

**CEMETERIES ACT 2018****Principal Act**

<b>Act. No. 2018-15</b>	<i>Commencement (LN. 2018/218)</i>	18.10.2018
	<i>Assent</i>	1.8.2018

Amending enactments	Relevant current provisions	Commencement date
LN. 2018/219 Sch. 1		18.10.2018

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**SCHEDULE 1**

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AN ACT TO PROVIDE FOR THE MANAGEMENT AND CONTROL OF CEMETERIES.

**Short title.**

1. This Act may be cited as the Cemeteries Act 2018.

**Commencement.**

2. This Act comes into operation on the day appointed by the Government by notice in the Gazette.

**Application.**

3. This Act applies to all cemeteries under the control of the Government of Gibraltar.

**Interpretation.**

4. In this Act, unless the context otherwise requires—

“the Board” means the Cemetery Board established under section 7(1);

“burial” means the interment of a human body or remains and includes the placing-

- (a) underground of cremated human remains;
- (b) underground of the bodies of stillborn children or the cremated remains thereof; and
- (c) in a vault of a human body or remains, cremated human remains, or the bodies of stillborn children or the cremated remains thereof;

“burial right” means a right of burial granted to a person by the Cemetery Authority, subject to such terms and conditions, for the exclusive right to carry out a burial on a plot of land but does not grant that person any legal or equitable title to that plot of land;

“cemetery” includes all cemeteries under the control of the Government of Gibraltar;

“Cemetery Authority” has the meaning given in section 5(1) of this Act;

“Cemetery Keeper” means the person appointed as such under section 6(1);

“grave” includes walled grave and gravestones;

“Minister” means the Minister with responsibility for the environment or such other Minister as the Chief Minister may designate from time to time;

“prescribed” means as prescribed by the Minister;

“Register” means the register of burials and disinterment’s to be kept under section 11;

“stillborn” is given the meaning contained in the section 2 of the Births and Deaths Registration Act; and

“vault” means a chamber for the deposit of a human body or remains, cremated human remains or the bodies of stillborn children or cremated remains thereof.

## **Establishment of Cemetery Authority.**

5.(1) There shall be established an Authority, to be known as the Cemetery Authority.

(2) The Government may designate such body or person, by notice published in the Gazette, to be the Cemetery Authority.

(3) The Cemetery Authority shall be responsible for the general management and supervision of the cemetery and the registration and control of burials.

(4) In exercising its powers, duties and functions under this Act the Cemetery Authority shall act in accordance with the policy of the Government and in accordance with any decision of the Government communicated to it.

(5) Subject to subsection (4) and the provisions of this Act, the Cemetery Authority may do all things it considers necessary or desirable for the proper management, regulation and control of the cemetery.

(6) The Cemetery Authority may delegate any of its powers to a Cemetery Keeper subject to such terms and conditions (if any).

## **Appointment of Cemetery Keeper.**

6.(1) The Minister shall appoint one or more fit and proper persons as a Cemetery Keeper by notice published in the Gazette.

(2) A Cemetery Keeper shall be subject to the directions of the Cemetery Authority with respect to the custody, charge, superintendence and management of the cemetery.

#### **Cemetery Board.**

7.(1) There shall be established a Board, to be known as the Cemetery Board.

(2) The provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Cemetery Board.

(3) The Minister may, by order published in the Gazette, amend Schedule 1 to this Act.

#### **Function of the Cemetery Board.**

8. The Cemetery Board shall-

- (a) advise the Cemetery Authority on any matter concerning its powers, functions and responsibilities under this Act;
- (b) from time to time visit and inspect the cemetery and bring to the notice of a Cemetery Keeper any matter which may in their opinion affects the management and control of the cemetery, the maintenance of good order therein and the condition and appearance thereof; and
- (c) inform a Cemetery Keeper of any matter brought to their notice affecting the management and control of the cemetery.

#### **Burial rights.**

9.(1) The Cemetery Authority may give, on such terms and subject to such conditions as it thinks proper-

- (a) to any person the right, on a pre-identified plot, to construct a grave or vault together with the exclusive burial right as to who may be buried therein;
- (b) to the beneficiary of a right described in (a), or to any person who satisfies the Cemetery Authority-
  - (i) that he is a relative of a person buried in the grave or vault, or is acting at the request of such a relative; and
  - (ii) that it has not been possible for him, or such relative, to trace the beneficiary of the right so described,

the right to place and maintain, or put any additional inscription on, a tombstone or other memorial on the plot, grave or vault in respect of which the right subsists; and

- (c) to any person the right to place and maintain a memorial in the cemetery otherwise than on a plot, grave or vault.

(2) The Cemetery Authority may, on any plot in relation to which there does not subsist a burial right under subsection (1)(a)-

- (a) cause a grave or vault to be constructed; and
- (b) grant to any person a burial right under subsection (1)(a) in relation to that plot.

(3) Subject to subsection (4), no burial shall take place in any grave or vault in which a burial right under subsection (1)(a) subsists except by, or with the consent in writing of, the beneficiary of the right.

(4) Subsection (3) does not apply to the body or remains or cremated remains of-

- (a) the person who immediately before his death was the beneficiary of the burial right; or
- (b) any other person specified in the burial right.

(5) Subject to subsection (6), burial rights under this Act may be transferred, inherited or bequeathed by will.

(6) No transfer of a burial right granted under this Act shall have effect unless-

- (a) the Cemetery Authority approves the transfer;
- (b) the prescribed fee (if any) is paid; and
- (c) the transfer is recorded under section 11(1)(b).

(7) The approval of the Cemetery Authority shall not be unreasonably withheld.

(8) The Cemetery Authority may by notice in the Gazette limit the number of burial rights under this Act that may be held by any one person at any one time.

**Plan of the cemetery.**

10.(1) The Cemetery Authority shall maintain a plan showing and allocating distinctive numbers to-

- (a) all graves and vaults in which burials are made after the coming into operation of this Act or are known to have been made before that event; and
- (b) plots subject to specified rights.

(2) The distinctive numbers allocated in the plan under subsection (1) shall be contained in the Register maintained by the Cemetery Authority pursuant to section 11.

(3) In this section “specified rights” means any rights given by the Cemetery Authority under section 9 and any rights saved under section 17(2).

(4) The Cemetery Authority-

- (a) shall keep the original plan required to be kept under this section at such place as may be specified by the Minister; and
- (b) may direct that a copy of the plan required to be kept under this section be maintained by a Cemetery Keeper.

(5) Where the Cemetery Authority makes a direction under subsection (4)(b), a Cemetery Keeper shall, unless directed otherwise, provide the Cemetery Authority with a note of any additions or amendments which are required to be made to the plan.

#### **Register of burial and disinterment.**

11.(1) The Cemetery Authority shall maintain a Register of-

- (a) all burials made after the coming into operation of this Act; and
- (b) the specified rights existing in any graves or vaults, or plots and the names of the beneficiaries thereof.

In this section “specified rights” has the same meaning as in section 10(3).

(2) As soon as is reasonably practical after any burial, a Cemetery Keeper or such other person authorised by the Cemetery Authority, shall enter the burial in the Register.

(3) The Register shall include in relation to each burial-

- (a) the number assigned to the burial;
- (b) the date of the burial;
- (c) the name of the deceased;
- (d) the age of the deceased;
- (e) the grave or vault number;
- (f) the distinctive number appearing in the plan to the cemetery;
- (g) a note as to whether the burial relates to cremated human remains;
- (h) a note as to whether the burial relates to the re-interment of disinterred remains and if so the previous place of burial;
- (i) any other particulars which in the opinion of the person entering the information in the Register should be included therein; and
- (j) the religion of the deceased (where this information is available).

(4) The Register may only be altered with the consent of the Cemetery Authority and where it is so altered, a note of the alteration and the reason shall be recorded.

(5) Where the burial relates to the body of a stillborn child or the cremated remains thereof the-

- (a) words “stillborn child of” and the name of at least one of the parents shall be included in the Register in the space available for other particulars; and
- (b) entry relating to age shall be left blank.

(6) A copy of an extract of the Register maintained under subsection (1), certified as a true copy by the Cemetery Authority, shall be received in all courts as evidence of the burial entered therein.

(7) The Cemetery Authority shall-

- (a) keep the original Register required to be kept under this section at such place as may be specified by the Minister;

- (b) compile an electronic copy of the Register required to be kept under this section; and
- (c) forward an electronic copy of the Register required to be kept under this section annually to the Gibraltar Government Archives.

**Offences in the cemetery.**

12.(1) A person who-

- (a) wilfully creates any disturbance in the cemetery;
- (b) commits any nuisance in the cemetery;
- (c) wilfully interferes with any burial taking place in the cemetery;  
or
- (d) plays any game or sport in the cemetery,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who enters or remains in the cemetery at any hour when it is closed to the public is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Subsection (2) does not apply to-

- (a) the Cemetery Authority, members of the Cemetery Board, a Cemetery Keeper; or
- (b) any other person authorised by the Cemetery Authority or by a Cemetery Keeper.

**Removal or alteration, etc.**

13.(1) The Cemetery Authority shall order the removal or alteration of anything within the cemetery which has been constructed, repaired or altered other than in accordance with this Act.

(2) An order made under subsection (1) shall be addressed to-

- (a) the person who carried out the construction, repair, removal or alteration; and
- (b) the beneficiary of the burial right which subsists in the relevant plot.



(3) A removal or alteration required by an order made under this section shall require that the removal or alteration be-

- (a) completed within one month of the order; and
- (b) undertaken at the expense of the person ordered.

(4) Where a person to whom the order has been addressed fails to comply with such order, the Cemetery Authority may cause the necessary work to be carried out.

(5) Any expense incurred by the Cemetery Authority under subsection (4) may be, without prejudice to any other remedy, recovered summarily as a civil debt from the person who failed to comply with the relevant order.

#### **Maintenance of cemetery etc.**

14.(1) Without prejudice to the generality of section 5, the Cemetery Authority may, for the purpose of maintaining the good order and appearance of the cemetery, instruct a person authorised by him to-

- (a) remove from the cemetery and destroy-
  - (i) any tombstone or other memorial on a grave of which all material particulars are illegible or which is dilapidated by reason of long neglect;
  - (ii) any stones, bricks and other material of monuments and memorials which have fallen from their places;
  - (iii) rails, railings or kerbs which surround or form part of monuments and memorials which are in a ruinous condition; or
  - (iv) any surface fittings not falling within (i), (ii) or (iii), or any flowering or other plants or other items left on a grave; and
- (b) arrange the materials of monuments and memorials which have become ruinous or dilapidated so as to render them less unsightly in appearance.

(2) On receipt of an instruction under subsection (1), an authorised person shall by notice in writing order the beneficiary of the burial right which subsists in the relevant plot to repair, remove or replace the offending items within 28 days his being served with the notice.

(3) Where an authorised person is under a duty to issue a notice under subsection (2) but is unable to locate the beneficiary of the burial right, he shall display the notice in a prominent position at the entrance to the cemetery where it is easily visible and legible by members of the public.

(4) Where a beneficiary fails to comply with a notice under this subsection (2), it shall be lawful for the Cemetery Authority to carry out the repair, removal or replacement of the offending items.

(5) Any expense incurred by the Cemetery Authority, or an authorised person instructed by the Cemetery Authority under this section may be, without prejudice to any other remedy, recovered summarily as a civil debt from the beneficiary of the burial right which subsists in the relevant plot.

### **Regulations.**

15. The Minister may make regulations—

- (a) regulating the use, control, governance and upkeep of the cemetery;
- (b) prescribing and regulating the right to erect and inscribe monuments, headstones, gravestones and tablets in the cemetery;
- (c) prescribing the size, method and manner of construction and specifications of vaults, graves, monuments, headstones and tablets;
- (d) prescribing the fees to be paid and other payments to be made in respect of plots, vaults, graves and burials in the cemetery, the manner of such payments and place where such payment is to be made;
- (e) prescribing the form of the Register required to be kept under this Act;
- (f) prescribing the fees to be paid in respect of searches of entries in the Register kept under this Act and the provision of certified copies of such entries;
- (g) prescribing offences and penalties for breach of any provision of this Act or any regulation made under this Act;
- (h) prescribing the right of the Cemetery Authority to terminate burial rights granted under this Act;

- (i) prescribing and regulating the use and maintenance of the Commonwealth War Graves; and
- (j) generally for the better carrying out of the provisions of this Act.

## **Miscellaneous.**

16. The Cemetery Authority may, where it considers appropriate to do so, cause any plan or Register required to be kept under this Act (or a copy thereof) to be placed in the custody of the Gibraltar Government Archives.

## **Repeal and transitional provisions.**

17.(1) The Cemetery Act and any subsidiary legislation made thereunder is repealed.

(2) Nothing in this Act shall be deemed or construed to extinguish, take away or prejudicially affect any existing rights of burial in the cemetery under the repealed Act.

(3) A person appointed under section 2 of the Cemetery Act to the post of Keeper shall be deemed to be appointed to the equivalent post of Cemetery Keeper under this Act until such time as an appointment to such post is made under section 6.

(4) Persons appointed under section 3 of the Cemetery Act to the Board of Visitors shall be deemed to be appointed to the equivalent post of the Cemetery Board under this Act until such time as an appointment to such post is made under section 7.

(5) A person appointed to the post of Superintendent under section 2 of the Cemetery Act shall continue his post until this is determined by notice in writing by the Cemetery Authority.

## **Consequential Amendments.**

18.(1) Consequential amendments are contained in Schedule 2.

(2) The Minister may by order published in the Gazette amend Schedule 2 to this Act.

## SCHEDULE 1

Section 7(2)

**CEMETERY BOARD****Membership of Cemetery Board.**

1.(1) The Cemetery Board shall consist of a Chairman and seven other members, all appointed by the Minister by notice in the Gazette.

(2) No more than two of the seven members appointed by the Minister under sub-paragraph (1) may be public officers.

(3) Alternate members may, from time to time, be appointed by the Minister by notice in the Gazette to substitute any of the members of the Cemetery Board and they shall have the same rights and powers as the appointed member they are substituting.

(4) Members of the Cemetery Board appointed by the Minister shall hold office for such period and on such terms as may be specified in their instrument of appointment, and shall be eligible for re-appointment.

(5) Notwithstanding anything contained in sub-paragraph (4), the Minister may, in his discretion, terminate the appointment of any member of the Cemetery Board at any time on the grounds of inability, neglect of duty, persistent failure to attend meetings or misconduct.

(6) The Minister shall by notice in the Gazette appoint a public officer as Secretary to the Cemetery Board.

(7) An appointed or an alternate member may be re-appointed.

**Chairman and Procedure.**

2.(1) The Chairman of the Cemetery Board shall preside at all meetings of the Cemetery Board and four members of the Cemetery Board (including the Chairman) shall form a quorum.

(2) The Cemetery Board shall meet at least twice per calendar year; one meeting must take place during the first half of the year and another meeting must take place during the second half of the year.

(3) The Cemetery Board may hold additional meetings-

- (a) at the request in writing of at least three members of the Cemetery Board; or
- (b) at the request of the Cemetery Authority.

(4) Any matters arising at a meeting of the Cemetery Board shall be decided by a majority of the members present and voting thereon at the meeting and in the case of an equality of votes, the Chairman shall have a second or casting vote.

(5) The Cemetery Authority and a Cemetery Keeper shall have notice of any meeting of the Cemetery Board and may be required to be present during the whole or part of such a meeting.

(6) Subject to the provisions of this Act, the Cemetery Board shall regulate its own procedure.

## SCHEDULE 2

Section 18

## CONSEQUENTIAL AMENDMENTS

**Crematoria Act 2008.**

1. The Crematoria Act 2008 is amended in section 17(1) by substituting “Superintendent of the Cemetery” with “Cemetery Authority”.

**Crematoria Regulations 2009.**

2. The Crematoria Regulations 2009 are amended-
  - (a) in regulation 2(1)(b) and (d) by substituting the fees of “£30” and “£24” respectively with “£0” in each instance they appear;
  - (b) by substituting regulation 2(2) with-

“(2) The fees in sub-regulation (1)(a) and (c) shall be increased by 50% for all interments that take place (with leave in writing of the Cemetery Authority ) before 8 o’clock in the morning or after 7 o’clock in the evening during the months from March to September or before 8 o’clock in the morning and after 6 o’clock in the evening during the months from October to February.”; and
  - (c) in regulation 2(3) by substituting “7 to 24 of Schedule 2 to the Cemetery Rules” with “3 to 15 of the Schedule to the Cemeteries Regulations 2018”.