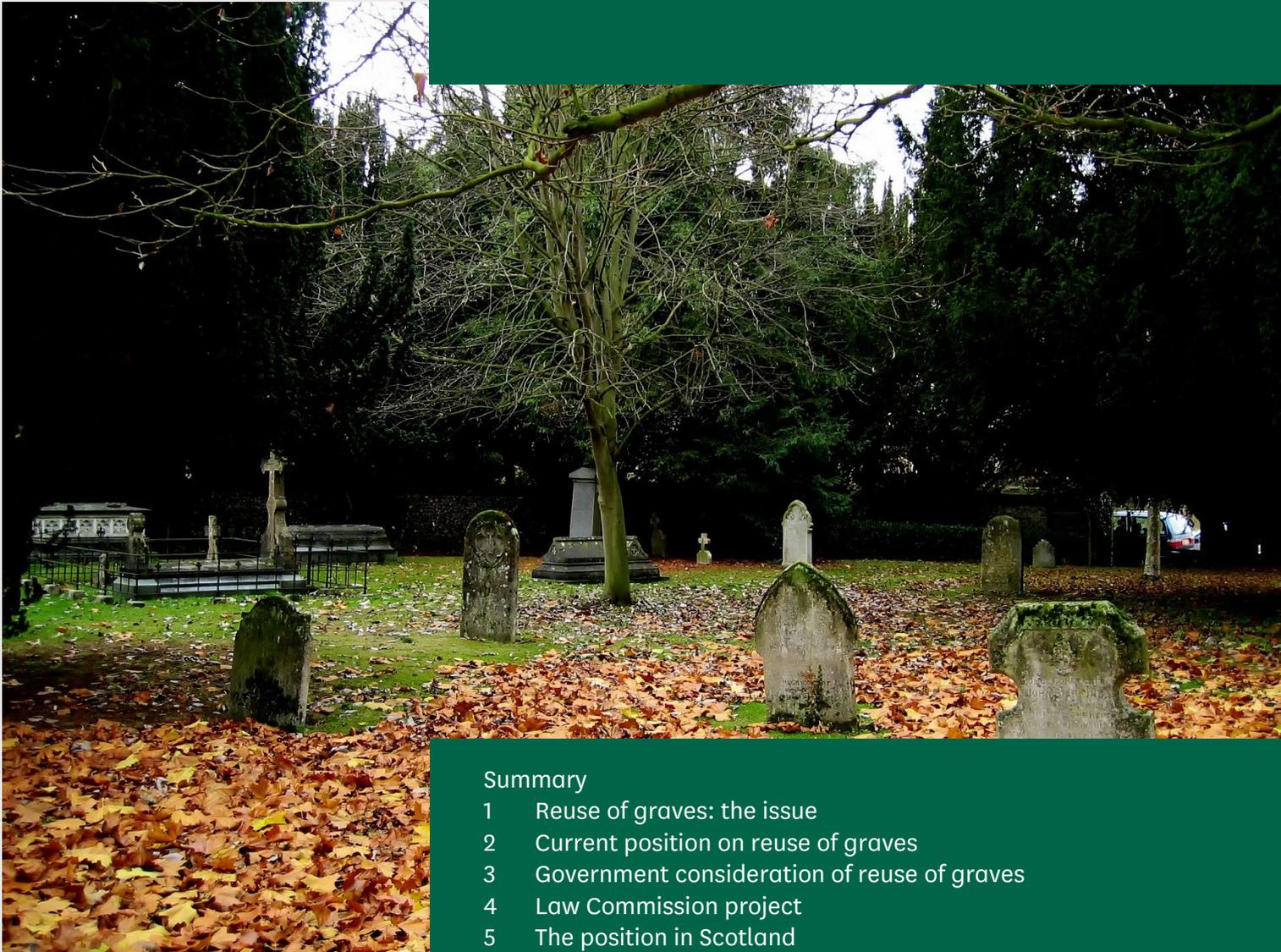


Research Briefing

16 October 2023

By Catherine Fairbairn

Reuse of graves



Summary

- 1 Reuse of graves: the issue
- 2 Current position on reuse of graves
- 3 Government consideration of reuse of graves
- 4 Law Commission project
- 5 The position in Scotland

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Summary

England and Wales

Shortage of space for burial

In some areas, land for burial is scarce and some burial grounds have closed because they are full. Many people, including some faith groups for whom burial is a religious requirement, do not wish to consider the option of cremation.

The problem of the shortage of burial space has been highlighted repeatedly. The reuse of graves, using the “[lift and deepen](#)” (PDF) method has been under consideration for some time as a means of addressing this problem. This involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials.

Current position

The general position is that buried human remains may not be disturbed without specific authority. [Section 25 of the Burial Act 1857](#) makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty (permission from the Church). Graves have been reused in London with Church permission.

Under the [Local Authorities Cemeteries Order 1977](#), [burial authorities](#) may “reclaim” rights in reserved graves purchased at least 75 years ago if the rights have not been exercised and the relevant notice has been given.

London burial authorities have some additional powers. In specified circumstances, they may reclaim a private grave (a grave in respect of which an exclusive right of burial has been purchased) and then use the remaining space in it for the purpose of further burial, where the burial rights have not been exercised for 75 years or more and notice has been published. [This process would not disturb any existing remains in the grave](#) (PDF).

[London burial authorities also have power](#) to disturb remains in private graves older than 75 years for the purpose of deepening the grave to allow further burials to take place.

Labour Government consultation

In 2004, the Labour Government consulted on a number of issues relating to burial law, including the reuse of graves. The proposal to reuse graves had a mixed reception.

In its response to the consultation, the Labour Government initially indicated it was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards. However, it later said this issue was being kept under review but was not being taken forward at that time. Successive Governments have similarly kept the issue under review.

Law Commission project

In December 2022, the Law Commission began a project, [Burial, Cremation, and New Funerary Methods](#). At the time of writing this briefing, the project is still at its scoping phase which will lead to terms of reference being agreed with the Government. However, the Law Commission anticipates the project will include a review of the laws governing burials and cremation and consideration of the creation of a regulatory framework for safe and dignified new processes.

Scotland

In Scotland, graves are referred to as “lair”, and reuse of graves as “restoration to use of lairs”.

The [Burial and Cremation \(Scotland\) Act 2016](#) provides for the restoration to use of lairs ([sections 32 to 44](#)), although most of these provisions are not yet in force (as of October 2023). This legislation followed a Scottish Government [consultation](#) which included questions about alleviating pressure on burial grounds. Most individuals who responded to the consultation [opposed the proposal or called for more information about proposed safeguards](#).

The Scottish Government considered that, despite these objections, [the fundamental purpose of the proposal remained valid](#) and would be taken forward, and pointed to the safeguards which would be put in place.

The Scottish Government is currently consulting on a range of matters relating to burial, [including in relation to commencing the sections in the 2016 Act which deal with the restoration to use of lairs](#). The consultation will close on 17 November 2023.

1 Reuse of graves: the issue

The reuse of graves has been under consideration for some time as a means of addressing the problem of the shortage of space for burial.

1.1 Shortage of space for burial – the problem

Provision of burial grounds is a matter for discretion by relevant local authorities, private companies, or various religious organisations, in the light of demand or tradition.¹

In some areas there is now a scarcity of land available for burial and some burial grounds have closed because they are full. Many people, including some faith groups for whom burial is a religious requirement, do not wish to consider the option of cremation. The position is particularly acute in London.²

The problem of the shortage of burial space has been highlighted repeatedly, over a long period of time, including, for example, in:

- a Labour Government consultation paper, [Burial Law and Policy in the 21st Century](#) (PDF), published in 2004³
- the results of a [Ministry of Justice survey of burial grounds](#) (PDF), published in 2007⁴
- the report of an [audit of London burial provision](#) (PDF), published in 2011⁵
- a [BBC survey conducted in 2013](#)⁶

¹ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#) (PDF, archived), January 2004, p1

² As above p15

³ As above

⁴ Ministry of Justice, [Burial Grounds The results of a survey of burial grounds in England and Wales](#) (PDF), June 2007. See also a written ministerial statement announcing its publication, [HC Deb 5 June 2007 cc11-12WS](#)

⁵ [An Audit of London Burial Provision A report for the Greater London Authority by Julie Rugg and Nicholas Pleace, Cemetery Research Group, University of York](#) (PDF), 2011

⁶ BBC News, [“Reuse graves in England or run out in 20 years”](#), 27 September 2013 (accessed 16 October 2023)

- a [2021 investigation by The Times](#).⁷

1.2

Reuse of graves – a possible solution?

The [eighth report](#) of the Select Committee on Environment, Transport and Regional Affairs, published in 2001, argued for legislation to enable reuse of graves (with safeguards):

It is the almost universal view of those in the burial industry that reuse is the only long-term solution not only to the lack of burial space, but also to the long-term financial viability of cemeteries. If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave reuse. ... For the reasons stated above, and assuming that the necessary safeguards are included, we are ourselves of the opinion that legislation should be introduced allowing burial to take place in reused graves.⁸

The Labour Government's [2004 consultation paper](#) (PDF) on burial law and policy set out how the “lift and deepen” method of reusing graves might alleviate the problem of shortage of space:

Although various models might have been considered, the method of re-use recommended by LPAC [London Planning Advisory Committee] was the so-called ‘lift and deepen’ practice.⁹ This involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials. Since old remains would occupy less room, and the grave itself would be dug, wherever possible, deeper than has commonly been the practice (perhaps to 3.1 metres, allowing a further three burials above), it was said that, in practice, the grave could be used indefinitely if the cycle were repeated.¹⁰

⁷ Kaya Burgess and Ryan Watts, “[Scramble for cemetery space swallows up allotments](#)”, The Times, 5 March 2021 (subscription required) (accessed 16 October 2023)

⁸ House of Commons Environment, Transport and Regional Affairs Select Committee, [Cemeteries](#), 2 April 2001, HC 91 2000-01, para 127

⁹ Footnote to quoted text: “Brick or vault graves are unlikely to be appropriate for re-use in this way”

¹⁰ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#) (PDF, archived), January 2004, p15

2 Current position on reuse of graves

2.1 Buried human remains not to be disturbed without authority

The general position is that buried human remains may not be disturbed without specific authority. [Section 25 of the Burial Act 1857](#) makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty (permission from the Church).

2.2 Exclusive rights of burial

When a grave is purchased, this generally refers to the “exclusive right of burial” for that grave space and not to the purchase of the actual land. A burial authority may grant an exclusive right of burial,¹¹ usually for a period not exceeding 100 years, or the right to burial in any grave space which is not subject to any exclusive right of burial.¹²

The general effect of purchasing the exclusive right of burial is that no one may be buried in the grave without the owner’s permission.

2.3 Reclaiming graves which have never been used

Under the [Local Authorities Cemeteries Order 1977](#) (LACO), burial authorities may “reclaim” rights in reserved graves purchased at least 75 years ago if the rights have not been exercised and the relevant notice has been given.¹³ These graves would then be available for new burials.

¹¹ Burial authorities are defined to include district councils, the councils of London Boroughs, and parish councils: [Local Government Act 1972 section 214](#)

¹² [Local Authorities’ Cemeteries Order 1977](#), SI 1977/204, [Article 10](#). Grants to the Commonwealth War Graves Commission may still be without limit

¹³ [Local Authorities’ Cemeteries Order 1977](#), SI 1977/204, [Article 10\(3\)](#). See Department for Constitutional Affairs, [Guide for Burial Ground Managers](#) (PDF), November 2005, para 2.29

LACO does not authorise the disturbance of human remains.¹⁴

2.4 Reuse with Church of England permission

Section 25 of the Burial Act 1857 (as amended by [section 2 of the Church of England \(Miscellaneous Provisions\) Measure 2014](#)) allows for the disturbance of remains in churchyards and other consecrated ground, with Church permission (faculty). The Cemetery Research Group provides information about the effect of the 2014 Measure:

S25 of the Burial Act 1857 also allowed for exhumations to take place ‘from one consecrated place of burial to another by faculty granted by the ordinary for that purpose’ without need of a Ministry licence. Essentially, this meant that where an exhumation is taking place in consecrated ground, with any remains re-interred in consecrated ground, then faculty only is required. Under Church law, it has been possible to re-use churchyards for – in some instances – centuries. Each diocese sets its own ‘best practice’ guidelines on churchyard management.

The Church of England (Miscellaneous Provisions) Measure 2014 has subsequently made changes to the Burial Act 1857. S2 of the Measure made a slight amendment to the wording of s25, which now allows for the disturbance of remains in churchyards and other consecrated ground without need for re-interment in consecrated ground. This change of wording permits a ‘lift and deepen’ approach to grave re-use in consecrated ground without a Ministry of Justice licence. This aspect of the Measure was enacted from January 2015.¹⁵

The Diocese of Southwark has published advice that there should be an expectation of reuse of graves after 75 years:

Except where burial rights are granted subject to a particular period of years, there should be an expectation that grave spaces will in due course be reused. This is necessary to economise on land use at a time when grave space is a diminishing resource. This is an increasingly urgent problem which all those responsible for churchyards have to face. Sensitive solutions have to be devised and implemented.

Reuse of graves within a period of less than 75 years is likely to cause distress and offence to the living, as well as appearing disrespectful to the dead. But Incumbents should promote and publicise policies for the reuse of graves as soon as 75 years have elapsed after the most recent burial therein, not least so that those presently arranging a burial are informed of what is likely to happen in the future.

Rather than planning for reuse on a grave-by-grave basis, there is merit in seeking to bring larger areas into reuse as part of a coherent plan.¹⁶

¹⁴ Local Authorities’ Cemeteries Order 1977, [Article 23](#)

¹⁵ Cemetery Research Group, [Frequently Asked Questions, “Isn’t it illegal to disturb human remains?”](#) (accessed 16 October 2023)

¹⁶ Diocese of Southwark, [Reuse of grave spaces](#) (accessed 16 October 2023)

The Cemetery Research Group states that the City of London Cemetery in Newham is re-using graves with church permission:

At one London cemetery – the City of London, in Newham – the re-use of graves takes place under faculty in consecrated sections of the site under Ecclesiastical law. Here, the local authority disinters any remains, and reinters them in a ‘designated’ grave at the end of the row, so releasing the original grave for use by another family. The last interments in the re-used graves will have taken place at least eighty years ago.

The local authority conducts re-use according to strict protocols. The last interment will have taken place at least eighty years ago. No disturbance takes place of any remains more substantial than minor bone or coffin fragments. Any remains are placed in a hessian sack before being re-interred in the designated grave. In no instance are remains cremated or taken away from the site. Hundreds of graves have been made available for re-use using this process.¹⁷

2.5 Reclamation and reuse of graves in London

In specified circumstances, burial authorities in London may reclaim a private grave and then use the remaining space in it for the purpose of further burial,¹⁸ where the burial rights have not been exercised for 75 years or more and notice has been published.¹⁹ This process would not disturb any existing remains in the grave.²⁰

London burial authorities also have power to disturb remains in private graves older than 75 years for the purpose of deepening the grave to allow further burials to take place.²¹ In 2013, the London Environmental Directors Network published [detailed technical guidance on reuse and reclamation of graves in London local authority cemeteries](#) (PDF).²² It includes a summary of the legislation:

Section 74 [of the London Local Authorities Act 2007] enables the disturbance of human remains in certain graves, in cases where a burial authority wishes to deepen the grave to enable more burials to take place. Under the City of

¹⁷ Cemetery Research Group, [Aren't they re-using graves in London?](#) (accessed 16 October 2023)

¹⁸ A private grave means a grave in respect of which an exclusive right of burial has been purchased

¹⁹ City of London (Various Powers) Act 1969 and Greater London Council (General Powers) Act 1976. These provisions do not apply to all cemeteries in London including private cemeteries, which are not burial authorities as defined in [section 214 of the Local Government Act 1972](#), and some other cemeteries: London Environmental Directors Network, Cemeteries, Crematoria and Burial Provision Sub-Group, [Technical Guidance on the Reuse and Reclamation of Graves in London Local Authority Cemeteries](#), October 2013, paras 3.6.2-3.6.4

²⁰ London Environmental Directors Network, Cemeteries, Crematoria and Burial Provision Sub-Group, [Technical Guidance on the Reuse and Reclamation of Graves in London Local Authority Cemeteries](#), October 2013, para 3.3.1

²¹ [London Local Authorities Act 2007](#), section 74

²² London Environmental Directors Network, Cemeteries, Crematoria and Burial Provision Sub-Group, [Technical Guidance on the Reuse and Reclamation of Graves in London Local Authority Cemeteries](#) (PDF), October 2013

London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976, burial authorities are already able, if conditions are met, to carry out burials in existing graves without disturbing human remains. They may only do so in respect of graves in respect of which they have extinguished a registered right of burial. The 1969 and 1976 Acts provide that the burial authority is not entitled to extinguish any rights of burial until at least 75 years after the last burial in the grave, and after having made efforts to notify the holder of the right of burial, and allow objections to be made.

Section 74 will only apply in relation to a grave where a registered right of burial or interment has been extinguished by the burial authority under either the 1969 Act or the 1976 Act. The burial authority would be able to disturb human remains for the purpose of deepening the grave to allow further burials to take place. No human remains may be disturbed under the Section if they have been interred for a period of less than 75 years. Any remains disturbed must be reinterred in the same grave...²³

Two other Acts also allow re-use in specified circumstances: [New Southgate Cemetery Act 2017](#) and [Highgate Cemetery Act 2022](#).

The technical guidance highlights how the position in London differs from that elsewhere:

Whilst the Ministry of Justice issues licences in general circumstances that accord with section 25 of the Burial Act 1957, a local authority situated in London is not required to apply for a licence when specifically utilising the London Local Authorities Act 2007.

Outside London a different situation exists. As the powers contained in the London Local Authorities Act 2007 are not available to authorities outside of London any application to the Ministry of Justice for a licence to reuse graves via lift and deepen made by an authority situated outside of London would be refused. Outside of London the Ministry will only consider the granting of a licence to lift and deepen on an individual basis (ie at the request of an individual grave owner or to rectify an error in connection with a particular grave).²⁴

2.6

Private bill

East Hertfordshire District Council is seeking similar powers to reuse graves as those available in London, by way of the [Bishops' Stortford Cemetery Bill \[HL\]](#). This is a private bill which is currently before Parliament. Further information is available on the [Bill page on the Parliament website](#).

At Lords third reading, Viscount Stansgate (Labour) commented:

²³ London Environmental Directors Network, Cemeteries, Crematoria and Burial Provision Sub-Group, [Technical Guidance on the Reuse and Reclamation of Graves in London Local Authority Cemeteries](#) (PDF), October 2013, Appendix 3.3

²⁴ As above, paras 3.2.2 and 3.2.3

I bring to the House's attention that this is a Bill about cemeteries and running out of space. In years to come, we will find more cemeteries in this position, so we may have further Bills of this kind.²⁵

The Parliament website sets out information about [private bills](#).²⁶

²⁵ [HL Deb 14 September 2023 c1114](#)

²⁶ [Private Bills - UK Parliament](#) (accessed 16 October 2023)

3 Government consideration of reuse of graves

3.1 Labour Government consultation

On 15 January 2004, the Home Office published a consultation paper, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#) (PDF).²⁷ The consultation paper covered a number of issues relating to burial law.

The then Government asked for views on the reuse of graves:

Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be 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.²⁸

The Government said the “lift and deepen” method was its preferred approach, but invited views on any foreseen disadvantages of this method, or advantages of alternative methods.²⁹

3.2 Labour Government response to consultation

The consultation period ended on 13 July 2004. In April 2006, the Department for Constitutional Affairs published a [summary of responses](#) (PDF) to the consultation.³⁰ This indicated that a range of opinions had been received in relation to the proposal to reuse graves:

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

²⁷ At that time the Home Office was responsible for burial matters. In 2005, responsibility was transferred to the Department for Constitutional Affairs, now the Ministry of Justice.

²⁸ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#) (PDF, archived), January 2004, Question 22

²⁹ As above, Question 26, p16

³⁰ Department for Constitutional Affairs, [Burial law and policy in the 21st century Response to consultation](#), CP (R) DCA/HO 1/05 (PDF, archived), April 2006

which would need careful presentation and handling, or fuller consideration of the financial, logistical and safety implications. 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. There was, however, a substantial minority entirely averse to re-use, especially from the general public.³¹

On 5 June 2007, the Ministry of Justice published its [response to the consultation](#) (PDF). Announcing publication in a written ministerial statement, Harriet Harman, who was then Minister of State at the Ministry of Justice, said the then Government was satisfied it would be right to enable graves to be reused, subject to appropriate safeguards:

One solution which the Government have been urged to consider is the reuse 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 are now satisfied that it would be right to enable graves to be reused in this way, subject to appropriate safeguards. For example, no grave should normally be reused unless the last burial took place at least 100 years before. And families should have the opportunity to defer reuse 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 reuse 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 reuse of old burial grounds, the provision of burial space generally, and the maintenance of existing burial grounds.³²

In March 2008, Bridget Prentice, who was then a junior Justice Minister, said work was progressing well on the practical details of how proposals to allow local authorities to reuse graves in their cemeteries would operate. At that time, she said it was expected that an announcement would be made in the near future about how the initiative would be taken forward, including a public consultation exercise.³³

However, in April 2009, Lord Bach, who was then a junior Justice Minister, indicated this issue was still being kept under review but was not being taken forward at that time.³⁴

³¹ As above, p9, para 20

³² [HC Deb 5 June 2007 cc 11-12 WS](#)

³³ [HC Deb 19 March 2008 c1194W](#)

³⁴ [HL Deb 22 April 2009 cc1497-9](#)

3.3 Reuse of graves kept under review

Successive governments have said they would continue to keep the issue under review.³⁵

In March 2022, Sir John Hayes (Conservative) tabled a written parliamentary question asking the Secretary of State for Justice:

...what recent assessment he has made of the availability of burial space in England and Wales; and whether the Government has plans to bring forward legislative proposals on the re-use of graves, similar to the regulations that apply in London.

Tom Pursglove, who was then a junior Justice Minister, replied:

As set out in our response on 2 December (UIN 80903), the reuse of burial space is a sensitive issue and we are carefully considering what action could be taken. We have not made a recent assessment of the availability of burial space in England and Wales, but we continue to work closely with stakeholders to build a national picture and welcome any information from burial providers about the circumstances in their area.

In addition, the Law Commission, as part of its programme of law reform, will be considering the modernising and streamlining of the law governing the disposal of human remains, with a view to putting forward a legal framework for the future. The Law Commission is working to prioritise this project, with a view to commencing it later this year subject to completion of current work. Further information on the project can be found at: www.lawcom.gov.uk/project/a-modern-framework-for-disposing-of-the-dead.³⁶

Information about the Law Commission's project is set out in the next section of this briefing.

³⁵ See, for example, [HC Deb 16 July 2012 c544W](#); [HC Deb 5 September 2012 cc360](#); [HC Deb 5 September 2014 c632](#); [PQ 122416 \[on Cemeteries\], 12 January 2018](#)

³⁶ [PQ 137242 \[on Cemeteries\], 18 March 2022](#)

4

Law Commission project

In December 2022, the Law Commission began a project, [Burial, Cremation, and New Funerary Methods](#).³⁷ At the time of writing this briefing, the project is still at its scoping phase which will lead to terms of reference being agreed with the Government. Meanwhile, the Law Commission anticipates the project will cover the following matters:

Generally, however, this project will seek to create a future-proof legal framework for disposal of the dead. We expect it will include a review of the laws governing burials and cremation and consideration of the creation of a regulatory framework for safe and dignified new processes. We expect that it will also consider the legal status of a person's wishes about what happens to their body following death as well as the rules governing who else has the right to make decisions about disposal of the deceased's body.³⁸

³⁷ Law Commission, [Burial, Cremation, and New Funerary Methods](#) (accessed 16 October 2023)

³⁸ As above

5

The position in Scotland

In Scotland, graves are referred to as “lair”, and reuse of graves as “restoration to use of lairs”.

The [Burial and Cremation \(Scotland\) Act 2016](#) provides for the restoration to use of lairs ([sections 32 to 44](#)), although most of these provisions are not yet in force.

The legislation followed a 2015 Scottish Government [consultation](#),³⁹ paragraphs 58 to 88 of which dealt with [Alleviating pressure on burial grounds](#).

In July 2015, the Scottish Government published its [Consultation Analysis Report](#). This revealed that there had been a mixed response to the questions relating to [reuse of burial lairs](#) and that most individuals who responded answered only these questions and opposed the proposal or called for more information about proposed safeguards:

There was clearly considerable concern about the concept of allowing burial lairs to be reused in certain circumstances, and some of the related proposals, particularly from members of the public who responded to the consultation. Given the sensitivity of this topic, this is perhaps unsurprising. The vast majority of individuals who responded to the consultation answered only those questions relating to burial lair reuse, and most of them opposed the proposal, or at least called for more information about the safeguards that would be put in place to govern the process. Most organisations who responded to this issue supported the proposal, although there were a number who did not, including a small number of burial authorities and the National Association of Funeral Directors.

As discussed at paragraphs [63 - 65](#), a variety of reasons were put forward in opposition to the reuse of lairs. A number of people believed that human remains should not be disturbed for any reason. Others were concerned that lairs in which they had an ongoing interest would be reused without the opportunity to object. A number of responses argued that safeguards needed to be set out to detail the process by which lairs would be selected for reuse. Some responses suggested that reusing lairs would harm the heritage and research value of the burial grounds in which they were located.⁴⁰

³⁹ Scottish Government, [Consultation on a Proposed Bill Relating to Burial and Cremation and Other Related Matters in Scotland](#), 26 January 2015

⁴⁰ Scottish Government, [Consultation Analysis Report on a proposed Bill relating to burial and cremation and other matters in Scotland](#), 6 July 2015, paras 161-162

The Scottish Government considered that, despite these objections, the fundamental purpose of the proposal remained valid and would be taken forward, pointing to the safeguards which would be put in place.

The consultation paper set out in detail the proposed process burial authorities would be required to undertake before being able to reuse a burial lair. This would offer people the opportunity to object to the reuse of a particular burial lair, and will enable burial authorities to take steps to try to identify the owner of a lair. Since the only burial lairs that would be initially suitable for potential reuse are those which appear to have been abandoned (eg, where the lair is overgrown or the headstones or other memorials are damaged or have fallen, or where the burial authority does not have current details of the owner) the notification process might help to identify the owner, enabling the burial authority to update its records and giving the owner the opportunity to repair the lair as necessary and undertake regular maintenance.

(...)

The Scottish Government believes that the process described in the consultation paper, together with various suggestions made through the consultation process, offer sufficient safeguards to ensure that the reuse of burial lairs should be included in the Burial and Cremation (Scotland) Bill. While remaining a sensitive subject, the benefits of allowing the reuse of burial lairs warrant the proposal being taken forward in legislation, supporting the sustainability of burial grounds and making burial a more affordable and viable option in places where there is severe pressure on burial land. If the policy came into force it would be an option for burial authorities to use in their management of burial grounds; it would not be mandatory.

The Scottish Government will continue to engage with stakeholders to further develop this policy with a view to taking account of the issues raised during the consultation process. This should ensure that the Burial and Cremation (Scotland) Bill contains provisions which offer a robust process for the reuse of lairs with safeguards built into every stage.⁴¹

The Scottish Government is currently consulting on a range of matters relating to burial,⁴² including in connection with commencing the sections in the 2016 Act which deal with the restoration to use of lairs.⁴³ The consultation paper sets out how these sections would operate:

Once these sections of the 2016 Act are brought into force, a lair in a burial ground can be considered for restoration if it appears to have been abandoned, the relevant period of time has passed and the burial authority is of the opinion that the lair is suitable for restoration. The relevant period of time is:

⁴¹ As above, paras paragraphs 163-7

⁴² Scottish Government, [Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland](#), August 2023

⁴³ As above, [section 6](#)

- where the lair contains human remains, 100 years from the day on which the last burial took place, or
- where no burials have taken place in the lair, 50 years from the day on which the right of burial in the lair was last sold

Additional strict safeguards are included in the 2016 Act to ensure lairs are only considered for restoration once the burial authority has notified the lair right-holder and given an opportunity for objection.

In some instances the lair right-holder may request that the lair is restored. Section 40 allows for this but the burial authority is still required to follow the consultation procedure set out in section 32 relating to archaeological and Commonwealth War Graves Commission (CWGC) interests.

Notification

Where a burial authority proposes to restore a lair and is aware of the name and address of the lair right-holder or is able, after some enquiry, to establish who the lair right-holder is, then they must give notice in accordance with section 33(3). The lair right-holder will have a period of time to consent or object in writing before any work to restore the lair can take place. The proposed time period is no less than 6 months and no greater than 12 months from the date the notice is issued.⁴⁴

The Scottish Government is seeking views on matters such as the appropriate notification periods. The consultation will close on 17 November 2023.

⁴⁴ As above, paras 129-131

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