

FRIENDS OF HIGHGATE CEMETERY TRUST

Highgate Cemetery Act: Interests of Relatives Protocol

1. Introduction

The Friends of Highgate Cemetery Trust ('the Trust') gave an undertaking to Parliament on 4 March 2021 that it would produce a Protocol, prior to the first exercise of the powers under the then clauses, now sections, 4 and 5 of the Highgate Cemetery Act 2022 ('the Act') relating to their use. The undertaking stated that the Protocol must make provision for:

- how the Trust will take account of the interests of relatives (including collateral descendants) and other people with connections to any persons whose remains are buried within a grave space that would be affected.
- notice to be given to any objector to the extinguishment of rights if their objection is referred to the Secretary of State under that subsection.
- how this Protocol will be made available to any objectors for the purposes of sections 4 and 5 of the Act.

This document is that protocol. In producing this protocol, the Trust has considered and ensured accordance with

- the Highgate Cemetery Plan (dated February 2019) or any replacement or modification of that plan adopted by the Trust one or before publication of this Protocol; and
- the Technical Guidance on the Re-Use and Reclamation of Graves in London Local Authority Cemeteries (dated October 2013).

2. Interpretation

In this protocol the following words mean the same as they do in the Act, that is --

"civil partner" includes former civil partner;

"relative", in relation to any person, means any of the following --

- (a) that person's spouse
- (b) that person's civil partner
- (c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of that person or of that person's spouse or civil partner; and

"spouse" includes former spouse.

In this protocol --

"collateral descendant" in relation to a deceased person means a direct descendant of that person's siblings.

3. Objections to disturbance of remains

3.1 The Act

Section 5(10) of the Act provides that, if a relative of the person whose remains are proposed to be disturbed objects before the specified date given in notices as set out in Section 5 of the Act, and that objection is not withdrawn, then the Trust may not proceed with the disturbance. Section 5 (11) provides that a further notice of proposed disturbance may be given by the Trust no sooner than 25 years after the first notice of objection.

3.2 Objections by relatives to the disturbance of human remains

On receipt of an objection, the Trust will require an objector to demonstrate that they are a relative of the person whose remains are proposed to be disturbed. Such an objection will not be considered valid unless and until reasonable evidence thereof has been provided. Without limitation, reasonable evidence would include birth, death, marriage or other official certificates or census documents. The Trust will usually consider a statutory declaration confirming that the person is a relative (as defined in the Act) which is in a form reasonably satisfactory to the burial authority to be determinative unless there is evidence to the contrary.

If the objector demonstrates to the satisfaction of the Trust that they are a relative of the person whose remains are proposed to be disturbed and the objection is received before the specified date, the Trust will not proceed with the disturbance for 25 years (and thereafter it will have to comply with the requirements of section 5(10) and (11)).

3.3 Objections by collateral descendants to disturbance of remains

For the purposes of determining whether an individual is a collateral descendant, reasonable evidence should be provided. Without limitation, reasonable evidence would include birth, death, marriage or other official certificates or census documents. The Trust will usually consider a statutory declaration confirming that the person is a collateral descendant (as defined in this protocol) which is in a form reasonably satisfactory to the burial authority to be determinative unless there is evidence to the contrary.

Where a collateral descendant objects to the disturbance of human remains, the Trust will attach weight to that objection. However, the Trust must give strong weight to the need to provide further burial space and/or conserving the cemetery (a principle endorsed in the Act itself). The Trust will in most cases proceed with the disturbance except where the connection between the deceased and the collateral descendant is shown to be enduring or strong, or akin of the relationship between the deceased and a "relative". In this context, collateral descendants should provide information to enable the Trust to understand the nature and duration of their connection with the deceased. The more remote the connection, the less likely the Trust will accord it weight.

3.4 Objections by other people with connections to the disturbance of remains

The Trust will consider objections by other people with connections to the person whose remains are proposed to be disturbed. "Connections" can include a non-familial relationship which is akin to a family relationship, and includes direct and personal friends but excludes persons who were unknown to the deceased. Reasonable evidence should be provided of the connection and objectors falling in this category should provide information to enable the Trust to understand the nature and duration of the connection.

Where a person with a connection to the deceased objects to the disturbance of the remains, the Trust will accord more limited weight to that objection. However, the Trust must also give strong weight to the need to provide further burial space and/or conserving the cemetery (a principle endorsed in the Act itself). The Trust will proceed with the disturbance except where the connection between the deceased and the objector is shown to be akin to the relationship between the deceased and a "relative". The more remote the connection, the less likely the Trust will accord it weight.

4. Objections to extinguishment of right of burial

4.1 Objections by registered owners

Section 4(9)(a) of the Act provides that, if the registered owner of the right of burial in any grave space objects before the specified date given in notices as set out in Section 4 of the Act, and that objection is not withdrawn, the right of burial to which the objection relates must not be extinguished. On receipt of such an objection, the Trust will require the objector to demonstrate that they are a registered owner of that right of burial. Such an objection will not be considered valid unless and until reasonable evidence thereof has been provided. Without limitation, reasonable evidence will include a transfer of the benefit of the right of burial in accordance with the terms of the grant of the burial right or evidence that the right was otherwise passed down to the individual concerned.

4.2 Referral of objections by any other person to the Secretary of State

Where a valid notice of objection to the extinguishment of a right of burial in any grave space has been given to the Trust in accordance with Section 4(9)(b) of the Act, by a person other than the registered owner and that objection is not withdrawn, the Trust will notify the objector that the objection has been referred to the Secretary of State and that any rights or memorial to which the objection relates must not be extinguished or removed unless the Secretary of State consents to the extinguishment. The Trust will notify the person using the physical or electronic address provided by that person in making their objection and that notification must confirm whether the Trust is seeking the Secretary of State's consent to the extinguishment of the relevant burial right.

5. Late objections

The Trust may, in its absolute discretion, consider late objections to extinguishment until immediately before such time as a grave is resold or put to another use. The Trust may, in its absolute discretion, consider late objections to the proposed disturbance of remains until immediately before the time of the disturbance.

6. Availability of Protocol

This protocol will be made available to any person who objects under clauses 4(10) and 5(10) of the Act.

7. Need for faculty

Where the burial authority proposes to disturb any human remains in consecrated land, the burial authority may not exercise its powers under this section without first obtaining a faculty. This protocol does not apply to any application for such a faculty, and does not otherwise constrain the jurisdiction of the Consistory Court.

8. Review

The Trust will review this protocol as often as necessary.