

## New Southgate Cemetery Bill [HL]

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### EXPLANATORY MEMORANDUM

This Bill is promoted by New Southgate Cemetery and Crematorium Limited (“the Company”). It confers powers on the Company and the National Spiritual Assembly of the Bahá’ís of the United Kingdom (“the Bahá’ís”), who are between them the burial authorities responsible for New Southgate Cemetery (“the cemetery”).

The purpose of this Bill is to authorise the Company and the Bahá’ís (“the burial authorities”) to extinguish rights of burial in grave spaces, and to disturb and reinter human remains in graves, in their respective sections of the cemetery in order to increase the space for further interments in such graves, as well as powers to use appropriately or remove altogether from the cemetery any memorials on such graves. It would provide the burial authorities with the same powers that are already available in respect of local authority run burial grounds in London.

*Clause 1* gives the short title of the Bill and provides for it to come into force 28 days after it is passed.

*Clause 2* defines certain expressions used in the Bill.

*Clause 3* provides the burial authorities with the power to extinguish rights of burial in grave spaces in the cemetery where 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. *Clause 3* is substantially based on section 6 of the City of London (Various Powers) Act 1969, and section 9 of the Greater London Council (General Powers) Act 1976, which provide the equivalent powers in respect of publicly run burial grounds in London.

*Subsections (4) to (6)* provide that at least six months’ notice of the proposal to extinguish such rights must be given by the burial authority concerned. If the registered owner objects to the proposal within that period, the right of burial may not be extinguished. If any other person objects, the right may only be extinguished by consent of the Secretary of State.

*Subsection (7)* provides that where a memorial is removed in connection with the extinguishment of burial rights it remains the property of the owner, but where it is not claimed within six months, the burial authority may put the memorial to another use or destroy it.

*Subsections (8) and (9)* provide a right of compensation to persons whose rights of burial are extinguished and for the amount of compensation to be determined by arbitration if it cannot be agreed.

*Subsection (10)* contains protection for graves and memorials that are the responsibility of the Commonwealth War Graves Commission.

*Clause 4* provides the burial authorities with the power to disturb, or to authorise the disturbance of, human remains interred in the cemetery 75 or more years ago, for the

purpose of increasing the space for new interments, and to remove any related memorials. The power may only be exercised in respect of graves where burial rights have been extinguished under *Clause 3*, or where the grave is a public or common grave where no right of burial was granted. Any human remains disturbed must be reinterred in their original grave, or another earth grave in the cemetery. *Clause 4* is based on section 74 of the London Local Authorities Act 2007, which provides similar powers in respect of publicly run burial grounds.

*Subsections (5) to (8)* provide that the burial authority concerned must give at least six months' notice of the proposal to disturb human remains. If the proposal is objected to by the registered owner of the extinguished burial right or memorial, or a relative of the person whose remains are to be disturbed, the burial authority may not exercise the powers under *Clause 4* for a period of 25 years.

*Subsection (9)* provides protection for the owners of memorials, along the lines of *clause 3(7)*.

*Subsection (10)* enables the Secretary of State to give the burial authority directions about the way in which it removes or reinters human remains. This power does not apply in relation to consecrated land, which is covered by *subsections (11) and (12)*. These subsections provide that a faculty from the consistory court of the diocese must first be obtained before disturbing any human remains in consecrated land.

*Subsection (13)* contains protection for human remains within graves that are the responsibility of the Commonwealth War Graves Commission.

*Subsection (14)* provides that section 25 of the Burial Act 1857, which requires the Secretary of State to license the removal of human remains, does not apply to removals that are carried out in accordance with this clause.

*Clause 5(1)* requires the burial authority to make a record of any memorial removed under this Act. *Subsections (2) to (4)* require the burial authority to maintain a public record of the disturbance and reinterment of remains under *Clause 4*.

#### EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of New Southgate Cemetery and Crematorium Limited the provisions of the New Southgate Cemetery Bill are compatible with the Convention Rights.

[HC]

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# B I L L

To confer powers upon New Southgate Cemetery and Crematorium Limited and the National Spiritual Assembly of the Bahá'ís of the United Kingdom to extinguish rights of burial and disturb human remains in New Southgate Cemetery for the purpose of increasing the space for interments; and for connected purposes.

WHEREAS—

- (1) The Great Northern London Cemetery Company (“Great Northern”) was incorporated by the Great Northern London Cemetery Act 1855 and, under the powers of that Act, purchased lands formerly in the urban district of East Barnet, in the county of Hertford, and now in the London Borough of Barnet (“the Borough”) and constructed a cemetery (“the cemetery”) on a portion of the said lands: 5
- (2) Further provisions were made with regard to the cemetery and further powers were conferred on Great Northern by the Great Northern London Cemetery Act 1876 and the Great Northern London Cemetery Act 1896, and Great Northern was empowered by the Great Northern London Cemetery (Crematorium) Act 1953 to erect and maintain and has erected and maintained within the cemetery a crematorium for the burning of human remains: 10
- (3) The cemetery is situated on that portion of the lands purchased by Great Northern under the said Act of 1855 which lies on the east side of Brunswick Park Road in the Borough: 15

- (4) The remainder of such lands lie on the west side of the said Brunswick Park Road and have been sold by Great Northern in pursuance of powers conferred upon it by the Great Northern London Cemetery Company Act 1961 and the Great Northern London Cemetery Company Act 1968:
- (5) Under the powers of the Great Northern London Cemetery Act 1976, Great Northern disposed of certain further surplus land and transferred the ownership and management of the remaining cemetery to New Southgate Cemetery and Crematorium Limited (“New Southgate”): 5
- (6) Under the New Southgate Cemetery and Crematorium Limited Act 1990, New Southgate transferred ownership of part of the cemetery (“the transferred land”) to the National Spiritual Assembly of the Bahá’ís of the United Kingdom (“the Bahá’ís”): 10
- (7) In order that better use may be made of the land in the cemetery for burials, it is expedient that New Southgate and the Bahá’ís 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 were granted, 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: 15
- (8) It is expedient that the other provisions contained in this Act should be enacted: 20
- (9) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and 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: 25

## 1 Citation and commencement

This Act may be cited as the New Southgate Cemetery Act 201[6] and comes into force at the end of 28 days beginning with the day on which this Act is passed.

## 2 Interpretation 30

In this Act—

“the borough” means the London Borough of Barnet;

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

“the burial authority” means— 35

- (a) in relation to the transferred land, the National Spiritual Assembly of the Bahá’ís of the United Kingdom, and
- (b) in relation to any other part of the cemetery, New Southgate Cemetery and Crematorium Limited;

- “the cemetery” means the New Southgate Cemetery referred to in the preamble to this Act, constructed and administered under the Great Northern London Cemetery Acts 1855 to 1976 and the New Southgate Cemetery and Crematorium Limited Act 1990;
- “civil partner” includes former civil partner; 5
- “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; 10
- “grave” includes any grave space 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; 15
- “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; 20
- “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; 25
- “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; and
  - (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; 30
- “relative”, in relation to any person, means any of the following— 35
- (a) that person’s spouse;
  - (b) that person’s civil partner;
  - (c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of that person or of that person’s spouse or civil partner; 40
- “spouse” includes former spouse; and
- “transferred land” means that part of the cemetery defined as such in the New Southgate Cemetery and Crematorium Limited Act 1990.

### 3 Power to extinguish rights of burial

- (1) Subject to subsection (2), 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, in accordance with the provisions of this section, extinguish the right of burial in that grave space. 5
- (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) 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. 10
- (4) Before extinguishing a right of burial or removing any memorial under the powers of this section, the burial authority must—
- (a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in the borough, with an interval between the dates of publication of not less than six clear days; 15
  - (b) display such a notice in a conspicuous position at each of the principal entrances to the cemetery; and
  - (c) serve such a notice upon— 20
    - (i) the registered owner of the right of burial at that person's registered address;
    - (ii) the Commonwealth War Graves Commission; and
    - (iii) the Historic Buildings and Monuments Commission for England.
- (5) Each of the notices must— 25
- (a) contain full particulars of the burial authority's proposals including a specification of 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 stating whether it is proposed that any memorials should be removed; 30
  - (b) specify the date on which it is intended that the rights should be extinguished and any memorial removed, which date must not be earlier than six months after the date of the later of the two publications, or the date on which notice is first displayed, or the date on which notice is served, whichever is the last; and 35
  - (c) state the effect of subsections (6) to (9).
- (6) If notice of objection to the extinction of a right of burial in any grave space is given to the burial authority before the date specified under subsection (5)(b) 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, and if notice of any other objection to the extinction of any rights of burial or to the removal of any memorial, and of the ground of any such objection, is given to the burial authority before the date specified under subsection (5)(b) and is not withdrawn, any rights or memorial to which such last mentioned objection relates must not be extinguished or removed without the consent of the Secretary of State. 40 45

- (7) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified under subsection (5)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may destroy it. 5
- (8) 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, 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. 10
- (9) In any arbitration under subsection (8) 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. 15
- (10) The powers conferred by this section must not, except with the prior written agreement of the Commonwealth War Graves Commission, be exercised by the burial authority in respect of— 20
- (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.

#### 4 Power to disturb human remains

- (1) 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— 25
- (a) the burial authority has extinguished rights of burial in the grave under **section 3**; or
  - (b) the grave is a public or common grave.
- (2) A person authorised by or under subsection (1)(b) to disturb human remains within a public or common grave may remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed. 30
- (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— 35
- (a) in their original grave; or
  - (b) in another grave within the cemetery, such grave being below the level of the ground and consisting wholly or substantially of earth.
- (5) Before disturbing any human remains, or removing any memorial, under this section the burial authority must— 40
- (a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in the borough, with an interval between the dates of publication of not less than six clear days;

- (b) display such a notice in a conspicuous position at each of the principal entrances to the cemetery; and
- (c) serve such a notice upon—
- (i) any registered owner of the extinguished right of burial or the memorial proposed to be removed at that person's registered address; 5
  - (ii) the Commonwealth War Graves Commission; and
  - (iii) the Historic Buildings and Monuments Commission for England.
- (6) Each of the notices referred to in subsection (5) must—
- (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in which it is proposed that the human remains are to be disturbed and stating whether it is proposed that any memorials should be removed; 10
  - (b) specify the date after which it is intended that the work should be undertaken, which must not be earlier than six months after the date of the later of the two publications, the date on which the notice is first displayed, or the date on which the notice is served, whichever is the last; and 15
  - (c) state the effect of subsection (8).
- (7) A single notice may be used for the purposes of this section and **section 3**. 20
- (8) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the date specified in subsection (6)(b) by—
- (a) the registered owner of the extinguished right of burial;
  - (b) the registered owner of a memorial erected or placed in or on any grave spaces specified under subsection (6)(a), whether or not the memorial itself is proposed to be disturbed; 25
  - (c) a relative of the person whose remains are proposed to be disturbed,
- and that objection is not withdrawn, the burial authority may not exercise its powers under this section for a period of 25 years, beginning with the date of the publication of the first notice under subsection (5)(a). 30
- (9) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified in subsection (6)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may destroy it. 35
- (10) 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 reinterment of any human remains in any case other than a case falling within subsection (12).
- (11) Subject to subsection (12), nothing in this section 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. 40
- (12) Where the burial authority proposes to disturb any human remains in consecrated land the burial authority may not exercise its powers under this section 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 45

objection to the proposed disturbance of human remains from consecrated land by any person under subsection (8) must be heard and determined by that consistory court.

- (13) The powers conferred by this section must not, except with the prior written agreement of the Commonwealth War Graves Commission, be exercised by the burial authority in respect of— 5
- (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.
- (14) 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. 10

## 5 Records

- (1) The burial authority must cause a record to be made of each memorial removed under this Act containing— 15
- (a) a copy of any legible inscription on it; and
  - (b) if it is intended to preserve the memorial, a statement showing where it has been taken,
- and the burial authority must deposit a copy of the record with the Registrar General. 20
- (2) The burial authority must maintain a record of any remains in the cemetery disturbed under the powers of **section 4**, showing—
- (a) the date of the disturbance;
  - (b) the registered number of the grave;
  - (c) the names, in full, of the person whose remain are disturbed; 25
  - (d) the book, page and entry number of the entry of burial or, where the burial was entered electronically, the number of the entry;
  - (e) particulars of the authority for disturbance; and
  - (f) the registered number of the grave in which the remains are reinterred and the date of reinterment. 30
- (3) As soon as reasonably practicable after any disturbance, the burial authority must complete the record as regards paragraphs (a) to (f) of subsection (2).
- (4) The record maintained under subsection (2) must at all reasonable times be available for consultation by any person free of charge.

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## BILL

To confer powers upon New Southgate Cemetery and Crematorium Limited and the National Spiritual Assembly of the Bahá'ís of the United Kingdom to extinguish rights of burial and disturb human remains in New Southgate Cemetery for the purpose of increasing the space for interments; and for connected purposes.

*Brought from the Lords 13 October 2016*

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SESSION 2016–17

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