



**Law  
Commission**  
Reforming the law

# Burial and Cremation

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## Summary of the Report

<p><b>Who we are?</b></p> 	<p>We are the Law Commission of England and Wales. The Law Commission is an independent body established by statute to make recommendations to Government to reform the law in England and Wales.</p>
<p><b>What are we doing?</b></p> 	<p>We have been asked to review the law on burial and cremation in England and Wales. The purpose of the review is to make recommendations aimed at simplifying, clarifying, and modernising the law, to make sure it offers appropriate protections to people organising burials and cremations, and addresses shortages in burial space.</p>
<p><b>What is this document about?</b></p> 	<p>This is a summary of our final report. The purpose of this summary is to explain:</p> <ul style="list-style-type: none"> <li>• the main changes that we recommend to burial and cremation law; and</li> <li>• why we recommend them.</li> </ul>
<p><b>Where can I find the report?</b></p> 	<p>The full report is available at <a href="https://lawcom.gov.uk/project/burial-and-cremation/">https://lawcom.gov.uk/project/burial-and-cremation/</a></p>
<p><b>What happens next?</b></p> 	<p>Government will consider our recommendations and decide whether to change the law.</p>

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## This Summary

We have not reproduced every detail of the report in this Summary. Instead, we have tried to focus on the most important issues. If you want to know more about the law, or how and why we think it needs to change, we encourage you to look at the relevant section of the report too.

If you need this Summary to be made available in a different format, please email [bcnfm@lawcommission.gov.uk](mailto:bcnfm@lawcommission.gov.uk).

# Glossary

**Burial authority:** a local authority which is empowered by the Local Government Act 1972 section 214 to operate a cemetery.

**Burial ground:** land that is, or was, used primarily for the burial of human remains. This encompasses Church of England churchyards and cemeteries.

**Cemetery:** the term used for a burial ground operated by a local authority in the Local Government Act 1972, and also used in the founding Acts of Parliament of a number of private burial grounds.

**Church in Wales:** the Anglican church in Wales, formed following the disestablishment of the Church of England in Wales in 1920.

**Church of England:** the established Anglican church in England and the Crown Dependencies.

**Churchyard:** a burial ground attached to a church. In the Report and Summary we use the term to describe all burial grounds operated by the Church of England, although some of these will not be adjacent to a church.

**Commonwealth War Graves Commission:** an organisation established under Royal Charter to commemorate service men and women who died in the two World Wars.

**Crematorium:** a building fitted with appliances for the purpose of burning human remains.

**Cremation authority:** any person who has opened a crematorium.

**Ecclesiastical court:** the courts of a church. In the Church of England, the ecclesiastical courts are the consistory courts alongside their appeal courts, the Court of Arches and Chancery Court.

**Exhumation:** the removal of human remains from a place of burial. Also referred to as disinterment.

**Faculty:** a decision by the consistory court which gives permission to make changes to consecrated buildings and land.

**Family grave:** a grave where the exclusive burial rights are purchased with the intention that members of a family can be buried in the same grave.

**Licence:** an exhumation licence is a permission issued by the Ministry of Justice to remove human remains from a place of burial which is not on consecrated land.

**Parochial church council:** the executive committee of each parish in the Church of England, made up of clergy, church wardens and lay members.

**Private cemetery:** a burial ground which is not owned by a local authority or the Church of England. Includes burial grounds owned by other religious groups, companies, and charities.

**Tombstone:** a memorial made of stone, placed over a grave.

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## The case for reform

When a person dies in England and Wales, they are likely to either be cremated, or buried. Historically, burial was the only option. The first crematoria were opened at the end of the nineteenth century, and today over eight in ten funerals use cremation. Burial remains vitally important however, both for those whose religious faith prescribes it, and those who prefer it for other reasons.

Parts of burial law in England and Wales have remained largely unchanged for over 170 years, and some aspects are now outdated. Many private burial grounds are subject to no regulation on important matters like how the burial ground should be maintained, or how burial and memorial rights should be issued. Gaps in the law on matters such as how a body should be buried, and what records should be kept, extend to other types of burial ground too. The recommendations made as part of this project would address these issues, enhancing the protections available to those making burials.

The shortage of burial space in England and Wales is a significant problem, requiring reform to the law. The reuse and reclamation of old graves could help to make further space available. It is already permitted by law in certain burial grounds, but is not allowed in the rest of England and Wales. Our recommendations would help to address this challenge. They set out robust requirements before a burial ground operator can obtain grave reclamation and reuse powers from the Secretary of State, and then further safeguards in relation to each grave which a burial ground operator may seek to reclaim or reuse. We also recommend new powers to enable the reopening of long-closed burial grounds,

allowing some communities to once again be able to make burials locally.

The law on cremation is more modern, having been kept under more frequent review. However, the irreversible nature of cremation raises particular issues, and means that reform is needed to create new protections. For instance, we recommend safeguards to prevent mistakes in identifying people before they are cremated, and to restrict the cremation of unidentified remains, or of more than one body at a time. We also set out reforms which would address certain long-standing issues, such as the significant number of sets of ashes left with funeral directors by those organising the funeral, and which funeral directors cannot by law deal with themselves.

## This project

Our recommendations for reform are based on the provisional proposals contained in our Consultation Paper on Burial and Cremation. We carried out a public consultation from 3 October 2024 to 9 January 2025, incorporating nine in-person and online events. We received 632 responses to our consultation, including from religious communities, local authorities, private burial ground operators, cemetery and crematorium staff, funeral directors and celebrants, lawyers, charities, and academics, as well as members of the public responding in a personal capacity.

The report which this document summarises concludes the **Burial and Cremation** sub-project, which is part of a wider overall project called **Burial, Cremation and New Funerary Methods**. A second report addressing the regulation of new funerary methods, along with draft legislation, will be published shortly. Work on the third sub-project, **Rights and Obligations**

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**Relating to Funerary Methods, Funerals and Remains**, will begin shortly and will run until the end of 2027. We will then publish a draft Bill which would give effect to the recommendations in both **Burial and Cremation** and **Rights and Obligations Relating to Funerary Methods, Funerals and Remains** in mid-2028.

## Regulating burial law

Burial law is complex, with historic roots in the role of the Church of England, religious dissent, and public health reform in the mid-Victorian era. As a result of this complexity, there are different laws applying to different types of burial ground:

- local authority cemeteries are tightly regulated (through the Local Authorities' Cemeteries Order 1977 ("LACO 1977");
- most private burial grounds are lightly regulated;
- Church of England churchyards and burial grounds have their own laws, part of a system called ecclesiastical law; and
- Church in Wales churchyards and burial grounds have specific acts replicating some of the law which applied to them when part of the Church of England.

This complexity has the potential to create confusion and uncertainty.

Replacing all of the current law with a single, unified burial law regime could address this: however, we do not think that approach is the right one. That is because different burial grounds serve diverse religious and cultural needs, and the law provides flexibility to meet those needs. There are nonetheless gaps in the safeguards for users of burial grounds, with unjustified inconsistencies. That is why we recommend that there should be a minimum level of protection applying to all burial grounds, with aspects

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of burial regulated on an issue-by-issue basis to continue to permit flexibility where it is needed. Such change will particularly, but not exclusively, affect private burial grounds, where there is currently little applicable law.

In order to regulate private burial grounds, we need to define them. In doing so we need to distinguish them from a person simply making a burial on their own land, for example in their garden, which is permitted by law. Establishing these distinctions is necessary to ensure that regulatory requirements are applied appropriately. We recommend that a private burial ground is an identifiable area of land used for burials, either where payment is taken, or where the burial is carried out by a public body, religious organisation, or charity, on its own land.

See Chapter 2 of the Report for further discussion of these recommendations. In that chapter we also address:

1. the circumstances in which land will cease to be considered a burial ground after a period of time passes; and
2. the definition of "burial".

## More consistent safeguards in burial grounds

Throughout our Report, we make recommendations which would introduce more consistent safeguards across different types of burial grounds. Currently, there are gaps in the law in key areas such as maintenance, how bodies are buried, how burial and memorial rights are issued, and the recording of burials.



## Maintenance of burial grounds

Maintenance duties vary widely across different types of burial grounds. Local authority cemeteries, cemeteries established under Acts of Parliament, and Church of England churchyards generally have defined duties, though these duties differ between them. In contrast, many private burial grounds currently have no maintenance requirements at all.

Differing maintenance requirements across burial grounds can create confusion for families and burial ground operators. Poor standards of maintenance can cause significant distress for bereaved families and friends if they encounter neglected or badly kept burial grounds during visits.

There is a wide range of different types of burial grounds with different maintenance practices. For example, some burial grounds are kept in ways that encourage

biodiversity, while others are kept as neat “lawn” cemeteries. For that reason, we take an approach that reflects these different contexts. We recommend that every burial ground owner and/or operator should be required to maintain their burial ground in good order appropriate to its current use.

The current enforcement framework rooted in Victorian-era Burial Acts requires updating. We recommend modernising it by giving the Secretary of State a clearer range of enforcement powers, including powers to authorise inspections, issue notices, impose civil penalties, and, where a burial ground fails to fulfil actions required by the notice, direct the local authority to take on the maintenance of the burial ground and recoup the costs of doing so.

**See Chapter 3 of the Report for further discussion of these recommendations. In that chapter we also address the repeal of an obsolete offence relating to enforcement.**

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## How bodies are buried

There are currently no consistent laws governing how a body should be buried (or “burial specifications”) that apply to private burial grounds, on private land, or in Church of England churchyards. By contrast, all local authority cemeteries are subject to the same legal requirements on this issue.

The impact that improper burials can have on families and friends is significant, because such practices risk remains being unearthed by animals, or disturbed as the soil moves. That is why we consider that a single set of minimum burial specifications across all types of burial ground is appropriate.

In a local authority cemetery, LACO 1977 provides that a body must be buried at least three feet deep. This means that the coffin must be covered by not less than three feet of soil, measured from the top of the coffin to the level of the adjoining ground. An exception to this rule is where the coffin is made of perishable materials and the soil is of suitable condition, in which case a burial must instead be made at least two feet deep.

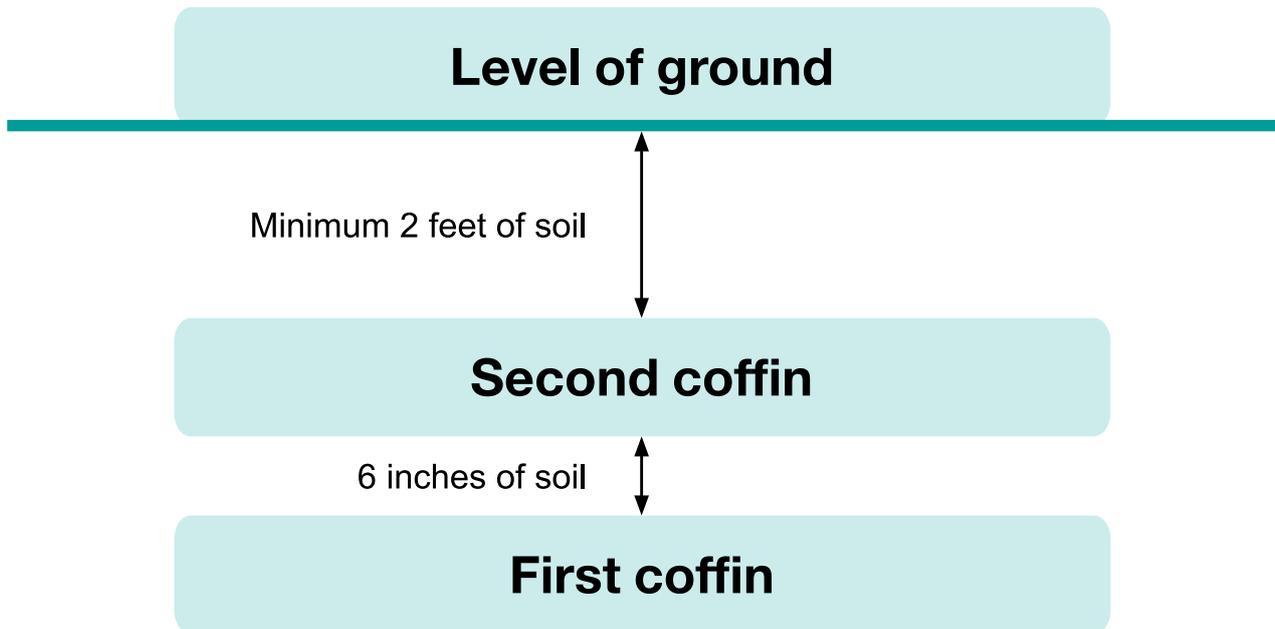
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Burial at two feet is practiced widely within natural burial grounds, because it aids in the natural breaking down of remains. We also heard from consultees that it is, in practice, the minimum depth used in local authority cemeteries. If we were to recommend a deeper minimum depth, it would cause problems in natural burial grounds, and prevent the burials of further people in existing family graves. That is why we recommend that the minimum depth at which a body should be buried, across all burial grounds, should be two feet. This would apply to every type of coffin regardless of soil conditions.

There are other rules in local authority cemeteries relating to how bodies should be buried. When a further burial is made in the same plot, coffins or bodies in the same grave must be separated by a layer of earth of at least six inches thick. We recommend that this rule is extended to other types of burial grounds. There are also rules relating to walled graves and vaults, which we recommend are also extended with some modifications.

Figure 1 shows how these requirements would be met within a typical family grave in which two coffins are buried.

**Figure 1: New laws on burial depth**



At present, only local authorities can be held criminally liable for breaches of burial requirements. Given the risk of harm to the family and friends of the deceased person and the impact on public dignity, we recommend extending the criminal offence so that it applies across all burial grounds. We recommend that the maximum penalty for this offence should be a fine at level 3 on the standard scale (currently £1,000).

See Chapter 4 of the Report for further discussion of these recommendations.

## Burial and memorial rights

### A requirement to issue rights in writing

Broadly, there are two types of burial rights and one memorial right. An “exclusive burial right” grants the holder an ongoing exclusive right to use a plot, often for

multiple burials, while a “non-exclusive burial right”, allows a single interment in a plot and is then terminated. A “memorial right” is separate and permits the holder to place a memorial on a grave.

The nature of burial and memorial rights differs based on the type of burial ground. In local authority burial grounds, the burial authority may grant a burial right to any person, on such terms and conditions as they think proper. The burial authority may also grant a memorial right to the holder of a burial right. Every burial and memorial right in local authority cemeteries must be granted in writing, signed by an officer of the local authority. In Church of England churchyards or burial grounds, an exclusive burial right requires a faculty, which is a decision of the Church’s ecclesiastical courts.

Operators of private burial grounds established under an Act of Parliament incorporating the Cemeteries Clauses Act 1947 are regulated similarly to local authorities. For other private burial grounds, there is little law which applies.

A key problem is the absence of a universal requirement for burial and memorial rights to be evidenced in writing. In some cases, the resulting lack of clear documentation has left purchasers uncertain about the nature of the rights they have purchased, or to which grave they apply.

Our recommendations would address this issue by requiring that in all burial grounds, burial and memorial rights must be issued in writing within two months of the purchase of the right. We set out the required content of the written record, but do not prescribe things such as how long exclusive burial rights must last. The Church of England and Church in Wales are excluded from this requirement because their exclusive burial rights already require a written faculty.

Our recommendation for burial and memorial rights to be issued in writing includes two enforcement mechanisms. First, we recommend that the Secretary of State should be able to issue a civil penalty where a burial ground operator fails to provide burial and memorial rights in writing. This would deter burial ground operators from failing to fulfil their duty, and address cases of consistent non-compliance. Secondly, we recommend that there should be a rebuttable presumption that the right is an exclusive burial right with a duration of 100 years if it has not been issued in writing. This would strengthen the purchaser's position in court by placing the burden of proof on the burial ground operator to show that the right is not a statutory exclusive burial right.

**See Chapter 5 of the Report for further discussion of these recommendations. In that chapter we also address:**

- 1. the introduction of an optional scheme of statutory exclusive burial rights for private burial grounds;**

- 2. including cohabitants within the group of relatives who may place a memorial where the owner of the exclusive burial right cannot be traced; and**
- 3. allowing local authorities to maintain a memorial without the consent of its owner, provided certain requirements are met.**

## Record keeping

At present, all burials must be registered and a record kept. However, burial registration requirements differ depending on where the burial occurs.

For burials which occur in local authority cemeteries, a register of all burials must be kept. Local authority burial registers must be available for public consultation during reasonable hours, where a fee may be charged. A plan of all burials and grave spaces, and a register of rights granted must also be kept.

Church of England churchyards or burial grounds must have a register book for each burial site. Searches of the registers are allowed during reasonable hours, with fees set by legislation. There is no requirement to keep a plan of the burial ground, or a register of burial or memorial rights granted.

For burials which take place in consecrated areas created by an Act incorporating the Cemeteries Clauses Act 1847, the registration provisions of the said Act would apply. In all other burial grounds, the Registration of Burials Act 1864 applies, which incorporates the laws currently governing Church of England burials.

Local authorities, the Church of England, and private burial grounds are therefore all subject to different rules. The law is

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inconsistent as to whether plans of the burial ground or registers of exclusive burial rights must be kept. These inconsistencies have in some cases led to problems, such as burial rights being wrongly assigned, burials taking place in the wrong grave, and confusion as to the nature of the rights. The application of the Church of England's registration provisions to all burials, which include many private burial grounds, is also a poor fit.

For these reasons, we recommend the creation of a new uniform registration system, applying across all types of burial grounds. All burial ground operators will be under a statutory duty to keep several prescribed documents:

1. a burial register;
2. a register of disinterments;
3. a register of the burial of pre-24-week pregnancy remains;
4. a plan of the burial ground; and
5. a register of rights granted.

The law on access to burial records in private burial grounds is complex, as it is governed by a patchwork of different legislation. There are, however, good reasons for the law to deal differently with access to local authority, Church of England, and private burial grounds' burial records, because of the different pressures and incentives relevant to each type of burial ground operator. We recommend that the Secretary of State should continue to have the power to set the fees charged by private burial grounds, and that they should consider using the Church of England's fee structure as a potential benchmark.

At present, if a private burial ground changes ownership, there is no requirement for its burial records to be transferred to the new owner. We recommend imposing such a requirement to ensure that records are not lost when burial grounds change hands.

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## Registration of the burial of pre-24-week pregnancy remains

There are currently no provisions in either birth registration law or burial and cremation law that address pregnancies ending before 24 weeks of gestation. As birth registration law falls outside the scope of our project, any reforms we make are limited to burial and cremation law.

Knowing the location of the burial of pre-24-week pregnancy remains may be significant for parents who chose to bury those remains, as it will ensure they have a focal point for mourning. Where parents choose to bury pre-24-week pregnancy remains, there should be a requirement to register that burial. This recommendation does not change the other law which applies to such remains.

The new registration requirement would not apply to burials of pre-24-week pregnancy remains made on private land. We consider that it would not achieve the same purpose of enabling parents to locate the grave.

**See Chapter 6 of the Report for further discussion of these recommendations. In that chapter we also address:**

1. **the repeal of the limited offences relating to keeping burial records, and their replacement with civil penalties; and**
2. **the circumstances in which burial records should be transferred to the local authority records office.**

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## Private land burials

We consider that burials on private land, for example on a person's farm or in their garden, should be treated differently from those in burial grounds. We recommend that when no payment is taken for a burial carried out on private land, that land should not be considered as a burial ground. Some laws which extend to burial grounds, such as the maintenance duty and relating to burial rights, would not apply. Other requirements, such as those relating to how bodies are buried, would still apply.

We also recommend specific reforms that relate only to private land burials, because with such burials there is a particular risk that the next owner of the land may not be aware that a burial has been made. For that reason, we recommend that it should be a criminal offence to knowingly

fail to register a burial made on private land. We also recommend making it a criminal offence knowingly to fail to transfer the burial register when the land changes hands. We also recommend that the Law Society should consider whether to include private land burials in its standard pre-contract documentation for property sales.

## Addressing shortages in burial space

According to available data, there is a shortage of burial space in England and Wales. A Government survey conducted in 2007 found that the average time before existing burial grounds would be filled was 30 years for local authority sites, and less in urban areas. Subsequent surveys suggest that many areas continue to face significant



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pressure on space. Evidence suggests that burial ground operators have found strategies to release new space, but these may not be sustainable in the long term. Finding new sites can be difficult for local authorities and companies, including due to changes in environmental law. An aim of our reform therefore is to address the shortage of burial space. In our Report, we address this issue through two approaches: reclaiming and reusing old graves and reopening closed burial grounds.

## The current law on reclaiming and reusing old graves

### What is grave reclamation and reuse?

An old grave is reclaimed when an additional body is buried in the same grave above the level of the existing burial, without disturbing the original burial.

An old grave is reused when the remains from an earlier burial are moved, after which the grave is used for a different burial. The existing remains may be buried deeper in the same grave (called “lift and deepen”), or elsewhere within the burial ground (called “lift and rebury”).

### Where are grave reclamation and reuse permitted?

At present, legislation permitting grave reuse exists for all London local authority cemeteries, and for specific cemeteries which have obtained the power through private Acts of Parliament.<sup>1</sup>

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Additionally, grave reuse and reclamation is permitted in Church of England cemeteries, as it has been since time immemorial, with a decision of the Church’s courts required if remains or memorials will be affected. We do not make recommendations which will affect grave reuse and reclamation in Church of England churchyards.

### What is currently required for grave reclamation and reuse?

In order to reclaim or reuse a grave the burial ground operator must first extinguish any existing exclusive burial rights in the grave. Reclaiming a grave may only require this step. If there are no exclusive burial rights which apply to the grave, no legal steps are necessary before the grave can be reclaimed. The duration of burial rights may vary, and in the past many were issued “in perpetuity”, that is, forever.

Reusing an old grave, on the other hand, requires an additional step: after the burial ground operator has extinguished any exclusive burial right, they must follow a further process to reuse the grave.

### What is the current process for extinguishing an exclusive burial right?

In London local authority cemeteries which have the power to extinguish burial rights early, such powers cannot be used until at least 75 years have passed since the last interment in a grave. Notices of the intention to extinguish burial rights must be published in a newspaper for two successive weeks, displayed in the cemetery, and served on the registered owner of the burial right and any associated memorial.

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<sup>1</sup> Kensal Green Cemetery, Bishop’s Stortford Cemetery, New Southgate Cemetery and Highgate Cemetery.

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After six months, or at a later specified date, if no relevant objection is received the rights are extinguished and any memorial associated with the grave may be removed. If the memorial is not collected, it may be destroyed three months after it is removed, and a record of the inscription must be deposited with the Registrar General. A memorial stone or tablet must be placed in substitution.

Similar powers exist for the cemeteries with powers obtained through private Acts of Parliament, with some differences, such as a requirement to notify Historic England before any rights are to be extinguished.

### **What happens if there is an objection to the extinguishment of the exclusive burial right?**

If the owner of the burial right objects to the extinguishment within the specified period, then the right will not be extinguished. If an objection is made by someone other than the owner of the burial right, this would also halt the extinguishment, however, this objection may be overridden if the Secretary of State consents to extinguishing the right. Powers to extinguish an exclusive burial right also cannot be exercised in relation to a Commonwealth war grave without the permission of the Commonwealth War Graves Commission.

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### **What is the current process for reusing a grave?**

There is a separate but very similar process that must be carried out before an old grave can be reused. That process can be carried out alongside the process to extinguish an exclusive burial right, although only in some of the cemeteries with private Acts of Parliament can one notice suffice for both processes. The period before graves can be reused is similarly 75 years, and very similar notice requirements apply.

London councils are only able to use the “lift and deepen” method of grave reuse, whilst cemeteries established under Acts of Parliament are allowed to use both that method and “lift and rebury”. If the graves are in consecrated land a faculty is still needed.

### **What happens if there is an objection to grave reuse?**

If an owner of an exclusive burial right, or the personal representative or a relative of the deceased person objects, the burial ground operator cannot attempt reuse for 25 years from the date of the notice. The Commonwealth War Graves Commission similarly has the right to object in relation to Commonwealth war graves.



## Reforms to the law on grave reclamation and reuse

The power to reclaim or reuse old graves is restricted to a small number of cemeteries, and the provisions for doing so are found in a patchwork of legislation. Evidence shows a reduction in available burial space and increasing difficulty in acquiring new land to create new burial space. There is also a risk that full cemeteries may fall into disrepair and become targets for anti-social behaviour.

Grave reclamation and reuse is a sensitive issue and there is much variation in both understanding of, and opinion on it.

We heard from stakeholders in our pre-consultation period that there may be greater objection to grave reuse from certain groups or faiths in society, and diversity of opinion was evident in responses to our consultation.

That sensitivity, and the need to ensure public support, is why we recommend two levels of safeguards applying to new powers to reuse and reclaim old graves. They should not apply automatically to all burial grounds. Instead, burial ground operators should be required to apply for them to the Secretary of State. If approved, there would then be further safeguards applying before individual graves could be reused. The framework we propose would apply to all private and local authority burial grounds.

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## How will a burial ground operator seek grave reuse and reclamation powers from the Secretary of State?

We recommend that in order to obtain these powers, a burial ground operator should have to make an application to the Secretary of State. The application should contain a grave reuse and reclamation plan:

1. identifying which graves would be affected;
2. setting out an assessment of historical and ecological impacts;
3. identifying plans in relation to memorials; and
4. setting out any proposed mitigations.

The application must also contain the results of an open public consultation on whether grave reuse and reclamation powers should be granted, and on the proposed plan. We recommend that the Government should issue non-statutory guidance on the conduct of such consultations.

That consultation may identify further protections identified as necessary to ensure local support, such as a particular approach to memorials, or the exclusion of specific graves. If mitigations included in the plan submitted to the Secretary of State are not implemented, the grant of grave reuse and extinguishment powers can be revoked.

As to London local authorities, we recommend that they retain their existing grave reuse powers without requiring them to be granted by the Secretary of State. However, the new safeguards which we recommend below would apply to their existing powers. The only exception is the new minimum period of 100 years between the last interment and grave reuse or extinguishment of burial rights, which should not take effect until 25 years after the reformed law is enacted.

**See Chapter 7 of the Report for further discussion on these recommendations.**

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## What safeguards will be available for individual graves once grave reclamation and reuse powers have been obtained by the burial ground operator?

Once a burial ground operator has been granted the power to extinguish exclusive burial rights and reuse graves, protections will apply to the individual graves. These will mirror those currently in place where grave reuse and reclamation is permitted by law, but with some changes. Some of these relate to the graves which it is possible to reuse or reclaim.

1. We recommend that a period of 100 years must elapse between the last burial in a grave, and either of the burial rights in that grave being extinguished, or the grave being reused. That is an increase from the current 75 year period, and we make that recommendation in order to reflect the duration of living memory given increases in life expectancy.
2. We recommend a new requirement that if there are any remains left in a grave, they must be no more than skeletal in order for the grave to be reused, as a further protection to ensure the dignified treatment of remains.

## What will the notice requirements be under our recommended reforms?

We recommend that in order for a burial ground operator to use their powers to reuse graves or extinguish exclusive burial rights, they must post notices of their intention to use their powers for twelve months:

1. on the burial ground operator's website if they have one, or in an appropriate electronic publication;

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2. in local newspapers; and
  3. by the grave and entrances to the cemetery.

The notices should also be sent:

1. to the last known address of the owner of the burial right (whether exclusive, non-exclusive, or expired) or memorial right;
2. to the Commonwealth War Graves Commission; and
3. to Historic England, or Cadw in Wales, if the burial ground is on the Register of Parks and Gardens.

A single notice should suffice for both extinguishing burial rights and grave reuse. These notices reflect the requirements in the most recent private Acts permitting grave reuse, and go further in requiring past owners of expired burial rights to be contacted.

### **Who will be able to object under our recommendation?**

For an objection to the extinguishment of an exclusive burial right, we recommend that the burial right holder or any other person may object. However, an objection made by any other person may be overruled by the Secretary of State. For an objection to grave reuse, a burial right holder or a “relative” of the deceased person, including a cohabitant partner of the deceased person may object. This objection cannot be overruled by the Secretary of State. In each case, a valid objection stops either extinguishment or grave reuse for a further 25 years.

In order to protect war graves from being reused or reclaimed, we make specific recommendations. The Commonwealth War Graves Commission and the Ministry of Defence should be notified before any reuse of a grave or any extinguishment

of an exclusive burial right is proposed, and they should have the right to object. Their written consent will also be required before a war grave is reclaimed.

### **What other safeguards do we recommend?**

We recommend where a memorial is removed as part of grave reuse and reclamation, a photograph and a record of the inscription must be taken, and sent to the local authority. The new requirement for a photograph to be taken will ensure that a more comprehensive record is available, in particular for those tracing their family history.

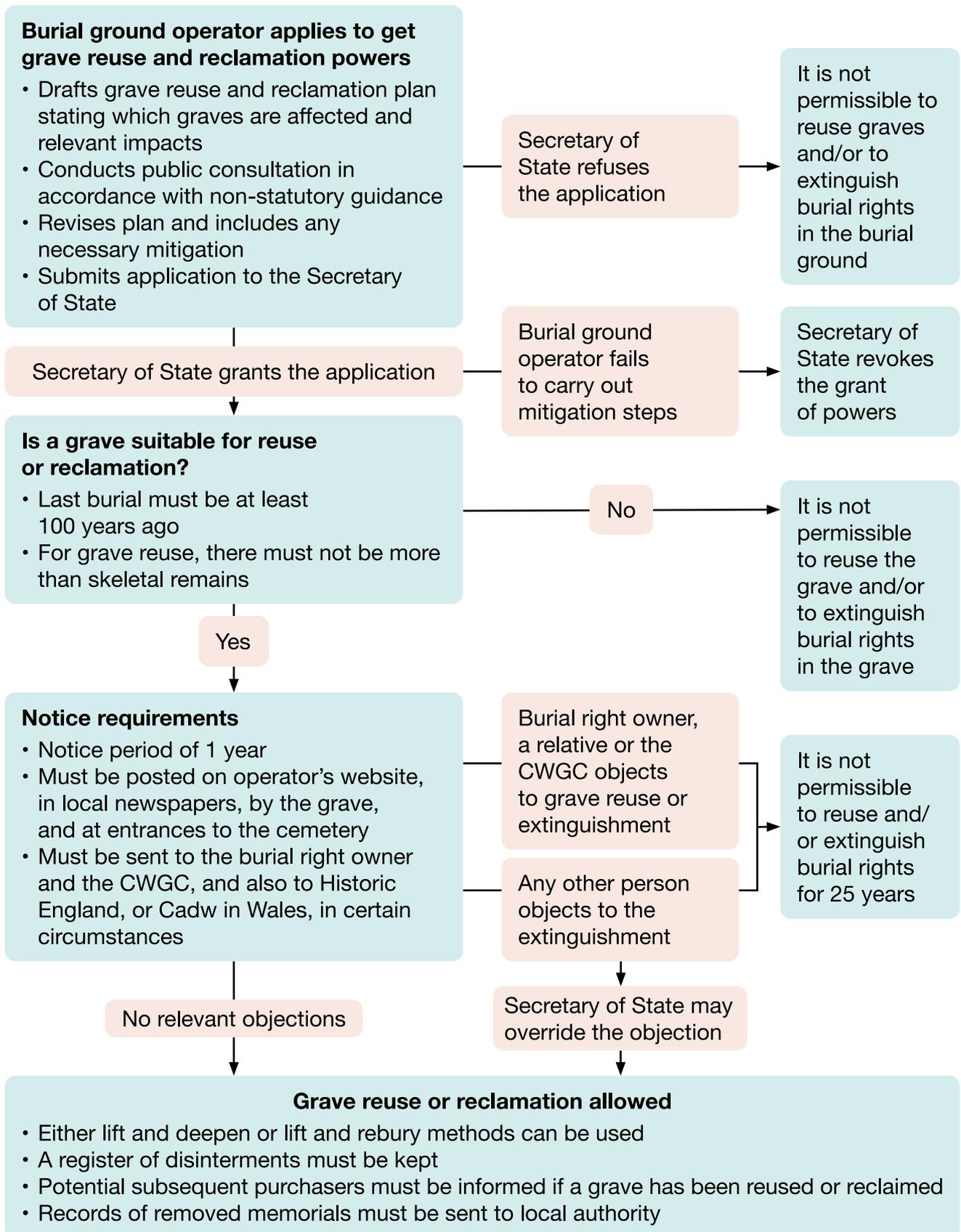
We also recommend that burial ground operators must disclose to potential purchasers that a grave has previously been reused or reclaimed and should retain the purchaser’s signed confirmation that this disclosure has been received.

### **What grave reuse methods will be permitted under our recommendation?**

We recommend that when exercising grave reuse powers, both methods should be permissible, that is the lift and deepen or lift and rebury.

**See Chapter 8 for further discussion on these recommendations. We also address the types of graves which can be reused, and other provisions in grave reuse law.**

**Figure 2: Obtaining grave reuse and reclamation powers**



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## Reopening closed burial grounds

Any burial ground can be closed to new interments through an Order in Council. An Order in Council is an instrument issued by the Sovereign on the advice of the Privy Council. These were originally used to close burial grounds posing a public health risk. More recently, these Orders are now mainly used to close full Church of England churchyards and burial grounds. Once this has been done, such churches can transfer responsibility for the maintenance of the churchyard to local authorities.

An Order may be postponed or varied by the Privy Council but there is no provision to revoke the Order. That means that once a burial ground is closed it cannot be reopened, even if the last burial was made so long ago that the land might now be suitable for burials again.

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Reopening burial grounds closed by Orders in Council may offer important benefits, especially for rural villages that face a shortage of burial space. Combined with existing Church of England powers to reuse graves, and our recommended extension of similar powers to non-Church of England burial grounds, this could increase the availability of burial space. Such changes may be especially valuable for families who wish to make burials in churchyards in which they have strong emotional and community ties with, but which are currently closed.

We recommend that the Sovereign in Council should have the power to reopen closed burial grounds through an Order in Council. In doing so, the consent of the burial ground owner, or both the incumbent and parochial church council should be required.

In relation to local authorities which have assumed responsibility for the maintenance of closed Church of England churchyards or burial grounds, we recommend that



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they should retain that responsibility if the churchyard or burial ground is reopened. However, we also recommend that a proportion of the burial fee payable to the parochial church council, to be set in regulations, should be transferred to the local authority to help cover the additional costs of maintaining an open, as opposed to closed, churchyard.

**See Chapter 9 of the Report for further discussion of these recommendations. In that chapter, we also address:**

- 1. the introduction of a simplified process for closing burial grounds and the introduction of specific reasons for when such closures may take place; and**
- 2. the creation of a criminal offence for breaching a decision or an existing Order in Council.**

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## Protecting graves

Throughout our Report, we aim to ensure appropriately robust protections for graves. This includes the safeguards we recommend for individual graves in the context of grave reclamation and reuse. We also make further recommendations focussed on the protection of specific graves, such as, war graves. These protections are reinforced by strengthening the offence of unlawful exhumation.

## War graves

LACO 1977 contains specific provisions concerning the Commonwealth War Graves Commission (“CWGC”) in local authority cemeteries, ensuring the protection of Commonwealth war graves (those of service personnel who died during the two World Wars). Similar provisions under ecclesiastical law are available in Church of England churchyards and burial grounds. Where grave reuse is currently permitted, there are provisions in place which protect Commonwealth war graves.

However, there is otherwise a lack of legal protections for Commonwealth war graves in private burial grounds, and gaps remain in the law governing local authorities where these graves do not benefit from adequate protections. There are similarly no legal safeguards for the graves of service personnel who died outside the period of the two World Wars. The Ministry of Defence (“MoD”) takes responsibility for many such graves.

Our recommendations focus on strengthening the protection of war graves in two key ways: first, we extend the powers currently held by the CWGC, and second, we recommend giving the MoD

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the same powers. Notably, it would be the first time that war graves would be given protections within private burial grounds. Our recommendations cover matters such as the removing or destroying of memorials, maintenance within burial grounds, grave reclamation and reuse, and powers in relation to a compulsory purchase scheme.

### **Actions relating to memorials**

We recommend that private burial ground operators should be required to obtain the written consent of the CWGC or MoD before removing or destroying a memorial on a relevant war grave. In local authority burial grounds, we make recommendations to improve the flow of information when the council seeks to conduct maintenance activity, and provide the CWGC and MoD with powers to object to certain types of maintenance but also to carry out maintenance where it is needed.

### **Grave reclamation and reuse**

We make specific recommendations to ensure protections for war graves whenever a burial ground operator seeks to reuse a grave. The CWGC and MoD should have the power to object to any such actions in relation to the war graves that they maintain. Additionally, the CWGC and MoD would, for the first time, be able to object to the reclamation (as well as reuse) of a relevant war grave.

### **Power to remove and reinter remains under compulsory purchase scheme**

Currently, the CWGC has the right to remove and reinter or cremate remains which are removed from Commonwealth war graves as part of plans to build on disused burial grounds. However, this right only applies to some of the schemes permitting building on disused burial grounds. We recommend that

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power is extended to the schemes which permit building on compulsorily purchased, acquired or appropriated land, and also given to the MoD.

**See Chapter 11 of the Report for further discussion of these recommendations. In that chapter, we also address how war graves should be identified.**

## **Exhumation**

Under section 25 of the Burial Act 1857, it is a criminal offence to exhume human remains without legal authorisation, which comes primarily in the form of a licence from the Ministry of Justice, or if the remains are on land consecrated to the Church of England, a faculty from the Church's consistory court. There are two problems with this offence. Firstly, the statutory provision does not state the fault element of the offence, which creates uncertainty in the law. We recommend that recklessness should be specified as the fault element.

Second, the current maximum penalty for the offence of unlawful exhumation is a fine of £200. This is too low given the significant distress that committing the offence can cause to the family and friends of the deceased person, and the wider impact on the public. We recommend that the maximum penalty for unlawful exhumation should be an unlimited fine or imprisonment for up to the maximum period available (currently 12 months) if sentenced in the magistrates' court, or an unlimited fine or imprisonment for a term not exceeding three years in the Crown Court.

We discuss the issue of so-called "coffin sliding" in our Report. This involves the act of moving a coffin between grave

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spaces without lifting it above ground level. The exhumation offence already includes the disturbing of remains by moving the remains or their container. We recommend that the exhumation offence should include “disturbing remains within a place of burial”, which would therefore cover the act of “coffin-sliding”.

We recommend that there should be an exception to the offence in relation to disturbing and removing remains where the burial has not yet been completed. Disturbing or removing a body before a burial has been completed is less likely to be distressing to the family and friends of the deceased person. However, because removing remains carries the risk that a burial ground operator could briefly place the body in the wrong grave, wait until the family has departed, and then move it to the intended location, we recommend that such removal should only be permitted with the consent of the owner of the burial right.

**See Chapter 10 of the Report for further discussion of these recommendations. In that chapter, we also address:**

- 1. the scope of the exhumation offence, by providing that it should apply to all interred human remains; and**
- 2. the exceptions to the exhumation offence, including circumstances where an urgent exhumation is authorised by a police officer of at least the rank of Superintendent.**

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The exhumation offence under section 25 of the Burial Act 1857 is now taken to include the burial of ashes from cremation. A difficulty arises in distinguishing between burial and the practice of strewing. Strewing is the practice of pouring ashes directly into or onto the ground before covering them with soil, and is common or required in Anglican and Roman Catholic theology and practice. Therefore, in areas where strewing is common, ashes from earlier strewings will inevitably be disturbed by a later strewing. We are of the view that repeated strewings could therefore amount to an exhumation offence. To avoid this religious practice inadvertently being caught by the offence, we recommend that the law should be amended to clarify that strewing is not interment for the purpose of the offence of unlawful exhumation.

**See Chapter 14 of the Report for further discussion of these recommendations.**

## **Enabling building on disused burial grounds**

Under the Disused Burial Grounds Act 1884, building on a disused burial ground is prohibited unless it is for the purpose of enlarging a church or other place of worship. There are, however, later laws which create exceptions, allowing buildings to be constructed for other purposes. These were first created for the Church of England; we do not recommend reforms to those provisions.

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The Disused Burial Grounds (Amendment) Act 1981 creates such a scheme, which only applies to burial grounds which are or were owned by a church or other religious body (excluding the Church of England). Using this scheme means that there is no requirement for an exhumation licence to remove remains. The requirements of the Act depend on whether the proposed development would disturb any remains, or make them inaccessible. If so, relatives or personal representatives of a person buried in the burial ground within the last 50 years can object, stopping the scheme. If they do not, or if more than 50 years have passed, there are provisions giving relatives the right to remove remains, and permitting the landowner to do so if they do not.

Building on disused burial grounds is also allowed, with similar safeguards, where the burial ground has been subject of a compulsory purchase or where it is governed by private or local Acts of Parliament.

That means that, at present, there is no exception permitting building on non-religious private burial grounds or local authority cemeteries. Allowing non-religious private burial ground operators to redevelop land that has ceased to function as a burial ground would enable land to be put to beneficial use where appropriate. The current range of provisions is confusing and the gaps in the law hinder the long-term viability of burial grounds. In many cases, the only way for burial ground owners to build on their land is to go through the costly process of obtaining a local Act of Parliament. This results in unequal treatment between different types of burial grounds with no justified basis for such disparity.

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To address that gap in the law, we recommend that the scheme in the Disused Burial Grounds (Amendment) Act 1981 allowing building on disused burial grounds should be extended to all private and local authority burial grounds. We recommend further changes to the law, which would also apply to the religious burial grounds covered by the existing law. These changes include:

1. extending the period during which a personal representative or relatives can object to the proposal to build on the disused burial ground from 50 years to 100 years from the deceased person's burial, in order to better reflect the duration of living memory;
2. increasing the notice period in which an objection is effective from six months to one year so that relatives have sufficient time to exercise their rights;
3. aligning the notice requirements substantially with those for grave reuse;
4. prohibiting the cremation of the remains that have been disinterred, in order to better respect the initial decision to bury (which may have reflected the deceased person's religious beliefs); and
5. requiring a photographic record of each memorial removed to be sent to the local authority.

**See Chapter 10 of the Report for further discussion of these recommendations. In that chapter, we also recommend:**

1. a ten-year transitional period before the 100-year period replaces the current 50-year period; and
2. putting the common law offence of building on a disused burial ground into statute.



## Cremation

The Cremation Act 1902 restricts where a crematorium may be built, and these restrictions are commonly known as the “radius clause”. Under the present law, the radius clause requires crematoria to be constructed at least 200 yards away from any residential house, unless written consent has been provided by the house’s owner, lessee, and occupier. Crematoria must also be constructed at least 50 yards away from public highways. We consulted on whether the radius clause should remain in place, given that it was introduced over a century ago.

Environmental concerns were significant when the Cremation Act 1902 was first introduced, but we believe that today the primary purpose of the radius clause is to help ensure crematoria remain separate from daily life, providing a peaceful setting

for visitors, and shielding local residents from the constant reminder of death. We therefore do not recommend repealing the radius clause.

**See Chapter 13 of the Report for further discussion of this recommendation. In that chapter, we also recommend:**

- 1. requiring certification by the Secretary of State before a crematorium can be built, to help prevent crematoria from being built which cannot legally be used; and**
- 2. repealing the existing restriction on constructing crematoria on the consecrated part of a local authority burial ground, which is unnecessary as other areas of law achieve the same protection.**

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## Protecting users of crematoria

Throughout our Report, we make several recommendations in order to better protect users of crematoria.

### Preventing mistaken cremation

Mistaken cremation, which is where the wrong body is cremated, is rare, but when it occurs, it can have devastating effects and cause significant distress for families. Some of the risk of mistaken cremation relates to practice in hospital and funeral director mortuaries, both of which are outside the scope of our project. However, we consider more can be done at the crematorium. While current good practice includes checking the coffin name plate prior to cremation, it is not a legal requirement.

We recommend therefore that crematoria should be required to check at least two pieces of identifying information about the deceased person, where available. These could include the date of birth, date of death, or name of the deceased person. We also recommend that when a coffin is used, crematoria should require two identification plates to be fitted to the coffin, one on the lid and one at the base, so that if the two are separated the risk of error is reduced.

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## Restricting joint cremation

Joint cremation is where two bodies are cremated together. It is not currently prohibited by law, and there are no restrictions on it, beyond self-regulation by the cremation sector.

We consulted on the question of whether particular relationships between two deceased people, such as a parent and child, should be required in order for joint cremation to be permitted. However, specifying eligible relationships in legislation risks unfairly excluding others for whom joint cremation would be equally meaningful, so our recommendation focusses instead on the consent of the person applying for cremation. We remain concerned about the risk that local authorities may carry out joint cremations of children who die in their care, so we recommend that joint cremation of two deceased people should be allowed only when both applicants for cremation have provided their written consent, and that public authorities should not be permitted to use it in most circumstances.

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## Information for people using direct cremation

Direct cremation is when cremation occurs without an accompanying ceremony at the crematorium. At present, it is governed by the law which applies to all cremations.

The cremation application form requires that the name of the crematorium to be used is included, but we understand that for some types of direct cremation it is not unusual for applications to be made without specifying this information. The body of the deceased person is then taken by the direct cremation company, and cremated at a crematorium chosen at short notice in order to make use of unused capacity. This creates a lack of transparency for the person applying for the cremation.

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We recommend that the statutory application form for cremation should be amended to include the options of stating either where the cremation will take place, or that this information is not known at the time of application. If the latter is selected, we recommend that after the cremation is carried out, the cremation authority should be required to tell the applicant where and when it took place. This will address the issue of transparency while permitting the continuation of the business model underlying some direct cremation services.

## Prohibiting cremation of unidentified remains

There is currently no provision which prevents the cremation of unidentified bodies or body parts. Such remains are usually buried or cremated by local



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authorities, although hospitals or other institutions may also have legal responsibility for them. However, cremation may negatively affect the possibility of future identification of the deceased person or hamper the investigation of crimes. It may also be against the religious beliefs of the deceased person, and, unlike burial, it is irreversible. For these reasons, we recommend that cremation should not be permitted in relation to unidentified bodies or body parts.

**See Chapter 12 of the Report for further discussion of these recommendations. In that chapter, we also make recommendations which:**

- 1. ensure that ashes from individual cremations are not mingled; and**
- 2. permit funeral directors to dispose of pacemakers which are removed from deceased people's bodies before cremation. The ownership of these devices has been unclear since the 1980s as a result of old Government guidance.**

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## **Dealing with ashes which are not collected from funeral directors**

Applicants for cremation often authorise funeral directors to collect the ashes from the crematorium. However, a recurring issue arises when these ashes remain uncollected from the funeral director. There are several reasons why this can happen. There may be family disputes over who should collect the ashes, the applicant for cremation may have died or become incapacitated, or there may be emotional reasons why the applicant may find it difficult to collect the ashes.

Estimates suggest that there are around a quarter of a million such sets of uncollected ashes. Since funeral directors have no legal authority to scatter or bury them, and crematoria have no duty to accept their return, these uncollected ashes end up sitting on the shelves of funeral directors' premises indefinitely. Funeral directors have told us that they feel uncomfortable retaining uncollected ashes in their commercial premises, premises which are not intended to serve as a final resting place.

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We therefore recommend a scheme for funeral directors which will give them the right to return uncollected set of ashes to the crematorium at which they were cremated. If a funeral director has held ashes for at least three months from the date of cremation, they may contact the applicant for cremation twice during a further three-month period to inform them of their intention to return the ashes to the crematorium. The scheme will not apply if the funeral director has been paid to retain or deal with the ashes in a different way.

If this process is followed, the cremation authority will then be under a statutory duty to accept the return of the ashes. We recommend that the cremation authority may charge the funeral director for the return of ashes, at a level to be set by the Government. Our recommendations on the scheme will apply retrospectively; consequently we recommend a mechanism to stagger the return of ashes so that crematoria have time to deal with the ashes appropriately.

**See Chapter 14 of the Report for further discussion of these recommendations. In that chapter, we also address:**

- 1. the steps funeral directors should take when the location of the cremation is unknown or where a crematorium has closed;**
- 2. creating a criminal offence of dishonestly making false representations in relation to the scheme for the return of ashes; and**
- 3. allowing the cremation authority to immerse uncollected ashes in a body of water, in order to permit them to act in a way that reflects Dharmic religious beliefs.**

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## Conclusion

Our recommended reforms would modernise burial and cremation law in England and Wales, and provide clearer, more consistent safeguards for bereaved families and friends. They respond directly to contemporary challenges, notably the shortage of burial space, the complexities created by Victorian-era legislation, and the need to respect the diversity of religious and cultural practices in modern Britain.

For the first time, there will be clear, comprehensive laws governing how all burials must be carried out, how burial grounds must be maintained, how burial rights must be issued, and how registers and plans must be kept. These new standards, supported by updated enforcement powers, will offer stronger safeguards for those who grieve, and ensure human remains are treated with dignity, without imposing disproportionate burdens on burial ground operators.

Whilst maintaining necessary distinctions between different types of burial grounds to respect religious and cultural diversity, our recommended reforms introduce far greater consistency and clarity, making rights and obligations easier to understand. They also address the growing pressure on burial space. Our recommendations on grave reuse and reclamation, together with new powers to reopen closed burial grounds, will increase the availability of grave space over time whilst ensuring strong protections for graves and human remains.

In the cremation sector, our recommendations will enhance respect for religious diversity, but also protection of deceased people. Measures such as prohibiting the cremation of unidentified remains, regulating joint cremations, and permitting the immersion of ashes reflect

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the range of beliefs and practices found in contemporary Britain. Our recommendations will resolve a long-standing practical problem faced by funeral directors, which includes the indefinite storage of uncollected ashes. By creating a lawful pathway for dealing with this issue, we remove a source of operational burden and ensure that remains can be handled appropriately.

Taken together, these reforms will modernise and strengthen the framework governing burial and cremation, ensuring it meets the needs of today's society whilst providing robust protections for bereaved families and friends, and respecting the dignity of the dead.

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