

ONGAR TOWN COUNCIL

CEMETERY POLICY 2020

In this Policy, unless the context otherwise requires, the word 'Council' means Ongar Town Council.

The Council's aim is to provide a safe and attractive place for burial and the interment of ashes. The cemetery should be used by the community not just as a place for burial and interment but also to visit to enjoy the calm and contemplative environment. Another aspect of the cemetery is its ecological, environmental and historical value.

Burial places are both a work place and public place. The Council has a duty of care to ensure the safety of employees, contractors and visitors.

The main statutory instrument for the management of burial grounds is the Local Authorities Cemeteries Order (LACO) 1977

Exclusive Right of Burial (EROB)

The pre-purchase of graves is permitted with the full amount paid at the time of purchase. The pre-purchase of burial plots by instalments is not permissible.

LACO 1977 article 10 states that no burial may take place without the consent of the owner unless the person to be buried was the owner immediately before death.

Cremated remains must be buried in a container. The scattering of ashes is not permitted.

Prior to 1962 the Town Council issued grave deeds in perpetuity and this will be honoured by the Council. From 1962 the Town Council issued grave deeds for 50 years. From 2012 the Council has attempted to contact families to renew the EROBs. When the grant expires, the Council will make every effort to contact relatives. If no relatives have come forward after 6 months the grave is deemed to be abandoned.

Local Authorities Cemetery Order (LACO) 1977 article 10 states that a local authority may grant to any person the Exclusive Right of Burial on any grave and on any terms and conditions they think proper. This includes the fees and the time scale for the Grant but this must not exceed 100 years.

Grants may be made to more than one person. Only one deed will be issued and copies can be issued (marked as copy). Where there is more than one owner, all owners will need to give permission for burials and sign the Interment Notice, give permission for the installation/removal/work to memorials and any other work related to the plot and/or memorial.

In line with advice from the Institute of Cemeteries and Crematorium Management (ICCM), of which the Council is a member, when the Grant expires the Council will make every effort to contact relatives by –

- Writing to the last known address
- Placing notices on cemetery notice board
- Placing notices in local churches
- Placing notices in local newspapers and publications
- Advertising on Council social media

Disinterment

Disinterments will be recorded in a separate Register of Disinterments.

The Council will consider buying back a plot at the original purchase price less an administrative charge, after exhumation, on the request of the grave owner. The grave can be re-sold and the new owner will be advised that an exhumation has taken place.

EXHUMATION – INTRODUCTION

This has been written with reference to guidance by the ICCM and covers the practicalities and health and safety requirements of exhumation. The disturbance of buried human remains, whether cremated or not, without lawful authority is an indictable offence.

Exhumations can be of either bodies or cremated remains. The exhumation of a body involves greater risks whilst the exhumation of cremated remains is generally a low risk operation. Each exhumation can vary greatly due to differing circumstances.

Lawful Authority to Exhume

Section 25 of The Burial Act 1857 states –

“Except in the case where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove the body, or the remains of any body without the licence under the hand of one of Her Majesty’s Principal Secretary of State.”

Any person who wishes to exhume buried remains has to apply to the Ministry of Justice (MOJ) for a licence to permit it. Licences are available through the MOJ website, <https://www.gov.uk/government/organisations/ministry-of-justice>

The Council will require details of the applicant, the deceased and the grave number within the cemetery. The applicant is required to complete Part A and then send the form to the Council for completion of Part B.

If the remains are buried within consecrated ground then consent from the Church of England (Faculty) will also be required.

The Council shall ensure that the following permissions are granted before allowing any exhumation –

- Exhume from consecrated ground and rebury in consecrated ground – Faculty only
- Exhume from consecrated ground and rebury in un-consecrated ground – Faculty only
- Exhume from un-consecrated and rebury in consecrated ground – Licence only
- Exhume from un-consecrated and rebury in un-consecrated ground – Licence only

After obtaining the proper legal authority to carry out an exhumation, the Council will refer to the Exhumation Risk Assessment to ensure that the removal takes place without delay. An original copy of the Licence or Faculty will be provided to the Council.

Exceptions

Coroner's Warrant (Section 23, Coroner's Act 1988)

Exhumation under a Coroner's Warrant does not require any lawful authority as mentioned in the Burial Act 1857. In these circumstances the Coroner's Officers may carry out the whole procedure with jurisdiction of the Coroner being absolute.

Other legislation exists which permits exhumation without the need for a licence or Faculty as laid out in the Town and Country Planning Acts which provide for the clearance of old burial grounds. The Council may become involved by way of receipt to rebury remains removed during the clearance of a redundant church yard or burial ground.

The removal of a buried foetus under 24 weeks gestation does not require an exhumation licence. Arrangements may be agreed with the Council and the owner of the EROB. A licence is required for the exhumation of a buried foetus over 24 weeks gestation.

Next of kin

The consents of all the next of kin of the deceased are required. The priority given in accordance with that set out in the Administration of Estates Act 1925 or the Civil Partnerships Act 2004 (which provides civil partners with equal rights to spouses). This means that if the spouse or civil partner is alive, then this person is the next of kin. Thereafter it is defined that the deceased's mother and father, and children, if any. Thirdly, joint status would be given to the deceased's brothers and sisters, grandparents and grandchildren.

If contact has been lost with any of the surviving relatives, it is the applicant's responsibility to undertake a search for that relative. There are a number of ways of trying to trace lost relatives one being the Salvation Army. Licences are unlikely to be issued without all of the required consents.

Applications will also be considered from any person, but in such cases it will be important to explain why the application is not being made by a relative.

The next of kin will not be told of the exact date of the exhumation but will be informed in writing after the exhumation has taken place.

Fees

Fees will be calculated on a case by case basis and will include items such as –

- Grave digging fees for two contractors
- Supply of secondary coffin
- Ongar Town Council administration fee
- Ongar Town Council staff time including unsociable hours payment
- Purchase cost of a new grave plot or cremated remains plot within Ongar Cemetery

Visitors to the cemetery

Owners of adjacent memorials will be notified in writing of the intention to carry out an exhumation.

The Council will notify neighbouring properties of the intention to carry out an exhumation in the early hours of the morning, without specifying the exact date.

The Council will inform the local Police of the intention to carry out an exhumation.

The exhumation will commence at 5 am and the site to be screened off so that adjacent neighbours cannot see the work being carried out. All entrances and exits to the cemetery to be blocked where possible so as not to allow general access whilst the procedure is taking place. It may be necessary to close the cemetery the day before to allow preparations to be made.

Risk Assessment

The Exhumation Risk Assessment will be referred to during the exhumation but on the spot risk assessments may need to be carried out at each stage of the exhumation.

The Council will notify the Epping Forest District Council's Environmental Health Officer and request their presence at the exhumation.

Records

A record of the exhumation will be kept and detail -

- The date of exhumation
- The number and location of the grave
- The full name of the deceased to be exhumed
- The page and entry number of the burial
- Details of the authority for exhumation
- If the remains are re-interred in Ongar Cemetery, the number and location of the new grave

- If the remains are to re-buried, the place and date of the proposed re-interment

Re-burials

Occasionally the Council may receive a request to re-bury remains which have been exhumed from other burial grounds.

There is no requirement for a fresh certificate from the Registrar of Births and Deaths, but it would be good practice to require the production of the exhumation licence or the directions in accordance of which the remains are to be buried. Failure to produce documentary evidence relating to the authority with which the remains have been exhumed will not present a legal obstacle to their re-burial, but the Council should be satisfied that there is no reason to suppose that the remains have been exhumed or acquired unlawfully or that there is any need for the circumstances to be investigated by the coroner or the Police. Most such cases are likely to involve remains removed from ancient burial grounds by professional archaeologists.

Exhumation

Section 25 of the Burial Act 1857 makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a Faculty.

From 1 January 2015, the procedure was simplified. Section 25 of the Burial Act 1857 was amended by the Church of England (Miscellaneous Provisions) Measure 2014.

From this date, you will only need approval from **either** the Secretary of State **or** the Church of England, depending on the current location of the remains. This change will eliminate the small number of cases where approval was needed from both.

- Exhumations from land which is subject to the Church of England's jurisdiction will need the Church's authorisation (a faculty or the approval of a proposal under the Care of Cathedrals Measure 2011). This includes consecrated ground in cemeteries.
- Exhumations from land which is *not* subject to the Church of England's jurisdiction will need a licence from the Secretary of State.

For land that is consecrated, burial is regarded as permanent. Applications for a Faculty to authorise exhumation are granted only in special circumstances.

Occasionally coffins are placed in the wrong grave. A licence (or Faculty) will be required if they are to be removed and replaced in the correct grave. The question may arise as to whether a licence is needed in such circumstances, especially where the mistake has been identified during or immediately after the interment. Remains should be regarded as buried on completion of the committal procedure and therefore remains should not be removed after that point without a licence (or Faculty).

If graves need to be disturbed for works, such as construction or the provision of utility services, licences and/or Faculties under the above legislation will be required. However, where burial land has been acquired by the Council for such purposes, the Town and Country Planning (Churches, Place of Religious Worship and Burial Grounds) Regulations 1950 will apply and relieve the need for exhumation licences (but will require the removed remains to be disposed of in accordance with directions from the MOJ).

The Clerk should be aware of the provisions of the Disused Burial Grounds (Amendment) Act 1981 which require certain procedures to be observed before remains can be removed (and which enable relatives to prevent development in certain circumstances). There are similar, but not identical, provisions under Section 65 of the Pastoral Measure 1983 in relation to churchyards subject to a redundancy scheme.

Grave Depth

LACO 1977 Sch 2 Part 1 recommends the minimum depth of graves.

SHALLOW GRAVES - INTRODUCTION

The ICCM has identified a growing problem in respect of the numbers of shallow graves being encountered when reopening takes place.

Cemetery managers have inherited an historic problem that they are required to deal with as each shallow grave is encountered. The Council could be negligent if proper procedures are not put in place, which are designed to prevent the problem increasing and to maintain complete compliance with burial law and the expectations of the bereaved.

This policy is divided into two sections –

1. Preventing the Occurrence of Shallow Graves
2. Dealing with the Inherited Problem

1. Preventing the Occurrence of Shallow Graves

The Local Authorities Cemeteries Order (LACO) 1977 contains the following requirements in respect of depths of burials and protection of previously buried remains –

- No burial shall take place, no cremated human remains shall be scattered and no tombstone or other memorial shall be placed in a cemetery, and no additional inscription shall be made on a tombstone or other memorial, without the permission of the officer appointed for that purpose by the burial authority.
- No body shall be buried in such a manner that any part of the coffin is less than three feet below the level of any ground adjoining the grave:
- Provided that the burial authority may, where they consider the soil to be of suitable character, permit a coffin made of perishable materials to be placed not less than two feet below the level of any ground adjoining the grave.

(Note: The soil at Ongar Cemetery does not fulfill the definition of 'suitable character')

- No body shall be buried in a grave unless the coffin is effectively separated from any coffin interred in a grave on a previous occasion by means of a layer of earth not less than six inches thick.
- When any grave is reopened for the purpose of making another burial therein, no person shall disturb any human remains interred therein or remove therefrom any soil which is offensive.

Section 25 of the Burial Act 1857 advises that the disturbance of buried human remains without lawful authority is a misdemeanour. This fact is reinforced by a general saving contained in Article 23 of LACO which states "Nothing in this order shall be construed as authorising the disturbance of human remains".

It is advisable to request the depth of each coffin to be buried in addition to length and width dimensions.

Checking Procedure

A checklist can be added to grave digging orders and interment notices with each step being signed by the person carrying out checks as detailed in the following:

- LACO requires that a plan of the cemetery is maintained and shows the locations of individual graves, the grave numbers and the rights attached to each grave.
- Before a new grave is excavated its location must be checked against the cemetery plan.
- In order to prevent further error the record of graves and register of grants must be checked to ensure that the particular grave has not already been allocated. It could be possible that the grave was previously allocated and the cemetery plan was not updated.
- The actual location within the cemetery must next be identified using the cemetery plan. The number of the grave to be excavated can be checked via the numbering of graves on either side and by referencing from the rows in front and behind. The grave space must be accurately measured and marked so as to coincide with the cemetery plan.
- Where graves are pre-marked on a continuous concrete bearer or where there are previously installed individual headstone foundations the marker must be placed centrally within the grave space immediately in front of the bearer or foundation.
- Before digging commences the appropriate officer must check the location.
- On completion of the excavation the person that originally allocated the grave from the cemetery plan should check the grave again.

2. Dealing with the Inherited Problem

A shallow grave will only be encountered at the time of reopening for a further interment and therefore time in which to resolve the problem will be limited.

Under no circumstances should a burial be carried out in an earth grave where full compliance with LACO will not be achieved.

The registered grave owner or executor or nearest surviving relative should be informed of the situation at the earliest possible time.

In circumstances where compliance with LACO cannot be achieved for earth burial there is provision within Part 1 of Schedule 2 of the Order that can assist –

- Every walled grave or vault shall be properly constructed of suitable materials.
- Within 24 hours of any burial in a walled grave or vault, the coffin shall be
(a) embedded in concrete, and covered with a layer of concrete not less than six inches thick; or
(b) enclosed in a separate cell or compartment of brick, slate, stone flagging or precast concrete slabs of a 1:2:4 mix, in any case not less than two inches thick, in such a manner as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or compartment.

When considering (a) above, it is apparent that embedding in concrete relates only to burials in existing walled graves or vaults. However a walled grave or vault may be constructed within a shallow depth grave. Once this is done however, there would be little point in embedding in concrete when taking (b) into account.

Recommended Code of Practice

- Excavate to maximum depth achievable leaving 6” of soil above the last coffin buried.
- Ensure that the length and width of the excavation are sufficient to allow the construction of the walls of a cell or compartment and allow the coffin free passage at the committal.
- Construct a solid foundation in the bottom of the grave by either the preparation of footings around the perimeter of the bottom of the grave or by inserting a pre-formed concrete foundation slab. Alternatively a layer of dry mix concrete can be spread over the bottom of the grave.
- Construct 4.5” brick walls around the inside the grave (alternatively a proprietary pre-formed concrete sleeve can be lowered into the grave).
- Ensure that there are no gaps in the mortar between bricks.
- Carry out the interment with the coffin coming to rest within the brick cell or compartment formed.
- Seal the top of the cell or compartment by bedding concrete slabs of at least 2 “in thickness onto mortar ensuring that no gaps exist.
- Backfill remaining depth with soil.

In order to remain within the requirements of LACO the cell or compartment must be constructed in such a manner so as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or compartment.

Foetal Remains

Foetal remains currently have no legal status and the burial process is similar to that for body parts. The law does not recognise foetal remains so no Home Office licence is necessary to exhume. However, a faculty may be required and checks should be made with the diocese.

INTERMENT OF FOETAL REMAINS INTRODUCTION

This has been written with reference to guidance provide by the ICCM and Sands, the stillbirth and neonatal death charity.

This covers the best practice in dealing with foetal remains and places great importance in the need to allow parental choice.

For the purposes of this document the definition of foetal remains is “a human foetus of less than 24 weeks gestation that has at no time since delivery shown any visible sign of life”.

RIGHT TO CHOOSE

It is essential that parents be given the same choice on the interment of the foetus as for a stillborn child. Choices should be given to the parents in an appropriate manner about the options available to them. It is essential that the Council provides a dignified, sensitive service, including traceability and the ability to provide a focal point for parent’s grief and in order to avoid distress at a later date. It is important that the area in which remains are interred is recorded and that there are options for memorials open to these families.

REGISTRATION

Foetal remains currently have no legal status; therefore there is no legal requirement for their interment to be registered. To ensure traceability, however, the Council will

- not accept instructions for communal burials
- accept instructions for burial with the correct certificates

Where a private, individual funeral is being arranged the Council will utilise the standard notice of Interment.

Although there is no legal requirement to register the interment of a foetus of less than 24 weeks old, the Council will make such an entry in the statutory register.

Where a parent purchases a private grave for the interment of their baby an entry in the statutory register of grants/purchased graves register will be made and a deed issued as per all other private graves.

The Council will maintain a non-statutory register of burials in perpetuity. As the Council maintains both a written statutory register and electronic records an appropriate note will be made in both mediums.

FUNERAL ARRANGEMENTS

Arrangements can be made directly by the hospital with the Council with the day and time of the burial. The Charter for the Bereaved, issued by the ICCM in 1996, indicates that where burial is the chosen option, facilities should be developed for the provision of individual baby graves. The Council will decline the request for communal burials of foetal remains.

CONCLUSION

The primary requirement for the interment of foetal remains is to comply with the parent's wishes. Where parents select an individual cremation or burial then normal procedures can be followed with consideration to be given for specific baby sections.

Interment by the Council allows for traceability and an option for memorialisation in future years. It also avoids allowing such remains to be treated of as clinical waste, providing a controlled and dignified process with suitable traceability in future years. The Council will play an active role in promoting the movement away from clinical waste towards interment using facilities provided by burial and cremation authorities.

Disposal of Body Parts

Body parts are described as organs or body tissue (blocks and slides) removed during a post mortem. It is recommended that an adapted interment notice be use.

An original disposal certificate is required to confirm that the death has been registered and permission of the grave owner is necessary.

This has been written with reference to ICCM guidance notes on the Disposal of Body Parts (Blocks and Slides).

DISPOSAL OF BODY PARTS - INTRODUCTION

The issue of the disposal of body parts removed during post mortem examination has had a high profile due to the production of a leaflet by the Retained Organs Commission (ROC). The Commission was established to oversee the process of returning body parts by NHS Trusts to bereaved families. Many burial and cremation authorities have been approached by hospitals, funeral directors or members of the public about the disposal of organs and tissues. While the Council needs to be able to provide for the needs of the bereaved, the statutory duties and responsibilities in terms of environmental and safety issues must be met.

Definitions

The term Body Part refers to either whole or parts of organs or other tissues removed during a post mortem examination and retained after disposal of the body. ROC guidelines encourage returning such items to the body prior to disposal wherever possible. Many of the samples taken during the post mortem

are used to form blocks and slides. The sections taken in this manner are about ten times thinner than human hair.

Cremations and Burials

Cremations of organs are acceptable and may be carried out in accordance with the Cremation (Amendment) Regulations 2000. The cremation of samples is only acceptable where the samples in question relate to one deceased individual and it is the desire of the deceased relatives. The cremation of such individuals may only take place in accordance with the Cremation (Amendment) Regulations 2000. There has been no amendment laws to allow the burial of body parts although there have been a number of burials throughout the country. In these cases, the body parts have been buried in the same grave as the original interment.

Policy

For the purpose of disposal it is necessary to distinguish between whole or parts of organs which are not contained on glass slides and those that are. For the purpose of this policy, loose sample body parts are referred to as organs and tissues on glass slides referred to as samples.

For burials it is necessary to obtain

- an application for the interment from the grave owner
- confirmation of the registration of death
- a statement from the pathologist or Coroner's office that the parts are those of the deceased.

Following the burial

- the original burial records will be amended to show the addition of the body parts
- a separate register of the burial of body parts will be kept

If the family wishes to open the coffin to insert body parts an exhumation licence, or faculty, will be necessary. (Please refer to the section on Exhumation).

Samples mounted on glass will not be accepted for burial unless placed in a protective container (wood or cardboard, not plastic).

Transfer of ownership

Council staff will ensure that the correct procedures for transferring ownership of graves are adhered to and the necessary paperwork is received.

Memorials

All stone masons working in the cemetery should be British Register of Accredited Memorial Masons (BRAMM). Applications for memorials must be approved by the Council. The cost of removal of unauthorised headstones is to be recovered from the person who ordered the memorial (LACO 1977 art. 14).

LACO 1977 Sch 3 states that the Council may remove dilapidated/unsafe memorials, once the period of the Exclusive Right of Burial has expired and after contacting the owner.

Informal memorials such as balloons, solar lights, glass vases etc. are not permitted and the Council may have them removed.

Memorials will be inspected regularly and the public kept informed of procedures. A memorial risk assessment was agreed by the Council in 2015.

Memorial Benches

Memorial benches are permitted in the cemetery. The design of the bench must match that of existing benches. The purchaser must pay the total price of purchase and fitting before the bench will be purchased. Fitting the bench must be carried out by a contractor appointed by the Council.

Records

LACO 1977 article 9 states that all local authorities must maintain a plan showing and allocating distinctive numbers to all graves. Records of purchases, burials and memorial applications will be kept up to date at all times. All burial records will be kept in paper and electronic format.

Paths

The Council will maintain the paths regularly to ensure adequate vehicular and pedestrian access to all parts of the cemetery.

Grounds Maintenance

The Council employs outside spaces staff who carry out most of the grounds maintenance requirements. Additional grounds maintenance is carried out by contractors appointed by the Council.

Preferred Contractor

The Council will appoint a preferred contractor for grave digging.

Insurance

The Council will ensure adequate cover for Public Liability Insurance as part of the Council's insurance provision.

Litter/Waste Management

The Council will maintain a contract with a waste management company to remove waste from the site regularly.

Fees and charges

Fees and charges are reviewed annually by the Council.

Rules and Regulations

Rules and Regulations are reviewed annually by the Council.

Historical interest/family history

Burial records are available for the public to view. Members of the public are not left alone with the records in case of accidental or deliberate defacement of the records. Appointments to view must be pre-booked with the office.

Vandalism

In the unlikely event of vandalism to memorials, the cost of repairs will be the responsibility of the memorial owners.

Staff training

Council staff are kept up to date on all aspects of cemetery management with refresher training provided as necessary.

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