



Bishop's Stortford Cemetery Act 2024

2024 CHAPTER i

An Act to confer powers upon Bishop's Stortford Town Council to extinguish rights of burial and disturb human remains in Bishop's Stortford New Cemetery and Old Cemetery for the purpose of increasing the space for interments; and for connected purposes. [20 March 2024]

WHEREAS—

- (1) Bishop's Stortford Town Council (“the parish council”) is the burial authority for the cemeteries in the town of Bishop's Stortford, known as the Old Cemetery and the New Cemetery (“the cemetery”):
- (2) The town of Bishop's Stortford is within the district of East Hertfordshire, which is under the local government of East Hertfordshire District Council (“the district council”):
- (3) In order that better use may be made of the land in the cemetery for burials, it is expedient that the parish council be authorised to extinguish certain rights of burial granted in graves in the cemetery and to disturb, or authorise the disturbance of, human remains interred in such graves and also in graves where no rights of burial exist, for the purpose of increasing the space for further interments in such graves and to use appropriately or remove altogether from the cemetery memorials on such graves:
- (4) It is expedient that the other provisions contained in this Act should be enacted:
- (5) The objects of this Act cannot be attained without the authority of Parliament:
- (6) In relation to the promotion of the Bill for this Act the requirements of section 239 of the [Local Government Act 1972 \(c.70\)](#) have been observed by the district council:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Citation and commencement

This Act may be cited as the Bishop's Stortford Cemetery Act 2024 and comes into force at the end of 28 days beginning with the day on which this Act is passed.

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2 Interpretation

In this Act—

“burial” includes the interment of cremated remains and “right of burial” includes “right of interment” accordingly;

“the burial authority” means the parish council or another person to whom any or all of the benefit of the provisions of this Act and any related statutory functions have been transferred;

“the cemetery” means the cemeteries sited on either side of Cemetery Road, Bishop's Stortford and known as 'the Old Cemetery' and 'the New Cemetery';

“civil partner” includes former civil partner;

“Commonwealth war burial” means a burial of any member of the armed forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or of any other person for whose burial the Commonwealth War Graves Commission is responsible;

“Commonwealth war memorial” means any memorial erected, owned or maintained by the Commonwealth War Graves Commission;

“expired” in relation to a right of burial, means that the right has ceased to exist, whether by reason of any fixed period for which the right was granted having ended or the right having been surrendered, forfeited or otherwise determined, or for any other reason other than the right having been extinguished in accordance with the provisions of section 3;

“grave” includes any grave space and any crypt, vault, catacomb, arch, brick grave, mausoleum, columbarium or other place of interment;

“memorial” includes any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone or tablet, any wall, kerb or railing protecting, enclosing or marking a grave (including any permanent covering thereon), or any other commemorative object placed in the cemetery including vases, flower containers or other similar objects;

“parish council” means Bishop's Stortford Town Council;

“public or common grave” means a grave in respect of which no right of burial has been acquired by or granted to, or is otherwise vested in, any individual or body other than a local authority or the burial authority;

“register of grants” means the register of grants of exclusive rights of burial, and of rights to erect or place memorials, maintained by the burial authority;

“registered address” means an address registered in the register of grants;

“registered number” means a number registered in the register of grants;

“registered owner”—

- (a) in relation to any right of burial means the person at the time in question named as the owner in the register of grants;
- (b) in relation to any memorial means the person at the time in question named in the said register as the person to whom the right to erect or place that memorial has been granted or, if no such person is named, the registered owner of the right of burial in the grave in or on which the memorial is erected or placed; and
- (c) in relation to any right that has expired or been extinguished, means the last person so registered;

“relative”, in relation to any person, means any of the following—

- (a) that person's spouse;
- (b) that person's civil partner;

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(c) any brother, sister, aunt or uncle of that person or of that person's spouse or civil partner;

(d) any lineal ancestor or lineal descendant of that person or of a person mentioned in paragraphs (a) to (c);

“relevant memorial” means a memorial in or on a grave space in respect of which the burial authority has given notice of its intention to exercise the powers under section 4;

“specified date” means the date specified in a notice given for the purposes of section 3 or section 4, on which it is intended that any burial rights should be extinguished, any human remains should be disturbed, or any memorial should be removed, as the case may be; and

“spouse” includes former spouse.

3 Power to extinguish rights of burial

(1) Subject to subsection (2) and section 5, where in respect of any grave space in the cemetery a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space, the burial authority may, by notice given in accordance with section 6, extinguish the right of burial in that grave space.

(2) No right of burial granted after the passing of this Act for any period longer than 75 years is to be extinguished under this section.

(3) Subject to section 7, the power of the burial authority under subsection (1) to extinguish a right of burial in any grave space includes the power to remove any memorial in or on the grave space.

(4) If notice of objection to the extinguishment of a right of burial in any grave space is given to the burial authority before the specified date by the registered owner of the right of burial and that objection is not withdrawn, the right of burial to which the objection relates must not be extinguished under this section.

(5) If notice of any other objection to the extinguishment of a right of burial in any grave space or to the removal of a memorial, and of the grounds of any such objection, is given to the burial authority before the specified date and is not withdrawn, any right or memorial specified in the notice of the objection must not be extinguished or removed without the consent of the Secretary of State.

(6) An extinguishment under subsection (1) takes effect—

(a) where no notice of objection is given, on the specified date;

(b) where notice of objection is given and the objection is withdrawn, on the specified date or the day after the objection is withdrawn, whichever is later; or

(c) where the Secretary of State consents to the extinguishment under subsection (5), on the day after that consent is given.

(7) As compensation for any right of burial extinguished under this section, the burial authority must on a claim being made by the registered owner of the right of burial within six months from the extinguishment of that right either—

(a) pay to the owner such sum representing the value of that right as may be agreed between the burial authority and the owner or, in default of agreement, determined by arbitration; or

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- (b) confirm in writing to the owner that the right of burial extinguished is to be revived and, if confirmation is given under this paragraph, the right of burial is deemed not to have been extinguished under subsection (1).
- (8) In any arbitration under subsection (7)(a), the reference must be to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party after giving notice in writing to the other party.

4 Power to disturb human remains

- (1) Subject to section 5, the burial authority may disturb or authorise the disturbance of human remains interred in a grave in the cemetery for the purpose of increasing the space for interments in the grave where—
- (a) the burial authority has extinguished rights of burial in the grave under section 3;
 - (b) the grave is a public or common grave; or
 - (c) any right of burial granted in relation to the grave has expired.
- (2) A person authorised by or under subsection (1)(b) or (c) to disturb human remains may, subject to section 7, remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed.
- (3) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.
- (4) Any human remains disturbed under subsection (1) must be reinterred either in their original grave or in another grave within the cemetery.
- (5) Before disturbing any human remains, or removing any memorial, under this section the burial authority must give notice in accordance with section 6.
- (6) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the specified date by—
- (a) the registered owner of the extinguished or expired right of burial;
 - (b) the registered owner of a relevant memorial, whether or not the memorial is proposed to be removed;
 - (c) a relative of the person whose remains are proposed to be disturbed,
- and that objection is not withdrawn, the burial authority may not, subject to subsection (7), disturb or authorise the disturbance of those remains.
- (7) A burial authority may, in accordance with subsection (1), disturb or authorise the disturbance of human remains that are otherwise protected from disturbance under subsection (6) if—
- (a) after the expiry of a period of 25 years from the date on which notice of objection in accordance with that subsection was last given, the burial authority has given further notice in accordance with section 6 in relation to the disturbance of those remains; and
 - (b) no notice of objection in accordance with subsection (6) is given in relation to that further notice or, if such notice of objection is given, it is withdrawn.
- (8) A person authorised by or under subsection (1) to disturb human remains must comply with any directions given by the Secretary of State with respect to the removal and

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reinterment of any human remains in any case other than a case where the human remains are interred in consecrated land.

- (9) The provisions of section 25 of the Burial Act 1857 (offence of removal of body from burial ground) do not apply to a removal carried out in accordance with the provisions of this section.

5 Protection for certain graves

- (1) The burial authority must obtain the written agreement of the Commonwealth War Graves Commission before exercising the powers conferred by sections 3 and 4 in respect of—
- (a) any grave in which there is a Commonwealth war burial, or
 - (b) any grave space in or on which there is a Commonwealth war memorial.
- (2) Subject to subsection (3), nothing in section 4 affects the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the interment of human remains.
- (3) Where the burial authority proposes to disturb any human remains in consecrated land, the burial authority may not exercise its powers under section 4 without first obtaining a faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains in consecrated land by any person under section 4 must be heard and determined by that consistory court.

6 Notices given under this Act

- (1) The burial authority may give a single notice for the purposes of section 3(1) and section 4(5) and (7).
- (2) The burial authority must—
- (a) publish notice in a newspaper of their intention to exercise the powers under section 3 or section 4 once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days;
 - (b) publish such a notice and maintain that notice until the specified date—
 - (i) on the burial authority's website; or
 - (ii) by using a means of electronic publication that the burial authority considers equivalent for the purposes of drawing attention to the burial authority's proposals;
 - (c) display such a notice in a conspicuous position—
 - (i) at each of the principal entrances to the cemetery; and
 - (ii) so far as is reasonably practicable at or near the grave;
 - (d) serve such a notice on—
 - (i) where the burial authority intends to extinguish burial rights, the registered owner of the right of burial and, if different, the registered owner of any memorial proposed to be removed, at their registered address;
 - (ii) where the burial authority intends to disturb human remains, the registered owner of any extinguished or expired right of burial or any memorial erected or placed in or on the grave space, at their registered address;

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- (iii) the Commonwealth War Graves Commission; and
- (iv) the Historic Buildings and Monuments Commission for England.

(3) Each notice must—

- (a) contain full particulars of the burial authority's proposals including the registered number or other description of all grave spaces in respect of which it is proposed that rights of burial should be extinguished, and graves in which it is proposed that human remains are to be disturbed, and specifying those graves where it is proposed that any memorials should be removed;
 - (b) contain the specified date, which must not be earlier than six months after the date of the last of the publications in accordance with subsection (2)(a) and (b), the date on which the notice is first displayed in accordance with subsection (2)(c), or the date on which the notice is served in accordance with subsection (2)(d), whichever is the last;
 - (c) in the case of a notice under section 3, state the effect of subsections (4) to (8) of that section; and
 - (d) in the case of a notice under section 4, state the effect of subsections (6) and (7) of that section.
- (4) A notice under subsection (2)(b) must contain, where known, the name of the registered owner of any right of burial or memorial affected and the name of any person whose remains are proposed to be disturbed.
- (5) A notice under subsection (2)(a), (c) or (d) must include details of where the notice under subsection (2)(b) may be found and a statement that the notice under subsection (2)(b) contains the information described in subsection (4).

7 Memorials

- (1) Any memorial removed by the burial authority under this Act remains the property of the owner of it, but if such owner does not claim it within a period of six months after the later of the specified date or the date on which the memorial is removed, the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may dispose of it.
- (2) The burial authority must publish on its website, and make available on request, a policy setting out how it will exercise its powers under this section in relation to memorials.

8 Records

- (1) The burial authority must maintain a record of any remains in the cemetery that are disturbed under the powers in section 4.
- (2) The record maintained under subsection (1) must include such information as the burial authority sees fit and must include—
- (a) the date of the disturbance;
 - (b) where known, the registered number of the grave in which the remains are disturbed;
 - (c) where known, the name, in full, of the person whose remains are disturbed;
 - (d) particulars of the authority for the disturbance; and

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- (e) the registered number of the grave in which the remains are reinterred, its approximate location and the date of reinterment.
- (3) As soon as reasonably practicable after any disturbance under section 4, the burial authority must complete the record in accordance with paragraphs (a) to (e) of subsection (2).
- (4) The burial authority must cause a record to be made of each memorial removed under this Act containing—
- (a) a copy of any legible inscription on it;
 - (b) if it is intended to preserve the memorial within the cemetery, a statement showing where it has been taken; and
 - (c) if the memorial is disposed of, a statement of the details of its disposal, and the burial authority must deposit a copy of the record with the Registrar General for England and Wales.
- (5) The records maintained under subsections (1) and (4) must at all reasonable times be available for consultation by any person free of charge.

9 Costs of Act

- (1) Without limiting the scope of any provision of the Localism Act 2011, the parish council is empowered to contribute to the costs, charges and expenses of applying for and obtaining this Act, or otherwise in relation to it.
- (2) Subsection (1) applies to any contributions for such purposes whether made before, on, or after the day on which this Act is passed.