

Subsidiary Legislation made under s.15.

## **Cemeteries Regulations 2018**

**LN.2018/220**

*Commencement*

**18.10.2018**

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### **ARRANGEMENT OF REGULATIONS**

#### Regulation

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#### **SCHEDULE**

#### **FEEES**

*In exercise of the powers conferred on him by section 15 of the Cemeteries Act 2018 and all other enabling provisions, the Minister with responsibility for the environment has made the following Regulations—*

**Title and commencement.**

1. These regulations may be cited as the Cemeteries Regulations 2018 and come into operation on the day of publication.

**Opening of the cemetery.**

2.(1) The cemetery shall be open to the public daily-

- (a) during the months of March to September between the hours of 8 o'clock in the morning and 7 o'clock in the evening; and
- (b) during the months of October to February between the hours of 8 o'clock in the morning and 6 o'clock in the evening,

or during such time as may be determined from time to time by the Cemetery Authority.

(2) The Cemetery Authority may in special circumstances-

- (a) close the cemetery to the public; or
- (b) require that a Cemetery Keeper open the cemetery to the public outside the times set out in subregulation (1).

(3) Subject to the provisions of this regulation, burials will only take place in the cemetery between the hours of 9 o'clock in the morning and 5 o'clock in the evening,

Provided that the Cemetery Authority may in exceptional circumstances permit a burial to take place at any other time.

(4) At the direction of the Cemetery Authority, a Cemetery Keeper shall cause to be displayed, in a prominent position at the entrance to the cemetery, a notice setting out the times during which the cemetery is open to the public.

**Admission to cemetery.**

3.(1) All persons admitted into the cemetery are subject to-

- (a) these regulations and the provisions of the Act; and

(b) the directions of the Cemetery Authority and any other person appointed for such purpose by the Cemetery Authority by notice in the Gazette.

(2) Children under 10 years of age shall not be admitted, unless accompanied by an adult.

**Use of vehicles in the cemetery.**

4.(1) No person shall-

- (a) drive a motor vehicle; or
- (b) ride a motorcycle, moped or bicycle,

in the cemetery without the consent of the Cemetery Authority.

(2) Subregulation (1) does not apply to the bona fide use of an invalid carriage in the cemetery.

(3) In this regulation-

“motor vehicle”, “motorcycle”, “moped” and “bicycle” have the meanings given to them in the Traffic Act 2005; and

“invalid carriage” has the meaning given to it in the Vehicles (Construction, Equipment and Maintenance) Regulations.

**Damage.**

5.(1) Except when actually visiting a grave, any person walking in the cemetery shall wherever possible keep to the footpaths.

(2) No person shall, except with the consent of the Cemetery Authority-

- (a) gather, injure or damage any flower, plant or shrub in the cemetery;
- (b) damage any road, path, grave, vault, monument, wall or other property in the cemetery.

(3) Any expense incurred by or on behalf of the Cemetery Authority as a result of remedying damage or injury done in contravention of subregulation (2) may be, without prejudice to any other remedy, recoverable summarily as a civil debt from the person who caused the damage or injury.

**Selection of sites.**

6.(1) A Cemetery Keeper, at the direction of the Cemetery Authority, shall select sites for new graves or vaults.

(2) Sites selected under subregulation (1) may only be used for such purpose with the consent of the Cemetery Authority.

**Construction, repair and modification of vaults, digging of graves, etc.**

7.(1) No person shall-

- (a) construct, repair or modify any vault, or erect or inscribe any headstone or monument in the cemetery; or
- (b) dig a grave or open any grave or vault in the cemetery,

except in accordance with permission in writing of the Cemetery Authority.

(2) Any permission granted by the Cemetery Authority under subregulation (1)-

- (a) in the case of the construction, repair or modification of a vault, the erection of a headstone or monument or the cutting of an inscription into an existing headstone or monument, is subject to the provisions of regulation 8;
- (b) in the case of the digging of any grave, or the opening of any grave or vault, is subject to the provisions of regulation 9;
- (c) is subject to the works being carried out in accordance with such dimensions and specifications as may be prescribed by the Cemetery Authority; and
- (d) may be subject to such additional conditions relating to the construction, repair or modification and to the time during which such work in the cemetery may be carried out, as the Cemetery Authority may think fit to impose.

(3) Where work has been carried out without written permission or in contravention of any condition imposed in such permission, the Cemetery Authority may order the person responsible to alter or undo such works.

(4) Every person constructing or repairing any grave shall be subject to the instructions and directions of the Cemetery Authority.

(5) The Cemetery Authority shall refuse to grant permission under subregulation (1) in circumstances where he is informed by the Minister with responsibility for heritage that the modification of the vault, headstone or monument in the cemetery (including but not limited to the removal of such vault, headstone or monument from the cemetery) is undesirable given the historical, architectural, artistic, scientific or social interest in connection with Gibraltar of that vault, headstone or monument.

#### **Construction, repair or modification of a vault, etc.**

8.(1) The Cemetery Authority shall not grant permission for the construction, repair or modification of a vault, the erection of a headstone or monument or the cutting of an inscription into an existing headstone or monument unless-

- (a) the name and address of the person to be registered as the beneficiary is supplied to the Cemetery Authority;
- (b) where the application relates to a new headstone or monument, the Cemetery Authority has been supplied with, and has approved an illustration or description of the proposed headstone or monument giving the dimensions;
- (c) the Cemetery Authority has been supplied with, and has approved, any inscription to be placed on the headstone or monument; and
- (d) contractors appointed by the beneficiary of a burial right to carry out the works are on the approved list of contractors held by the Cemetery Authority pursuant to regulation 9(7).

(2) The Cemetery Authority shall maintain a document specifying the manner in which vaults shall be built and the materials to be used.

(3) A copy of the specification required to be kept under subregulation (2) shall be available for consultation by any person, without fee, during the hours the cemetery is open to the public.

(4) The Cemetery Authority shall ensure that all graves including those of still-born children are marked so as to permit ready identification.

#### **Digging of graves and opening of graves or vaults.**

9.(1) Subject to the provision contained in subregulation 7, no person may dig any grave, or open any grave or vault other than in accordance with this regulation.

(2) The Cemetery Authority shall not grant permission to open any grave or vault within twelve months of a burial having taken place in that grave or vault except-

- (a) in pursuance of a court order;
  - (b) with the approval of the Director of Public Health; or
  - (c) in exceptional circumstances.
- (3) The Cemetery Authority shall not grant permission to open a grave or vault unless-
- (a) he is satisfied that a beneficiary of the burial rights for that plot consents;
  - (b) where a beneficiary of the burial rights cannot be traced, the Cemetery Authority is satisfied that the opening of the grave or vault would be appropriate in all the circumstances; or
  - (c) he is acting in pursuance of a court order.
- (4) The works shall be carried out-
- (a) in the case of a grave, by employees of the Cemetery Authority or such other persons as may be designated by the Cemetery Authority; and
  - (b) in the case of a vault-
    - (i) where the beneficiary of the burial right can be traced and subject as provided by subregulation (7), by such person or persons as may be contracted by the said beneficiary with the approval of the Cemetery Authority; or
    - (ii) where the beneficiary of the burial right cannot be traced, and subject to subregulations 3(b) and (c), by employees of the Cemetery Authority;
- and in all cases the grave or vault shall be thoroughly disinfected by such persons, under the supervision of the Cemetery Authority, who shall be supplied with the necessary materials.
- (5) The Cemetery Authority shall authorise the removal of a body, human remains or cremated human remains from a grave or vault unless it is not in the public interest to do so.
- (6) Any expense incurred by or on behalf of the Cemetery Authority as a result of remedying damage or injury done by persons, other than employees of the Cemetery Authority, whilst digging or opening graves or vaults under this regulation may be, without prejudice to any other remedy, recoverable summarily as a civil debt from the person who caused the injury or damage.

(7) Contractors appointed by a beneficiary of a burial right are only permitted to carry out works in the cemetery provided -

- (a) an application is made in the prescribed manner to the Cemetery Authority to be included in the list of approved contractors held by the Cemetery Authority;
- (b) their application for inclusion in the list of approved contractors held by the Cemetery Authority is approved (such approval not to be unreasonably withheld by the Cemetery Authority); and
- (c) they agree in writing to carry out the works in accordance with any conditions (if any) prescribed by the Cemetery Authority.

#### **Depth of graves.**

10. No coffin shall be buried in a grave at a less depth than 1.25 metres measured from the ordinary surface of the ground to the top of the coffin.

#### **Notice of proposed burial.**

11.(1) A notice of any proposed burial, in the form prescribed by the Cemetery Authority and containing the particulars required by such form, shall be handed to the Cemetery Authority at his office before 9 o'clock in the morning on the day of the burial.

(2) Notwithstanding anything contained in subregulation (1), the Cemetery Authority may in its discretion, accept a notice of any proposed burial after 9 o'clock in the morning on the day of the burial provided the conditions contained in regulation 12 are satisfied.

#### **Burial certificates.**

12.(1) The burial in the cemetery of-

- (a) the body of a still-born shall not be permitted except in accordance with the provisions of the Births and Deaths Registration Act;
- (b) the body of a person who died outside Gibraltar shall not be permitted without-
  - (i) a certificate from the Coroner authorising the burial confirming that he is satisfied that such death has been registered in accordance with the laws of the jurisdiction where the death occurred; and

- (ii) such certificate must be delivered to the Cemetery Authority and a copy, together with any information relied upon by the Coroner in issuing it, shall be forwarded to the Registrar of Births and Deaths by the Coroner; or
- (c) any other body shall not be permitted without the certificate of the Registrar of Births and Deaths that the death has been registered or part registered (or the Coroner's warrant when an inquest has been held) which must be delivered to the Cemetery Authority in accordance with the provisions of the Births and Deaths Registration Act.

(2) The Registrar of Births and Deaths shall keep a register of certificates issued under this regulation together with a copy of all information supplied to him in relation to such certificates.

#### **Removal of human remains.**

13.(1) Subject to regulation 9, on application by a beneficiary of a burial right of a vault or grave, the Cemetery Authority shall have power to authorise the removal of any human remains from that grave or vault in accordance with its directions and in compliance with any conditions as it may impose.

(2) An application under subregulation (1) shall be accompanied by evidence that a notice of intention of removal of human remains and, if that be the case, of any tombstone, monument or other memorial commemorating the deceased person, has-

- (a) been published on the notice board at the cemetery office for a minimum of 2 weeks; and
- (b) where the identity of the persons holding the burial rights in relation to that plot are known, evidence that such persons have been served with a copy of the notice of intention.

(3) A notice of intention required to be published under subregulation (2)(b), when applicable, shall contain-

- (a) the identity of the deceased person whose remains are intended to be removed and his date of death;
- (b) the number or location of the grave or vault from where the human remains are intended to be removed and the name or names of the registered beneficiaries of burial rights in relation to that plot;



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- (c) the intentions of the applicant with respect to the future treatment of those human remains;
  - (d) whether any tombstone, monument or other memorial commemorating the deceased person are intended to be removed;
  - (e) the address at which further particulars of the intended removal may be obtained; and
  - (f) a statement to the effect that any representations against the intended removal must be received by the Cemetery Authority within 28 days of the date of publication of the notice.

(4) The provisions of subregulations (2)(b) and (3) do not apply to the removal of the remains of any child who on his date of death was under the age of eighteen years or of any still-born child if-

- (a) both parents consent to such removal; or
- (b) if only one parent is alive, that parent consents to such removal.

(5) In all cases of removal of human remains, the Cemetery Authority shall record such removal.

(6) For the purposes of this regulation “human remains” includes cremated human remains.

#### **Deposit of materials.**

14.(1) No person shall deposit any material in the cemetery other than-

- (a) that required for the construction of any vault, monument or other correlative work; and
- (b) at a place approved by the Cemetery Authority.

(2) Any material deposited-

- (a) outside the entrance gates of the cemetery for use therein; or
- (b) inside the cemetery under subregulation (1);

shall be removed within a reasonable time.

(3) All surplus materials, or rubbish arising from the completion of any vault, monument or other work shall be removed from the cemetery within a reasonable time and the place left clean and tidy by the person who caused the material or rubbish to be deposited.

(4) Upon any person failing to comply with the requirements of subregulation (2) or (3), it shall be lawful for the Cemetery Authority to carry out the removal of such material or rubbish.

(5) Any expense incurred by the Cemetery Authority as a result of the removal of material or rubbish left in contravention of this regulation may be, without prejudice to any other remedy, recovered summarily as a civil debt from the person who caused the material or rubbish to be deposited.

**Nothing to be removed.**

15. A person who, other than under the provisions of the Act, removes any property from any grave, vault or plot or from within the cemetery, including any wreath, case, frame or ribbon without the permission in writing of the owner of the property or of the Cemetery Authority is guilty of an offence.

**Planting of trees, erection of railings, etc.**

16. No tree or shrub or railing, fence or other item shall be planted or fixed on or around any grave or vault without the permission of the Cemetery Authority.

**No transfer without consent.**

17. No transfer of any vault or monument shall be made without the consent of the Cemetery Authority.

**Determination of rights.**

18.(1) Where a right to construct a grave or vault is given to a beneficiary under the Act, and such right has not been exercised before the expiration of 3 months from the date the right was given, the Cemetery Authority may serve notice on the beneficiary informing him that the right shall extinguish unless, within 1 month from the date of service of notice, the right is exercised.

(2) Where the Cemetery Authority is entitled to serve a notice under subregulation (1) but is unable to locate the beneficiary of the right, he may instead-

- (a) display the notice in a prominent position at the entrance to the cemetery where it is easily visible and legible by members of the public; and
- (b) publish the notice in the Gazette,

and this subregulation shall then have effect as if the notice had been duly served on the date it was published pursuant to paragraph (b).

#### **Disputes between beneficiaries etc.**

19.(1) A dispute between beneficiaries arising out of the proposed exercise of burial rights given under the principal Act shall be determined by the Magistrates' Court.

(2) Any dispute between parties arising out of any intended removal of human or cremated remains shall be determined by the Magistrates' Court.

(3) The Cemetery Authority may suspend rights given under the Act where he is made aware of a dispute between beneficiaries and such suspension shall remain in effect until such time as a final determination has been made or an agreement has been reached between the beneficiaries.

#### **Maintenance of Commonwealth War Graves.**

20. The weeding and cleaning of all graves under the jurisdiction of the Commonwealth War Graves Commission shall be carried out by the servants of the cemetery under the supervision of the Cemetery Authority and no fee shall be charged for such service.

#### **Fees.**

21.(1) The relevant fee in relation to rights given under section 9 of the Act are as prescribed in the Schedule.

(2) Unpaid fees shall, without prejudice to any other remedy, be recoverable summarily as a civil debt.

(3) In any proceedings under subregulation (2), the production of a certificate signed by the Cemetery Authority giving the name and address of the defendant and the amount of fees due by him shall be sufficient evidence of the amount so due and sufficient authority for the Magistrates' Court to give judgement for such amount.

#### **Receipts.**

22. Receipts shall be given in all cases for every fee or charge made pursuant to these Regulations.

#### **Penalties.**

23. A person who-

- (a) is in breach of any of the provisions of these Regulations;
- (b) fails to comply with any lawful order, direction or instruction given under these Regulations; or
- (c) is in breach of any condition of any written or oral permission;

is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

## SCHEDULE

## FEES

Regulation 21

	Persons of or over 10 years £	Children under 10 years £
1. (a) For interment in a vault.	52.00	-
(b) For interment of a still-born child in a vault.		-
2. (a) For interment in an ordinary grave.	40.00	-
(b) For interment of a still-born child in an ordinary grave.		-
3. (a) For opening a vault	24.00	-
(b) For opening a grave	30.00	-
(c) For opening a grave or vault of a still-born child.		-
4. For removal and transfer of remains from a vault or grave to a vault, grave or mortuary (where re-arrangement of contents or drainage is not required or requested) (In addition to fees in 1 and 2 as appropriate).	8.00	-
5. For removal or re-arrangement of remains in a vault if necessary or if required by owner (including drainage of water if required).	42.00	-
6. For permission to cut any inscription (subject to approval) on any existing tomb.	5.00	-
7. For search of Register Book	5.00	-

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8.	For certified copy of result of search of Register Book	5.00	-
9.	For a plot size 2.74m x 2.44m or equivalent area with entrance 1.68m x 1.22m for constructing a large vault and monument.	45.00	-
10.	For two adjoining plots size 2.44m x 1.37m each or equivalent area with entrance 1.68m x 1.22m to each for constructing two small vaults and monument.	45.00	-
11.	For three adjoining plots size 2.44m x 1.37m each or equivalent area with entrance 1.68m x 1.22m to each for constructing three small vaults and monument.	90.00	-
12.	For a plot size 2.44m x 1.37m or equivalent area with entrance 1.68m x 1.22m for constructing a small vault and monument.	18.00	-
13.	For a plot size 1.98m x 0.76cm for erecting a monument.	7.00	-
14.	For a plot size 1.52m x 0.76cm for erecting a child's monument.	-	-
15.	For consent to transfer of a vault or monument.	20.00	-

NOTE: No fee will be charged for small wooden crosses not exceeding 0.76cm high by 0.51cm wide, but authority from the Cemetery Authority must be obtained for erection.