

Appendix E – Legal and Policy Framework

Reclaim & Re-use of private grave areas

1. In the past some graves have been purchased to accommodate two or more bodies but subsequently not fully utilised. In these circumstances it is possible to **reclaim** and sell remaining space. This process does not disturb the human remains already buried within the grave but requires that notices are displayed and every effort is made to identify any living relative.
2. It is also possible to re-use private graves through a practice called 'lift and deepen' where the human remains are lifted and reburied at a greater depth to allow for burials on top.
3. For most London councils, the legal power to **reclaim** space in private graves is provided in Section 9 of the Greater London Council (General Powers) Act 1976. This enables burial authorities in London to extinguish exclusive rights to graves, reclaim and then bury in un-used space. This is possible where rights of interment have not been exercised for 75 years where notices and letters have failed to identify living relatives who can make a claim to the grave.
4. However, the 1976 act specifically excludes Southwark's cemeteries because these powers had already been granted to Southwark in the previous year (General Powers Act 1975).
5. A subsequent act (London Local Authorities Act 2007) gave London authorities the power to disturb human remains and therefore practice 'lift **and deepen**'. However it states that this is only available where exclusive rights have been extinguished under the 1976 act.
6. Because Southwark's powers derive from the earlier act in 1975 and there is no reference to this act in the 2007 legislation the council currently has no legal power to practice 'lift and deepen' re-use.
7. Re-use of private graves is considered to be the most sustainable option by industry experts. Whilst the City of London, has a re-claim scheme in place as described in paragraph 25, there are no local authorities currently undertaking re-use of private graves through lift and deepen.
8. There are some concerns about the re-use of private graves – mainly because it remains widely un-tested. If significant human remains are found it is not considered appropriate to re-use the grave. This may be an issue in Southwark as in heavy London soil, decomposition rates are slower.
9. Administratively the process is intensive, notices must be on the site for 2 years (this is best practice and City of London put notices up for 5 years) and all efforts must be made to find living relatives. If living relatives are found and want to make a claim to the grave and purchase extended rights to the grave, the section cannot be used.

Re-use of common graves

10. It is possible to re-use common graves by making up the soil level on top of the area of graves in order to provide the appropriate depth for new burials as described in the short term options section of the April 2011 Cabinet report. This prevents the disturbance of human remains. It is also possible to use chamber systems on top of common graves.
11. Raising the soil levels above common graves to construct a new area on top of the existing graves can be considered as approved development although the actual construction work may be subject to planning controls. Apart from the area already identified as part of the short term solutions there may be other areas of the cemeteries where this would be a suitable long term option.
12. It is also possible to re-use areas of common graves on consecrated land, which is land that has been solemnly dedicated for use by a religious group. Where land is consecrated it can be re-used subject to permission by the relevant Diocesan Authority , provided that the graves are old enough (different Diocese have different lower age limits) and provided that remains are exhumed and reburied in another area of consecrated ground. Exhumations would need to be dealt with sensitively

Provision of burial space and dealing with human remains

13. Southwark Council, in keeping with all Local Authorities, is not required to provide cemeteries and crematoriums as a statutory duty. The requirement is discretionary and the Local Authorities' Cemeteries Order 1977 (LACO77) states that a Local Authority may provide and maintain cemeteries inside or outside of its area. Article 4(1) of LACO77, requires that a Local Authority must keep any cemetery that they are responsible for in good order, including buildings and infrastructure.
14. In addition to the above, the requirements of the Public Health (Control of Disease) Act 1964 need to be met. Under this legislation, a Local Authority becomes responsible for the disposal of any person who dies within its boundary where no suitable funeral arrangements have been made.

Exclusive rights of burial

15. Article 10(1) of the Local Authorities Cemeteries Order 1977, sets out the terms and conditions a burial authority may consider in relation to granting rights of burial. The rights subsist for the period specified in the respective grants and such period is to begin from the date of the grant and must not exceed 100 years, though the burial authority may from time to time extend the period of any grant. In Southwark, in common with many other London local authorities, exclusive rights are commonly purchased for 50 years. As burial space diminishes a number of local authorities including Southwark are now offering a 25 year as standard.
16. Section 21 of the Greater London Council (General Powers) Act 1975 enables Southwark Council to reclaim and then use space in a grave where the rights of interment have not been exercised for 75 years and notice has been published. More often exclusive rights are renewed or extended.
17. It is clear that there is a need for significant reform of exclusive rights of burial and re-use policy and as such central guidance is required for areas outside of London where there is no legislation and also Southwark because

Southwark is excluded from the London legislation for the reasons outlined in paragraphs 29 and 30 above. The London Environment Directors Network (LEDNET) are jointly funding a project to provide guidance for all London authorities on these issues as well as jointly funding a feasibility study to identify future burial space elsewhere for London authorities. The ICCM (Institute of Cemetery and Crematorium Management) is lobbying government to gain similar legal provision outside of London.