

General Cemetery Bill

EXPLANATORY MEMORANDUM

This Bill is promoted by the General Cemetery Company (“the Company”).

The Bill deals with the cemetery and crematorium in the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea called the Kensal Green Cemetery and West London Crematorium (together “the cemetery”). By virtue of Acts of 1832, 1839 and 1937 (together “the old Acts”), the cemetery is owned and operated by the Company. The old Acts contain provisions about the making of rules for the management of the Company and the cemetery and other provisions which are no longer required or are outdated. In many cases the provisions of the old Acts have been superseded by general legislation relating to companies or cemeteries.

The current corporate and regulatory structure for the Company and the cemetery prevent the Company from accessing grant funding to cover the costs of repairing and conserving the many historic buildings and structures in the cemetery. The purpose of this Bill is to update the regulation and management of the Company and the cemetery in order to preserve the historic landscape of the cemetery. The Bill will enable the Company to register as a private company under the Companies Act 2006, at which point the provisions of the old Acts that are now redundant will be repealed. The Bill also permits the Company to transfer the ownership and management of the cemetery to [insert name of Trust] (“the Trust”) which would become the burial authority. These changes would enable grants to be obtained in order to repair and conserve the many historic buildings and structures in the cemetery.

The Bill also authorises the Company to extinguish rights of burial in grave spaces, and to disturb and reinter human remains in graves, in order to increase the space for further interments in those graves and improve the cemetery. It also confers power to use appropriately, or remove altogether from the cemetery, any memorials on those graves. These powers are already available to local authority run burial grounds and certain private burial authorities in London, and would enable the cemetery to continue to operate and secure the long-term sustainability of the site.

The Bill also repeals outdated and redundant legislation applying to the cemetery and confirms the Trust’s powers to operate and manage the cemetery following those repeals.

Part 1 of the Bill deals with introductory matters.

Clause 1 gives the short title of the Bill and provides for it to come into force 28 days after it is passed.

Clause 2 defines certain expressions used in the Bill.

Part 2 of the Bill relates to the updating of the Company’s structure so that its management aligns with the Companies Act 2006.

Clause 3 provides for the provisions of the Bill relating to the regulation and management of the Company to come into force when the Company registers under the 2006 Act.

Clause 4 provides that the registration of the Company does not affect its rights and liabilities.

Clause 5 provides for the update of outdated provisions of the 1832 Act regulating the Company. The amended provisions are set out in *Part 1 of Schedule 1*.

Clause 6 provides for obsolete provisions of the old Acts regulating the Company to be repealed when the Company is registered. The repealed provisions are set out in *Part 1 of Schedule 2*.

Part 3 of the Bill enables the transfer of the cemetery to the Trust. This Part is mainly based on the relevant provisions of the Monken Hadley Common Act 2022, which provided for the transfer of the ownership of that common to a charity.

Clause 7 defines the “primary objects” which the Trust must have while the cemetery is in its ownership. The primary objects are [first, the continued operation of the cemetery as a place for the burial and cremation of the dead, secondly the repair and conservation of the monuments, buildings and historical landscape features of the cemetery for the benefit of the public, thirdly the conservation and management of historic records and other archives relating to the cemetery for the public benefit and fourthly the education of the public about the social, economic, architectural and cultural history of the cemetery and those buried in it]. *Subsection (3)* says that the objects of the Trust (or any future owner under *clause 12*) must always include these primary objects. *Subsection (4)* says that the Trust and its successors can have other objects, but they must be charitable.

Clause 8 provides for the transfer of the ownership of the cemetery (and property associated with it) from the company to the Trust on a day to be appointed by the Company. *Subsection (2)* requires the Trust, while it owns the cemetery, to remain a charity and requires the objects of the Trust to include the primary objects (see *clause 7*). Following the transfer, the Company will have no interest in the cemetery and will be free of any liability for any obligations arising in relation to it before the appointed day.

Clause 9 makes the Trust responsible for the management of the cemetery. It is based on section 3 of the Highgate Cemetery Act 2022.

Clause 10 enables the Trust to grant easements or other rights over the cemetery as it thinks fit. *Subsection (4)* makes the power to grant easement and rights subject to the normal rules that apply to the disposition of land by charities.

Clause 11 enables the Trust to grant and renew leases over of any part of the cemetery subject to conditions they see fit. There are restrictions preventing the grant of leases protected by the Landlord and Tenant Act 1954 and the Housing Act 1988 in *subsection (2)*.

Clause 12 enables further transfers of the ownership and management of the cemetery. *Subsections (2) and (3)* provide that if the whole cemetery is transferred, the transferee must be another charity, and will have the ability to exercise the Trust’s statutory functions. *Subsection (4)* enables land that is not needed for the cemetery to be transferred without those

requirements being met. Under *subsection (5)* the power to transfer surplus land requires a faculty from the Church of England if it relates to consecrated land.

Clause 13 enables the Company to appoint a day for the transfer of the cemetery to the Trust. The Trust must have been registered as a charity before the transfer can happen. *Subsection (3)* requires the date of the appointed day to be publicised by a notice in the [London Gazette][a local newspaper].

Part 4 of the Bill makes provision for the regulation and management of the cemetery.

Clause 14 enables the Company to make regulations to secure the good management of the cemetery. This power would replace the Company's existing byelaw-making power under the old Acts.

Subsection (3) makes general provision about the application of the regulations and provides that a person contravening the regulations is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500).

Clause 15 is about the procedure for making those regulations. *Subsection (1)* applies (with minor modifications) the byelaw making procedures in the Local Government Act 1972 used by district councils. One of the effects of that is that the Trust must apply to the Secretary of State for confirmation of any regulations.

Clause 16 makes it an offence to cause a nuisance in the cemetery. This clause is based on article 18 of the Local Authorities' Cemeteries Order 1977, which provide the equivalent powers in respect of publicly run burial grounds in London and replaces similar, but out of date, provisions in the 1832 Act.

Clause 17 provides the Company with the power to extinguish rights of burial in grave spaces in the cemetery where a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space. *Clause 17* is substantially based on section 6 of the City of London (Various Powers) Act 1969, section 9 of the Greater London Council (General Powers) Act 1976, section 3 of the New Southgate Cemetery Act 2017 and section 3 of the Bishop's Stortford Cemetery Act 2024 which provide the equivalent powers in respect of publicly run burial grounds in London, the New Southgate Cemetery and the Bishop's Stortford Cemetery respectively.

Subsections (4) and (5) provide that if the registered owner objects to the proposal before the date specified in a notice (which must be at least 6 months), the right of burial may not be extinguished. If any other person objects, the right may only be extinguished by consent of the Secretary of State.

Subsection (6) provides that extinguishment takes effect on the date specified under a notice or, where an objection is made, the day after consent is given by the Secretary of State under *subsection (5)*.

Subsections (7) and (8) provide a right of compensation to persons whose rights of burial are extinguished and for the amount of compensation to be determined by arbitration if it cannot be agreed. As an alternative to compensation, *subsection (7)(b)* allows the Company to provide

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

Clause 18 provides the Company with the power to disturb, or to authorise the disturbance of, human remains interred in the cemetery 75 or more years ago, for the purpose of increasing the space for new interments. The power may only be exercised in respect of graves where there are no private burial rights, either because they have been extinguished under *clause 17*, because they have expired or because no right of burial was ever granted. Any human remains disturbed must be reinterred in their original grave or in another grave in the cemetery. Again *Clause 18* is substantially based on the equivalent power in respect of publicly run burial grounds in London, as well as private burial grounds in New Southgate and Highgate.

Subsections (5) to (7) provide that if a proposal to disturb human remains is objected to by the registered owner of the extinguished burial right or a memorial, or a relative of the person whose remains are to be disturbed, the Company may not exercise the powers under *Clause 18* for a period of at least 25 years.

Subsection (8) enables the Secretary of State to give the Company directions about the way in which it removes or reinters human remains. This power does not apply in relation to consecrated land, which is covered by *clause 19*.

Subsection (9) provides that section 25 of the Burial Act 1857, which requires the Secretary of State to license the removal of human remains, does not apply to removals that are carried out in accordance with this clause.

Clause 19 contains protection for graves and memorials that are the responsibility of the Commonwealth War Graves Commission, graves in consecrated land, and certain graves designated as “protected graves” by the Company. The powers in *clauses 17* and *18* only apply to these graves with the agreement of the Commission, in the case of a war grave, the diocese, in the case of consecrated land, or Historic England and the local planning authority in the case of a protected grave. *Clause 19* is based on section 6 of the Highgate Cemetery Act 2022.

Subsections (5) and (6) set out the power for the Company to designate certain graves, or revoke designations, as protected graves following consultation with or at the request of Historic England and the relevant planning authority.

Subsections (7) and (8) require the Company to maintain a public register of any protected grave designated under *subsection (5)*.

Clause 20 sets out the processes for giving notice in connection with the extinguishment of rights or the disturbance of remains. At least 6 months’ notice must be given, the notices must be publicised in newspapers, on the Company’s website and in the cemetery, and they must be sent to the registered owners of the burial rights or any memorials affected. *Clause 20* replicates section 6 of the of the Bishop’s Stortford Cemetery Act 2024.

Clause 21 deals with memorials. Where a memorial is removed in connection with the extinguishment of burial rights or the disturbance of human remains it remains the property of

the owner of the memorial, but where it is not claimed within six months, the Company may put the memorial to another use or dispose of it. *Clause 21* replicates section 7 of the of the Bishop's Stortford Cemetery Act 2024.

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

Clause 22(1) to (3) requires the Company to maintain a record of disturbance and reinterment under *clause 4*. *Subsection (4)* requires the Company to make a record of any memorial removed under this Act. The clause is based on section 5 of the New Southgate Cemetery Act 2017, section 7 of the Highgate Cemetery Act 2022 and section 8 of the of the Bishop's Stortford Cemetery Act 2024.

Clause 23 provides for outdated provisions of the old Acts relating to the cemetery to be amended or repealed. The amended provisions are set out in *Part 2 of Schedule 1* and the repealed provisions in *Part 2 of Schedule 2*. These amendments and repeals come into force 28 days after the Act is passed, apart from the repeal of the power to make byelaws, which comes into force when new regulations come into force under *Clause 14*. *Subsection (4)* provides for things done by the Company under the amended or repealed provisions to continue to have legal effect.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of the General Cemetery Company the provisions of the Kensal Green Cemetery and Crematorium Bill are compatible with the Convention Rights.

General Cemetery Bill

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B I L L

5 To make new provision for the regulation and management of the General Cemetery Company upon its registration as a private company under the Companies Act 2006; to permit the transfer of the ownership and management of Kensal Green Cemetery and West London Crematorium to [insert name of Trust]; and to confer powers upon the General Cemetery Company to extinguish rights of burial and disturb human remains in Kensal Green Cemetery for the purpose of increasing the space for interments; and for connected purposes.

10 **W**HEREAS—

- 15 (1) The General Cemetery Council (“the Company”) was incorporated by an Act of the second year of the reign of His Majesty King William the Fourth, entitled “An Act for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis” (“the 1832 Act”) and, under the powers of that Act, purchased lands now in the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea, and constructed a cemetery on a portion of the said lands:
- 20 (2) Further provisions were made with regard to the cemetery and further powers were conferred on the Company by an Act of the second year of the reign of Her Majesty Queen Victoria, entitled “An act for enabling the General Cemetery Company to raise a further Sum of Money and for amending the Act relating to the said Cemetery” (“the 1839 Act”):
- 25 (3) Further powers were conferred on the Company by the General Cemetery Act 1937 (“the 1937 Act”), including power to establish and operate a crematorium in the cemetery:
- (4) The Company remains the registered proprietor of the cemetery, including the crematorium, and operates and manages the cemetery as a public burial ground:
- 30 (5) In order to better manage the cemetery and its protected monuments, and the crematorium, it is expedient that the ownership of the cemetery and crematorium be transferred to a new charitable body, that the Company and the new body be provided with functions that are cast in modern terms and that outdated provisions of the 1832 Act, the 1839 Act and the 1937 Act (together “the old Acts”) are disapplied:

(6) In order that better use may be made of the land in the cemetery for burials, it is expedient that the Company be authorised to extinguish certain rights of burial granted in graves in the cemetery and to disturb, or authorise the disturbance of, human remains interred in such graves and also in graves where no rights of burial exist, for the purpose of increasing the space for further interments in such graves and to use appropriately or remove altogether from the cemetery memorials on such graves:

(7) It is expedient that the other provisions contained in this Act should be enacted:

(8) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART 1

PRELIMINARY

1 Citation and commencement

(1) This Act may be cited as the General Cemetery Act 202[X].

(2) Except as set out in **section 3** and **section 23(3)**, this Act comes into force at the end of 28 days beginning with the day on which it is passed.

2 Interpretation

In this Act—

“the 1832 Act” means the Act of the the second year of the reign of His Majesty King William the Fourth, entitled “An Act for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis”;

“the 2006 Act” means the Companies Act 2006;

“the appointed day” means a day fixed by the Company in accordance with **section** Error! Reference source not found.**3**;

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

“the cemetery” means the Kensal Green Cemetery and West London Crematorium, Harrow Road, London W10 4RA;

“civil partner” includes former civil partner;

“Commonwealth war burial” means a burial of any member of the armed forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or of any other person for whose burial the Commonwealth War Graves Commission is responsible;

“Commonwealth war memorial” means any memorial erected, owned or maintained by the Commonwealth War Graves Commission;

“the Company” means the General Cemetery Company or another person to whom any or all of the benefit of the provisions of this Act and any related statutory functions have been transferred;

“expired” in relation to a right of burial, means that the right has ceased to exist, whether by reason of any fixed period for which the right was granted having ended or the right having been surrendered, forfeited or otherwise determined, or for any other reason other than the right having been extinguished in accordance with the provisions of **section 17**;

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

“memorial” includes any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone or tablet, any wall, kerb or railing protecting, enclosing or marking a grave (including any permanent covering thereon), or any other commemorative object placed in the cemetery including vases, flower containers or other similar objects;

“the old Acts” means—

(a) the 1832 Act;

(b) the Act of the second year of the reign of Her Majesty Queen Victoria, entitled “An Act for enabling the General Cemetery Company to raise a further Sum of Money and for amending the Act relating to the said Cemetery”; and

(c) the General Cemetery Act 1937;

“protected grave” means a grave designated as a protected grave by the Company under **section 19(5)**;

“public or common grave” means a grave in respect of which no right of burial has been acquired by or granted to, or is otherwise vested in, any individual or body other than a local authority or the Company;

“register of grants” means the register of grants of exclusive rights of burial, and of rights to erect or place memorials, maintained by the Company;

“registered address” means an address registered in the register of grants;

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

“registered owner” means—

(a) in relation to any right of burial means the person at the time in question named as the owner in the register of grants;

(b) in relation to any memorial means the person at the time in question named in the said register as the person to whom the right to erect or place that memorial has been granted or, if no such person is named, the registered owner of the right of burial in the grave in or on which the memorial is erected or placed;

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

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

(a) that person’s spouse;

(b) that person’s civil partner;

(c) any brother, sister, aunt or uncle of that person or of that person’s spouse or civil partner

(d) any lineal ancestor or lineal descendant of that person or of a person mentioned in paragraphs (a) to (c);

“relevant memorial” means a memorial in or on a grave space in respect of which the Company has given notice of its intention to exercise the powers under **section** Error! Reference source not found.;

“specified date” means the date specified in a notice given for the purposes of **section 17** or **section 18**, on which it is intended that any burial rights should be extinguished, any human remains should be disturbed, or any memorial should be removed, as the case may be; and

“spouse” includes former spouse; and

“the Trust” means [insert name of the Trust] which was formed on [insert incorporation date] and the first trustees of which were [insert Trustee names].

PART 2

REGULATION AND MANAGEMENT OF THE COMPANY

3 Commencement on registration of the Company under the Companies Act 2006

This Part comes into force on the day on which the Company is registered as a private company under Chapter 1 of Part 33 of the 2006 Act.

4 Effect of registration

The registration of the Company as a private company under Chapter 1 of Part 33 of the 2006 Act does not affect any rights or obligations of the Company or render defective any legal proceedings by or against it.

5 Amendments of the 1832 Act relating to the Company

The provisions of the 1832 Act specified in Part 1 of Schedule 1 have effect subject to the amendments set out in that Schedule.

6 Repeals relating to the Company

The enactments specified in Part 1 of Schedule 2 are repealed to the extent shown.

PART 3

TRANSFER OF CEMETERY TO THE TRUST

7 The primary objects of the Trust

(1) On its incorporation as a charitable incorporated organisation, the objects of the Trust must include—

(a) [the continued operation of the cemetery as a place for the burial and cremation of the dead;

(b) the repair and conservation of the monuments, buildings and historical landscape features of the cemetery for the benefit of the public;

(c) the conservation and management of historic records and other archives relating to the cemetery for the public benefit; and

(d) the education of the public about the social, economic, architectural and cultural history of the cemetery and those buried in it.]

(2) In this Act, those objects are referred to as the “primary objects”.

(3) The objects of the Trust and any transferee under **section 12** must always include the primary objects.

(4) The Trust and any transferee may have other objects but they must be charitable objects.

8 Transfer of ownership of the cemetery

(1) On the appointed day—

(a) the cemetery and all other property which immediately before that date was the property of the Company and was used or held in connection with the cemetery;

(b) all rights, liabilities, interests, privileges and functions conferred by the old Acts; and

(c) all rights and liabilities of the Company subsisting immediately before that date which were acquired or incurred in connection with the cemetery,

are transferred to and vest in the Trust.

(2) Whilst the cemetery is in its ownership—

(a) the Trust must remain a charity;

(b) the objects of the Trust must include the primary objects.

(3) From the appointed day, any reference to the Company in any provision of the old Acts, Part 4 of this Act or any other instrument is to be read as if it were a reference to the Trust.

(4) From the appointed day the Company is not to be liable for any act, event, failure to act or omission so far as the act, event, failure to act or omission relates to the cemetery and occurred before the appointed day.

(5) Where the transfer and vesting of the cemetery or any part of the cemetery effected by subsection (1) is a registrable disposition under the Land Registration Act 2002, the Trust must apply to the Chief Land Registrar for registration in the register of title of a restriction to reflect **section 12(2)**.

9 The Trust’s power to manage the cemetery

(1) On and after the appointed day, the Trust may do all things it considers necessary or desirable for the proper management, regulation and control of the cemetery.

(2) The power in subsection (1) is subject to any restrictions or limitations contained in this Act.

10 Easements and other rights

(1) On and after the appointed day, the Trust may, over any part of the cemetery, grant easements, licences or other rights on such terms (including the payment of charges, whether periodic or otherwise) and subject to such conditions as the Trust thinks fit.

(2) Rights granted under subsection (1) may be granted on such terms (including the payment of charges, whether periodic or otherwise) and subject to such conditions as the Trust thinks fit.

(3) [Nothing in this Act affects any rights of owners and occupiers of land adjoining the cemetery in respect of gates, ways or passages lawfully erected or used before the appointed day.]

5 (4) Nothing in this section affects the application of sections 117 to 123 of the Charities Act 2011 (restrictions on dispositions of land) in relation to the Trust.

11 Leases

(1) On and after the appointed day the Trust may grant or renew a lease of any part of the cemetery.

10 (2) Part 2 of the Landlord and Tenant Act 1954 (which provides security of tenure for commercial tenancies) and section 5 of the Housing Act 1988 (which provides security of tenure for assured tenancies) do not apply to a lease granted under subsection (1).

(3) The exercise of the power under subsection (1) is not a disposition falling within section 117(3) of the Charities Act 2011 and nothing in this section affects the application of sections 117 to 123 of the Charities Act 2011 in relation to the Trust.

15 12 Further transfers of the cemetery

(1) Subject to the provisions of this section, the Trust may transfer its interest in the cemetery and any property, rights and liabilities relating to the cemetery, or any part of it, to another person (“a transferee”).

(2) A transferee must be a charity.

20 (3) Where a transfer has been made, references in the old Acts or this Act to the Trust (including any references that apply by virtue of **sections 8(3) and (4)**) are to be construed as references to the transferee.

(4) Subsections (2) and (3) do not apply to a limited transfer.

25 (5) The Trust may not make a limited transfer of any part of the cemetery that has been consecrated and set apart for the burial of the dead without a faculty granted by the consistory court of the diocese of London.

(6) A transfer under subsection (1) is not a disposition falling within section 117(3)(a) of the Charities Act 2011 (restrictions on dispositions of land: general).

30 (7) Where a transfer of an interest in the cemetery or any part of the cemetery under this section includes a registrable disposition of land under the Land Registration Act 2002, the transferee must apply to the Chief Land Registrar for registration in the register of title of a restriction to reflect subsection (2).

35 (8) Nothing in this section affects the operation of regulations made under section 245 of the Charities Act 2011 (regulations about winding up, insolvency and dissolution of charitable incorporated organisations).

(9) In this section, a “limited transfer” means a transfer by the Trust of its interest in any part of the land comprised in the cemetery that in the opinion of the Trust is not required for the exercise of its functions under the old Acts and this Act.

13 Appointed day

40 (1) The appointed day is fixed by a decision of the Company.

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- (2) The appointed day must not be before the Trust is registered by the Charity Commission as a charity.
 - (3) Before the appointed day, the Company must publish notice of the day appointed in [the London Gazette][a newspaper circulating locally], stating that it is the appointed day for the purposes of this Part.
 - (4) The publication of a notice under subsection (3) is conclusive evidence of the date of the appointed day in question, and a photocopy or other reproduction, certified by one of the directors or the company secretary of the Company, of a page or part of a page of the [London Gazette][newspaper] containing the notice is conclusive evidence of publication.

PART 4

REGULATION AND MANAGEMENT OF THE CEMETERY

14 Regulations

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- (1) The Company may make regulations in relation to the operation and maintenance of the cemetery.
 - (2) Without limiting the scope of subsection (1), the Company may make regulations for the purposes of regulating the use of the cemetery by members of the public and the conduct of burials in the cemetery.
 - (3) Regulations under this section may—
 - (a) make provision that a person contravening the regulations is liable on summary conviction to a fine not exceeding level 2 on the standard scale;
 - (b) be made so as to relate to the whole or any part of the cemetery;
 - (c) make different provision for different cases and in relation to different parts of the cemetery; and
 - (d) amend or revoke other regulations made under this section, or byelaws made under section 56 of the 1832 Act.
 - (4) In any proceedings for an offence under regulations, it is a defence for the person charged to prove—
 - (a) that the person took all reasonable precautions and exercise all due diligence to avoid the commission of the offence; or
 - (b) that the person had a reasonable excuse for the action or failure to act.

15 Procedure for making regulations

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- (1) Section 236 (except subsection (2)) and section 238 of the Local Government Act 1972 (which respectively relate to the procedure for making byelaws by local authorities and provide for the proof of byelaws in legal proceedings) shall apply to regulations made by the Company under **section 14** as they apply to byelaws made by a district council, as if—
 - (a) references to byelaws were references to regulations under **section 14**;
 - (b) references to a district council were references to the Company;

- (c) references to the area to which the byelaws are to apply were references to the cemetery;
- (d) references to the making of byelaws under the common seal of a district council were references to the making of regulations under the hand of two persons appointed for that purpose by the Company;
- (e) references to the offices of a district council were references to the Company's registered office;
- (f) references to the proper officer of a district council were references to a person appointed for that purpose by the Company;
- (g) there was an additional requirement to publish a copy of the regulations on the Company's website in every case where there is a requirement to deposit one at the offices of a district council.
- (2) The confirming authority for the purposes of section 236 is the Secretary of State.

16 Offences in the cemetery

- (1) A person commits an offence if they—
- (a) wilfully create any disturbance in the cemetery;
- (b) commit any nuisance in the cemetery;
- (c) wilfully interfere with any burial taking place in the cemetery;
- (d) wilfully interfere with any grave or vault, any tombstone or other memorial, or any flowers or plants on any such matter; or
- (e) play at any game or sport in the cemetery.
- (2) A person not being an officer or servant of the Company or another person so authorised by or on behalf of the Company commits an offence if they enter or remain in the cemetery at any hour when it is closed to the public.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

17 Power to extinguish rights of burial

- (1) Subject to subsection (2) and **section 19**, where in respect of any grave space in the cemetery a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space, the Company may, by notice given in accordance with **section 20**, extinguish the right of burial in that grave space.
- (2) No right of burial granted after the passing of this Act for any period longer than 75 years is to be extinguished under this section.
- (3) Subject to **section 21**, the power of the Company under subsection (1) to extinguish a right of burial in any grave space includes the power to remove any memorial in or on the grave space.
- (4) If notice of objection to the extinguishment of a right of burial in any grave space is given to the Company before the specified date by the registered owner of the right of

burial and that objection is not withdrawn, the right of burial to which the objection relates must not be extinguished under this section.

- 5 (5) If notice of any other objection to the extinguishment of a right of burial in any grave space or to the removal of a memorial, and of the grounds of any such objection, is given to the Company before the specified date and is not withdrawn, any right or memorial specified in the notice of the objection must not be extinguished or removed without the consent of the Secretary of State.
- 10 (6) An extinguishment under subsection (1) takes effect—
- (a) where no notice of objection is given, on the specified date;
 - (b) where notice of objection is given and the objection is withdrawn, on the specified date or the day after the objection is withdrawn, whichever is later; or
 - (c) where the Secretary of State consents to the extinguishment under subsection (5), on the day after that consent is given.
- 15 (7) As compensation for any right of burial extinguished under this section, the Company must on a claim being made by the registered owner of the right of burial within six months from the extinguishment of that right either—
- (a) pay to the owner such sum representing the value of that right as may be agreed between the Company and the owner or, in default of agreement, determined by arbitration; or
 - 20 (b) confirm in writing to the owner that the right of burial extinguished is to be revived and, if confirmation is given under this paragraph, the right of burial is deemed not to have been extinguished under subsection (1).
- 25 (8) In any arbitration under subsection (7)(a), the reference must be to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party after giving notice in writing to the other party.

18 Power to disturb human remains

- 30 (1) Subject to **section 19**, the Company may disturb or authorise the disturbance of human remains interred in a grave in the cemetery for the purpose of increasing the space for interments in the grave where—
- (a) the Company has extinguished rights of burial in the grave under **section 17**;
 - (b) the grave is a public or common grave; or
 - (c) any right of burial granted in relation to the grave has expired.
- 35 (2) A person authorised by or under subsection (1)(b) or (c) to disturb human remains may, subject to **section 21**, remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed.
- (3) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.
- 40 (4) Any human remains disturbed under subsection (1) must be reinterred either in their original grave or in another grave within the cemetery.
- (5) Before disturbing any human remains, or removing any memorial, under this section the Company must give notice in accordance with **section 20**.

- (6) If notice of objection to the proposed disturbance of human remains is given to the Company before the specified date by—
- (a) the registered owner of the extinguished or expired right of burial;
 - (b) the registered owner of a relevant memorial, whether or not the memorial is proposed to be removed;
 - (c) a relative of the person whose remains are proposed to be disturbed,
- and that objection is not withdrawn, the Company may not, subject to subsection (7), disturb or authorise the disturbance of those remains.
- (7) The Company may, in accordance with subsection (1), disturb or authorise the disturbance of human remains that are otherwise protected from disturbance under subsection (6) if—
- (a) after the expiry of a period of 25 years from the date on which notice of objection in accordance with that subsection was last given, the Company has given further notice in accordance with **section 20** in relation to the disturbance of those remains; and
 - (b) no notice of objection in accordance with subsection (6) is given in relation to that further notice or, if such notice of objection is given, it is withdrawn.
- (8) A person authorised by or under subsection (1) to disturb human remains must comply with any directions given by the Secretary of State with respect to the removal and reinterment of any human remains in any case other than a case where the human remains are interred in consecrated land.
- (9) The provisions of section 25 of the Burial Act 1857 (offence of removal of body from burial ground) do not apply to a removal carried out in accordance with the provisions of this section.

19 Protection for certain graves

- (1) The Company must obtain the written agreement of the Commonwealth War Graves Commission before exercising the powers conferred by **section 17** and **section 18** in respect of—
- (a) any grave in which there is a Commonwealth war burial, or
 - (b) any grave space in or on which there is a Commonwealth war memorial.
- (2) Subject to subsection (3), nothing in **section 18** affects the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the interment of human remains.
- (3) Where the Company proposes to disturb any human remains in consecrated land, the Company may not exercise its powers under **section 18** without first obtaining a faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains in consecrated land by any person under **section 18** must be heard and determined by that consistory court.
- (4) The Company must obtain the written agreement of the Historic Buildings and Monuments Commission for England and the relevant planning authority before exercising the powers conferred by **sections 17** and **18** in respect of a protected grave.

- (5) The Company may from time to time, in consultation with or at the request of the Historic Buildings and Monuments Commission for England or the relevant planning authority, designate a grave as a protected grave.
- 5 (6) The Company may from time to time, following consultation with the Historic Buildings and Monuments Commission for England and the relevant planning authority, revoke the designation of any grave as a protected grave.
- (7) The Company must maintain a record of any protected grave.
- (8) The record maintained under subsection (7) must at all reasonable times be available for consultation by any person free of charge.
- 10 (9) In this section, “the relevant planning authority” means—
- (a) in relation to a grave in the London Borough of Hammersmith & Fulham, the Council of that London Borough; and
 - (b) in relation to a grave in the Royal Borough of Kensington & Chelsea, the Council of that Royal Borough.

15 **20 Notices given under this Act**

- (1) The Company may give a single notice for the purposes of **section 17(1)** and **section 18(5)** and (7).
- (2) The Company must—
- 20 (a) publish notice in a newspaper of their intention to exercise the powers under **section 17** or **section 18** once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days;
- (b) publish such a notice and maintain that notice until the specified date—
- 25 (i) on the Company’s website; or
 - (ii) by using a means of electronic publication that the Company considers equivalent for the purposes of drawing attention to the Company’s proposals;
- (c) display such a notice in a conspicuous position—
- (i) at each of the principal entrances to the cemetery; and
 - (ii) so far as is reasonably practicable at or near the grave;
- 30 (d) serve such a notice on—
- (i) where the Company intends to extinguish burial rights, the registered owner of the right of burial and, if different, the registered owner of any memorial proposed to be removed, at their registered address;
 - 35 (ii) where the Company intends to disturb human remains, the registered owner of any extinguished or expired right of burial or any memorial erected or placed in or on the grave space, at their registered address;
 - (iii) the Commonwealth War Graves Commission; and
 - (iv) the Historic Buildings and Monuments Commission for England.
- (3) Each notice must—

- 5 (a) contain full particulars of the Company's proposals including the registered number or other description of all grave spaces in respect of which it is proposed that rights of burial should be extinguished, and graves in which it is proposed that the human remains are to be disturbed, and stating those graves where it is proposed that any memorials should be removed;
- 10 (b) contain the specified date, which must not be earlier than six months after the date of the last of the publications in accordance with subsection (2)(a) and (b), the date on which the notice is first displayed in accordance with subsection (2)(c), or the date on which the notice is served in accordance with subsection (2)(d), whichever is the last;
- (c) in the case of a notice under **section 17**, state the effect of subsections (4) to (8) of that section; and
- (d) in the case of a notice under **section 8**, state the effect of subsections (6) and (7) of that section.
- 15 (4) A notice under subsection (2)(b) must contain, where known, the name of the registered owner of the right of burial or memorial and the name of any person whose remains are proposed to be disturbed.
- 20 (5) A notice under subsection (2)(a), (c) or (d) must include details of where the notice under subsection (2)(b) may be found and a statement that the notice under subsection (2)(b) contains the information described in subsection (4).

21 Memorials

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

22 Records

- 30 (1) The Company must maintain a record of any remains in the cemetery that are disturbed under the powers in **section 18**.
- (2) The record maintained under subsection (1) must include such information as the Company sees fit and must include—
- 35 (a) the date of the disturbance;
- (b) where known, the registered number of the grave in which the remains are disturbed;
- (c) where known, the names, in full, of the person whose remains are disturbed;
- (d) particulars of the authority for disturbance; and
- 40 (e) the registered number of the grave in which the remains are reinterred, its approximate location and the date of reinterment.

- (3) As soon as reasonably practicable after any disturbance under **section 18**, the Company must complete the record in accordance with paragraphs (a) to (e) of subsection (2).
- (4) The Company must cause a record to be made of each memorial removed under this Act containing—
- 5 (a) a copy of any legible inscription on it;
- (b) if it is intended to preserve the memorial within the cemetery, a statement showing where it has been taken; and
- (c) if the memorial is disposed of, a statement of the details of its disposal, and the Company must deposit a copy of the record with the Registrar General for
- 10 England and Wales.
- (5) The records maintained under subsections (1) and (4) must at all reasonable times be available for consultation by any person free of charge.

23 Amendments and repeals relating to the cemetery

- (1) The enactments set out in Part 2 of Schedule 1 have effect subject to the amendments
- 15 made by that Part.
- (2) The enactments set out in Part 2 of Schedule 2 are repealed to the extent shown.
- (3) The repeal of section 56 of the 1832 Act (byelaw-making power) has effect from the date on which the first regulations under **section 14** come into force.
- (4) The repeals under subsection (1) do not affect, anything done (or having effect as if
- 20 done) by the Company under those enactments in connection with the operation, management or improvement of the cemetery, including without limitation the grant of any burial rights.

SCHEDULES

SCHEDULE 1

Section 5

AMENDMENTS OF THE 1832 ACT

1 The 1832 Act has effect with the following amendments.

5 **PART 1**

AMENDMENTS RELATING TO THE COMPANY

2 In section 1 omit from “, and by that Name” to the end of the section.

PART 2

AMENDMENTS RELATING TO THE CEMETERY

10 3 In section 21, at the end of the section insert “and the Company may do all such things as they consider necessary or desirable for the proper management, regulation and control of the Cemetery”.

4 In section 22—

15 (a) after “according to the Established Form of the United Church of England and Ireland,” insert “or a Chapel for the use of any other denomination or religious body,”; and

(b) at the end of the section insert “and the Company may do all such things as they consider necessary or desirable for the proper management, regulation and control of the Chapel.”.

20 5 In section 25, for “and under the Direction of the Commissioners of Sewers for the City and Liberty of Westminster and Part of the County of Middlesex, for the Limits of Holborn and Finsbury Division, the Parish of Saint Leonard Shoreditch and the Liberty of Norton Falgate, and for the Tower Hamlets (excluding Saint Katherine’s and Blackwall Marsh) in the said County of Middlesex”, substitute “with the written consent of the street authority, within the meaning of Part 3 of the New Roads and Street Works Act 1991 (which regulates street works)”.

25

6 In section 35, for “shall be conclusive Evidence of the Facts therein stated; and the said Company shall not be liable to give, nor shall any such Incumbent as aforesaid be entitled to require, any other Evidence of the Amount of the Sum payable to him for Fees under the Authority of this Act than the Entries in such Books”, substitute “must be stored so as to preserve them from loss or damage”;

30

7 For section 42 substitute—

“XLII. Consecration, and setting apart for particular denomination

(1) Subject to subsection (2), the Company may if they think fit—

35 (a) apply to the Bishop of the diocese for consecration of any part of the cemetery;

(b) set apart for the use of a particular denomination or religious body any part of the cemetery which has not yet been consecrated.

- (2) In exercising the powers conferred by subsection (1), the Company must satisfy itself that a sufficient part of the cemetery remains unconsecrated and not set apart for the use of particular denominations or religious bodies.
- (3) The Company may mark off any consecrated part of the cemetery in such manner as they consider suitable.
- (4) Notwithstanding the consecration or the setting apart for the use of a particular denomination of the part of a cemetery in which any burial is to be effected, the burial may take place without any religious service or with such orderly religious service at the grave, conducted by such person or persons, as the person having the charge of or being responsible for the burial may think fit.
- (5) The Company may at the request of a particular denomination or religious body prohibit the interring or scattering of cremated human remains in or over a part of the cemetery set apart for their use.”.

15 8 For section 43 substitute—

“XLIII. Grant of burial rights and rights to erect memorials, and agreements for maintenance of graves and memorials

- (1) The Company may grant, on such terms and subject to such conditions as they think proper—
- (a) to any person—
- (i) the exclusive right of burial in any grave space or grave, or the right to construct a walled grave or vault together with the exclusive right of burial therein; or
- (ii) the right to one or more burials in any grave space or grave which is not subject to any exclusive right of burial;
- (b) to the owner of a right described in paragraph (a)(i) or (ii) (or to any person ‘P’ who satisfies them that P is a relative of a person buried in the grave or vault, or is acting at the request of such a relative and that it is impractical for P, or P’s relative, to trace the owner of the right so described), the right to place and maintain, or to put any additional inscription on, a tombstone or other memorial on the grave space, grave or vault in respect of which the right so described subsists;
- (c) to any person, the right to place and maintain a memorial in a cemetery otherwise than on a grave space, grave or vault in respect of which a right described in paragraph (a)(i) has been granted, but—
- (i) in the case of a memorial to be placed in a chapel provided, only at the request of persons appearing to the Company to be representative of the Church of England or other particular denomination or religious body at whose request the chapel was provided; and
- (ii) in the case of any other memorial being an additional inscription on an existing memorial, only with the consent of the owner of the right to place and maintain such existing memorial.”.

- (2) The Company may from time to time extend the period of any grant under subsection (1) (subject, if they think fit, to any modification of its terms or conditions) for up to 75 years from the date on which the extension is granted.
- (3) The Company may, at the expiration of the period of any grant under paragraphs (b) or (c) of subsection (1), or of any extension of such period—
- (a) move to another place in the cemetery; or
 - (b) remove from the cemetery, for preservation elsewhere or for destruction, any tombstone or other memorial which has not been removed from the cemetery by the owner of the right to place and maintain it in the cemetery.
- (4) No body shall be buried in or over any grave in which an exclusive right of burial for the time being subsists except by, or with the consent in writing of, the owner of the right.
- This paragraph shall not extend to the body, or remains, of—
- (a) the person who immediately before their death was the owner of the right; or
 - (b) any other person specified in the deed of grant or in an indorsement thereon made at the request of the owner for the time being of the right by the officer appointed for that purpose by the Company.
- (5) The Company shall also have power to agree with any person, on such terms and subject to such conditions as they think proper, to maintain any grave, vault, tombstone or other memorial in a cemetery for a period not exceeding 100 years from the date of the agreement.”.

9 For section 45 substitute—

“XLV. Form and register of grants of exclusive right of burial, etc.

- (1) A grant, or an extension of a grant, under section XLIII must be in writing signed by the officer appointed for that purpose by the Company and any extension of the period of such a grant must also be in writing signed by such an officer.
- (2) The Company must maintain a register of all rights, or an extension of rights, granted by them under section XLIII, showing in relation to each right—
- (a) the date on which it was granted;
 - (b) the name and address of the grantee;
 - (c) the consideration paid for the grant;
 - (d) the place in which it is exercisable; and
 - (e) its duration.
- (3) The Company must make the register available at all reasonable times for inspection by any person free of charge.
- (4) The Company may charge such fees as they think proper for the making by them of searches in, and the provision of certified copies of entries in, the register.”.

10 For section 46 substitute—

“XLVI. Disposal of exclusive right of burial

(1) A right granted, or an extension of a grant, under section XLIII may be assigned by deed or bequeathed by will.

5 (2) The Company must, following such investigation as they think proper, record particulars of any assignment or transmission of such a right in the register maintained under section XLV.”.

11 In section 49—

(a) the existing text becomes subsection (1);

10 (b) after “Monumental Inscriptions, Grave Stones,” insert “any kerbs surrounding a grave (whether containing any commemorative inscription or not) together with the foundation slabs of such kerbs, any surface fittings, any railings,”;

15 (c) after “Permission to erect or construct the same was granted, or in such case such Terms and Conditions shall not have been complied with” insert “; or all material particulars are illegible or which is dilapidated by reason of long neglect”; and

(d) omit from “: Provided always, that in the case of such Resumption of Possession” until the end of the section, and insert—

20 “(2) The powers under subsection (1) are not exercisable in relation to any building of special architectural or historic interest included in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 unless the works have been granted consent under section 16 of that Act.”.

12 In section 50, for “enclosed in a Coffin of Lead, or otherwise enclosed in Pitch of Half an Inch in Thickness between an interior and exterior Coffin of Wood” substitute
25 “constructed of suitable materials”.

13 In section 51, delete from “and Copies of the Transcripts thereof,” to the end of the section and insert “and Copies of the Register Books must at all reasonable times be available for inspection by any person free of charge. The Company may charge such fees as they think proper for the making by them of searches in, and the provision of
30 certified copies of entries in, a register of burials.”;

14 In section 119, for “Commissioners of Sewers for the City and Liberty of Westminster and Part of the County of Middlesex, for the Limits of Holborn and Finsbury Division, the Parish of Saint Leonard Shoreditch and the Liberty of Norton Falgate, and for the Tower Hamlets (excluding Saint Katherine’s and Blackwall Marsh), in the said County
35 of Middlesex” substitute “the street authority within the meaning of Part 3 of the New Roads and Street Works Act 1991”.

SCHEDULE 2

Section 6

REPEALS

PART 1

REPEALS RELATING TO THE COMPANY

5

<i>Chapter</i>	<i>Title or short title</i>	<i>Extent of repeal</i>
2 & 3 Will. 4 c. cx (1832)	An Act for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis	Sections 8 to 20. Sections 23 and 24. Section 40. Sections 52 to 102. Sections 105 to 117.
2 & 3Vict. c. v (1839)	An Act for enabling the General Cemetery Company to raise a further Sum of Money and for amending the Act relating to the said Cemetery	Sections 1 to 8. Sections 12 and 13.
1937 (c. xxiii)	General Cemetery Act	Section 2. Sections 4 to 18. Section 20.

PART 2

REPEALS RELATING TO THE CEMETERY

<i>Chapter</i>	<i>Title or short title</i>	<i>Extent of repeal</i>
2 & 3 Will. 4 c. cx (1832)	An Act for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis	Sections 5 to 7. Sections 27 to 34. Sections 36 to 39. Section 41. Section 44. Section 47. Sections 103 to 104.
2 & 3Vict. c. v (1839)	An Act for enabling the General Cemetery Company to raise a further Sum of Money and for amending the Act relating to the said Cemetery	Sections 9 to 11.
1937 (c. xxiii)	General Cemetery Act	Subsection (4)(a) of section 3.

10

General Cemetery Bill

A

BILL

To make new provision for the regulation and management of the General Cemetery Company upon its registration as a private company under the Companies Act 2006; to permit the transfer of the ownership and management of Kensal Green Cemetery and West London Crematorium to [insert name of Trust]; and to confer powers upon the General Cemetery Company to extinguish rights of burial and disturb human remains in Kensal Green Cemetery for the purpose of increasing the space for interments; and for connected purposes.

SESSION 2024-2025

[Name of person responsible for the Bill]

GENERAL CEMETERY COMPANY

[Address]

[Designation]

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Solicitors and Parliamentary Agents

[27.09.24]

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