

Bishop's Stortford Cemetery Bill

EXPLANATORY MEMORANDUM

This Bill is promoted by East Hertfordshire District Council.

The purpose of this Bill is to authorise Bishop's Stortford Town Council ("the parish council"), which is the burial authority for Bishops' Stortford New Cemetery and Old Cemetery (together "the cemetery"), to extinguish rights of burial in grave spaces, and to disturb and reinter human remains in graves 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.

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 authority 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, as well as section 3 of the New Southgate Cemetery Act 2017 and section 4 of the Highgate Cemetery Act 2022 which provide the equivalent powers in respect of private burial grounds in New Southgate and Highgate respectively.

Subsections (4) and (5) provide that if the registered owner objects to the proposal before the date specified in a notice (which must be at least 6 months), 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 (6)* sets out considerations the Secretary of State must have regard to when considering whether to consent to an extinguishment.

Subsection (7) provides that extinguishment takes effect on the date specified under a notice or, where an objection is made, the day after consent is given by the Secretary of State under *subsection (5)*.

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. As an alternative to compensation, *subsection (8)(b)* allows the burial authority to provide confirmation that the burial right is to be revived, in which case the burial right is deemed not to have been extinguished under *subsection (1)*. This enables the burial authority to deal with circumstances where the burial right owner does not respond to a notice of extinguishment within the specified period but makes a later compensation claim, and the burial authority is content for the right of burial to endure.

Clause 4 provides the burial authority 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. 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 or where any right of burial has expired. Any human remains disturbed must be reinterred in their original grave or in another grave in the cemetery. *Clause 4* is substantially based on section 74 of the London Local Authorities Act 2007, which provides the equivalent power in respect of publicly run burial grounds in London, as well as section 4 of the New Southgate Cemetery Act 2017 and section 5 of the Highgate Cemetery Act 2022, which provide the equivalent powers in respect of private burial grounds in New Southgate and Highgate respectively.

Subsections (5) to (7) provide that if a proposal to disturb human remains is objected to by the registered owner of the extinguished burial right or a 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 at least 25 years.

Subsection (8) 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 *clause 5*.

Subsection (9) 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 contains protection for graves and memorials that are the responsibility of the Commonwealth War Graves Commission. The powers in *clauses 3 and 4* only apply to these graves with the agreement of the Commission.

Subsections (2) and (3) make it clear that the powers in *clause 4* cannot be exercised in relation to human remains in consecrated land unless a faculty is first obtained from the consistory court of the diocese .

Clause 6 sets out the processes for giving notice in connection with the extinguishment of rights or the disturbance of remains. At least 6 months' notice must be given, the notices must be publicised in newspapers, on the burial authority's website and in the cemetery, and they must be sent to the registered owners of the burial rights or any memorials affected.

Clause 7 deals with memorials. Where a memorial is removed in connection with the extinguishment of burial rights or the disturbance of human remains it remains the property of the owner of the memorial, but where it is not claimed within six months, the burial authority may put the memorial to another use or dispose of it.

Subsection (2) requires the burial authority to publish a policy setting out how it will exercise its powers of disposal in relation to memorials.

Clause 8(1) to (3) requires the parish council to maintain a record of disturbance and reinterment under *clause 4*. *Subsection (4)* requires the burial authority to make a record of any memorial removed under this Act. The clause is based on section 5 of the New Southgate Cemetery Act 2017 and section 7 of the Highgate Cemetery Act 2022.

Clause 9 confirms for the avoidance of doubt that the parish council is entitled to contribute to the costs, charges and expenses in relation to obtaining this Act, which also extends to any contributions made prior to the date of the Act. This clause is based on section 20 of the Swavesey Bye-ways Act 1984.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of East Hertfordshire District Council the provisions of the Bishop's Stortford Cemetery Bill are compatible with the Convention Rights.

Bishop's Stortford Cemetery Bill

CONTENTS

- 1 Citation and commencement
- 2 Interpretation
- 3 Power to extinguish rights of burial
- 4 Power to disturb human remains
- 5 Protection for certain graves
- 6 Notices given under this Act
- 7 Memorials
- 8 Records
- 9 Costs of Act

A

BILL

To confer powers upon Bishop's Stortford Town Council to extinguish rights of burial and disturb human remains in Bishop's Stortford New Cemetery and Old Cemetery for the purpose of increasing the space for interments; and for connected purposes.

WHEREAS—

- (1) Bishop's Stortford Town Council ("the parish council") is the burial authority for the cemeteries in the town of Bishop's Stortford, known as the Old Cemetery and the New Cemetery ("the cemetery"):
 - (2) The town of Bishop's Stortford is within the district of East Hertfordshire, which is under the local government of East Hertfordshire District Council ("the district council"):
 - (3) In order that better use may be made of the land in the cemetery for burials, it is expedient that the parish council 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 exist, 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:
 - (4) It is expedient that the other provisions contained in this Act should be enacted:
 - (5) The objects of this Act cannot be attained without the authority of Parliament:
 - (6) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c.70) have been observed by the district council:
- May it therefore please your Majesty that it may be enacted, and be it enacted, by the King'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 Citation and commencement

This Act may be cited as the Bishop's Stortford Cemetery Act 202[X] and comes into force at the end of 28 days beginning with the day on which this Act is passed.

2 Interpretation

5 In this Act—

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

10 “the burial authority” means the parish council or another person to whom any or all of the benefit of the provisions of this Act and any statutory functions related to the operation and maintenance of the cemetery have been transferred;

“the cemetery” means the cemeteries sited on either side of Cemetery Road, Bishop's Stortford and known as ‘the Old Cemetery’ and ‘the New Cemetery’;

“civil partner” includes former civil partner;

15 “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;

20 “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 3**;

25 “grave” includes any grave space and any crypt, vault, catacomb, arch, brick grave, mausoleum, columbarium or other place of interment;

30 “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;

“parish council” means Bishop's Stortford Town Council;

35 “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;

“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;

“registered number” means a number registered in the register of grants;

40

“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;

5 (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; and

10 (c) in relation to any right that has expired or been extinguished, means the last person so registered;

“relative”, in relation to any person, means any of the following—

(a) that person’s spouse;

(b) that person’s civil partner;

15 (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;

“specified date” means the date specified in a notice given for the purposes of **section 3** or **section 4**, on which it is intended that any burial rights should be extinguished, any human remains should be disturbed, or any memorial should be removed, as the case may be; and

20 “spouse” includes former spouse.

3 Power to extinguish rights of burial

(1) Subject to subsection (2) and **section 5**, 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, by notice given in accordance with **section 6**, extinguish the right of burial in that grave space.

(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.

30 (3) Subject to **section 7**, 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.

(4) If notice of objection to the extinguishment of a right of burial in any grave space is given to the burial authority before the specified date 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.

35 (5) If notice of any other objection to the extinguishment of any rights of burial or to the removal of any memorial, and of the grounds of any such objection, is given to the burial authority before the specified date and is not withdrawn, any specific 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

- (6) When considering whether to consent to the extinguishment of the right of burial under subsection (5) the Secretary of State must have due regard to such matters as it considers relevant including—
- (a) the interest of the person making an objection in the right of burial;
 - 5 (b) the grounds of objection;
 - (c) the presumption in favour of the need for increased burial spaces in the cemetery.
- (7) An extinguishment under subsection (1) takes effect—
- (a) where no notice of objection is given, on the specified date,
 - 10 (b) where notice of objection is given and the objection is withdrawn, on the specified date or the day after the objection is withdrawn, whichever is later, or where the Secretary of State consents to the extinguishment under subsection (5), on the day after that consent is given.
- (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 either—
- 15 (a) 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; or
 - 20 (b) confirm in writing to the owner that the right of burial extinguished is to be revived and, if confirmation is given under this paragraph, the right of burial is deemed not to have been extinguished under subsection (1).
- (9) In any arbitration under subsection (8)(a), 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.
- 25

4 Power to disturb human remains

- (1) Subject to **section 5**, 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 in the cemetery where—
- 30 (a) the burial authority has extinguished rights of burial in the grave under **section 3**;
 - (b) the grave is a public or common grave; or
 - (c) any right of burial granted in relation to the grave has expired.
- 35 (2) A person authorised by or under subsection (1)(b) or (c) to disturb human remains may remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed.
- (3) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.
- 40 (4) Any human remains disturbed under subsection (1) must be reinterred either in their original grave or in another grave within the cemetery.

- (5) Before disturbing any human remains, or removing any memorial, under this section the burial authority must give notice in accordance with **section 6**.
- (6) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the specified date by—
- 5 (a) the registered owner of the extinguished or expired right of burial;
- (b) the registered owner of a memorial erected or placed in or on any grave spaces specified in the notice, whether or not the memorial itself is proposed to be removed;
- (c) a relative of the person whose remains are proposed to be disturbed,
- 10 and that objection is not withdrawn, the burial authority may not, subject to subsection (7), disturb or authorise the disturbance of those remains.
- (7) A burial authority may disturb or authorise the disturbance of human remains that are otherwise protected from disturbance under subsection (6) if—
- 15 (a) after the expiry of a period of 25 years from the date on which notice of objection in accordance with that subsection was last given, the burial authority has given further notice in accordance with **section 6** in relation to the disturbance of those remains; and
- (b) no notice of objection in accordance with subsection (6) is given in relation to that further notice or, if such notice of objection is given, it is withdrawn.
- 20 (8) 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 where the human remains are interred in consecrated land.
- 25 (9) 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.

5 Protection for certain graves

- (1) The burial authority must obtain the written agreement of the Commonwealth War Graves Commission before exercising the powers conferred by sections 3 and 4 in respect of—
- 30 (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.
- (2) Subject to subsection (3), nothing in **section 4** 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.
- 35 (3) Where the burial authority proposes to disturb any human remains in consecrated land, the burial authority may not exercise its powers under **section 4** 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 objection to the proposed disturbance of human remains in consecrated land by any person under **section 4** must
- 40 be heard and determined by that consistory court.

6 Notices given under this Act

- (1) A single notice may be given for the purposes of **section 3** and **section 4**.
- (2) The burial authority must—
 - (a) publish notice in a newspaper of their intention to exercise the powers under **section 3** or **section 4** once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days;
 - (b) publish such a notice and maintain that notice on the burial authority's website until the specified date;
 - (c) display such a notice in a conspicuous position—
 - (i) at each of the principal entrances to the cemetery; and
 - (ii) so far as is reasonably practicable at or near the grave;
 - (d) serve such a notice on—
 - (i) where the burial authority intends to extinguish burial rights, the registered owner of the right of burial and, if different, the registered owner of any memorial proposed to be removed, at their registered address;
 - (ii) where the burial authority intends to disturb human remains, the registered owner of any extinguished or expired right of burial or any memorial erected or placed in or on the grave space, at their registered address;
 - (iii) the Commonwealth War Graves Commission; and
 - (iv) the Historic Buildings and Monuments Commission for England.
- (3) Each notice must—
 - (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 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;
 - (b) contain the specified date, which must not be earlier than six months after the date of the last of the publications, the date on which the notice is first displayed, or the date on which the notice is served, whichever is the last;
 - (c) in the case of a notice under **section 3**, state the effect of subsections (4) to (9) of that section; and
 - (d) in the case of a notice under **section 4**, state the effect of subsections (6) and (7) of that section.
- (4) A notice under subsection (2)(b) must contain, where known, the name of the registered owner of the right of burial or memorial and the name of any person whose remains are proposed to be disturbed.
- (5) A notice under subsection (2)(a), (c) or (d) must include details of where the notice under subsection (2)(b) may be found and a statement that the notice under subsection (2)(b) contains the information described in subsection (4).

7 Memorials

- 5 (1) Any memorial removed by the burial authority under this Act remains the property of the owner of it, but if such owner does not claim it within a period of six months after the specified date, the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may dispose of it.
- (2) The burial authority must publish on its website, and make available on request, a policy setting out how it will exercise its powers under this section in relation to memorials.

8 Records

- 10 (1) The burial authority must maintain a record of any remains in the cemetery that are disturbed under the powers in **section 4**.
- (2) The record maintained under subsection (1) must include such information as the burial authority sees fit and must include—
- 15 (a) the date of the disturbance;
- (b) where known, the registered number of the grave;
- (c) where known, the names, in full, of the person whose remains are disturbed;
- (d) particulars of the authority for disturbance; and
- (e) the registered number of the grave in which the remains are reinterred, its approximate location and the date of reinterment.
- 20 (3) As soon as reasonably practicable after any disturbance under section 4, the burial authority must complete the record in accordance with paragraphs (a) to (e) of subsection (2).
- (4) The burial authority must cause a record to be made of each memorial removed under this Act containing—
- 25 (a) a copy of any legible inscription on it;
- (b) if it is intended to preserve the memorial within the cemetery, a statement showing where it has been taken; and
- (c) if the memorial is disposed of, a statement of the details of its disposal, and the burial authority must deposit a copy of the record with the Registrar General for England and Wales.
- 30 (5) The records maintained under subsections (2) and (4) must at all reasonable times be available for consultation by any person free of charge.

9 Costs of Act

- 35 (1) Without limiting the scope of any provision of the Localism Act 2011, the parish council is empowered to contribute to the costs, charges, and expenses of applying for and obtaining this Act, or otherwise in relation to it.
- (2) Subsection (1) applies to any contribution for such purposes whether made before or after the date of this Act.

Bishop's Stortford Cemetery Bill

A

BILL

To confer powers upon Bishop's Stortford Town Council to extinguish rights of burial and disturb human remains in Bishop's Stortford New Cemetery and Old Cemetery for the purpose of increasing the space for interments; and for connected purposes.

SESSION 2022-2023

Victoria Wilders
EAST HERTFORDSHIRE DISTRICT COUNCIL
Wallfields
Pegs Lane
Hertford SG13 8EG
Solicitor for the District Council

BDB PITMANS LLP
One Bartholomew Close
London EC1A 7BL
Solicitors and Parliamentary Agents

[25.10.22]

58/3