

Burial Rights Reform Bill

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TO

Enable a person to make his or her instructions concerning burial and related matters binding on their personal representative or beneficiary; to enable a person to make provision about the use of a burial space he or she acquired while living after the person's burial; and for connected purposes.

BE IT ENACTED by the Queen'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 Registered declaration of funeral and burial directions and requests

- (1) A person over the age of 16 may make a declaration of his or her directions and requests concerning his or her funeral and burial arrangements other than in his or her will or testament.
- (2) A direction gives rise to the duties under section 5 (and see also section 8). 5
- (3) A request does not give rise to a duty (see sections 5(9) and 8).
- (4) When the declaration has been deposited with, and accepted by, the Registrar General for England and Wales the declaration becomes a registered declaration of funeral and burial directions and requests ("registered declaration"). 10
- (5) A person may amend or replace his or her registered declaration by depositing a revised declaration and on it being accepted by the Registrar General it replaces any earlier registered declaration.
- (6) A person may cancel his or her registered declaration by serving notice on the Registrar General. 15
- (7) The person making the declaration may direct or request that a person named in the declaration ("funeral agent") carry out some or all of directions or requests in the declaration (see section 5).
- (8) The declaration may make provision for a substitute funeral agent to replace a person named under subsection (7) if he or she is unable to perform the functions of agent. 20

- (9) The Secretary of State must make regulations prescribing—
- (a) the format and content of a declaration, including the matters that may and may not be included in a declaration;
 - (b) which matters may be included as directions and which as requests;
 - (c) the methods and arrangements for authenticating a declaration; 5
 - (d) the methods, including electronic, for depositing a declaration with the Registrar General for England and Wales;
 - (e) the arrangements for amending and replacing a registered declaration;
 - (f) the arrangements for cancelling a registered declaration;
 - (g) the charges for depositing, amending, replacing and cancelling a declaration; and 10
 - (h) the criteria and arrangements to be applied by the Registrar General for England and Wales before accepting the deposit of a declaration.

2 Registered declaration in respect of a grave

- (1) Where a person has acquired a right of burial to a grave he or she may include 15
in the declaration deposited under section 1—
- (a) directions and requests concerning the interment of the person's remains, including cremated remains, in the grave;
 - (b) directions and requests concerning memorials erected on the grave;
 - (c) directions concerning the future use of the grave, in particular who may be interred in the grave; 20
 - (d) directions and requests concerning the disbursement of charges, including future charges, for the grave; and
 - (e) directions and requests concerning the future upkeep of the grave, including disbursements. 25
- (2) The directions and requests deposited under subsection (1) cease to have effect—
- (a) if the right to burial acquired by the person making the declaration has expired; or
 - (b) when the right to burial acquired by the person making the direction expires. 30

3 Register of funeral and burial declarations

- (1) It is the duty of the Registrar General for England and Wales to—
- (a) maintain a register of registered declarations for England;
 - (b) make the register available for public inspection; and 35
 - (c) publish guidance on—
 - (i) making declarations,
 - (ii) the operation of the register, and
 - (iii) the duties at section 4 on certain persons to interrogate the register and to take action in respect of a registered declaration. 40
- (2) The Secretary of State may by regulations—
- (a) set out the requirements that the Registrar General must carry out to meet the duty at subsection (1); and
 - (b) restrict public inspection of all or part of registered declarations.

4 Duties on a person taking charge of a body, registering a death or organising or undertaking a funeral or burial

- (1) The following persons have a duty to interrogate the register of registered funeral and burial declarations—
- (a) a person taking charge of a dead body, 5
 - (b) a person registering a death,
 - (c) a person responsible for dealing with the will or estate of a deceased person, which includes as an executor, personal representative or administrator,
 - (d) a person who intends to arrange and pay for the funeral and burial arrangements of a deceased person, 10
 - (e) a funeral contractor or undertaker carrying out funeral or burial arrangements,
 - (f) a local authority if—
 - (i) no person takes lawful control of a body or 15
 - (ii) the person with lawful control does not have the funds to pay for a funeral and burial or he or she fails to do anything lawful with the body or abandons the body, and
 - (g) any other person prescribed by the Secretary of State in regulations for a registered declaration deposited by the deceased person. 20
- (2) Where a person (A) on interrogation, in order to meet the requirements of subsection (1), establishes that there is a registered declaration deposited by the deceased person, which contains requirements and requests that fall to be carried out by another person (B), A has a duty to take reasonable steps to inform B of the declaration. 25
- (3) Where a person on interrogation to meet the requirements of subsection (1) finds no registered declaration, he or she has a duty to take reasonable enquiries within the time available to locate a will or testament of the deceased person to establish whether directions and requests have been included in it by the deceased person concerning burial and funeral arrangements. 30
- (4) Where a deceased person has—
- (a) deposited a registered declaration, and
 - (b) made a will or testament or codicil containing directions and requests concerning burial and funeral arrangements,
- the directions and requests in the document executed most recently are to be followed. 35

5 Duties on a “funeral agent”

- (1) Where a registered declaration has been deposited, which has not been superseded by a will or testament or codicil (see section 4(4)), the person responsible for meeting the directions and considering the requests is the “funeral agent”. 40
- (2) Where the registered declaration of a deceased person places responsibility for carrying out a direction or considering a request on a person (C) other than the person (D) responsible for dealing with the will or estate of a deceased person, which includes an executor, personal representative or administrator, C is the funeral agent for the purposes of the direction or request. 45
- (3) Where subsection (2) applies—

- (a) C has a duty to make reasonable requests to D who has a duty to comply with reasonable requests, in order to meet the directions and requests in the registered declaration;
- (b) C has a duty to make the contents of the registered declaration known to D and inform D of the steps he or she proposes to take to meet the directions and consider requests; 5
- (c) C is required to make reasonable endeavour to meet the directions and consider the requests in the registered declaration; and
- (d) D may make moneys chargeable to the deceased person's estate available to C to meet the directions and requests in the registered declaration. 10
- (4) Person (C) in subsection (2) does not have to meet or consider the duties at subsection (3) where –
- (a) C is incapacitated and unable to act,
- (b) C's circumstances are such that it is impractical for him or her to meet the requirements or requests in the registered declaration (for example, where C no longer normally resides in the United Kingdom), or 15
- (c) D is unable or refuses to make moneys available to meet the terms of the registered declaration.
- (5) Where no person is named in a registered declaration as having responsibility for carrying out directions or considering requests the funeral agent is the person responsible for dealing with the will or estate of a deceased person, which includes as an executor, personal representative or administrator executor or administrator. 20
- (6) Subject to the provisions of this section, it is the duty of the funeral agent, irrespective of any other estate matters, to – 25
- (a) to review the registered declaration as soon as possible after the death of the person to whom it relates;
- (b) carry out the directions in the registered declaration; and
- (c) consider and, where the agent considers it expedient, meet the requests in the registered declaration. 30
- (7) Where the registered declaration contains a direction concerning the future use of the grave (see section 2(1)(c)), the funeral agent has a duty to inform –
- (a) the burial authority of the direction;
- (b) the owners of the site in which the grave is located of the direction and ask them to make an entry of the direction in their records concerning the grave; and 35
- (c) those with a property interest in the grave of the direction;
- (d) those named in the direction; and
- (e) those who might reasonably be expected to be buried in the grave (for example, relatives of the deceased) of the direction. 40
- (8) The funeral agent does not have to meet a direction in a registered declaration that –
- (a) is largely impractical,
- (b) is unclear, 45
- (c) is unreasonable, frivolous or vexatious,
- (d) could give rise to a breach of the law,
- (e) could not be funded from the deceased person's estate, or

(f) conflicts with any other ground set out in regulations made by the Secretary of State.

(9) A funeral agent may disregard requests in a registered declaration.

6 Breach of duty

- (1) A person is in breach of duty if he or she— 5
- (a) fails to meet a duty provided in or under sections 4(1) to (3); or
 - (b) fails to meet a duty provided in or under sections 5(3)(a) to (c), (6) and (7).
- (2) Where a breach of duty has taken place, or appears to have taken place, a person with an interest in the burial arrangements of the deceased may apply to the court for— 10
- (a) a declaration that a breach has taken place; and
 - (b) where a declaration has been made, financial redress for the injury, harm or distress caused by the breach to the person who sought the declaration. 15

7 Regulations

- (1) Regulations under this Act must be made by statutory instrument.
- (2) No regulations under this Act, other than those under section 10(3), shall be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament. 20

8 Interpretation

In this Act—

- “burial” includes the interment of cremated remains and the “right of burial”, which includes “right of interment”; 25
- “burial authority” means the council of a district, London borough, parish or community, the Common Council of the City of London, the parish meeting of a parish having no parish council, whether separate or common, or a joint board established under section 6 of the Public Health Act 1936 or by or under any local Act for the provision and maintenance of cemeteries; 30
- “direction” means an instruction to carry out an act or to prevent the carrying out of an act or occurrence, which is binding on a funeral agent, other than as provided in this Act;
- “funeral agent” has the meaning at section 5(1) of this Act; 35
- “grave” includes any grave space, burial plot and any crypt, vault, catacomb, arch, brick grave, mausoleum, columbarium or other place of interment;
- “memorial” means any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone or tablet, and includes any wall, kerb or railing protecting, enclosing or marking a grave or grave space or memorial (including any permanent covering thereon), or any other commemorative object placed in the cemetery including vases, flower containers or other similar objects; and 40

“request” means an expression of a view or preference that is not binding on a funeral agent.

9 Financial provision

There is to be paid out of money provided by Parliament –

- (a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown, and* 5
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

10 Short title, commencement and extent

- (1) This Act shall be cited as the Burial Rights Reform Act 2017. 10
- (2) This section comes into operation on the day on which this Act is passed.
- (3) All other sections shall come into force on such a day as the Secretary of State may by statutory instrument appoint.
- (4) This Act extends to England and Wales.

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To enable a person to make his or her instructions concerning burial and related matters binding on their personal representative or beneficiary; to enable a person to make provision about the use of a burial space he or she acquired while living after the person's burial; and for connected purposes.

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*Ordered, by The House of Commons,
to be Printed, 17 January 2017.*

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