

planning for burial space in London

Town & Country Planning Act 1990 (as amended); Greater London Authority Act 1999 – report on Home Office consultation

'Burial Law and Policy in the 21st Century: the Need for a Sensitive and Sustainable Approach'

Context

1 In January 2004 the Home Office published a consultation document on the law as it relates to burials in England. A wide range of issues is covered, but from a strategic planning point of view, the most important issue is the future supply of land for burials. Closely related and overlapping issues include cemetery management, nature conservation, the conservation of the historic environment, sustainable development and equal opportunities. The closing date for responses is 13 July 2004. This report sets out information for the Mayor's use in deciding what comments to make.

2 The Mayor of London's comments on this consultation document will be made available on the GLA website www.london.gov.uk.

LPAC research and policy

3 In August 1997 the London Planning Advisory Committee, in conjunction with the Confederation of Burial Authorities, the Institute of Burial and Cremation Administration and the Corporation of London, published *'Planning for Burial Space in London: Policies for Sustainable Cemeteries in the New Millennium'*. This was based on research carried out for LPAC, the Corporation and the CBA by Halcrow Fox in association with the Cemetery Research Group at the University of York, and the Landscape Partnership, published by LPAC in January 1997 as *'Burial Space Needs in London'*. LPAC's research and policy recommendations were concerned with the strategic supply of land for burials in London, and related concerns about cemetery management.

4 The origin of LPAC's concern was anecdotal evidence of an increasingly severe shortage of burial space, which was having growing implications for land supply, and was threatening land used for recreation, allotments and agriculture. In one particular case, land held in reserve for burials, but used for many decades as a public playing field, was being reclaimed for an extension to an adjacent cemetery, resulting in a loss of valuable recreation and amenity space for the local community. The above-mentioned research was commissioned to ascertain the position across London. It involved a study of burial custom and practice, including legal constraints; a survey of public and private burial land reserves in all boroughs to determine the future supply of burial space; and an analysis of population growth and death-rate projections to determine the future demand for burial space. Particular account was taken of the special needs of minority population groups.

5 The LPAC/CBA/IBCA/City report identified a wide variation in burial land supply across London. There was no land for burials in Hackney, Islington, Tower Hamlets or Westminster (although Islington and Westminster Councils owned operational cemeteries located at some considerable distance outside their boundaries). There were reserves of less than ten years, including private cemeteries and cemeteries owned by other borough councils, within the boundaries of Brent, Croydon, Ealing, Harrow, Havering, Camden, Hammersmith & Fulham, Haringey, Lambeth and Lewisham (some of which borough councils owned reserves elsewhere). At the other extreme, Hounslow, Merton and Richmond upon Thames each had reserves that would last for more than 150 years (although some of this was private or belonged to other borough councils). In terms of burial land reserves owned by borough councils within their boundaries, or reasonably close by, and taking account of privately-owned cemeteries or cemeteries owned by other authorities, inner London boroughs had, on average, a supply of seven years of space available to them for burials, and outer London boroughs had a supply of eighteen years (reduced to ten excluding the six boroughs with the highest reserves).

6 Immediately after the Second World War, cremation was chosen in only 4% of deaths in London. This rose to the current rate of about 70-72%, enabling London to eke out its burial land reserves for much longer than would otherwise have been possible. The burial/cremation ratio is now stable. The growth in London's Muslim population, for which cremation is not an option, and a perceived, albeit small reaction against cremation by some people from population groups that allow it, means that it is unlikely that the cremation rate will increase significantly in the foreseeable future, although price advantage over burial will ensure that cremation remains the predominant choice.

7 The implications for a growing number of families in London is that in order to exercise their preference for burial rather than cremation, burial opportunities have to be sought far from their local community. For the high proportion of bereaved that is elderly and frail, this makes travelling to cemeteries expensive and often impossible. In terms of burial fees, borough councils often charge non-parishioners up to four times the normal rate. This has a disproportionate effect on residents of boroughs such as Hackney and Tower Hamlets, which have no burial space available, but contain some of the poorest and most disadvantaged communities in the country. For members of the local Muslim communities in those boroughs, the problems are acute, and recourse has often to be taken to inferior services offered by some private cemeteries.

8 The research showed that shortages of burial land were leading to management practices that were eroding the historic, landscape, architectural and natural character of many cemeteries. Typically, new graves with modern, machine-cut black marble memorials were being crammed between older graves, and were even being located in footpaths, roadways and grass verges that were part of the original cemetery design. Flowerbeds and other landscaping features were also being destroyed. In extreme cases, memorials in old sections of cemeteries and burial grounds were being removed; topsoil was being spread over the site (sometimes to a depth of twenty feet), and new graves were being dug into this made-up ground. There is evidence that these practices have continued since 1997, as the only means of enabling cemeteries to continue in operation for longer than had been estimated.

9 The research also made clear that the only significant source of income to maintain cemeteries came from the sale of new burial rights. Once a cemetery became full, its income ceased; and, in many cases, cemeteries were abandoned to the ravages of nature and vandalism.

10 The crux of the problem was identified as a peculiarity in U.K. law: that it is illegal to disturb mortal remains. In exceptional circumstances, a license from the Home Secretary (or a faculty from the diocesan bishop in the case of consecrated land) can be obtained to disturb

remains; but, except for forensic purposes, this is usually limited to purposes such as pipe laying or road widening. Permission is hardly ever given to disturb remains for the purpose of making new burials. As a consequence, burial land is almost unique: it cannot be recycled, or intensified; and the future demand can only be met by taking yet more and more land. In London, an area equivalent to the Royal Borough of Kensington & Chelsea is already occupied by cemeteries, burial grounds and graveyards.

11 The solution, first promoted by the CBA and IBCA, and supported by all the London borough councils and the City Corporation (through LPAC), was to change the law to allow the disturbance of mortal remains, and hence the re-use of old graves, in carefully controlled circumstances. The proposed 'lift and deepen' system would involve the careful exhumation of mortal remains from old graves once a minimum period (suggested to be 75) years had passed since the last burial, with any remains, if any are found, re-interred in a small casket at the bottom of the grave, which would normally be deepened to allow, typically, four new burials. This would, in effect, return to the situation that prevailed in England from Roman times up to the mid-nineteenth century, when the law against disturbance was introduced - but with new safeguards. It would also bring English and Welsh (and ecclesiastic) law into line with most European countries.

12 LPAC proposed regulations to safeguard memorials and landscapes of historic or architectural value; to protect areas of nature conservation importance; to give a right to descendants to prevent the re-use of family graves; and to ensure that new customers would be informed of previous burials in potential graves plots. Most significantly, LPAC suggested that re-use should only be permitted in cemeteries where management plans had been adopted following full consultation.

13 LPAC's research indicated that the proposed change of legislation would enable all of London's burial needs to be met within existing cemeteries, burial grounds and graveyards, resulting in the sustainable use of the existing land resource.

The Select Committee inquiry

14 Between 1997 and 2000, LPAC and its partners lobbied the Home Office for a change in legislation, supported by various other bodies, including national organisations and representatives of various churches. In 2001, the House of Commons Environment, Transport and Regional Affairs Committee conducted an inquiry into cemeteries. Evidence was given on behalf of the Mayor of London, supporting LPAC's findings and policy recommendations. Evidence was also given by a wide range of organisations, including the CBA and IBCA. The Committee's report was published in March 2001 (*'Eighth Report, Cemeteries, 21 March 2001 HC91-1'*). One of the recommendations of that report was that there should be a review of the legislation surrounding burial and cemeteries.

15 The Committee accepted that problems of land supply existed in London and elsewhere, and acknowledged that it would be very difficult to create new cemeteries to accommodate all of the anticipated demand. It recognised that many groups and people were wary of any changes to allow the disturbance of mortal remains, but took note of research showing that a majority of people would accept re-use in the right circumstances (Davies and Shaw, *'Reusing Old Graves: a Report on Popular British Attitudes'*, Nottingham University, 1995). The Committee also dealt in detail with the problems of management and funding, especially in closed cemeteries. It gave careful consideration to questions of conservation of the built and natural environment.

16 From a land use planning point of view, the Committee's most important recommendation was: *"If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave re-use.....assuming that the necessary safeguards are included, we are ourselves of the opinion that legislation should be introduced allowing burial to take place in re-used graves"*.

The Government's response and consultation paper

17 In response, the Government agreed that there was a need for all aspects of burial law to be reviewed, including rationalisation of regulations across the public and private sectors, the management of cemeteries, enforcement of the legislation, and exhumation or disturbance after burial (*'The Government Reply to the Eighth Report from the Environment, Transport and Regional Affairs Committee, Section 2000-2001 HC91 Cmnd 5281'*). In January 2004 the Home Office published its consultation paper, *'Burial Law and Policy in the 21st Century: the Needs for a Sensitive and Sustainable Approach'*. Issues were raised in four parts. Part A deals with the complex and confusing burial laws, and asks whether there should be uniform legislation.

18 Part B deals with the provision of burial grounds. The Government reflects on the fact that there is no statutory obligation on local authorities to provide burial facilities and asks whether this should be reversed. It invites views on whether any change should be based on a requirement to make an assessment of local needs, for example, every ten years, geared to statements in local plans, and to take account of private provision and to particular cultural and faith needs. The Government states that it believes that diversity of demand cannot necessarily be achieved at the lowest tier of local government and that the aim should be to provide adequate diversity at district/London borough level. Of particular interest to London, where each borough council is a burial authority, is the Government's request for views on the potential benefits of larger scale burial authorities, for example economies of scale in terms of training and developing expertise. Questions of provision by local authority consortiums are raised, as is the possibility of different levels of local authority and religious authorities working together. Finally, in Part B, the Government asks whether cemetery managers should be required to make available the information needed by local authorities to plan for burials.

19 Part C deals with regulations. These can, or should, and in some ways already do, cover issues such as the depth of burial, plans and record keeping, registration of burials and disinterments, storage of records, provision of separate areas for use by particular denominations or religious bodies, provision of chapels, mortuaries, grants of exclusive rights of burial, rights to erect memorials, agreements for the maintenance of graves and memorials, fees and charges, and offences and penalties. The Government seeks views on the case for additional regulation of these detailed aspects of cemetery operations. Views are also sought on whether a statutory obligation to bury or cremate those who have died should be created and, if so, on whom. Other issues raised included standards, enforcement and staff training; the role of guidance rather than regulation; the potential benefits of establishing a cemeteries inspectorate to enforce standards; and the scope of such an inspectorate.

20 Part D deals with exhumation or disturbance after burial. The Government's stated position is that it is right to continue to protect buried human remains from unauthorised disturbance. It sets out the limited circumstances where disturbance might be justified, and asks whether the grounds for justifying disturbance are too narrow. Views are sought on how licensing for disturbance might be operated, including criteria and how old buried remains might need to be to justify any relaxation of the regulation for their disturbance. Part B then turns to the crux of the issue from a planning point of view. The consultation paper outlines the LPAC work and reports the Environment Select Committee's endorsement for the re-use of graves. Given the sensitivities on this issue, however, the Government believes that the arguments in

favour of the re-use of graves needs to be tested, in particular, so as to gauge public opinion, the practicality and economics of re-use, and the need for any exceptions and safeguards. Views are sought on the potential impact of re-use, such as how tombstones and memorials should be dealt with. The issue of the appropriate age of burials before re-use is raised. The Government states that if re-use is to be reintroduced, it favours the lift and deepen method, and asks for comments on this. Further questions are asked about the need and scope of local consultation, possible exceptions, improved cemetery practices, regulatory arrangements, and the re-use for churchyards and consecrated burial grounds.

21 The consultation paper usefully asks for answers to a number of specific questions – see paragraph 38, below.

The London Plan

22 Policy 3D.15 of the London Plan, in the section headed ‘Enjoying London’ (in chapter 3), deals with burial space:

“UDP policies should ensure that provision is made for London’s burial needs, including the special needs of certain religious or cultural groups for whom burial is the only option. Provision should be based on the principle of proximity to local communities.

“The Mayor will promote the policies for sustainable cemeteries published by the London Planning Advisory Committee (LPAC) in 1997.”

23 The supporting text in paragraphs 3.264 and 3.265 of the London Plan reiterates the matters set out by LPAC and investigated by the Environment Select Committee.

24 Policy 3D.12 of the London Plan states that “The Mayor will work with partners to ensure a proactive approach to the protection, promotion and management of biodiversity in support of the Mayor’s Biodiversity Strategy”. The Biodiversity Strategy contains detailed policies for the protection and enhancement of the natural environment, and supports the preparation of a habitat action plan for churchyards and cemeteries. Such an action plan has been produced, and its current review has taken account of the Government consultation paper, and has fed into this report.

25 Some cemeteries, burial grounds and churchyards are included in areas designated by the Mayor as Sites of Metropolitan Importance for Nature Conservation. Borough councils should give strong protection to these sites in their UDPs. The London Plan calls on borough councils to use the procedures adopted by the Mayor in the Biodiversity Strategy to identify sites of Borough or Local importance for nature conservation.

26 Policies 4C.10 and 4C.11 of the London Plan outline the Mayor’s approach to the protection and conservation of the built environment. Listed building legislation and conservation area designations provide safeguards for structures of architectural or historic importance, such as chapels, lodges, boundary walls, headstones and monuments.

Consideration of strategic planning issues

27 The Confederation of Burial Authorities convened a special meeting of its London Forum for Burial and Cremation Authorities/Cemetery and Crematorium Managers (which was held at Guildhall on 9 March 2004) to agree a response to the Government’s consultation paper. The Forum agreed to seek endorsement of the finalised responses from the Association of London Government and the Greater London Authority; and to consider, in the event of Government inaction, implementing a London General Powers Act to effect the necessary legislative change

to allow the reuse of graves. The Forum's approach to the issues has consistently paralleled that of LPAC and the GLA.

28 The consultation document gives a thorough, rounded and appropriate summary of the possible solutions to the many problems that face the management of existing cemeteries and the need to find additional and sustainable resources for burials in the future. Some of the questions asked have little direct bearing on planning and land supply, but most in one way or another impinge either directly on the existing or possible new mechanisms for meeting burial needs, or indirectly on procedures that have to be got right if public acceptance of radical changes to burial practice is to be secured. In this regard, the Government has taken a cautious approach to the critical issue of re-use. It appears to have attached insufficient weight to the evidence presented on public acceptability of re-use, and on the depth of support for re-use that was demonstrated by a wide range of witnesses before the Select Committee, including representatives of religious organisations. Greater acknowledgement could, perhaps, have been made of the measures proposed to safeguard the interests of different groups in society, including, for example, the requirement of the Muslim and Jewish communities for separate, permanent graves. Indeed, it is not made clear that one of the only ways that existing unused reserves of burial land can be safeguarded for Muslim and Jewish burials might be by reducing the demand for this land by groups for whom re-use is acceptable.

29 Having clearly set out the problems of managing closed cemeteries and of finding land for new burials, and having set out the proposals to allow re-use, the Government appears to be cautious about re-use almost to the point of unenthusiastic, but puts forward no alternative. Given that re-use is a sensitive issue, it would not be unexpected if consultees reacted to the Government's lack of firm support in a similar vein. However, Professor Davies's research (see paragraph 15, above) shows that the level of public acceptance of re-use grows significantly once the problems, methods and safeguards have been fully explained. In that context, the Government should have tested public attitudes to re-use against the only alternative allowed, which is to do nothing. Doing nothing will, as the LPAC research shows, continue to financially penalise some of the poorest communities in London; adversely impact upon certain groups in society, especially Muslims; make bereavement an even more distressing experience for many elderly people who have to travel far beyond their communities to visit graves; consign closed cemeteries to vandalism and gradual despoliation; and require more playing fields, allotments and countryside to be taken over for burials.

30 With regard to detailed management, much experience has been gained from restoration schemes in some of the country's most historic cemeteries, such as Arnos Vale Cemetery in Bristol. At the City of London Cemetery, innovative measures have been introduced that show that graves can be disturbed without damaging memorials, even to the extent of facilitating otherwise unlikely restoration. In London, the London Churchyards and Cemeteries Habitat Action Plan is currently under review, and a working group has considered the threats to habitats and wildlife generally, and has concluded that a lack of appropriate management, rather than re-use, is the main threat. It is clear that re-use is the only measure on the table that will bring the necessary skills and resources back into London's cemeteries.

Legal and financial considerations

31 There are no legal or financial considerations relating to this report.

Equal opportunities

32 Different faith and cultural groups have different customs and rules regarding the disposal of human remains. For the Jewish and Muslim communities, and possibly some others, burial is the only permitted option, and graves must be regarded as permanent, with no more than one body per grave. In exceptional circumstances the removal of remains from one place to another might be possible, but the requirement for land is not thereby reduced. The re-use of graves for those for whom re-use is acceptable will help burial authorities and other providers to ensure that the needs of the Jewish, Muslim and other communities can be met in the future.

33 Re-use will enable most local cemeteries to remain operational in perpetuity; and, subject to various safeguards, would allow closed churchyards, burial grounds and cemeteries to be reopened, thus offering again the opportunity for burials to take place locally. This would be of particular benefit to those bereaved for whom long journeys to cemeteries for the purpose of remembrance is difficult or costly, including many elderly people and people with mobility impairments.

Conclusion

34 The only alternative to re-use is increasing land shortages and dereliction. Whilst this is demonstrably not a uniquely London issue, it is clear that the Government needs to bring forward changes in legislation for London as soon as possible, accompanied by the appropriate research, in order to (a) save land currently threatened by use for burial; (b) stop the growth in the number of people for whom burial is not an accessible option; (c) prevent yet more of London's land falling into disrepair; and (d) meet the needs of all Londoners.

35 The caution expressed in the consultation paper needs to be addressed, and in that regard the Government should seek the assistance of burial authorities, their representatives and professional institutions to draw up appropriate regulations, best practice guidance, and blueprints for cemetery management plans.

36 The Government's acknowledgement of the problems of staff skills and training, and the other potential benefits of scale that might be achieved by larger burial authorities, needs to be tested further. In London, many borough councils are rightly proud of their record in providing cemeteries and maintaining them to the highest standards, but on the whole this remains the 'Cinderella' service, and joint authorities, or even a single London-wide authority, might bring great advantages. This needs to be examined further. At the least, the Government should provide the Greater London Authority with the necessary funding and regulatory means to conduct and update research into demand and supply, and coordinate the long term planning of the burial authorities.

37 Responses to the Government's specific questions are set out, where applicable to London, in the attached Annex.

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Burial Law and Policy in the 21st Century: GLA Response

QUESTION 1:

The Government believes that any review of current burial law needs to address the case for legislation applying to all burial grounds consistently, even if some burial grounds, such as Church of England churchyards, were to continue to be subject to relevant ecclesiastical law. It would accordingly welcome views on:

- a) Whether there should be a single statute to establish the broad framework in which burial grounds should operate;
- b) What aspects that broad framework might or ought to include (and what might be better left to other areas of law, such as planning);
- c) Whether there should be exceptions for different providers, or different types of burial ground, and, if so, what those exceptions might be.

GLA RESPONSE:

- a) There should be a single statute. This would enable better planning and management, with greater consistency throughout London, thus helping to eliminate the disadvantages that apply to certain groups and areas.
 - b) It should cover all aspects, including financial viability and sustainability. It should cover land use planning, unless that is to be covered separately, such as in a Planning Policy Statement.
 - c) There should be no exceptions; but the statute and/or framework should take account of the different religious or cultural practices of London's communities.
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QUESTION 2:

The Government would welcome views on whether provision of burial grounds should be left to the market, or whether there should be a statutory obligation on local authorities to provide burial facilities.

GLA RESPONSE:

Given the economics of burials, it is unlikely that the market could provide for London's burial needs. It is the Mayor's policy in the London Plan that UDPs should ensure that provision is made for London's burial needs, and it is therefore logical that provision should be made mandatory. As many crematoriums are located within cemeteries, this should also cover cremation.

QUESTION 3:

The Government invites views on whether any change to the existing discretionary powers of local authorities to provide burial grounds should be based on a requirement to make an assessment of community needs, for example, every 10 years (geared to statements in their Local Plan); to take account of all local existing non-municipal burial facilities (and any re-

useable sites, if appropriate – see Part D); to ensure adequate provision for particular cultural and faith needs, and for diversity of demand. The Government does not believe that diversity can necessarily be achieved at the lowest tier of local government, and that the aim should therefore be to provide adequate diversity of provision at district/London borough level.

GLA RESPONSE:

The London Forum believes that the Greater London Authority should carry out periodic reviews to ensure adequate provision. This is sensible, but would require the cooperation of the burial and cremation authorities.

QUESTION 4:

The Government would welcome comments on the practicalities of requiring such needs assessments, their frequency and scope, and the implications for practice in relation to the compulsory purchase of land. It would also be helpful to receive views on how parish, town and district Councils, local authorities in Wales, Church of England and Church in Wales diocesan and other religious authorities, might work together to provide an appropriate level and variety of burial facilities for all their communities.

GLA RESPONSE:

The needs assessment should be carried out in London by the Greater London Authority, with the assistance of the local planning authorities as required, every eight years, i.e. every two London Plan review cycles. Every four years would be too onerous, and unnecessary. The private sector and faith groups should be required to cooperate fully with the provision of information.

QUESTION 5:

If diversity of provision is important, but it is not feasible to provide such diversity within first tier local authorities, is there a case for restricting the power to establish burial grounds to district-level authorities only, or even to county-level councils (or unitary authorities in Wales)? Or can adequate, diverse, local, facilities be provided through consortia of district level authorities? Or would some other tier of government, or other mechanism, be appropriate?

GLA RESPONSE:

Diversity of provision is very important, but it is likely that a number of borough-level authorities in London will be unable to provide for diversity, and some will not be able to make any kind of provision. This is because of the unavailability of land at a reasonable price within many boroughs' boundaries. Provision could be made remotely, but the 'proximity' principle is also very important in London. A degree of intervention from a higher level, either by the strategic authority, or by consortiums of boroughs, might therefore be necessary. In the short term, the only reasonable prognosis appears to be to keep the burial authority role at the London borough council level. This could be enhanced by giving the Greater London Authority or some new agency a role in overseeing strategic provision of burial and cremation facilities across the capital. In the longer term, the Government should carry out research to ascertain whether a single burial and cremation authority in London would lead to improved services, lower prices and a more consistent offer for customers; better provision for minority groups; and better maintenance of existing facilities.

QUESTION 6:

Views on the viability and practicality of leaving responsibility for local authority burial grounds within first tier councils are invited. Views would also be appreciated on the potential benefits of larger scale burial authorities, for example economies of scale in terms of training and developing expertise.

GLA RESPONSE:

In London a larger, regional-scale burial authority would be able to secure economies of scale in terms of training and developing expertise, and also in terms of day-to-day operations. Burial is seen as the 'Cinderella' service in local government, and a strategic authority would be able to change this perception, and attract more of the better able staff that are required. Management practices would be improved, and expertise in conservation and biodiversity, for example, could be made available. Not even burial authorities of the size of a typical London borough appear able to provide the best possible service, and this situation will be exacerbated unless more funding can be made available to each borough.

QUESTION 7:

The costs of ensuring adequate provision of burial facilities are not strictly an issue for consideration within a consultation exercise on burial law, but views on the financial implications for first or second tier local authorities of any obligatory provision of burial facilities would be welcome.

GLA RESPONSE:

Any obligatory provision of burial facilities would in all probability be financially crippling for borough councils that had to acquire land for new burials, especially if they were required to do so near to the communities it would serve. The charges that councils could levy would fall far short of meeting capital and revenue costs. A strategic burial authority would be better placed than individual borough councils to make obligatory provision. Legislation to allow re-use might, however, enable even boroughs such as Hackney and Tower Hamlets to provide burials locally at reasonable cost.

QUESTION 8:

The Government believes that while the information required can normally be expected to be provided voluntarily by the various cemetery managers, statutory authority to obtain the data would be desirable and a statutory obligation to report on the opening of cemeteries would provide an essential mechanism to ensure that central information was up to date. Views on the need for such provisions are invited.

GLA RESPONSE:

The GLA agrees with the Cemetery Managers' Forum that a comprehensive database covering all sectors of burial provision is vital. This could be established and kept up to date by the GLA, a new strategic burial authority in London, or a new 'Inspectorate'. There should be a mandatory duty to respond within a reasonable response time. This should apply to private as well as public cemeteries.

QUESTION 9:

The Government would welcome views on the case for additional regulation of the detailed aspects of cemetery operations set out in the above paragraphs, and in particular on the appropriate mechanisms for referral or appeal of any local decisions. One possibility would be for them to be made to the Home Office, as is already the case in some instances but alternatives might be more effective, such as a dedicated tribunal or other body.

GLA RESPONSE:

There seems to be no reason why this should not remain with the Home Office under a newly formed 'Inspectorate'.

QUESTION 10:

The Government would welcome views on whether a statutory obligation to bury or otherwise dispose of those who have died should be created. If so, on whom such an obligation should be placed, within what period of time, and what exceptions should there be (for example where the remains are required as evidence for a court case)?

GLA RESPONSE:

The GLA agrees with the Cemetery Managers' Forum that an obligation to dispose should be established, and that this should fall upon the Executor or nearest surviving relative or ultimately the local authority if not carried out within a maximum period of six months of the date of death.

QUESTION 11:

The Government believes that there should be scope for improving the standards of maintenance, restoration and safety in burial grounds through more precise definitions, reinforced through more effective staff training and enforcement measures, underpinned by guidance and new funding schemes. Views are invited on whether this is the right approach, whether new legislation alone will deliver the benefits required, or whether funding issues also need to be resolved before substantial progress can be expected.

FORUM RESPONSE:

New legislation should require cemetery authorities or managers to employ properly trained staff. Guidance should deal with standards across all aspects of service delivery. A new Inspectorate should be established to enforce the required minimum standards. New funding should be found to restore decaying, vandalised and derelict cemeteries to a reasonable condition, and to enable future maintenance to minimum standards thereafter without pricing out customers, bearing in mind the cost advantages of cremation.

QUESTION 12:

The Government considers that, on the whole, service standards can be improved by guidance rather than regulation, especially where it may take time for standards to be established and bedded in. But views would be welcome on whether it would be helpful or constructive to place obligations on burial ground managers to take account of guidance on these issues in

planning for the future, or to consult relevant experts, for example, on the options available for developing the environment of their sites.

FORUM RESPONSE:

Membership of the ICCM's 'Charter for the Bereaved' should be made a minimum requirement. Thereafter periodic inspections would lead to a timescale for improvements to be made. Enforcement would become the ultimate sanction.

QUESTION 13:

The Government does not believe that it would be the task of an inspectorate to undertake all these functions, although, if such a body was established, it might well contribute to policy development, standard setting, training and research needs. Views would, however, be welcome on:

- whether compliance with regulation and good practice would be dependent on the availability of a field force to provide a local presence of experience and expertise;

GLA RESPONSE:

This appears to be a minimum requirement.

- where that resource should be drawn from;

GLA RESPONSE:

Burial authorities, but with grant aid at 100% from central Government.

- whether a standing body would be needed or whether it would be feasible to draw on existing sources;

GLA RESPONSE:

An 'Inspectorate' working to the 'Charter for the Bereaved' template seems to be the most satisfactory beginning and solution.

- what frequency of inspections might be required;

GLA RESPONSE:

Research should be conducted to ascertain the most appropriate period. An annual inspection regime would be easiest to operate, but it might be possible to have less frequent inspections of cemeteries that reached an 'excellent' level (or similar) at the previous inspection. Six-monthly inspections might be necessary for badly performing cemeteries. .

- what size of any standing body might be needed;

GLA RESPONSE:

The GLA is unable to comment on this.

- whether all burial grounds should be subject to inspection, or whether some should be exempt (if so, which ones and why).

GLA RESPONSE:

Ideally, all cemeteries and burial grounds should be inspected, but a randomly selected sample might be necessary to start with. Problem cemeteries brought to light through complaints or media coverage should be targeted.

QUESTION 14:

Views are invited as to whether the case for an inspectorate has been made out, whether the costs are likely to justify the benefits, and whether the costs might more appropriately be recovered from the industry, rather than from the taxpayer, perhaps through a system of licensing cemeteries.

GLA RESPONSE:

An inspectorate should be funded by central Government. The cost of operating cemeteries is a disincentive to local authorities to make provision. Alternatively, licensed cemeteries could be charged for an inspectorate service, but this would require central government-funded grants to keep burial charges within reason for those unable to meet the market rate.

QUESTION 15:

The Government believes that it is right to continue to protect buried human remains from unauthorised disturbance. Where statutory provision has been made for remains to be exhumed or removed, it is important that the remains should be treated at all times with dignity and respect, however old the remains might be. The Government believes that disturbance may be justified only in limited circumstances:

- in the interests of justice (for example exhumation on the order of a coroner);
- for personal reasons by the next of kin of the deceased;
- on grounds of public health or nuisance;
- in the public interest (in connection with site developments which have public or other planning consent);
- for scientific purposes (e.g. for archaeological research);
- for other exceptional reasons (the case for exhumation for the purpose of re-use of old graves is discussed below).

GLA RESPONSE:

The GLA has no comment to make on this (but see re-use, below).

QUESTION 16:

The Government would welcome views on whether these grounds are too narrow (or too wide).

GLA RESPONSE:

The GLA has no comment to make on this.

QUESTION 17:

The Government would welcome views on the case for licensing the disturbance of all human remains, cremated or otherwise, which have been interred or otherwise given a permanent resting place.

GLA RESPONSE:

Licensing would seem to be an important safeguard; but there should be delegation to burial authorities in specified circumstances and for certain categories.

QUESTION 18:

The Government would welcome views on whether:

- authority to licence the exhumation of remains should be retained centrally;
- such authority might be delegated to the burial authority/burial ground manager;
- the criteria for the grant or refusal of licences should be regulated in statute;
- there should be a formal appeal mechanism;
- fees should be charged, or chargeable;
- procedures and criteria should be more closely aligned with those relating to faculties;
- whether archaeological remains should be subject to the same regulation, or be unregulated, or more lightly regulated.

GLA RESPONSE:

Burial authorities in London should be exempt from the need to obtain a license where the lease on a grave has expired and the rights to the grave have been reclaimed accordingly, subject to proper notification; to there being a right for descendants or grave owners to extend a lease; to a right of appeal; to there being permanent safeguards from disturbance for the graves of people of the Jewish and Muslim faiths; and for to there being an up-to-date cemetery management plan in place. Burial authorities should have a right of appeal to the Home Office where objections are made. Private cemeteries should be required to obtain a license from the burial authority. The same regulations should apply to graves in consecrated land. The GLA has no comment to make on cremated remains.

QUESTION 19:

It would also be helpful to have views on:

- what the criteria should be for the grant of licences or faculties;

GLA RESPONSE:

The criteria for permission to disturb mortal remains for re-use purposes should include the time that has passed since the last burial, and the absence of an objection. Other factors to be taken into account are the possibility of damage to the historical or natural environment or to the character of the cemetery. In addition, the need for re-use should be established by surveys and controlled by a cemetery management plan. The GLA has no comments to make on the criteria for disturbance for other purposes.

- how old buried remains might need to be to justify any relaxation of the regulation of their disturbance.

GLA RESPONSE:

There should be no relaxation of regulations, and re-use should not be permitted until 75 years have passed since the last burial in a grave.

QUESTION 20:

Views are invited on the case for the delegation of authority for the removal of remains in these circumstances, and to whom such authority might be delegated.

GLA RESPONSE:

In London, responsibility should lie with the burial authority.

QUESTION 21:

The Government believes that statutory provision to require the removal of remains before a burial site is developed reflects a proper balance between the need for respect towards those who have died, sensitivity towards the bereaved and their descendants, and the interests of public and private sector developers. However, views would be welcome on:

- whether the existing legislation might be rationalised for general application;
- whether there is sufficient protection of the interests of those who have died and their families, for example in relation to the ability to prevent development, or to have the costs of re-burial reimbursed, or to restrict making the graves inaccessible; and
- whether the notice arrangements (two weeks) or the time allowed to make private arrangements for reburials (two months) are too short or too long;
- whether there might be circumstances in which the prescribed procedures should be disapplied, for example because the site or the remains are so old.

GLA RESPONSE:

The GLA believes that burial sites and land reserved for burials in London should not be developed. There is a severe shortage of land for burials, and existing sites are, or will be, needed for re-use in the future. Guidance to this effect should be introduced in the appropriate Planning Policy Statement, with a requirement being placed on local planning authorities to safeguard all burial land in their local development documents. Licenses or faculties should not normally be issued for redevelopment purposes.

QUESTION 22:

Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be tested, in particular, so as to gauge public concerns and acceptability, and to determine the practicality and economics of any new approach, having regard to the need for any exceptions and safeguards. Comments are therefore invited on the principal as to whether the disturbance of remains would be justified in the interests of preserving and funding local, viable burial grounds, and reducing demands for new land for burials.

GLA RESPONSE:

Sufficient research has already been carried out at the national level. At the local level, consultation on draft cemetery management plans is the appropriate way to test public acceptance of re-use. Each such plan should demonstrate the local need for disturbance in the interests of preserving and funding local cemeteries and burial grounds and reducing the demand for new land for burials. This should be backed up at the strategic level in London by updated research into demand and land supply.

QUESTION 23:

Comments are invited on the potential impact of re-using graves on the character of a burial ground, and how any adverse effect might be mitigated. Views would also be welcome on how tombstones and memorials should be dealt with where graves were to be re-used (for example, new or additional memorials, additional names on existing memorials or the details of the further burials to be recorded in books of remembrance).

GLA RESPONSE:

Local cemetery management plans should set out detailed policies for protecting the character of a cemetery and on how memorials should be dealt with. The Home Office, in conjunction with the Department of Culture, Media and Sport and the Office of the Deputy Prime Minister should issue guidance on the basic rules to be applied, and a best practice guide.

QUESTION 24:

The Government would welcome views on whether the age of the grave should be the appropriate criterion to determine whether a grave might be re-used. If so, is 100 years the appropriate length of time? Should it be longer, or shorter? And if so, on what basis? Should there be any linkage to the time granted for exclusive rights of burial? Or to the 50 years from the date of burial which, under the Disused Burial Grounds (Amendment) Act 1981, qualifies the next of kin to prevent the development of a burial ground? Should re-use depend on a shortage of burial space in the particular local area?

GLA RESPONSE:

A period of 50 years was generally accepted as reasonable subject to a photographic record of the memorial and no disturbance of remains in Commonwealth War Graves or graves supporting memorials of distinction. LPAC suggested that 75 years would probably be sufficient to meet future demand for burials through the sustainable re-use of graves in London. Existing research into the rate of decomposition of human remains should be reconsidered and new research commissioned if necessary.

QUESTION 25:

Alternatively, might a more scientific approach be adopted which determined that only graves containing skeletal remains were used? Would this be practical? (Decomposition would mainly depend on local soil conditions, might not be accurately predictable, and might involve a period of time considerably longer or shorter than 100 years.)

GLA RESPONSE:

The GLA has no comment to make on the practicability of this. Were it to be scientifically possible to provide robust results, this method might be appropriate, subject to the costs being bearable.

QUESTION 26:

The Government believes that, if graves were to be re-used the lift and deepen method would be the preferred approach. Views are invited on any foreseen disadvantages of this method, or advantages of alternative methods.

GLA RESPONSE:

The GLA accepts the advice of the CBA and IBCA that the lift and deepen is the only practical, sustainable method. The cremation of exhumed remains should be an option subject to the appropriate notification, consultation and rights of refusal.

QUESTION 27:

It would also be helpful to have views on whether particular methods of re-using graves should be prescribed, or whether burial ground managers should be free to adopt whatever method appeared appropriate according to local circumstances.

GLA RESPONSE:

In London, this should be left to cemetery managers, subject to approval by the burial authority, and to proper training of staff. The publication of best practice by the Home Office would be an advantage.

QUESTION 28:

The Government would welcome comments on any or all of these factors. [This relates to a statement in the consultation document that “The economic arguments in favour of the re-use of graves depend to a large degree on the accuracy or predictability of a number of assumptions:

- a steady proportion of cremations to burials;
- a steady or falling death rate;
- the number or proportion of graves that have not yet been fully used;
- the number or proportion of graves which might be suitable for re-use (allowing for proposed exemptions);
- the depth to which graves might be realistically dug (and the number of burials that they might therefore accept);
- the amount of unused burial ground at present available within burial grounds;
- the availability and cost of new land for burial purposes; and
- the relative costs of re-using old graves rather than developing new burial sites.

GLA RESPONSE:

The research carried out by and for LPAC by Halcrow Fox and York University investigated these assumptions and showed that each must be taken into account. Assumptions made included digging graves to depth suitable for four burials, and little future change in the burial/cremation ratio. Fluctuations in the death rate can be projected, and in London the present decline to about 2016 is likely to be followed by a steep rise. Accurate assessments can be made of the number of graves that might be suitable for re-use on the basis of age, and local surveys could further refined this by taking account of the condition of memorials, etc. Problems identified included the lack of information about the numbers of people for whom cremation is not an option, but changes to the 2001 census inviting religious affiliation to be stated might have resolved this. Cemetery managers would need to provide accurate statements of the amount of unused space.

QUESTION 29:

The Government believes that local consultation about any re-use of graves would be essential, but that it would be important for such exercises to be undertaken on a consistent basis. Comments are invited on the need for consultation and what might properly be addressed in such consultation, including:

- best estimates of remaining burial space and demand;
- details of any additional burial grounds already earmarked or acquired, and reasons why it is not proposed to use them;
- details of any local burial facilities which will not be subject to a re-use scheme;
- proposed criteria for exempting graves or cemeteries from re-use, or details of graves and cemeteries already identified for exemption;
- proposed method of re-use; and
- implications for burial charges.

GLA RESPONSE:

All of the above are relevant. Consultation should be standard and conducted in accordance with an agreed protocol, based on the advice of the relevant learned institutes.

QUESTION 30:

Whether and how such consultation might usefully be undertaken jointly with other burial ground providers would be appreciated.

GLA RESPONSE:

In London, the GLA or a new strategic burial and cremation authority could usefully coordinate consultation.

QUESTION 31:

The Government would welcome views on the proposed exceptions to any re-use arrangements, in particular:

- whether the exceptions proposed are the right ones, or whether there should be others;

- whether it would be right to enable exceptions, in effect, to be purchased;
- whether the criteria for identifying exceptions are sufficiently clear, or flexible, to be effective; and
- whether the need for sustainable land use is such that exceptions should not be permitted in any circumstances.

GLA RESPONSE:

The possible exceptions seem reasonable. In particular, cemeteries or parts of cemeteries that have acquired value for nature conservation should be excluded from re-use, unless careful management practices can ensure the protection of nature conservation value generally in a cemetery. A rolling programme of re-use might actually enable better management of the natural environment.

QUESTION 32:

The Government would find it helpful to learn what importance ought to be attached to the introduction of good cemetery practices prior to any adoption of a re-use regime.

GLA RESPONSE:

An approved, up-to-date cemetery management plan should be a prerequisite of re-use.

QUESTION 33:

The Government would welcome views on:

- whether there is a need for additional regulatory arrangements before any re-use schemes might be introduced;
- what such arrangements might require (for example, regular inspection of cemeteries to assess general compliance with burial legislation or one-off inspections to determine suitability or competence to operate a re-use scheme);
- whether they might need to cover all burial bodies (including churches and private cemetery owners); and
- how best they might be put in place (for example, a new Government inspectorate, self-regulation, or the development of other regulatory bodies for the purpose).

GLA RESPONSE:

The establishment of an adequately staffed inspectorate would require only the minimum level of regulation. Guidance and information on best practice would be more important than regulation.

QUESTION 34:

The Government proposes that, were it to be persuaded that the re-use of graves should be established, it would be right to leave decisions about whether to use such graves entirely to the individuals and families concerned. However, it would seem appropriate to ensure that the public was properly informed about the nature of any grave or grave space that might be purchased, both as to the fact that the grave had been previously used, and that it would be

expected to be re-used again in due course. It would also be important to ensure that information about the availability of any virgin burial facilities was also provided in response to enquiries or applications to purchase a grave.

GLA RESPONSE:

Cemetery managers should be required to give full information about the previous history of a grave when selling re-used grave space.

QUESTION 35:

Should the practice of closing Church of England churchyards which are full by Order in Council be changed?

GLA RESPONSE:

It should be changed to take account of any new re-use legislation.

If so, in what circumstances should decisions be made? Where a churchyard is full, on what criteria should it be decided whether it should be closed or provision made for reuse? In particular, what weight should be attached to the importance of the churchyard as an open space and the conservation of its character, including existing monuments?

GLA RESPONSE:

These are matters for local assessment and consultation. There is not necessarily a conflict between the character of a churchyard and its amenity value, and the benefits of re-use. Enabling local parishioners to be buried in the local churchyard would be very much in character.

Should there be a procedure for declaring a churchyard full without formally closing it, so that special steps may be taken for its future use?

GLA RESPONSE:

Given re-use legislation, there seems little to be gained by requiring such a declaration.

Where a churchyard is full, should the Church of England and Church in Wales authorities be given statutory power to require the relevant local authority to provide for the cost of preparing the ground for reuse?

GLA RESPONSE:

No. This should be a matter for agreement at the local level.

Should there be provision for reopening closed churchyards at the request of the church authorities? If so, in what circumstances should such decisions be made and on what criteria?

GLA RESPONSE:

Yes. The criteria should be the same as other burial grounds.

QUESTION 36:

To what extent should special provision be made on theological, pastoral or other grounds for the reuse for burials of land, which has been consecrated for Christian burials by the Church of England or Church in Wales but which is part of a municipal or private cemetery rather than a churchyard, or for reuse of land set aside for burials according to any other particular religious tradition?

GLA RESPONSE:

There appears to be no reason why consecrated ground should be treated differently. The reuse of Jewish or Muslim graves should not be allowed.

QUESTION 37:

The Government takes the view that unauthorised disturbances of human remains is, and should remain, a serious matter, that there is a continuing need for buried remains to be protected within the criminal law, and that there is widespread public support for such protection. Views on whether the re-use of graves would be likely to undermine respect for the dead and, if so, suggestions as to how this might be mitigated would be welcome.

GLA RESPONSE:

It is the present deplorable condition of many cemeteries, burial ground and graveyards, including their chapels and other structures, that most undermines respect for the dead. Re-use would provide some or all of the funding needed to restore derelict cemeteries, to prevent operational cemeteries from becoming derelict; and to ensure decent management of operational cemeteries. Perhaps of greater importance is respect for the wishes of the living. A situation that provides no choice other than cremation, or which prices out the burial option for many people, or which forces interment far away from the community, is one that shows no respect for those making arrangements for their own funerals. Under section 30 of the Greater London Authority Act 1999, the Mayor of London is required to have regard to the achievement of sustainable development in the United Kingdom. This involves taking account of the needs of all sections of society, including disadvantaged groups. The re-use of graves is the only sustainable way on offer of enabling people to choose burial at reasonable cost and within their local community.
