

C07/2015



**Command Paper
on a draft bill to provide for the
management and control of
Cemeteries.**

**Presented to Parliament by
the Minister with responsibility for the
Environment.**

**by Command of Her Majesty
19th May 2015**

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to

command.papers@gibraltar.gov.gi or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Education, Justice and International Exchange of Information, Suite 771, Europort, Gibraltar, no later than the 2nd June 2015.

Any comments received later than the 2nd June 2015 may not be taken into account for the purposes of the relevant consultation.

CEMETERIES BILL 2015

Arrangement of Clauses

Clause

1. Short title, commencement and application.
2. Interpretation.
3. Establishment of Cemetery Authority.
4. Appointment of Cemetery Keeper.
5. Cemetery Board.
6. Role of Cemetery Board.
7. Meetings of Cemetery Board.
8. Burial rights.
9. Record and plan of cemetery.
10. Record of burial and disinterment.
11. Offences in the cemetery.
12. Duty of Cemetery Keeper to order removal, etc.
13. Maintenance of cemetery etc.
14. Regulations.
15. Miscellaneous.
16. Repeal and transitional provisions.

BILL

FOR

AN ACT to provide for the management and control of cemeteries.

ENACTED by the Legislature of Gibraltar.

Short title, commencement and application.

1. (1) This Act may be cited as the Cemeteries Act 2015.

(2) This Act shall come into operation on the day appointed by the Government by notice in the Gazette.

(3) This Act applies to all cemeteries under the control of the Government of Gibraltar.

Interpretation.

2. In this Act, unless the context otherwise requires—

“the Board” means the Cemetery Board established under section 5(1);

“burial” means the interment of human remains and includes the placing-

- (a) underground of cremated human remains;
- (b) underground of the bodies of stillborn children or the cremated remains thereof; and
- (c) in a vault of human remains, cremated human remains, or the bodies of stillborn children or the cremated remains thereof;

“cemetery” includes all cemeteries under the control of the Government of Gibraltar;

“Cemetery Authority” has the meaning given in section 3(1) of this Act;

“Cemetery Keeper” means the officer(s) appointed as such under section 4(1);

“grave” includes walled grave;

“Minister” means the Minister with responsibility for the environment or such other Minister as the Chief Minister may designate from time to time;

“stillborn” is given the meaning contained in the section 2 of the Births and Deaths Registration Act.

Establishment of Cemetery Authority.

3.(1) There shall be established an authority, to be known as the Cemetery Authority, who shall be the Head of the Government department with responsibility for the environment or such other body or person as the

Government may designate from time to time by notice published in the Gazette.

(2) The Cemetery Authority shall be responsible for the general management and supervision of the cemetery and the registration and control of burials.

(3) In exercising its powers, duties and functions under this Act the Cemetery Authority shall act in accordance with the policy of the Government and in accordance with any decision of the Government communicated to it.

(4) Subject to subsection (3) and the provisions of this Act, the Cemetery Authority may do all things it considers necessary or desirable for the proper management, regulation and control of the cemetery.

Appointment of Cemetery Keeper.

4.(1) The Minister shall appoint one or more fit and proper persons as a Cemetery Keeper.

(2) A Cemetery Keeper shall be subject to the directions of the Cemetery Authority with respect to the custody, charge, superintendence and management of the cemetery.

Cemetery Board.

5.(1) There shall be established a Board, to be known as the Cemetery Board.

(2) The Cemetery Board shall consist of a Chairman and six other members, all appointed by the Minister.

(3) No more than two of the six members appointed by the Minister under subsection (2) may be public officers.

(4) Members of the Cemetery Board appointed by the Minister shall hold office for such period and on such terms as may be specified in their instrument of appointment, and shall be eligible for re-appointment.

(5) Notwithstanding anything contained in subsection (4), the Minister may, in his discretion, terminate the appointment of any member of the Cemetery Board at any time on the grounds of inability, neglect of duty, persistent failure to attend meetings or misconduct.

(6) The Minister shall designate a public officer as Secretary to the Cemetery Board.

Role of the Cemetery Board.

6. The Cemetery Board shall-

- (a) advise the Cemetery Authority on any matter concerning its powers, functions and responsibilities under this Act;
- (b) from time to time visit and inspect the cemetery and bring to the notice of a Cemetery Keeper any matter which may in their opinion affect the management and control of the cemetery, the maintenance of good order therein and the condition and appearance thereof;
- (c) inform a Cemetery Keeper of any matter brought to their notice affecting the management and control of the cemetery.

Meetings of the Cemetery Board.

7.(1) The Cemetery Board shall meet at least twice per calendar year; one meeting must take place during the first half of the year and another meeting must take place during the second half of the year.

(2) The Cemetery Board may hold additional meetings-

- (a) at the request in writing of at least three members of the Cemetery Board; or
- (b) at the request of the Cemetery Authority.

(3) The Chairman shall preside at all meetings and four members of the Cemetery Board (including the Chairman) shall form a quorum.

(4) Any matters arising at a meeting of the Cemetery Board shall be decided by a majority of the members present and voting thereon at the meeting and in the case of an equality of votes, the Chairman shall have a second or casting vote.

(5) A Cemetery Keeper shall have notice of any meeting of the Cemetery Board and may be required to be present during the whole or part of such a meeting.

(6) Subject to the provisions of this Act, the Cemetery Board shall regulate its own procedure.

Burial rights.

8.(1) The Cemetery Authority may give, on such terms and subject to such conditions as it thinks proper-

- (a) to any person the right, on a pre-identified plot, to construct a grave or vault together with the exclusive right as to who may be buried therein;
- (b) to the beneficiary of a right described in (a), or to any person who satisfies the Cemetery Authority-
 - (i) that he is a relative of a person buried in the grave or vault, or is acting at the request of such a relative; and
 - (ii) that it has not been possible for him, or such relative, to trace the beneficiary of the right so described,

the right to place and maintain, or put any additional inscription on, a tombstone or other memorial on the plot, grave or vault in respect of which the right subsists;

- (c) to any person the right to place and maintain a memorial in the cemetery otherwise than on a plot, grave or vault.

(2) The Cemetery Authority may, on any plot in relation to which there does not subsist a right under subsection (1)(a)-

- (a) cause a grave or vault to be constructed; and
- (b) grant to any person a right under subsection (1)(a) in relation to that plot.

(3) Subject to subsection (4), no burial shall take place in any grave or vault in which a right under subsection (1)(a) subsists except by, or with the consent in writing of, the beneficiary of the right.

(4) Subsection (3) does not apply to the body or remains of-

- (a) the person who immediately before his death was the beneficiary of the right; or
 - (b) any other person specified in the right.
- (5) Subject to subsection (6), rights under this Act may be transferred, inherited or bequeathed by will.
- (6) No transfer of a right granted under this Act shall have effect unless-
- (a) the Cemetery Authority approves the transfer;
 - (b) the prescribed fee (if any) is paid; and
 - (c) the transfer is recorded under section 9(2)(b).
- (7) The approval of the Cemetery Authority shall not be unreasonably withheld.
- (8) Rights given under this Act do not grant any title over land.
- (9) The Cemetery Authority may by notice in the Gazette limit the number of rights under this Act that may be held by any one person at any one time.

Record and plan of the cemetery.

- 9.(1) The Cemetery Authority shall maintain a plan showing and allocating distinctive numbers to-
- (a) all graves and vaults in which burials are made after the coming into operation of this Act or are known to have been made before that event; and
 - (b) plots subject to specified rights.
- (2) The Cemetery Authority shall maintain a record, by reference to the numbers in the plan, of-
- (a) the burials made after the coming into operation of this Act; and

(b) the specified rights existing in any graves or vaults, or plots, and the names of the beneficiaries thereof.

(3) In this section “specified rights” means any rights given by the Cemetery Authority under section 8 and any rights saved under section 16(2).

(4) The Cemetery Authority-

(a) shall keep the original plan and records required to be kept under this section at such place as may be specified by the Minister;

(b) may direct that a copy of the plan and records required to be kept under this section be compiled and maintained by a Cemetery Keeper.

(5) Where the Cemetery Authority makes a direction under subsection (4)(b), a Cemetery Keeper shall, on a weekly basis and unless directed otherwise, provide the Cemetery Authority with a record or any additions or amendments which are required to be made to the record.

(6) A copy of an extract of the record certified as a true copy by a Cemetery Keeper shall be received in all courts as evidence of the burials entered therein.

Record of burial and disinterment.

10.(1) The record required to be kept under section 9(2) shall be maintained in the prescribed manner.

(2) The record shall include in relation to each burial-

(a) a distinctive number assigned to the burial;

(b) the date of the burial;

(c) the name of the deceased;

(d) the age of the deceased;

(e) the grave or vault number;

- (f) a note as to whether the burial relates to cremated human remains;
- (g) a note as to whether the burial relates to the re-interment of disinterred remains and if so the previous place of burial;
- (h) any other particulars which in the opinion of the person making the record should be included therein; and
- (i) the religion of the deceased (where this information is available),

and each entry shall be signed by the person directing or making it.

(3) The record may only be altered with the consent of the Cemetery Authority; where the record is so altered a note of the alteration and the reason shall be recorded.

(4) Where the burial relates to the body of a stillborn child or the cremated remains thereof-

- (a) the words “Stillborn child of” and the name of at least one of the parents shall be included in the record in the space available for other particulars;
- (b) the entry relating to age shall be left blank; and
- (c) the address of the parent or parents shall be deemed to be the address of the stillborn child.

(5) The Cemetery Authority shall maintain a record of disinterment’s in the prescribed form.

(6) The Cemetery Authority shall-

- (a) keep the original records required to be kept under this section at such place as may be specified by the Minister;
- (b) compile an electronic copy of the records required to be kept under this section;
- (c) forward an electronic copy of the records required to be kept under this section annually to the Gibraltar Government Archives.

(7) A copy of an extract of the record maintained under subsection (5) certified as a true copy by a Cemetery Keeper shall be received in all courts as evidence of the disinterment's entered therein.

Offences in the cemetery.

11.(1) A person who-

- (a) wilfully creates any disturbance in the cemetery;
- (b) commits any nuisance in the cemetery;
- (c) wilfully interferes with any burial taking place in the cemetery; or
- (d) plays any game or sport in the cemetery,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who enters or remains in the cemetery at any hour when it is closed to the public is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Subsection (2) does not apply to-

- (a) the Cemetery Authority, members of the Cemetery Board, a Cemetery Keeper; or
- (b) any other officer or person authorised by the Cemetery Authority or by a Cemetery Keeper.

Duty of Cemetery Keeper to order removal, etc.

12.(1) A Cemetery Keeper shall order the removal or alteration of anything within the cemetery which has been constructed, repaired or altered other than in accordance with this Act.

(2) An order made under subsection (1) shall be addressed to-

- (a) the person who carried out the construction, repair, removal or alteration; and

(b) the beneficiary of the burial right which subsists in the relevant plot.

(3) A removal or alteration required by an order made under this section shall require that the removal or alteration-

(a) be completed within one month of the order; and

(b) be undertaken at the expense of the person ordered.

(4) Where a person to whom the order has been addressed fails to comply with such order, a Cemetery Keeper may cause the necessary work to be carried out.

(5) Any expense incurred by a Cemetery Keeper under subsection (4) may be, without prejudice to any other remedy, recovered summarily as a civil debt from the person who failed to comply with the relevant order.

Maintenance of cemetery etc.

13.(1) Without prejudice to the generality of section 3, a Cemetery Keeper may, for the purpose of maintaining the good order and appearance of the cemetery, instruct an officer or person authorised by him to-

(a) remove from the cemetery and destroy-

(i) any tombstone or other memorial on a grave of which all material particulars are illegible or which is dilapidated by reason of long neglect;

(ii) any stones, bricks and other material of monuments and memorials which have fallen from their places;

(iii) rails, railings or kerbs which surround or form part of monuments and memorials which are in a ruinous condition;

(iv) any surface fittings not falling within (i), (ii) or (iii), or any flowering or other plants or other items left on a grave.

(b) arrange the materials of monuments and memorials of the dead which have become ruinous or dilapidated so as to render them less unsightly in appearance.

(2) On receipt of an instruction under subsection (1) the officer or authorised person shall by notice in writing order the beneficiary of the burial right which subsists in the relevant plot to repair, remove or replace the offending items within 28 days his being served with the order.

(3) Where the officer or authorised person is under a duty to issue an order under subsection (2) but is unable to locate the beneficiary of the right, he shall display the order in a prominent position at the entrance to the cemetery where it is easily visible and legible by members of the public.

(4) Where a beneficiary fails to comply with an order under this section, it shall be lawful for a Cemetery Keeper to carry out the repair, removal or replacement of the offending items.

(5) Any expense incurred by a Cemetery Keeper under this section may be, without prejudice to any other remedy, recovered summarily as a civil debt from the beneficiary of the burial right which subsists in the relevant plot.

Regulations.

14. The Minister may make regulations—

- (a) regulating the use, control, governance and upkeep of the cemetery;
- (b) prescribing and regulating the right to erect monuments, gravestones, tablets and monumental inscriptions in the cemetery;
- (c) prescribing the size, method and manner of construction specifications of vaults, graves, gravestones, monuments and tablets;
- (d) prescribing the fees to be paid and other payments to be made in respect of plots, vaults, graves and burials in the cemetery, the manner of such payments and place where such payment is to be made;
- (e) prescribing the form of any record required to be kept under this Act;

- (f) prescribing the fees to be paid in respect of searches of records kept under this Act and the provision of certified copies of such records;
- (g) prescribing offences and penalties for breach of any provision of this Act or any regulation made under this Act;
- (h) prescribing the right of the Cemetery Authority to terminate rights granted under this Act; and
- (i) generally for the better carrying out of the provisions of this Act.

Miscellaneous.

15. The Cemetery Authority may, where it considers appropriate to do so, cause any record required to be kept under this Act (or a copy thereof) to be placed in the custody of the Gibraltar Government Archives.

Repeal and transitional provisions.

16.(1) The Cemetery Act is repealed.

(2) Nothing in this Act shall be deemed or construed to extinguish, take away or prejudicially affect any existing rights of burial in the cemetery.

(3) A person appointed under section 2 of the Cemetery Act to the post of Keeper shall be deemed to be appointed to the equivalent post under this Act until such time as an appointment to such post is made under section 4.

(4) Persons appointed under section 3 of the Cemetery Act to the Board of Visitors shall be deemed to be appointed to the equivalent post under this Act until such time as an appointment to such post is made under section 5.

EXPLANATORY MEMORANDUM

This Act provides for the management of cemeteries under the control of the Government of Gibraltar and is not limited to the cemetery at North Front as per the previous Cemetery Act.

The post of “Superintendent” of the cemetery disappears. Instead there is established a “Cemetery Authority” under section 3(1) responsible for the

general management and supervision of cemeteries and registration and control of burials.

The role of “Keeper” present in the previous Cemetery Act remains, save that he is now referred to as “Cemetery Keeper” under section 4 and he is under the direction of the Cemetery Authority.

The Board of Visitors established under the Cemetery Act is now known as the “Cemetery Board” and it advises the Cemetery Authority and Cemetery Keeper on any matters relating to the cemetery.