



## Private Burial Grounds and Cemeteries Bill [HL]

### HL Bill 31 of 2022–23

Author: Edward Scott

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The [Private Burial Grounds and Cemeteries Bill \[HL\]](#) is a private member's bill introduced in the House of Lords by Baroness Hussein-Ece (Liberal Democrat). The bill would establish a new regulatory regime for private burial grounds and cemeteries in England and Wales.

The bill received first reading on 15 June 2022. A date for the bill's second reading has yet to be confirmed.

#### I. Purpose of the bill

Unlike local authority burial grounds which are regulated under the [Local Authorities' Cemeteries Order 1977](#) and the [Local Government Act 1972](#), there are currently no statutory provisions governing private cemeteries.

Instead, a series of acts, referred to as the Burial Acts, govern certain aspects of how private burial grounds operate. Most of the Burial Acts date from the nineteenth century. For example, [section 8 of the Burial Act 1855, as amended](#), allows the government to establish inspections of burial grounds, including private burial grounds. [Section 25 of the Burial Act 1857](#), as amended, governs the exhumation of bodies from a burial ground. Private burial grounds and cemeteries may also be regulated by private acts of parliament.

The government has said that while private burial grounds are not governed by the same regulations and guidance as local authority burial grounds, private cemeteries should adhere to the same standards.<sup>1</sup>

Speaking to the purpose of the bill, Baroness Hussein-Ece said:

There has been an increase in privately run burial grounds in England. All that is needed to open a private burial ground is planning permission. No licence is required, and there is little regulation on how they should be regulated and run. Privately run burial grounds remain unregulated in law and are only loosely governed by guidelines. The present regulation goes back to a series of statutes between 1852 and 1857 and is of limited use today. There are a growing number of cases where the maintenance and regulation is left to unscrupulous owners, and there have been incidents and evidence of poor maintenance, reburials, exhumations, without following legal requirements. The local authority, the police or any other body have little power of enforcement. Scotland passed the [Burial and Cremation \(Scotland\) Act 2016](#) that provides a modern, comprehensive legislative framework for burial and cremation. The existing

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<sup>1</sup> House of Commons, '[Written question: Cemeteries: Tottenham](#)', 12 April 2021, 179542.

legislation in England is outdated and increasingly unfit for purpose. This private member's bill would ensure that private burial grounds are brought in line with local authority burial grounds, and provide a modern, legislative framework for burial and cremation.<sup>2</sup>

## 2. Case study: Tottenham Park cemetery

Tottenham Park cemetery is a private cemetery in London established in 1912.<sup>3</sup> Baroness Hussein-Ece is a member of the Tottenham Park cemetery charitable trust and has previously raised concerns about the upkeep of the cemetery.<sup>4</sup> In 2018, the Ministry of Justice conducted a statutory inspection of Tottenham Park cemetery.<sup>5</sup> This followed reports of exhumed human remains being discovered in the cemetery.<sup>6</sup> The review recommended that no new excavations should be conducted.<sup>7</sup>

In 2019, the cemetery came under new ownership.<sup>8</sup> In June 2022, the Ministry of Justice announced that a further inspection of the cemetery would be conducted.<sup>9</sup>

## 3. Bill provisions

The Private Burial Grounds and Cemeteries Bill [HL] contains the following four clauses.

### 3.1 Clause 1: Regulation of private burial grounds and cemeteries

Clause 1 concerns the regulation-making powers in the bill. Subsection 1 would require the secretary of state to make provisions about the management, regulation and control of private burial grounds and cemeteries.

Subsection 2 of clause 1 would establish that these regulations would not apply to any cemeteries provided, owned or maintained by a local authority, the crown or any other public body. Neither would they apply to family cemeteries where the person buried is a member of that family and is on that family's own land. Further to these exceptions, under subsection 3, the regulations introduced by the secretary of state may make provision about the definition of family cemeteries. The regulations may also make provision about the definition of a cemetery run by a public body other than the crown or a local authority.

Subsection 4 of clause 1 would require that these new regulations ensure owners of private cemeteries:

- Take all the steps the owner considers necessary for the proper management, regulation and control of a cemetery.

<sup>2</sup> Text provided by Baroness Hussein-Ece to the House of Lords Library.

<sup>3</sup> Tottenham Park Cemetery, '[About](#)', accessed 4 August 2022.

<sup>4</sup> T-Vine, '[Dignity for the dead: Families to protest over poor state of Tottenham Park cemetery](#)', 28 October 2018.

<sup>5</sup> House of Commons, '[Written question: Cemeteries: Tottenham](#)', 12 April 2021, 179542.

<sup>6</sup> Enfield Independent, '[Human bones found in Tottenham Park cemetery](#)', 13 September 2018.

<sup>7</sup> Kate Osamor MP, '[Tottenham Park cemetery](#)', 14 August 2020.

<sup>8</sup> Tottenham Park Cemetery, '[About](#)', accessed 4 August 2022.

<sup>9</sup> Londra Gazete, '[Ministry of Justice orders a new inspection into Tottenham Park Cemetery](#)', 21 June 2022.

- Keep the cemetery in good order and repair.
- Do nothing in relation to any vaults, tombstones or other memorials other than what is necessary in order to remove a danger.
- Maintain a plan of the cemetery, allocate numbers to burial spaces and maintain accurate records.
- Maintain a register of all the burials in the cemetery and ensure they are publicly available. Under the bill, the cemetery owner would be able to charge a reasonable fee to the public in order to view this register.
- Maintain a record of any disinterments.
- Ensure any records are in a durable form, in order to preserve them from loss or damage.

Under subsection 5 of clause 1, the owner of a private cemetery would be able to establish the terms and conditions under which someone may be granted a burial space or memorial. The cemetery owner would be required to issue a certificate confirming any burial right granted or documentation concerning any other rights granted. The cemetery owner would be required to keep a record of these certificates and other documents.

Subsection 6 of clause 1 concerns the steps to be taken by a cemetery owner if the burial rights they have granted to someone are due to lapse as a result of the terms and conditions they have set. The bill would require the regulations introduced by the secretary of state to set out what these steps should be. Specifically, the bill says the cemetery owner should be required to inform someone of any right they might have to extend their existing burial rights.

### **3.2 Clause 2: Offences**

Clause 2 concerns the offences that might be created as a result of the regulations made under the bill. Subsection 1 of clause 2 states the regulations may create new summary offences, punishable by a fine. These fines may go up to a level 5, unlimited, fine.<sup>10</sup>

The bill would also amend section 25 of the Burial Act 1857 concerning the offence of the removal of a body from a burial ground. It would raise the maximum penalty for this offence from a £200 (level 1) to an unlimited (level 5) fine.

### **3.3 Clause 3: Procedure for regulations**

Clause 3 concerns the procedure by which these new regulations would be introduced. The bill states the regulations would be introduced using the draft affirmative procedure. This means the regulations would need to be approved in draft by both Houses of Parliament before they can be made. The bill would also require the secretary of state to hold consultations on any changes made by these regulations before laying them before both Houses.

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<sup>10</sup> Sentencing Council, '[Fines and financial orders: Approach to the assessment of fines: 9. Maximum fines](#)', accessed 2 August 2022.

### 3.4 Clause 4: Territorial extent and commencement date

Clause 4 states the territorial extent of the bill will be England and Wales only. The bill's provisions would come into force when the bill is passed.

### 4. Recent parliamentary questions

The issue of how private burial grounds and cemeteries are regulated was raised in the House of Lords by Baroness Hussein-Ece in June 2018 in an oral question.<sup>11</sup> She asked the government whether it planned to review legislation to bring private burial grounds in line with cemeteries and burial grounds regulated by statute. She expressed concerns that private burial grounds were loosely governed and that local authorities and the police had little power of enforcement regarding existing statutory offences. She argued there was evidence that some unscrupulous private burial ground owners had conducted unlawful burials, reburials and exhumations. She also raised concerns about a lack of upkeep in some private cemeteries, citing the example of a listed Victorian chapel in Tottenham Park cemetery which had been allowed to fall into ruin.

The then advocate general for Scotland, Lord Keen of Elie, said that the government had agreed that the Law Commission should include a review of the law governing the disposal of human remains in its current programme of law reform. He continued:

I entirely accept the noble Baroness's observation on the limited regulation of private burial grounds in England. That is why we have agreed that the Law Commission should have a project aimed at addressing this matter. The present regulation, such as it is, goes back to a series of statutes between 1852 and 1857 and is of limited utility today.<sup>12</sup>

The review is still at the initiation stage and has yet to be subject to a consultation.<sup>13</sup> The Law Commission has said the project will start as and when resources allow.<sup>14</sup> The review was first announced in the Law Commission's 13th programme of law reform, launched in 2017.<sup>15</sup>

### 5. Read more

- House of Commons Library, '[Reuse of graves](#)', 12 June 2017
- House of Commons Library, '[Unsafe memorials in cemeteries](#)', 5 February 2019

<sup>11</sup> [HL Hansard, 18 June 2018, cols 1848–50.](#)

<sup>12</sup> [HL Hansard, 18 June 2018, col 1849.](#)

<sup>13</sup> Law Commission, '[A modern framework for disposing of the dead](#)', accessed 3 August 2022.

<sup>14</sup> Law Commission, '[A modern framework for disposing of the dead](#)', accessed 3 August 2022.

<sup>15</sup> Law Commission, '[13th programme of law reform](#)', accessed 3 August 2022.

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