

GUIDANCE NOTES ON PRACTICES AND REGULATIONS WITHIN EXMINSTER PARISH COUNCIL'S CEMETERY

These notes are for the guidance of those purchasing (or receiving by transfer or inheritance) the Exclusive Right of Burial in a grave.

We understand that at such a distressing time rules and regulations are far from your mind however they are necessary to enable the Council to maintain the cemetery in a condition that is acceptable to all visitors and ensure holders of the Exclusive Right of Burial understand the legal requirements attached to the deed.

This information may be of assistance to you in the future, so we suggest keeping these notes with your grave deed for reference.

Cemetery Rules and regulations

The Right of burial which you have purchased gives you control over the burials on the grave space for a period of 50/99 years and, once the appropriate fee has been paid, the right to erect a memorial on that grave. The ground itself remains in the ownership of Exminster Parish Council, who as burial authority, are empowered to set out regulations for the proper management of the cemetery.

No burials shall take place without the consent in writing of the owner/applicant for the Exclusive right of burial, except for the burial of the owner of that right.

All burials shall take place in accordance with the Parish Council's Cemetery regulations and also the statutory requirements laid out by the Local Authorities Cemeteries Order 1977 or any subsequent legislation that comes into force.

Information following the burial

After the burial has taken place, the floral tributes may remain on the grave for around 14 days, or until the flowers have wasted, after which they will be removed by the cemetery staff. After this period the grave bed should be kept clear at all times. Small floral tributes only can be placed on the base (plinth) of the headstone, or where a headstone would be if one has not yet been placed on the grave.

The grave will then be turfed or grass seed sown, depending on the season and conditions, 4 to 6 months after the burial has taken place. It is normal for the grave to subside during the first months after a burial as the soil settles, especially after periods of heavy rain, and staff regularly check the graves and reinstate them as necessary.

Lawn type grave sections

The lawn type grave sections are laid out to enable mowing to take place easily between the rows of graves. No mounds or raised turf areas, planting of shrubs or trees is permitted on a grave. In order to keep the graves neat and tidy and to avoid accidents to the cemetery staff, no kerbs or surrounds or items such as stone chippings, glass containers, plastic surrounds or plants may be placed on the bed of the grave. A 600mm strip of undisturbed ground is left at the head of a grave to allow for the fixing of a memorial.

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The Council has the right to remove and dispose of any floral tributes, plants etc that have withered or died or have become unsightly on any grave.

The Council has the right to remove from any grave any items that may interfere with the ground maintenance of that area after serving notice to the registered grave owner. Any items causing an immediate hazard (such as glass) will be removed immediately without notice

Memorials

A memorial stone may be erected at the head of the grave, if you wish, from six months after the burial. This time is allowed for the ground to settle.

All memorials must be constructed and fixed to the requirements of BS 8415 by a BRAMM registered mason or one registered with the Council. Your memorial mason will be able to advise you on the styles of memorial that can be placed in the cemetery.

An approved application, submitted by your memorial mason, is required to place a memorial, add an inscription or alter one. The signature of the owner of the Exclusive Right of Burial is required on the form which is to be submitted with the appropriate fee and approved by the Council.

The memorial stone remains the property of the deed holder who is responsible for the maintenance of the memorial, keeping it in a good and safe condition. If the memorial is found not to be in a safe condition then the owner of the memorial will need to organise its repair by a registered mason. You are encouraged to take out insurance against damage or vandalism etc, as this is not the responsibility of the Council. Your memorial mason will be able to advise you on insurance options.

Should a memorial be found to be unsafe at any time the Council has a legal right and obligation, under the Local Authority Cemetery Order 1977, to remove any danger immediately. This is usually done by cordoning off, use of a temporary support or laying down. We will then contact the owner to inform them of the action that has been taken giving them the opportunity to organise the repairs necessary to the memorial.

Exclusive Right of Burial Information

The Grant of Exclusive Right of Burial can only be purchased when arranging a burial and not in advance.

Exclusive Right of Burial is an official document confirming that the purchaser (owner) has the right to say who can be buried in a defined grave space (plot). Rights of burial only are purchased, not the land itself which remains the property of the burial authority (the Parish Council).

No burial (full burial or interment of cremated remains) may take place in the grave and no memorial can be erected on the grave without the written permission of the grave owner during the period that the Exclusive Right exists. Where an existing burial has taken place no further burials or amendments to existing memorials will be allowed

without the permission of the grave owner. The only exception to this is where the owner of the right is being interred.

Ownership of the Exclusive Right is therefore very important and grave owners must keep their Deed of Grant safe. This is a legal document and should be produced for each burial. Possession of the Deed does not signify ownership of the Exclusive Rights.

Transfer of ownership

All references to wills in this document relate to wills recognised as valid by the laws in England and Wales.

The legal transfer of ownership of rights can be carried out by the following methods;

Grave owner living

The grave owner can assign the Exclusive Right of burial to another individual during their lifetime on completion of a Deed of Assignment, available from the Clerk. They can also assign the rights to create a joint ownership. Please note that there is a fee applicable for this transfer.

Grave owner deceased

If the grave owner dies it is assumed that they have given permission for their remains to be buried in the purchased grave. The Exclusive Right then becomes part of their estate and may be left in a will to someone else. If the Exclusive Right is not specifically mentioned in the will it will form part of the residual estate of the deceased.

Therefore the procedure to transfer ownership depends on whether there was a valid will or not and whether the Exclusive Rights were mentioned in the will.

1. If the deceased owner left a will

If the deceased owner left a will stating who the Grant of Exclusive Right of Burial should be passed to then the person identified in the will should provide the Council with: -

- the Grant of the Exclusive Right of Burial
- the Grant of Probate – Probate is the document issued by the Court after the will has been proved in Court. It should be the original document bearing the Court Seal. A copy of the relevant part of the document can then taken and retained for the files
- if the person is not also the Executor of the will, a form of Assent is required from the Executor(s) of the Will giving the Grant of Exclusive Right of Burial to that person.

If the deceased owner left a will of insufficient value to merit application to be made for Grant of Probate and someone wishes to claim the exclusive right of burial, then the Council ask for:

- the Grant of the Exclusive Right of Burial
- a Statutory Declaration detailing the relationship of the person claiming the right of exclusive burial to the deceased owner. This is detailed later in the guidance.

- A Form of Renunciation from all other people who would be entitled to claim the Grant of Exclusive Right of Burial.

2. When there is no will

If the owner of the rights dies without leaving a will, this is generally referred to as dying intestate and the Council ask for:

- the Grant of the Exclusive Right of Burial
- the Grant of Letters of Administration – letters of administration are granted to a person or persons who apply to the Court to receive permission to administer the estate of the deceased. The Letters of Administration should name the administrator/s and once again should bear the official seal of the Court. The relevant part of the document should be copied and retained on file. An Administrator of an estate has the same powers and responsibilities as an Executor
- if the person is not also the Administrator, then a form of Assent is required from the Administrator(s) giving the Grant of Exclusive Right of Burial to you.

If the estate is of insufficient value to merit application for Letters of Administration the Council ask for:

- the Grant of the Exclusive Right of Burial
- a Statutory Declaration detailing the relationship of the person claiming the rights to the registered grave owner.
- A Form of Renunciation from all other people that would be entitled to claim the Grant of Exclusive Right of Burial.

3. Original Grant of Right has been lost

The Statutory Declaration should be amended to include suitable wording to cover this or other suitable legal declaration should be completed and returned with the rest of the documents.

If you need any further help and advice please contact:

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