

HOUSE OF LORDS

SESSION 2019–2021

HIGHGATE CEMETERY BILL [HL]

AMENDMENTS PROPOSED TO BE MADE IN THE
OPPOSED BILL COMMITTEE, HOUSE OF LORDS

Explanatory Memorandum

Page 2, first paragraph (“Subsection (8)”), line 4, delete “destroy” and insert “dispose of”

Page 2, third paragraph (“Clause 5”), line 3, delete “improve” and insert “conserving”

Page 2, third paragraph (“Clause 5”), line 4, delete “The power may only be exercised in respect of graves where burial rights have been extinguished under *clause 4*, or where the grave is a public or common grave where no right of burial was granted provided it is not a protected grave pursuant to *clause 6(3)*.” and substitute “The power may only be exercised in respect of graves where no burial rights exist, either because the right has been extinguished under *clause 4*, because the right has expired or because the grave is a public or common grave where no right of burial was granted.”

Page 2, third paragraph (“Clause 5”), line 11, for “provides” substitute “provide”

Page 2, fourth paragraph (“Subsection (5) to (8)”), line 3, delete “tombstone” and insert “memorial”

Page 3, delete third paragraph (“Clause 8”).

Page 3, fifth paragraph (“Subsection (4)”), line 1, delete “(4)” and insert “(3)”

Page 3, fifth paragraph (“Subsection (4)”), line 2, after “byelaw” insert “, and for such a person”

Page 3, from beginning of seventh paragraph (“Clause 10”) to end of ninth paragraph (“Subsection (3)”), delete and substitute –

“*Clause 10* makes provision for the repeal of the London Cemetery Company Act 1836, the London Cemetery Company Act 1843 and the London Cemetery Company Act 1911 so far as they relate to the cemetery, on the basis that they are redundant because the Trust now operates, and is the registered proprietor of, the cemetery.

Subsection (2) provides that the London Cemetery Company shall cease to be a body corporate and that all property, rights, liabilities, etc., of the London Cemetery Company shall pass to the Trust. This is necessary on the basis that the aforesaid Acts are proposed to be repealed. This provision is based on section 10 of the HBOS Group Reorganisation Act 2006 and section 3 of the St Austell Market Act 2008.

Subsection (3) provides that any act carried out by the London Cemetery Company which is required to be given effect insofar as related to the cemetery, shall be deemed to have effect as though the Trust carried out the act on the date on which the London Cemetery Company carried it out. This is substantially based on regulation 4 of the Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015."

Long Title

- 1 Page 1, line 2, delete "improve" and insert "conserve"
- 2 Page 1, line 4, delete "improvement" and insert "conservation"

Preamble – Recital (5)

- 3 Page 2, line 2, delete "were granted" and insert "exist"
- 4 Page 2, line 3, delete "improving" and insert "conserving"

Clause 2 – Interpretation

- 5 Page 2, line 17, at beginning insert "(1)"
- 6 Page 2, line 31, at end insert –

""expired", in relation to a right of burial, means that the right has ceased to exist, whether by reason of any fixed period for which the right was granted having ended or the right having been surrendered, forfeited or otherwise determined, or for any other reason other than the right having been extinguished in accordance with the provisions of section 4;"

- 7 Page 2, line 43, delete "is" and insert "has"
- 8 Page 3, line 10, delete "and"

- 9 Page 3, line 13, after “granted” and “or” delete commas
- 10 Page 3, line 15, at end insert “and
- (c) in relation to any right that has expired or been extinguished, means the last person so registered;”
- 11 Page 3, line 24, at end insert —
- “(2) Reference to a right of burial that has expired include references to a right of burial that has been surrendered or determined, or after the expiry of the period for which it was granted.”

Clause 3 – Power to operate and maintain the cemetery

- 12 Page 3, line 26, delete “The” and insert “Subject to the provisions of this Act, the”

Clause 4 – Power to extinguish rights of burial

- 13 Page 4, line 3, at end insert —
- “(aa) publish such a notice on their website (or by using an equivalent means of electronic publication);
- 14 Page 4, line 4, after “position” insert “ —
- (i)”
- 15 Page 4, line 5, at end insert —
- “(ii) so far as is reasonably practicable, at or near the grave; and”
- 16 Page 4, line 8, at end insert —
- “(ia) if different, the registered owner of any memorial proposed to be removed at that person’s registered address;”
- 17 Page 4, line 20, after the first instance of “which” insert “the”
- 18 Page 4, line 21, before “notice” insert “the”
- 19 Page 4, line 36, delete “destroy” and insert “dispose of”

Clause 5 – Power to disturb human remains

- 20 Page 5, line 9, delete “improving” and insert “conserving”
- 21 Page 5, line 12, delete “or”
- 22 Page 5, line 13, delete “provided it is not a protected grave.” and insert “; or
(c) any right of burial granted in relation to the grave has expired.”
- 23 Page 5, line 15 after “subsection (1)(b)” insert “or (c)”
- 24 Page 5, line 16, delete “within a public or common grave”
- 25 Page 5, line 27, at end insert –
“(aa) publish such a notice on their website (or by using an equivalent means of
electronic publication);”
- 26 Page 5, line 28, after “position” insert “ –
(i)”
- 27 Page 5, line 29, at end insert –
“(ii) so far as is reasonably practicable, at or near the grave; and”
- 28 Page 5, line 31, delete “any” and insert “the”
- 29 Page 5, line 31, before “extinguished” delete “the” and insert “any”
- 30 Page 5, line 31, after “extinguished” insert “or expired”
- 31 Page 5, line 31, before “memorial” delete “the” and insert “any”
- 32 Page 5, line 41, delete “work” and insert “works proposed in the notice”
- 33 Page 5, line 42, after “which” insert “date”
- 34 Page 6, line 4, after “extinguished” insert “or expired”
- 35 Page 6, line 16, delete “destroy” and insert “dispose of”

Clause 6 – Further protection for certain graves

- 36** Page 6, line 35, delete from “The” to the end of line 37 and insert –

“The burial authority must obtain the written agreement of the Commonwealth War Graves Commission before exercising the powers conferred by sections 4 and 5 in respect of –”

- 37** Page 6, line 41, for subsection (2) substitute –

“(2) The burial authority must obtain the written agreement of the Historic Buildings and Monuments Commission for England and the London Borough of Camden before exercising the powers conferred by sections 4 and 5 in respect of a protected grave.”

Clause 7 – Register of burials and other records

- 38** Page 7, line 28, delete “record as regards” and insert “register in accordance with”

Clause 8 – Offences in the cemetery

- 39** Page 7, line 39 to page 8, line 12, delete clause 8.

Clause 10 – Repeals and savings

- 40** Page 8, line 33, delete “The” and insert “Subject to subsection (2), the”

- 41** Page 8, line 36, at end insert –

“(1A) Sections 118 and 119 of the London Cemetery Company Act 1836 are repealed so far as they relate to the cemetery on the date on which byelaws made under section [9] come into operation.”

Back Sheet

Long Title

- 42 Line 2, delete "improve" and insert "conserve"
- 43 Line 4, delete "improvement" and insert "conservation"

BDB Pitmans LLP

BDB Pitmans LLP
Solicitors and Parliamentary Agents
12 February 2021