







**Law
Commission**
Reforming the law





Burial and Cremation

Summary of the Consultation Paper

This consultation

<p>Who we are?</p> 	<p>The Law Commission of England and Wales is an independent body established by statute to make recommendations to government to reform the law.</p>
<p>What are we doing?</p> 	<p>Conducting a public consultation on our provisional proposals to reform the law governing burial and cremation.</p>
<p>What is it about?</p> 	<p>The law relating to burial and cremation.</p>
<p>Why are we consulting?</p> 	<p>We are seeking views on our provisional proposals and asking questions. Your views will be carefully considered when we decide on our final recommendations.</p>
<p>Who do we want to hear from?</p> 	<p>We are keen to receive responses from as many stakeholders as possible. That includes those who operate burial grounds or crematoria, those who use them, funeral directors, and those with an interest in what happens to our bodies after we die.</p>

What is the deadline? 	The consultation runs for 14 weeks and closes on 9 January 2025.
What happens next? 	After reviewing all responses, we will decide on our final recommendations for law reform, which we will publish in a report at the end of 2025.

This summary

This summary does not summarise all of the provisional proposals and questions set out in our detailed Consultation Paper. Instead, it explains what the project is about, provides some context, and then highlights significant issues discussed in the Consultation Paper. This summary only provides an overview of those significant issues. There are Consultation Questions in the Consultation Paper which are not discussed in this summary.

Before responding, you are encouraged to read our full Consultation Paper, or the relevant parts of it. You do not have to respond to all the questions in our consultation. References in this summary are to the chapters of the Consultation Paper.

The Consultation Paper does not contain any final recommendations for reform of the law. Rather, it makes provisional proposals. We will analyse the responses we receive and consider what recommendations we make to Government in our report. It will then be for Government to decide how to take them forward, and for Parliament to pass any new Acts needed to change the law.

Responding to our consultation

The full Consultation Paper is available on our website at: <https://lawcom.gov.uk/project/burial-and-cremation/>. The deadline for responses is 9 January 2025.

We encourage you to submit your response using the online form available at the link above. If possible, please use this method.

Alternatively, you can send your comments:

- by email to bcnfm@lawcommission.gov.uk; or
- by post to Burial and Cremation project, Property, Family and Trust Law team, Law Commission, 1st Floor, 52 Queen Anne's Gate.

If you send your comments by post, it would be helpful to also send them electronically if possible.

When providing responses, we ask consultees if they could avoid including personal identifying information in the text of their response, particularly where this may reveal other people's identities.

Some of our Consultation Questions ask for consultees' views on a provisional proposal, where we think that the evidence is sufficient for us to advocate a particular way forward. Others ask open questions, inviting consultees to share their views where we do not make a provisional proposal.

Why is reform needed?

Approximately half a million people die in England and Wales each year, and each death will affect the lives of many other people. Almost all of the bodies of those who die will be buried or cremated, and so this area of law affects how each of us grieves and commemorates our losses. This area of law impacts us not just as individuals, but also as members of different communities and faiths. The respect which we show to the dead is of significance to the whole of society.

This project makes provisional proposals for reform to the law governing burial and cremation. It represents a key opportunity for significant reforms to the law in these two areas. Some of the law on burial has remained unchanged since the 1850s, while the main piece of legislation on cremation dates to 1902. Aspects of the law in its current state offer too little protection to people who bury or cremate their family and friends. Research also shows that there is a risk of burial space running out in the future, which is an issue that law reform could help to address.

Regulation of burial grounds

Burial law has evolved over the centuries, moving from being solely the responsibility of the Church of England to the diverse burial sector we see today. As a result, different laws apply to the burial grounds which are operated by local authorities, the Church of England, the Church in Wales, and to different kinds of private burial grounds.

“Private” burial grounds

When we refer to “private” burial grounds in this Consultation Paper, we include burial grounds operated by private companies. But we also include all burial grounds which are not operated by local authorities or the Church of England (or the Church in Wales, in some contexts). That includes, for example, burial grounds run by charities or other religious faiths.

Some of the law that applies to burial grounds is over 170 years old, and it is not fit for the twenty-first century. The varied development of burial law also means that it features significant gaps. In many private burial grounds and in Church of England churchyards there is nothing in place to govern how bodies should be buried. There are different standards to which burial grounds should be maintained, and none which apply to many private cemeteries. In the rare cases where there are problems in private cemeteries, that can result in it being difficult for Government to take action to enforce standards. Other rules are inconsistent, such as those governing the rights to a grave space which can be purchased, or the extra protections afforded to burials of members of the armed forces who died in service in the two World Wars.

Reusing and reclaiming old graves

Grave reclamation is when the space above existing burials in a grave is used to make further burials. It is already possible in circumstances where nobody owns the right to a grave, and our proposed reforms would not change this. Grave reuse is when remains in an old grave are disinterred, reburied, and the grave is used again. Reuse is commonly practised and

understood in many countries. While its use in England and Wales is less common and it is less widely known, it is far from novel. Grave reuse has been used in Church of England churchyards since time immemorial, and is also permitted in London local authority cemeteries, and three other cemeteries as a result of private Acts of Parliament.

The available evidence suggests that grave space is running out in many parts of the country. Reusing and reclaiming old graves could help address this problem, provided the law enabling it included sufficient safeguards to ensure public support. But in local authority cemeteries outside London, and in private and non-Church of England religious cemeteries, grave reuse is not permitted by law. Another means to create more burial space could be to reopen for reuse burial grounds, particularly Church of England churchyards, which were closed in the past – in some cases, well over a century ago. But the law does not permit this either.

Disused burial grounds

Where a burial ground is no longer in use, there may come a time where it is preferable for the land to be put to an alternative use. At present there is a general prohibition on building over disused burial grounds. However, this prohibition is not absolute and in Church of England churchyards, other private religious burial grounds, and in burial grounds which have been compulsorily purchased or appropriated for development by a public authority, the law offers an exception to this ban. If the burial ground owner follows certain safeguards, they are able to develop the land which was formerly used for burials. In Church of England and private religious burial grounds, that includes a period of 50 years during which the family of those buried in the burial ground can veto any development.

That leaves other private burial grounds and local authority cemeteries without such provision, meaning that other uses of that land in the future are not possible.

Cremation

The regulations governing cremation have been subject to more recent reform than burial law. However, there are a number of areas of law which cause problems for those working in the sector, or where the law may be argued to no longer serve the purpose for which it was passed.

For example, there are currently a significant number of sets of ashes from cremation which funeral directors have received from the crematoria, but which are then left uncollected by family or friends of the deceased person. But while crematoria have permission to scatter ashes which are left in their care, there is no provision to enable funeral directors to deal with them.

Similarly, funeral directors must ensure that pacemakers are removed from the bodies of deceased people before cremation, otherwise they cause damage to equipment at the crematorium. But due to a feature of Department for Health guidance on pacemakers, funeral directors do not have the legal right to dispose of them, leading to them retaining large numbers of the devices.

Cremation law also includes a rule that crematoria must be constructed at least 200 yards from a home and 50 yards from a highway. That rule was put in place when there were concerns about the public health impacts of emissions from crematoria. Given the effect of modern technology in reducing those impacts, stakeholders have raised questions as to whether that rule is needed in the modern age.

The overall project

This Consultation Paper is part of an overall project called **Burial, Cremation and New Funerary Methods**. That project exists because stakeholders told us, in response to an open public consultation as part of our 13th Programme of Law Reform in 2017, that the law which governs how we deal with the bodies of dead people is out of date and not fit for purpose.

Because the issues involved are so broad, we have split the project into three parts. As well as this one, on **Burial and Cremation**, there are two others:

1. **New Funerary Methods**, which will identify an appropriate regulatory framework for new methods such as alkaline hydrolysis and human composting, which are in use in other jurisdictions. This part is currently in process; and
2. **Rights and Obligations Relating to Funerals, Funerary Methods, and Remains**, which will look at whether decisions you make about your body after death should be binding, and how disputes over funerary methods and remains should be resolved. This part will begin at the end of 2025.

Burial, Cremation and New Funerary Methods

Burial and Cremation

- Subject of this consultation
- Report in 2025
- Draft Bill at the end of the Rights and Obligations part of the project
- Considers the law governing existing funerary methods

New Funerary Methods

- Currently in progress
- Consultation in 2025
- Report and draft Bill in spring 2026
- Considers regulation of new methods

Rights and Obligations in Relation to Funerals, Funerary Methods and Remains

- Begins end of 2025
- Report at the end of 2027
- Considers whether funeral wishes should be binding, and how to resolve disputes
- Draft Bill at the end of this strand, also covering Burial and Cremation

Some issues which relate to this area of law are outside the scope of the project. These include, among others, death registration, the regulation of funeral directors, and planning and environmental law.

Burial and cremation law are matters on which the Senedd, the Welsh devolved legislature, has the power to make new laws. Enacting any reforms that need new primary legislation would require either an Act of the Senedd, or for the Senedd to give consent to the Westminster Parliament legislating.

This summary first sets out how burial and cremation law have evolved over time, and some issues which are relevant to this area of law as a whole. It then addresses the significant issue of grave reuse, and other issues which relate to the future availability of burial space and sustainability of burial grounds. We then look at the regulation of burial grounds, and, finally, cremation law.

The development of burial and cremation law

The table below shows how burial and cremation law have developed over the centuries.

	Burial	Cremation
Pre-1800s	The Church of England is responsible for burials. Burial grounds from other faiths, and Protestant Christian dissenters, begin to develop.	Cremation is not typically practised in the UK.
1800s	First, private cemetery companies are established, often by Acts of Parliament. The Cemeteries Clauses Act 1847 establishes a template for such Acts. Then, successive Burial Acts provide for public cemeteries run by Burial Boards, and some regulation of burials, including powers to close burial grounds.	Some in society begin advocating for cremation as a more sanitary funerary method. The case of <i>R v Price</i> [1884] establishes that cremation is not unlawful. Local Acts of Parliament enable councils or corporations to establish crematoria.
1900s	The Welsh Church (Burial Grounds) Act 1945 resolves the position of Church in Wales churchyards following disestablishment. The Local Government Act 1972 and Local Authorities' Cemeteries Order 1977 replace much of the Burial Acts with simpler powers for parish and district councils to provide cemeteries.	The Cremation Act 1902 is passed, enabling local authorities to establish crematoria, with regulations made under that Act governing how cremation should be conducted in all crematoria. Cremation becomes commonplace by the second half of the twentieth century.
Today	The result of the development of burial law over the centuries is that burial is now a diverse sector, with broadly a tripartite division between Anglican, local authority and private burial grounds.	Rise of direct cremation, where cremation takes place without a funeral service at the same time.

Ecclesiastical law

The Church of England is the established church in England, meaning that it has a formal relationship with the state. One element of that relationship is that the Church of England has its own courts. One such type of court, the consistory court, can hear applications for a type of decision called a “faculty”. A faculty is needed in order to permit many types of changes to churchyards.

The Church in Wales

The Church in Wales was created in 1920 when the role of the Church of England as the established church in Wales was ended. Following disestablishment, it retained the duty to bury all parishioners without discrimination which the Church of England has in England.

Faith and cultural perspectives on burial and cremation

Different faiths and cultures have different approaches to burial and cremation. The two major Christian denominations, the Anglican Church and the Roman Catholic Church, do not require one or the other. They do require that ashes are buried or strewn (laid on the ground and covered with soil) on consecrated ground. Islam places a prohibition on cremation. So does Orthodox Judaism, but not the Liberal or Reform traditions, and we have heard that some Caribbean and African communities in the UK have a strong preference for burial. Hinduism and Sikhism require cremation.

Reusing and reclaiming old graves

The need for reuse and reclamation of old graves

Surveys have found that burial space is running out. A 2007 Ministry of Justice survey found that local authority cemeteries had on average 30 years’ space left, with less time in urban areas. Other studies have suggested that burial authorities have found strategies to release further space, such as using space which had not been intended for burials, but this approach may not be sustainable in the long run.

It is difficult to establish a causal link between the availability of space in cemeteries, and the cost of a funeral, which will include a range of services. Nevertheless, the cost of funerals is rising. The most recent annual SunLife *Cost of Dying* report found that the cost of a basic funeral rose from £3,953 to £4,141 from 2022 to 2023, and had increased 126% over 20 years. We have heard from stakeholders that the cost of burial in some London cemeteries, particularly private ones, can be close to £10,000.

New burial grounds can be developed to meet this need. For burial ground operators, that represents a significant cost, usually running into the millions. Requiring new land for burials means that it cannot be used for other purposes, which at a time of significant public debates around the availability of land for housing may represent a lost opportunity. When each burial plot in a cemetery is only used once, over the course of time the cemetery ceases to serve its original purpose and risks falling into disrepair and becoming a site for anti-social behaviour.

Grave reuse and reclamation offer a potential solution to the problems arising from a shortage of burial space.

Current law

Exclusive burial rights are the rights to control a grave space: to determine who is buried in it and to place any memorial over it. There are two types of burial grounds which have powers to extinguish burial rights early:

1. London local authority cemeteries; and
2. cemeteries which have obtained their own Acts of Parliament for the purpose (namely Highgate Cemetery, New Southgate Cemetery, and Bishop's Stortford Cemetery).

These cemeteries also have the power to reuse graves, which is when remains in an old grave are disinterred and reburied, and the grave is used again. Later in this section, we set out the different steps required by law to extinguish burial rights and then to reuse graves, in these cemeteries.

In Church of England churchyards, grave reuse has been permitted since time immemorial, and a faculty is required if reuse involves moving memorials or remains. We do not propose any changes to grave reuse in relation to the Church of England.

Grave reclamation is when the space above existing burials in a grave is used to make further burials. Under the current law, a grave can be reclaimed if there are no exclusive burial rights in relation to it. That may be because they have expired, because there never were any, or, in the cemeteries which have such powers, because they have been extinguished. Our provisional proposals would not change this position. They would however permit more burial grounds to extinguish burial rights in graves, after which they could then reclaim them.

Extinguishing burial rights

The same rules when it comes to extinguishing burial rights apply whether the grave is then reused, or reclaimed. For burial rights to be extinguished in a grave, there must have been no burials made for at least 75 years. The burial ground operator must publish a notice and serve it on the registered owner of the grave. After a minimum of six months the rights are extinguished. Any tombstone may be removed, and may be destroyed if it is not collected after three months.

If any objection is made by the owners of the burial right within the six-month period, then the right will not be extinguished. Any other objections also stop the process, unless the Secretary of State provides their consent. There are provisions for a registrar to resolve any disputes as to ownership, for details of any tombstones to be recorded and deposited with the Registrar General, and for compensation for any extinguished right to be paid if a claim is made within six months. The power to extinguish burial rights early does not apply to any rights which were granted after these provisions came into force.

Once burial rights have been extinguished in a grave and any memorials dealt with, the law does not require any further steps under the law before a grave can be reclaimed.



Reusing graves

Once any exclusive burial rights have been extinguished, additional steps must be taken before a grave can be reused. The starting point for grave reuse is that moving human remains requires either an exhumation licence from the Ministry of Justice or, if the remains are on ground consecrated by the Church of England, a faculty from the ecclesiastical courts. The Acts of Parliament which permit grave reuse provide an exception to the requirement for a licence (but not for a faculty).

A grave can be reused by removing remains already within it, and reintering them either at a deeper level (known as the “lift and deepen” method), or in another grave (“lift and rebury”). Only lift and deepen is permitted in London council cemeteries, but lift and rebury is permitted in the cemeteries which have obtained private Acts of Parliament.

There are safeguards in place for grave reuse, which are similar to those for extinguishing exclusive burial rights. Only graves where the last remains were interred at least 75 years ago can be reused. Notices must be served by the burial ground operator, and if the owner of the burial right or the relatives of the deceased person objects to the reuse, no further attempt can happen for another 25 years.

Reform to the law

The law as it currently stands risks us running out of burial space; risks the cost of burial continuing to rise; has a particular impact on religious and cultural communities that require burial; risks anti-social behaviour as cemeteries fall into disrepair; and exposes burial ground operators to the cost of new burial grounds. It creates significant inconsistency in the tools to deal with these problems between different types of burial ground, and different parts of the country.

For these reasons, we think that an extension of grave reuse and reclamation powers is desirable. We acknowledge that reuse of old graves is a sensitive issue. Our provisional proposals would introduce two stages of safeguards. First, a burial ground operator would have to consult the local community before obtaining reuse and reclamation powers for the cemetery. Then, there would be protections in place before any particular grave could be reused or reclaimed.

Obtaining reuse and reclamation powers

It is important to note that no burial ground operator would be required to reuse or reclaim graves. Our proposed reforms would only give them the option to do so.

In order to obtain grave reuse and reclamation powers, we provisionally propose that burial ground operators should be required to apply for a decision to the Secretary of State. They would need to submit the results of a public consultation, and a grave reuse and reclamation plan including information about the graves affected, a conservation plan, and any mitigation steps identified through the consultation.

We acknowledge that these requirements are burdensome and would take time and cost money to comply with. They could reduce the extent to which graves are reused. However, the costs involved will be less than the effort and expense of securing a private Act of Parliament, and this approach would provide reassurance to the public.

Safeguards for the reuse or reclamation of any specific grave

We provisionally propose that expanded grave reuse and reclamation powers for all types of burial ground should have broadly the same safeguards as those in place where it is already permitted. Therefore, an objection from relatives of the deceased person or the grave owner should result in the process being stopped for 25 years.

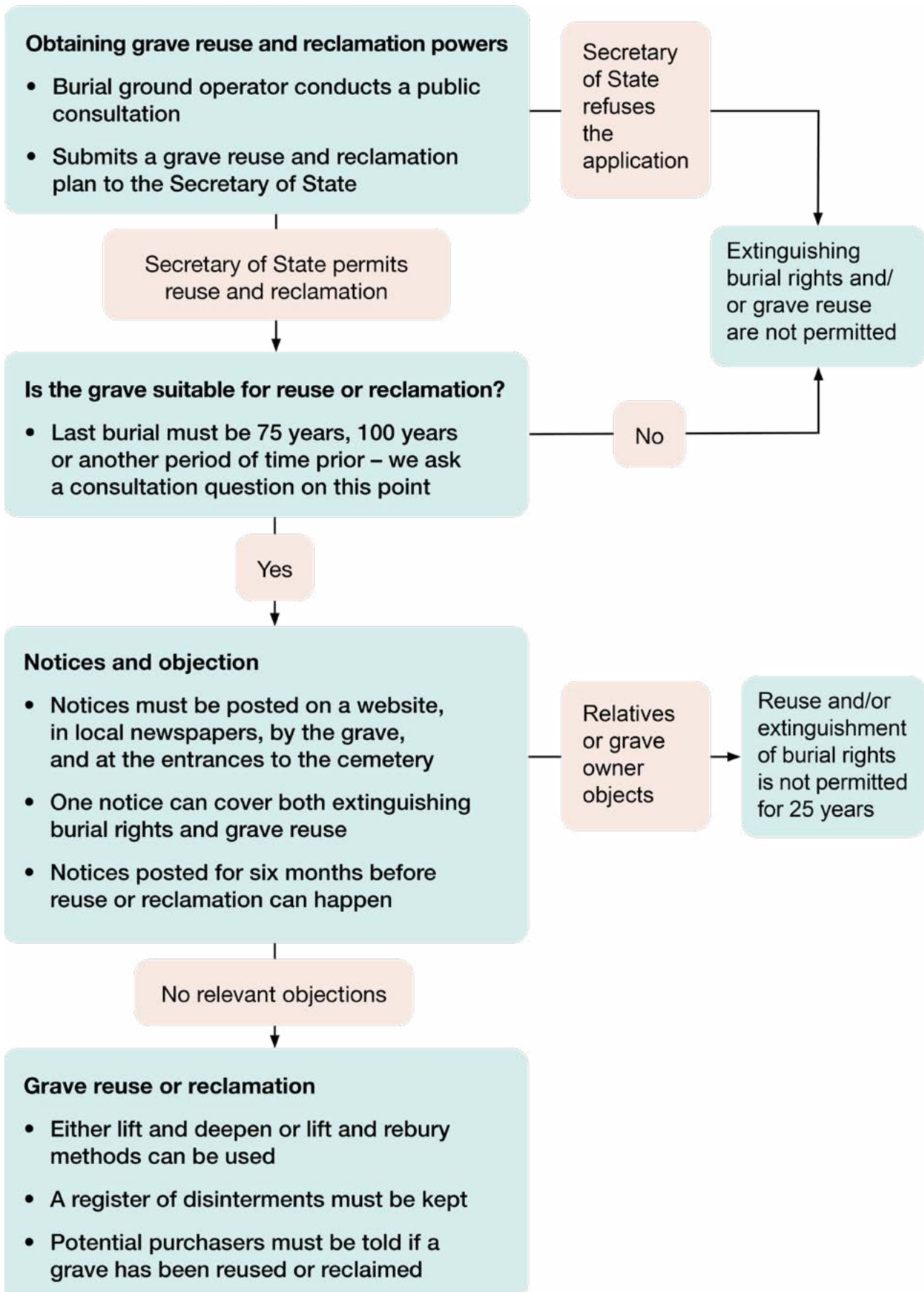
The burial ground operator should be required to tell a potential purchaser that a grave they are considering buying an exclusive right to burial in is one that is being reused or reclaimed.

A key question on which we consult is how long the period should be between the last burial in a grave, and the point at which it can be reused or reclaimed. The current period before reuse or reclaimed is permitted is 75 years. Two main considerations are cited when it comes to how long that period should be: the time it naturally takes for a body to decompose, and ensuring that graves are not reused or reclaimed during the lifetime of someone who knew the deceased person. On that basis, we ask an open question consulting on a period of 75 years, 100 years, or another period.

We provisionally propose that both lift and deepen and lift and rebury methods should be permitted when reusing a grave. We ask whether there should be a requirement that a grave must not be reused if it still contains significant remains from a previous burial. We also ask whether the Secretary of State should be able to permit grave reuse after a shorter period of time in exceptional circumstances.

See Consultation Questions 18 to 24. Chapter 6 of the full Consultation Paper addresses this issue.

Our provisional proposals for grave reuse and reclamation



Closed and disused burial grounds

Closed burial grounds

Under the current law, all burial grounds can be closed to further burials by an Order in Council. Orders in Council are a legal instrument issued by the Sovereign on the advice of the Privy Council. In the case of closing burial grounds, the Secretary of State makes an application to seek one. The law governing this area was introduced in the 1850s to address the perceived public health risk from overly full burial grounds. Now, though, they are mainly used to close Church of England churchyards.

We consider that the use of Orders in Council to close a burial ground is outdated, and provisionally propose that it is replaced by a decision of the Secretary of State. The basis on which a closure order could be made would be set out in a reformed law.

The law currently does not permit closed burial grounds to be reopened. However, some stakeholders have told us that they may be interested in reopening burial grounds which have been closed by Orders in Council. The last burial in many of these will have happened well over a century ago, so they could be suitable for grave reuse. We provisionally propose that it should also be possible for the Secretary of State to reopen closed burial grounds.



When a Church of England churchyard is closed, the parochial church council (the parish church's executive body) has the power to transfer responsibility for its maintenance to the secular parish council, who can then transfer it to the district council. We do not propose any changes to this power, as it results from the duty the Church of England has to bury all parishioners.

However, our proposed reforms would enable closed churchyards which have been transferred into local authority maintenance to be reopened. The question then arises as to who should be responsible for maintaining them when new burials begin to be made. We provisionally propose that it should continue to be the local authority, because returning responsibility to the Church would reduce the incentive to reopen churchyards. However, we consult openly on whether there should be any provision to share fees for burial, or to charge an additional fee for burials in previously closed churchyards, which would be paid to the local authority.

See Consultation Questions 25 to 30. Chapter 7 of the full Consultation Paper addresses this issue.

Closed burial grounds in Wales

The Church in Wales has no equivalent power to transfer the responsibility for maintaining burial grounds to local authorities. However, it continues to have a duty to bury parishioners without discrimination. As a result, we have heard that the Church in Wales is hesitant to open new burial grounds unless they have an endowment and financial plan to maintain them indefinitely. This in turn has a negative impact on the availability of burial space, particularly in areas of rural Wales where local authority burial grounds may be some distance away.

We ask for consultees' views on giving the Church in Wales an equivalent power to transfer maintenance responsibility to local authorities. We recognise that this would create a significant cost pressure on Welsh local authorities.

See Consultation Question 31. Chapter 7 of the full Consultation Paper addresses this issue.

Exhumation

Exhumation is when human remains are removed from a place of burial. Exhumation without lawful authority is a criminal offence. That authority can be obtained from the consistory court if the body is in ground consecrated by the Church of England, or through a licence from the Ministry of Justice if it is not. We do not propose significant changes to these processes, although we do provisionally propose an increase in the maximum penalty for unlawful exhumation.

See Consultation Question 33. Chapter 8 of the full Consultation Paper addresses this issue.

Disused burial grounds

The Disused Burial Grounds Act 1884 prohibits building on disused burial grounds. However, there are a number of provisions which provide exceptions to that rule, which enable land which is no longer used for burial to be put to other uses. Those provisions also disapply the law on exhumations. A burial ground does not have to be formally closed to be disused, it must only no longer be used for burials.

The current exceptions to the ban on building on disused burial grounds cover three circumstances:

1. Church of England churchyards and burial grounds;
2. other religious burial grounds; and
3. burial grounds which have been acquired or appropriated for planning purposes.

In each case certain safeguards must be followed. For non-Church of England religious burial grounds, notice must be given by the owner of the land for two weeks in a newspaper and near the land itself.

The personal representative (the executor or administrator) or relatives of a person buried in the last 50 years in the burial ground have six weeks to object to the development, and if they do, it may not proceed.

If there are no objections, remains buried in the land must be removed and reburied or cremated, and memorials dealt with, in accordance with directions issued by the Secretary of State. Notices must be given of these plans, so that the relatives of people buried in the burial ground may remove the remains themselves at the expense of the owner of the burial ground.

The law in its current state leaves other private burial grounds, and local authority cemeteries, without any provision to enable building to occur on disused burial grounds. A number of stakeholders have told us this is confusing, and a barrier to the long-term financial sustainability of those who operate burial grounds, including local authorities.

We provisionally propose that the scheme applying to non-Church of England religious burial grounds should be extended to all private and local authority burial grounds. We also ask whether the period during which the relatives of people buried in the burial ground can veto development should remain at 50 years, or whether it should be brought into line with the longer period of 75 or 100 years that we consult on as a requirement before graves can be reused.

See Consultation Question 36. Chapter 8 of the full Consultation Paper addresses this issue.

The law applying to different types of burial grounds

Approach to regulation of burial grounds

There are a limited number of laws that apply to all types of burial ground, such as the Secretary of State's powers to inspect them and seek Orders in Council to close them, and the duty to register burials.

Many other aspects of burial law vary depending on whether the burial ground is operated by a local authority, the Church of England, the Church in Wales, or a private operator.

This can lead to confusion as to which laws apply in any given case and, in particular, there have been calls for greater regulation of private burial grounds, given the relative lack of legislation that currently applies to them.

We do not think, however, that it would be right to apply a single set of uniform burial laws to all types of burial grounds. The different levels of regulation which apply in local authority and private burial grounds reflect their different histories and contexts, and what works for one sector may not necessarily always work for another. Private burial grounds are a place where private individuals can enter into contracts with private companies or organisations, and religious private burial grounds are a place where the private rules of association may reflect that religion's practices and doctrines.

Instead, we make provisional proposals for reform where the evidence suggests that specific elements of regulation should apply to particular kinds of burial ground, or, in some cases, to all types of burial ground.

See Consultation Question 1. Chapter 2 of the full Consultation Paper addresses this issue.

Laws applying to different types of burial ground

	Local authority	Church of England	Church in Wales	Private
Maintenance standards	Yes	Yes	Yes	Some
Burial specifications	Yes	No	No	No
Burial rights issued in writing	Yes	Yes	No	Some

Maintenance

Different maintenance standards apply to different types of burial grounds.

1. Local authorities must keep their cemeteries in good order and repair.
2. In some older private burial grounds, founding legislation says they must be kept in complete repair.
3. Canon law says Church of England churchyards must be kept in orderly and decent manner as becomes consecrated ground.
4. Church in Wales burial grounds must be kept in decent order, in such a manner as to preserve the cemetery for the enjoyment of the public.

In addition, burial ground operators will owe different duties of care under the Occupiers' Liability Acts 1957 and 1984 to visitors and to others, including trespassers.

The Secretary of State can authorise the inspection of any burial ground or cemetery to determine its condition, and, where any regulations apply, whether they have been complied with. The Secretary of State can also seek Orders in Council to close a burial ground, or to require actions to be taken to prevent one from being dangerous or injurious to public health.

We are not aware of widespread problems with the standards of maintenance in burial grounds in England and Wales. Over the last decade, however, there have been some complaints about maintenance in local authority cemeteries, and rare instances of more significant poor standards. Stakeholders have also told us that they would welcome greater clarity and uniformity when it comes to maintenance.

A uniform standard of maintenance

We consider that there is a case for a maintenance standard that applies to all burial grounds, including all private burial grounds. Burial is not simply a private matter, but rather one of public importance.

A uniform maintenance standard will need to be sensitive to the varied circumstances of burial grounds, ranging from newly established natural burial grounds to long-closed non-denominational churchyards. For that reason, we provisionally propose a contextual standard: that every burial ground owner should be required to maintain their burial ground in good order appropriate to its current use.

There is a lack of evidence of significant, widespread problems with maintenance in burial grounds. This could be because there is no problem, or it could be because there are problems, but they are not reported. We ask consultees if they have evidence on this point.

Because of this lack of evidence, we are cautious about imposing further regulatory requirements on burial ground operators, beyond a general maintenance duty. If consultation responses establish the need for such requirements, we consider that they could take two possible forms: a statutory code of practice, or a requirement for burial ground operators to publish a management plan. We ask for consultees' views on these options.

See Consultation Questions 5 and 6. Chapter 3 of the full Consultation Paper addresses this issue.

Enforcement

In order for a uniform standard of maintenance and burial specifications to be effective, there needs to be some mechanism to enforce them. We consider the best option is to retain but enhance the current system – that is, the Secretary of State having ad hoc inspection and enforcement powers. The main tool that the Secretary of State currently has is to seek an Order in Council to require actions to be taken. Our provisional proposals would give the Secretary of State the power, in response to an inspection report, to issue a notice requiring action to be taken by a burial ground operator in order to meet their statutory duties, including those imposed by the uniform maintenance standard.

The Secretary of State can currently direct a local authority to take actions in relation to a burial ground. We provisionally propose modernising this power, and enabling the local authority to charge back the costs of carrying out those actions to the cemetery owner.

See Consultation Questions 7 and 9. Chapter 3 of the full Consultation Paper addresses this issue.

Burial specifications

All local authority cemeteries are subject to the same rules as to how a body should be buried. No other type of cemetery is subject to a consistent set of rules.

Within a local authority cemetery, a body must be buried at least three feet deep, meaning that no part of the coffin can be less than three feet below ground level. An exception applies where the coffin is made of perishable materials and the soil is suitable. In these circumstances a burial within a local authority cemetery may be

made at the shallower depth of at least two feet. There are also specific provisions about walled graves and vaults.

There are no universal rules applying to Church of England churchyards or private cemeteries about the minimum depth of a grave.

We think there is a case for a single set of minimum burial specifications across different types of burial ground, on the basis of the impact that improper burials can have on the families and friends of deceased people – particularly if they result in remains being unearthed. The question is what those specifications should be.

The scientific evidence suggests that what happens to a body after it is buried is subject to a wide range of factors, such as the quality of the soil and physical characteristics of the person who has been buried. As a result, rules on how a body should be buried which sought fully to reflect all of these different factors through different rules for different circumstances might quickly become cumbersome.

We have not heard that the current rules in local authority burial grounds, that is, burial at two feet in a perishable coffin and in appropriate soil conditions, or three feet otherwise, result in these negative outcomes occurring. However, the limited research evidence seems to suggest that deeper burials should be required for burials made without a coffin (that is, burials in a shroud). We therefore ask an open question about what the requirements should be for a uniform burial specification. We provisionally propose that breaching the new rules should be a criminal offence.

See Consultation Question 10. Chapter 3 of the full Consultation Paper addresses this issue.



Burial and memorial rights

Everyone in England has a right to be buried in a Church of England churchyard, which is known as an “ordinary right of burial”. The law then governs which churchyards a person has the right to be buried in. The ordinary right of burial does not include a right to be buried in a particular part of the churchyard or burial ground, or to further interments in the plot so that family members are buried in the same plot, or to the erection of a monument or the construction of a vault. For any of these to be granted in a Church of England churchyard, a faculty must be obtained.

An exclusive right of burial is different to the ordinary right of burial. Broadly, an exclusive right of burial is the right to bury one or more bodies or sets of ashes in a specific grave plot. Exclusive rights of burial can be granted in relation to a Church of England, local authority or private burial ground.

In local authority cemeteries, we understand that common practice is for exclusive burial rights and memorial rights to be granted for 50 or 75 years, but there is no lower limit in the law. These rights cannot be granted, in the first place, for longer than 100 years, but can be extended. They must be issued in writing, and can be passed on by deed or inherited. A local authority can also, separately, grant a right to place a memorial on a grave, either to the person who owns the burial right or to a relative, if the owner of the burial right cannot be traced.

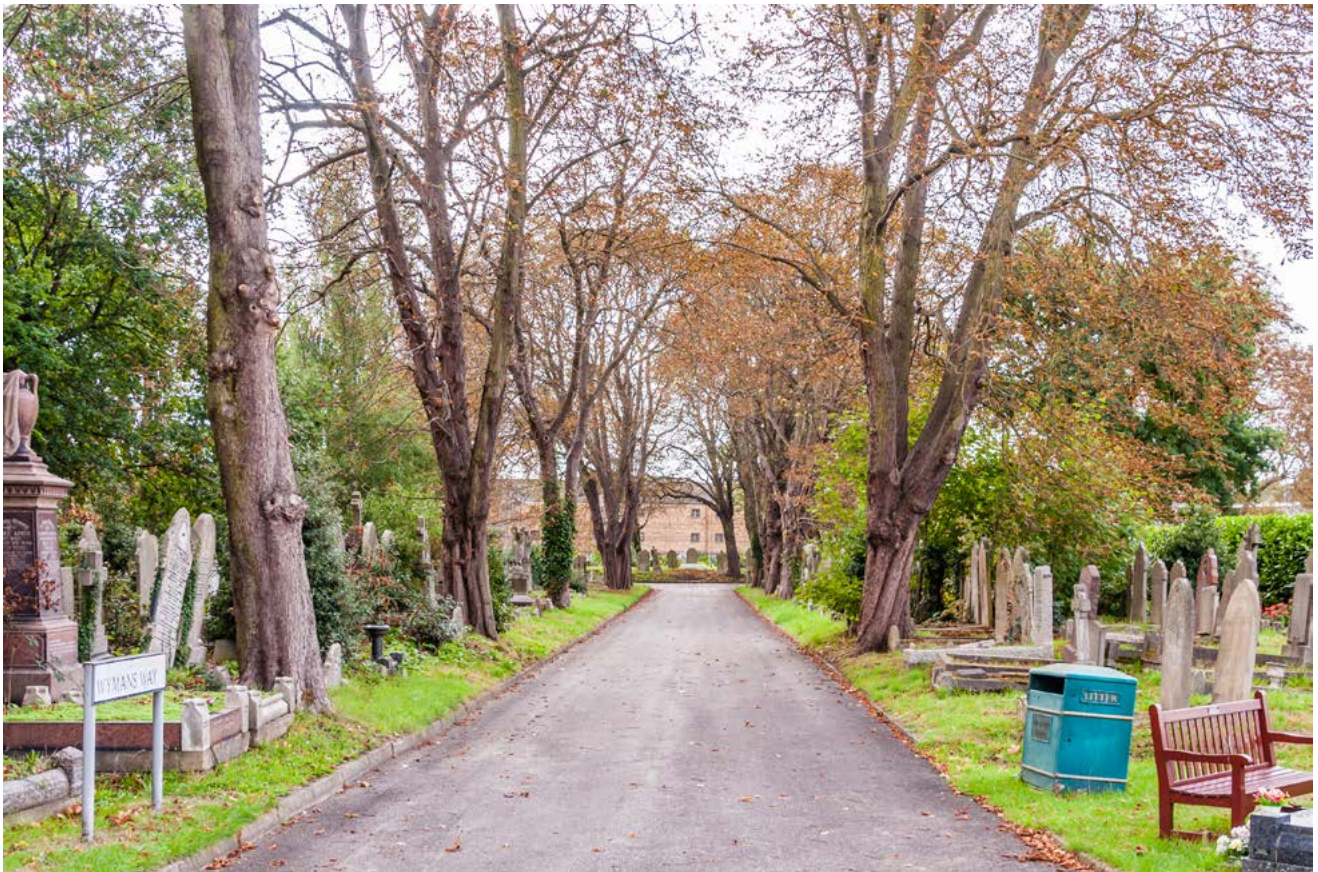
In private burial grounds, the status of exclusive rights of burial varies. Private cemeteries established by Acts of Parliament may have requirements to issue rights in writing, but those which are not governed by any legislation may not.

There are various effects of different exclusive rights of burial. These include the way that exhumation is controlled, remedies for infringement, who has control of the right and whether successors in title are bound by the right.

Problems with burial and memorial rights

We have heard of varied practice in private cemeteries which are not established by statute when it comes to issuing burial and memorial rights, with documentation varying from a simple receipt at one end of the scale, to a deed at the other.

We have also heard of disputes in which family members of deceased people have been unable to place any memorial over their graves because another member of the family, who owns the burial right, has not done so or refuses to do so.



Reform of the law

We consider that imposing some of the formality and record-keeping requirements currently in place for local authority cemeteries upon all private cemeteries would address some of the issues we have heard of, as regards relatives and executors of deceased people being provided with little information on the rights they have purchased. We provisionally propose that all burial rights and memorial rights should be issued in writing.

We also consider that there may be benefit in introducing an optional scheme of statutory exclusive burial rights in private cemeteries, and provisionally consult on such a proposal. Such a scheme could offer certainty and clarity to the purchaser of the right. It could be seen as of benefit to the cemetery operator, by saving the time costs of creating their own scheme.

We also provisionally propose that where no memorial is raised over a grave within two years, local authorities should be permitted to grant a right to place a memorial on the grave to any relative of the deceased person – a neutrally-worded one, if there is any dispute as to what the memorial should say.

See Consultation Questions 11 to 13. Chapter 4 of the full Consultation Paper addresses this issue.

Private land burials

Burial on private land, as opposed to in a burial ground (including a private burial ground), is believed to be rare. It is often used where there is a connection between the deceased person and the land, such as a family farm or landed estate. There is no law prohibiting burial on private land. Private land burials must adhere to the law which applies to all other forms of burial, such as death registration and environmental law.

Private land burials must also be registered. However, there is no requirement that the register is handed over when the land is sold or transferred. This could lead to problems, such as future building works resulting in an exhumation causing distress and cost to the new owners, and the family of the deceased person. We provisionally propose that it should be a criminal offence to fail to transfer the record of a burial that is made on private land when property on the land is sold.

See Consultation Question 3. Chapter 2 of the full Consultation Paper addresses this issue.

The Commonwealth War Graves Commission

The Commonwealth War Graves Commission (“CWGC”) was established under Royal Charter in 1917 to commemorate the 1.7 million service men and women of the Commonwealth Forces who died in the First and Second World Wars.

There are specific rights afforded to the CWGC so that it can protect war burials in the law governing local authority cemeteries, Church of England churchyards, in the law on grave reuse, and in the law on building on disused burial grounds.

However, there are gaps in these rights, and we make provisional proposals which would address them. We also make provisional proposals which would give the CWGC new rights in relation to private cemeteries. Chapter 9 of the full Consultation Paper addresses this issue.

Cremation

The regulations governing cremation have been subject to more recent reform than burial law, and indeed remain in a state of transition following the introduction of the new statutory medical examiner system. However, there remain specific issues which merit a review.

In addition to these issues, we note that the current rules which govern cremation applications can result in disputes, including about who should be able to receive ashes after cremation. We consider that this issue can only be properly considered alongside the overall issue of who should have the right to decide what happens to our bodies after we die. That issue will be addressed in the third part of the overall **Burial, Cremation and New Funerary Methods** project, so we do not make any proposals at this stage – but we do ask for evidence on the scale of the problem.

See Consultation Question 45. Chapter 11 of the full Consultation Paper addresses this issue.

Uncollected ashes and removed pacemakers

Two issues of cremation law cause particular problems in relation to funeral directors.

First, the law provides for crematoria to scatter or bury ashes after 14 days if they are uncollected. Funeral directors have no similar provision, and it has been reported that they hold a quarter of a million sets of uncollected ashes as a result. As well as the practical difficulties arising from storing ashes, the premises of funeral directors are not a suitable final resting place.

We provisionally propose that where funeral directors have held ashes for at least four weeks, they should take reasonable steps to contact the person who applied for the cremation to find out what they want to happen to the ashes. If the applicant does not respond within four weeks, the funeral director should be able to return the ashes to the crematorium, and the crematorium should have a duty to accept them. The crematorium would then be able to bury or scatter the ashes under its existing powers. This provisional proposal would apply retrospectively, that is, to ashes which are currently unclaimed and in funeral directors' possession, as well as to those which are not collected in the future.



Secondly, due to an unintended consequence of Government guidance from the 1980s, many funeral directors hold large numbers of pacemakers removed prior to cremation for safety reasons, which they do not have legal authority to dispose of. We provisionally propose a scheme to enable them to dispose of them as they see fit, once relatives of the deceased person have had an opportunity to claim them.

See Consultation Questions 50 and 53. Chapters 11 and 13 of the full Consultation Paper address these issues.

Where cremations can happen

Cremation law restricts where new crematoria can be constructed. They must be built at least 200 yards from a dwelling house (unless the owner, lessee and occupier consent in writing) and 50 yards from a public highway.

This requirement was introduced in the Cremation Act 1902, due to concerns about the impact of cremations on air quality. While sensitivities on this point continue to exist, environmental protection requirements in relation to cremation are extensive and ought to ensure that emissions, particularly from new crematoria, are not harmful to public health. The rule may be said no longer to serve the purpose for which it was introduced.



However, it appears from planning cases that the rule may now be serving a different purpose, of enabling crematoria to be built on Green Belt and countryside sites where they would otherwise not be permitted. It has also been argued that it therefore ensures an appropriate degree of solemnity at crematoria, by restricting noise and disturbance from neighbours. For this reason, we ask an open question as to whether the rule on where crematoria can be sited should be repealed or retained.

See Consultation Question 51. Chapter 12 of the full Consultation Paper addresses this issue.

Next steps

The provisional proposals contained in the full Consultation Paper provide a key opportunity to bring the law governing burial and cremation up to date. Doing so will ensure that with appropriate safeguards, reuse and reclamation of old graves is available to secure burial space for the future across the country. It will enable closed Church of England churchyards to be reopened so that more people have access to burial space close to them, and in settings which are meaningful for them. It will ensure that there are sufficient protections for bereaved people who choose to bury their families and friends, whatever type of burial ground they use. It will address unresolved and outdated aspects of cremation law.

Your responses to this consultation will enable us to make final recommendations that reflect the expertise of those who work in the burial and cremation sector, and the real-life experiences of those who use the sector for the funerals of their friends and relatives.

