

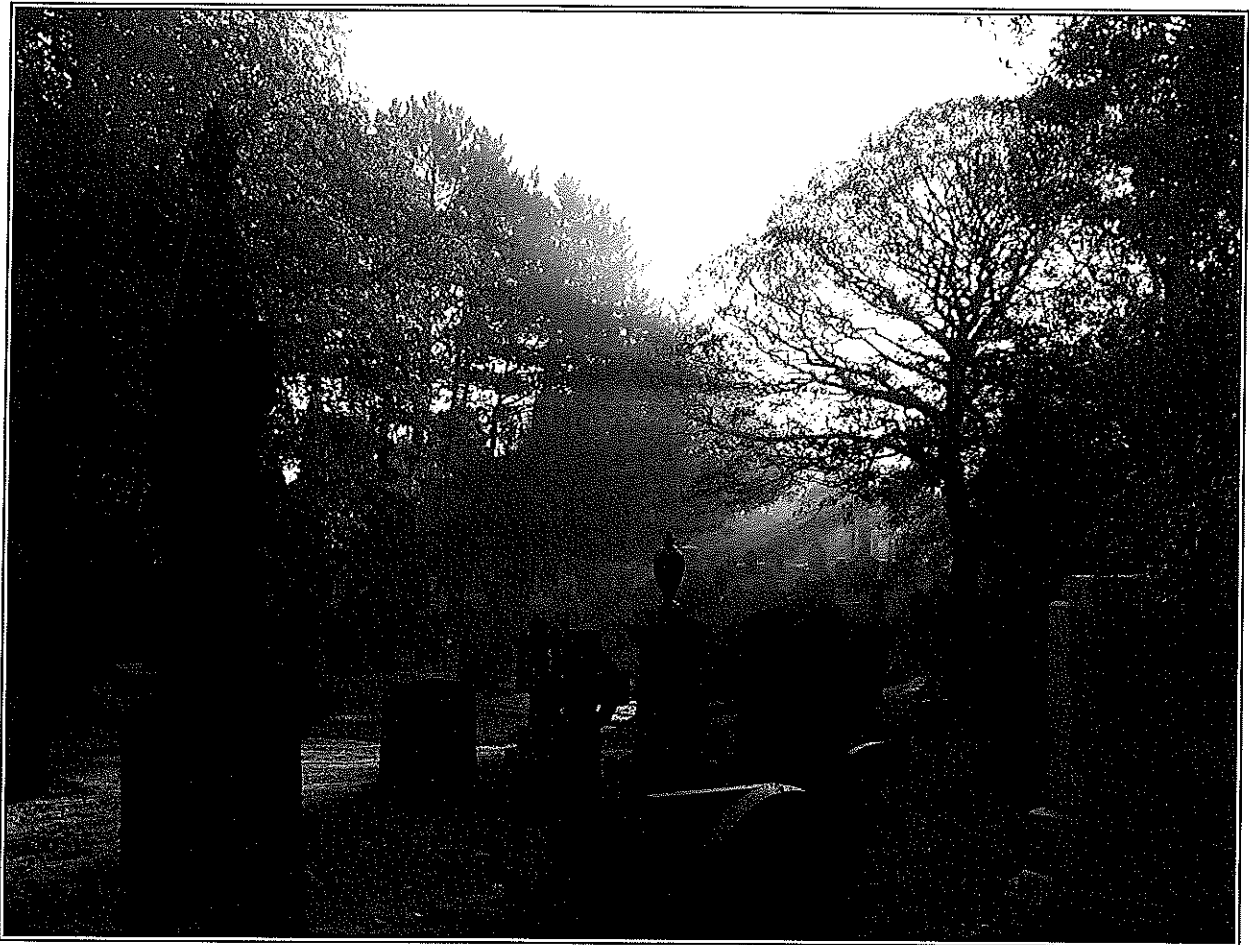
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EXTRACT: TRANSFER OWNERSHIP OF
EXCLUSIVE RIGHTS OF BURIAL



Cemetery Management and Administration for Local Council Clerks

A guidance document prepared jointly by the Institute of Cemetery and Crematorium Management and the
Society of Local Council Clerks

CEMETERY MANAGEMENT & ADMINISTRATION FOR TOWN AND PARISH COUNCIL CLERKS

REVISED EDITION 2018

Introduction

This guidance has been produced by the Institute of Cemetery and Crematorium Management (ICCM) and Society of Local Council Clerks (SLCC) for Town and Parish Council Clerks that have responsibilities for the management and control of cemeteries and the maintenance of closed churchyards.

User Guide

This document has been prepared in an electronic format for ease of use. Whilst the guidance is detailed, the headings in the contents pages below are hyperlinked to allow you to quickly identify the subject you require further information on and take you directly to the relevant text. Simply click on the item that you require in the contents list and you will be taken directly to the appropriate text.

Further links have been added within the text of the document that will take you to relevant parts of legal documents and detailed guidance notes that are contained as appendices.

Links to information contained on external websites have also been included, however, you must be connected to the internet for these links to operate.

Navigation of Hyperlinks – As indicated above to move to the section of the guidance you are interested in simply click the hyperlink.

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This section consists of the ICCM Code of Safe Working Practice for Cemeteries and is contained in this guidance as an appendix. This 'Code' covers the entire burial process and includes example risk assessments.

3. Installing memorials – Codes of Practice, British Standard and the BRAMM Scheme

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to 30 years as this is seen as being a reasonable time in which to expect a properly installed memorial to remain standing and not become unstable and therefore dangerous. Should a single deed be issued for both burial and memorial rights for say 75 years it would follow that no action could be taken should the memorial become unstable and hazardous, except action designed to make it safe, during the period of the rights issued. This thinking was brought about due to the liabilities and duty of care placed on burial authorities in relation to dangerous memorials and the push to gain 30 year workmanship guarantees from memorial masons. This position has moved somewhat recently with thoughts being transferred to memorial masons issuing guarantees of conformity to nationally accepted standards.

Refer to the section on this subject included in the Management of Memorials Guidance by clicking [HERE](#) before making any decision on issuing separate deed for memorial rights.

Should your authority consider it necessary or desirable to issue separate memorial rights an example Deed can be viewed by clicking this [Example Deed of Grant of Rights to Erect and Maintain a Memorial](#)

10. Transferring Ownership of Exclusive Rights of Burial

Introduction

When families are asked to transfer burial rights on a grave, it can be a very difficult time for them. In particular, if burial rights have not been dealt with properly in the past then there is often a lack of understanding and questions which effectively say, "We've never had to do this in the past, why are you starting to make us do it this way now?"

A valid question in many respects, however, society is changing:

- families are moving around the country much more than in the past, or even abroad
- Levels of divorce are much higher than in the past so families are often becoming disjointed.
- There are often disputes between different parts of the family.

It is not for the authority to become embroiled in such disputes or to take what is considered the morally correct line of action. Owners of the burial rights have legal entitlements and local authorities have a statutory obligation to comply with the law. So it is the law that must be considered. This guidance will consider the legal position and provide authorities with guidance to support them in what is often a difficult position.

The basic principal to be understood by all Parish/Town Clerks is that it is illegal to permit a burial in a grave subject to an existing exclusive right of burial without first obtaining permission from the owner of the right. The only exception to this is where the owner of the

right is being buried, then permission can be obtained from anyone. The Local Authorities Cemeteries Order 1977 states, "10(6) *No body shall be buried, or cremated human remains interred or scattered, in or over any grave or vault in which an exclusive right of burial for the time being subsists except by, or with the consent in writing of, the owner of the right.*" This means if the owner is already deceased when an application is received, a transfer must take place and permission be received from the new owner prior to the burial in that grave.

Where authorities have not required this in the past there will be numerous situations where urgent action is required to transfer the grave rights prior to burial. To avoid such situations in the future, the Council should always identify when the owner of the rights is buried into the grave, shortly after the burial the family should be contacted (whilst you still have an active address) and it should be recommended that the rights be transferred to avoid potential delay in any subsequent burial. This should become an essential part of the administrative process.

Authorities must comply strictly with the law, whilst providing help and assistance in enabling the rightful owner to resolve the problem, then they will be beyond criticism. Should the authority breach statutory legislation and allow the burial to take place without receiving the specific permission of the owner of the rights, then it is possible they could be sued by any injured parties. They could also be left with the substantial costs of obtaining a licence from the Ministry of Justice, possibly a faculty from the church diocese and then exhuming the body for transport and re-burial elsewhere. (see Chapter 13 for guidance on exhumation)

When a grave is "purchased" this refers to the purchasing of the **exclusive right of burial** in a grave space and **not** the purchase of the land itself, very often this will include the right to erect a memorial, but may not directly refer to it. It is recommended that exclusive rights of burial are either separated from the right to erect a memorial, or more logically ensure the right to erect a memorial is referred to within the exclusive right of burial.

A Grant of Exclusive Right of Burial (grave deed) should be issued to the owner, or owners of the exclusive right of burial and right to erect a memorial for the specific grave number. Grave rights can legally be sold to one person, or multiple persons. Advice should be given to keep the Grant in a safe place, it will be required should there be a further burial in the grave at some point in the future. If the owner of the rights then wishes to transfer those rights to another person, the documents that the local authority will require from the owner are detailed below.

In accordance with the Local Authorities Cemeteries Order 1977, all grave rights are sold for a fixed period. The number of years the rights have been granted for should be shown on the Grant, the period of time can vary from 10 years to 100 years, but in England and

Wales must not exceed 100 years, perpetuity rights are no longer permitted. At the end of this period the owner of the rights may apply to the Council to extend those rights.

It is important that this information is given to the purchasers of rights and that they be advised to keep the authority updated on any changes of address, this is the single biggest factor in losing contact with the owner of the rights it is very important to enable the Council to keep records up to date.

If the owner of the rights wishes to transfer the ownership during their lifetime it is relatively straightforward. They must complete a Form of Assignment and submit it to the Council, together with the Grant of Exclusive Right of Burial.

Documents required by the Council - to transfer the ownership of a grave when the owner dies

The following section describes the information that is required by the Council to enable the proper legal processing of applications for burials in grave spaces. If a will has been left, grave rights are normally included in the residual estate of the deceased, they are seldom referred to directly.

References to Wills are references to Wills recognised as valid by the laws of England, Scotland and Wales. It should be remembered, however, that Scottish Law on intestacy is different to England and Wales, so if you are in doubt ensure reference is made to your own legal advisors who supply legal support for your authority.

1 If the deceased owner left a will

If the deceased owner left a will stating who the Grant of Exclusive Right of Burial should be passed to then the person identified in the will should provide the Council with:

- the Grant of the Exclusive Right of Burial
- the Grant of Probate – Probate is the document issued by the Court after the will has been proved in Court. It should be the original document bearing the Court Seal. A copy of the relevant part of the document can then taken and retained for the files
- if the person is not also the Executor of the will, an Assent from the Executor(s) of the Will giving the Grant of Exclusive Right of Burial to that person.

If the deceased owner left a will of insufficient value to merit application to be made for Grant of Probate and someone wishes to claim the exclusive right of burial, then the Council should ask for:

- the Grant of the Exclusive Right of Burial
- the Death Certificate
- a Statutory Declaration detailing the relationship of the person claiming the right of exclusive burial to the deceased owner. This is detailed later in the guidance.

- a Form of Renunciation from all other people who would be entitled to claim the Grant of Exclusive Right of Burial.

2 When there is no will

If the owner of the rights dies without leaving a will, this is generally referred to as dying intestate and the Council should ask for:

- the Grant of the Exclusive Right of Burial
- the Grant of Letters of Administration – letters of administration are granted to a person or persons who apply to the Court to receive permission to administer the estate of the deceased. The Letters of Administration should name the administrator/s and once again should bear the official seal of the Court. The relevant part of the document should be copied and retained on file. An Administrator of an estate has the same powers and responsibilities as an Executor
- if the person is not also the Administrator then an Assent Form is required from the Administrator(s) giving the Grant of Exclusive Right of Burial to you.

If the estate is of insufficient value to merit application for Letters of Administration the Council should ask for:

- the Grant of the Exclusive Right of Burial
- the Death Certificate
- a Statutory Declaration detailing the relationship of the person claiming the rights to the registered grave owner.
- a Form of Renunciation from all other people that would be entitled to claim the Grant of Exclusive Right of Burial.

If a Statutory Declaration is to be used then must comply with the Statutory Declaration Act 1835 and must be witnessed by a Commissioner for Oaths (normally a practicing solicitor) or a Magistrate. A form of Indemnity is not acceptable. A typical Indemnity Form states:

"I (state full name) of (state full address) hereby declare that I am the (state relationship) of the late (state full name of deceased). The said deceased died on (date) and the said Exclusive Rights of Burial has not been otherwise dealt with.

I am the proper person to exercise the burial and memorial rights in the said grave, and no other relative or person to my knowledge claims any right...and I hereby indemnify the Council against all claims and losses"

This will not stand up in a Court of law and the burial authority may find themselves jointly or wholly liable for any damages as you are unable to be indemnified from something that is illegal. If you currently use an indemnity form on the transfer of burial rights this needs to be changed.

A statutory declaration is needed in place of an indemnity form, this normally seeks to identify just how the person who is to become the new owner of the rights, is the legally entitled next of kin to the current owner of the rights. A valid statutory declaration is made up of the following sections:

Section 1 - details of the person making the declaration. This may read:

I (*name of person making declaration*) of (*address*)
 in the (*County or London Borough*)
 do solemnly and sincerely declare that (*name of current owner*), purchased/owned the exclusive Right of Burial, described in the Plan Book as Square (*number*) No (*number*) Grant (*number*) in the City of London Cemetery, Manor Park, in the London Borough of Newham, and that...

Section 2 – the body of the declaration explaining specific circumstances (detailed examples below)

Section 3 – the declaration in the presence of a magistrate or commissioner for oaths. This should read:

And I make this solemn declaration conscientiously believing the same to be true by virtue of "The Statutory Declaration Act, 1835"

Signed (*name of person making the declaration*)

Declared at

in the of.....

This Day of, 20.....

Before me (*Magistrate or commissioner for oaths*)

Due to the number of people now dying intestate (without a will) then the need for a statutory declaration is becoming a frequent requirement. They have many uses, some of which are as follows:

- Correction of mistakes made on the deeds, either during the life of the owner or after death. An example of Section 2 of the declaration may read as follows:

"the said *Frederick John Smith* shown on Disposal certificate Dis28 41894 dated 1st June 2000 issued by the registrar of births and deaths for the district of Newham is one and the same person as *John Smith* his name having been incorrectly given when the exclusive Rights of Burial was purchased and I make this declaration in order that the said *John Frederick Smith* may be buried in the said grave space on Monday 6th June 2000 as is his right as owner thereof AND FURTHER I hereby

indemnify (*Name*) Council and all its officers and servants from any liability whatsoever in this matter or arising therefrom.”

- Transfer to spouse/partner when Letters of Administration have not been applied for. An example of Section 2 of the declaration may read as follows:

“the said *John Frederick Smith* died intestate leaving an estate that does not warrant applying for Grant of Letters of Administration THAT I the said *Ann Smith* am his lawful surviving wife and next of kin and therefore the present rightful owner of the said Right of Burial AND FURTHER I hereby indemnify (*Name*) Council and all its officers and servants from any liability whatsoever in this matter or arising therefrom.”

- Transfer from a deceased owner who is widowed and one or more sons/daughters are jointly entitled to the ownership of the right. An example of Section 2 of the declaration may be as follows:

“the said *John Smith* died a widower intestate leaving an estate that does not warrant applying for Grant of Letters of Administration THAT *Colin John Smith Brian Alan Smith* and myself the said *Mary Ann Smith* are his only lawful surviving children and next of kin and therefore the present rightful owners of the said Right of Burial AND FURTHER I hereby indemnify (*Name*) Council and all its officers and servants from any liability whatsoever in this matter or arising therefrom.”

- Transfer from a deceased owner who is widowed and whilst one or more sons/daughters may be entitled, it has been agreed that only one will claim the right. This requires agreement from the other siblings and should be accompanied by a Form of Renunciation from the other siblings. An example of Section 2 of the declaration may be as follows:

“the said *John Smith* died a widower intestate leaving an estate that does not warrant applying for Grant of Letters of Administration THAT *Colin John Smith Brian Alan Smith* and myself the said *Mary Ann Smith* are his only lawful surviving children and next of kin and therefore the present rightful owners of the said Right of Burial AND FURTHER I hereby indemnify (*Name*) Council and all its officers and servants from any liability whatsoever in this matter or arising therefrom.”

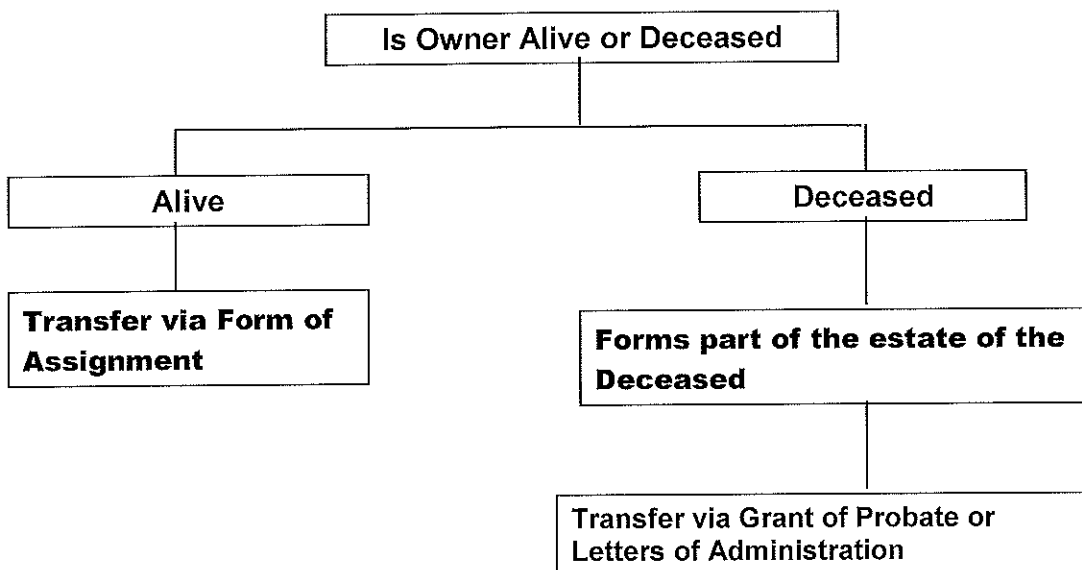
- Transfer of burial rights in accordance with a valid will, however, the will has not been proved in Court so there is no Deed of Probate. An example of Section 2 of the declaration may be as follows:

“the said *John Smith* died a widower intestate leaving an estate that does not warrant applying for Grant of Letters of Administration THAT *Colin John Smith Brian Alan Smith* and myself the said *Mary Ann Smith* are his only lawful surviving children and next of

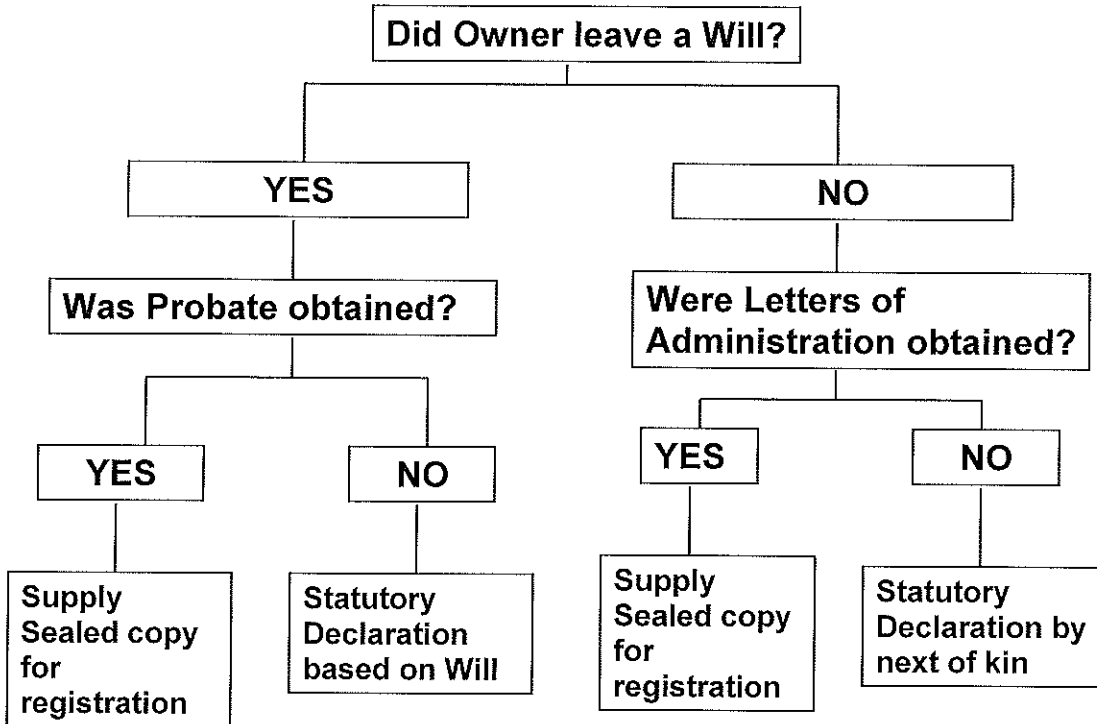
kin and therefore the present rightful owners of the said Right of Burial BUT *Colin John Smith* and *Brian Alan Smith* desire that the exclusive Right of Burial be vested solely in my name as *Mary Ann Smith* and have given their consent in the document attached hereto which I declare to be genuine AND FURTHER I hereby indemnify *(Name)* Council and all its officers and servants from any liability whatsoever in this matter or arising therefrom.”

These are just a few examples of where a statutory declaration will be required. There are obviously many more scenarios, however, the statutory declaration should be an explanation of the reasons why a particular person, or persons, are entitled to own the right.

To assist cemetery staff find the correct documentation required for a transfer of rights the following charts will be of great use. The first part is very simple...Is the owner alive or deceased?



The following questions then guide the Council to identifying what specific documents are necessary:



Transfer of Exclusive Rights of Burial - Summary

- Burial rights do not give the owner title over the land. It is simply a right of burial and should include a right to erect a memorial.
- Lease periods for exclusive rights of burial are at the discretion of the authority, but must not exceed 100 years.
- Ownership can be in single or multiple names
- Written permission of the owner of the right must be obtained before the burial can take place. If the owner is deceased then transfer must take place before the burial can go ahead.
- Essential part of the administration process should be to identify when the owner of the right is buried into the grave and arrange for the transfer of ownership shortly after this.
- No written permission is required when the burial is that of the owner of the rights.
- Indemnity Forms are not legal documents and should not be used. statutory declarations can be used as an alternative.
- A statutory declaration is very useful in the absence of legal documents such as a Grant of Probate or Letters of Administration, however, it is not an alternative to these.

- If the rights are not legally transferred the burial authority is exposed to the likelihood of legal proceedings at some point in the future.

11. Receiving memorial applications

a) New memorials

Applications should be required for all new memorials to be installed within the cemetery. An application for the installation of a new memorial should include:

- Name and address of the applicant (normally the owner of the right of burial)
- Name and address of memorial mason
- Grave details (section, plot number etc)
- Details of memorial to be installed including:
 - Dimensions of memorial
 - Proposed memorial inscription
 - Type of stone (or other material) to be used in the construction of the memorial
 - Full construction details of the memorial including dowel sizes, dowel holes sizes and type of ground anchor (if required).
 - Signed commitment that the memorial will be installed in full compliance with the current version of the NAMM Code of Working Practice and BS 8415.
- Signed commitment to compliance with a local or national registration scheme, ideally the British Register of Accredited Memorial Masons (BRAMM).

A model application form can be found by following the link: [Memorial Application Form](#)

Once the application is received, normally completed by the memorial mason, it should be checked against the requirements of the NAMM Code/BS 8415 and the Council's Cemetery Regulations. If the application is in order then a permit to fix can be issued to the memorial mason. It is strongly recommended that a mason should not be allowed to fix a memorial unless a permit has been issued by the Council and they have indicated when they will be entering the cemetery to carry out the installation (this can either be by appointment or simply by agreement to a date or am/pm on a date). This will allow random checking of memorial masons as they install memorials.

Should memorial installation details not meet the requirements of the NAMM Code/BS 8415 or cemetery regulations, then a permit should not be issued and the application should either be amended or rejected. The sooner any errors are identified the better,