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**C E M E T E R I E S ( B U R I A L A N D E X H U M A T I O N )**  
**O R D I N A N C E 2 0 1 6**

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An Ordinance to update legislation relating to the creation of cemeteries and make provision for a court to make exhumation orders

**M. Wigston**  
**ADMINISTRATOR**

*3 July 2016*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

**Short title**

1. This Ordinance may be cited as the Cemeteries (Burial and Exhumation) Ordinance 2016.

**Commencement**

2. This Ordinance comes into force on 11 July 2016.

**Interpretation**

3.—(1) In this Ordinance —

“appropriate person” in relation to an act or omission of —

- (a) a community council, is an Area Officer;
- (b) a municipal council, is the Chief Officer;

“contribution” means a contribution towards the cost of a new cemetery payable by a local resident determined in accordance with section 10;

“court” means the Resident Judge’s Court;

“corresponding Republican law” means Law No. 257(I)/2004(a) (Cemeteries (Burial and Exhumation) Law 2004) and includes—

- (a) amendments to that law whether made before or after the coming in force of this Ordinance;
- (b) any law replacing that law;

“land register” has the meaning given in section 2 of the Immovable Property (Tenure, Registration and Valuation) Ordinance (b);

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(a) Republic of Cyprus Gazette 10 December 2004.

(b) Cap 224; Statute Laws of Cyprus revised edition 1959, as applied in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/2012) provides for the interpretation of such legislation; the definition of land register was substituted by Ordinance 7/2011.

“local authority” means a community council or a municipal council;

“local resident” means a person aged 18 years or over who resides permanently in the administrative area of a local authority.

(2) In this Ordinance, a reference to “new cemetery” includes the expansion of an existing cemetery.

#### **Creation or expansion of cemetery**

4.—(1) A local authority may decide to create a new cemetery where—

- (a) there is insufficient space within the administrative area of the local authority to bury deceased persons; or
- (b) the use of an existing cemetery is a danger to public health.

(2) A local authority must decide on the location and size of a new cemetery.

(3) A local authority may permit the erection of a chapel in a cemetery, but must first consult the relevant church authorities.

#### **Order in Gazette approving creation of cemetery etc.**

5.—(1) A decision of a local authority under section 4(1) or (2) must be approved by the appropriate person.

(2) Where the decision is approved, the appropriate person must publish a notice of approval in the Gazette.

#### **Creation of cemetery outside administrative area of local authority**

6.—(1) Where section 4(1) applies, but there is no appropriate place in the administrative area of the local authority concerned to create or expand a cemetery, the local authority may decide to create a new cemetery in a place outside its administrative area.

(2) The local authority in which the new cemetery is to be created must agree to the use of the place for a cemetery.

(3) A decision to create a new cemetery in a place outside the administrative area of a local authority must be approved by the appropriate person in accordance with section 5 before the new cemetery is created.

#### **Compulsory acquisition of land for cemetery**

7.—(1) Subject to the approval of the relevant authorities, land which is required for a new cemetery may be compulsorily acquired in accordance with the Land Acquisition Ordinance<sup>(a)</sup>.

(2) In this section, the relevant authorities means the departments of the Government of the Republic which are required under the corresponding Republican law to certify that the land is appropriate for a cemetery.

#### **Compensation**

8.—(1) Where compensation for the compulsory acquisition of land for a new cemetery cannot be paid to the owner of the land, because the owner cannot be traced or is under a mental impairment, compensation may be paid—

- (a) to the owner’s guardian or legal representative; or
- (b) to the court.

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(a) Cap 226, Statute Laws of Cyprus revised edition 1959, as amended by Ordinances 12/1963, 9/1964, 1/1986, 4/1987, 19/1988, 10/1993, 1/2001, 36/2010 and 20/2014.

(2) The court may order that the compensation be used for the benefit of the owner, or held until the owner is traced.

### **Gift by owner of land**

**9.**—(1) Where an owner gives land without charge for use as a cemetery the land may be registered in accordance with the Immovable Property (Tenure, Registration and Valuation) Ordinance as a cemetery for use by the religious community for which the cemetery is intended.

(2) A gift under subsection (1) must be evidenced by a declaration in writing.

### **Costs payable by local residents**

**10.**—(1) A local authority which has acquired land for a cemetery, whether by purchase, compulsory acquisition or gift, must determine the total cost of the acquisition.

(2) The total cost of acquisition includes the costs of fencing the land, the installation of electricity and water and the preparation of the cemetery for use, including the arrangement of plots and other facilities.

(3) The local authority must determine the contribution payable towards the total costs by each local resident of the religious community served by the cemetery.

(4) The local authority must take into account the financial means of each local resident when assessing the amount of the contribution.

(5) The local authority may specify that the contribution is payable in annual instalments.

(6) A list showing the amount of the contribution payable by each local resident must be sent to the appropriate person.

(7) The local authority must publish the list by affixing it in public places in its administrative area.

(8) Where the local authority is a municipal council, the list must also be published in at least 2 daily newspapers circulating in the overlapping municipality.

(9) If a local authority does not make a determination of the contribution within 6 months of registration of the land as a cemetery, the appropriate person may make and publish a determination of the contributions in accordance with this section.

### **Appeal against contribution**

**11.**—(1) A local resident may appeal in writing against the amount of the contribution.

(2) The appeal must be sent to the Administrator within 15 days of publication of the list under with section 10(7).

(3) The appeal is determined by the Administrator who may uphold or substitute the decision of the local authority or the appropriate person, as the case may be.

### **Non-payment of contribution**

**12.**—(1) If a resident does not pay the contribution within the period specified by the local authority, the local authority may require the resident to pay the contribution plus an additional charge of 20% of the contribution.

(2) A resident, who fails to pay the contribution or the additional charge, or both, commits an offence and is liable, on conviction, to a fine not exceeding €85.

### **Accounts and loan**

**13.**—(1) A local authority must make provision for fencing a cemetery, the supply of water and electricity and the arrangement of plots and other facilities.

(2) A local authority must keep a separate accounting record of the amounts received and spent in connection with the cemetery.

(3) The appropriate person may audit the accounts of a local authority.

(4) With the approval of the appropriate person, a local authority may arrange a loan in order to purchase land for a cemetery and the conduct of the works specified in subsection (1).

#### **Power of appropriate person to fence cemetery**

**14.** Where a local authority does not fence a cemetery as soon as reasonably practicable after registration of the land as a cemetery, the appropriate person may fence the cemetery, and collect a contribution towards fencing from the local residents.

#### **Grant of special rights**

**15.—**(1) A person does not acquire a right in private law in respect of a plot in a cemetery.

(2) A local authority may grant a person a special right in a cemetery.

(3) Where a local authority grants a special right it is deemed to be an administrative right granting permission to use a plot in the cemetery.

(4) The plot in respect of which the special right is granted is not the property of the person to whom the right was granted and the right may not be transferred to another person.

#### **Sale or exchange of a cemetery**

**16.—**(1) The Administrator, by order made as a public instrument, may permit a local authority to sell or exchange—

(a) part of a cemetery (whether consecrated or non-consecrated) which in the opinion of the local authority is not part of the cemetery or is not required as a cemetery;

(b) a cemetery or part of it (whether consecrated or non-consecrated) in order to keep it as a cemetery but under different ownership.

(2) The Administrator may impose condition on an order made under subsection (1).

(3) The entry in respect of the cemetery in the land register may be modified pursuant to an order under this section.

#### **Family tombs**

**17.—**(1) Subject to subsection (2), the exclusive right to be buried in a family tomb belongs to—

(a) the person who acquired such right;

(b) the person's spouse;

(c) direct ascendants or descendants of the person including their spouses and descendants;

(d) the parents of the person's spouse;

(e) the person's siblings, providing they have no family of their own.

(2) The person may direct in writing that a person or a class of persons specified in subsection (1) may not be buried in the tomb.

#### **Memorials on graves**

**18.** Memorials on graves may not be sold, mortgaged, confiscated or used for any other purpose.

### **No burials in old cemetery**

**19.**—(1) Where a local authority has registered land as a new cemetery it may order that no burials take place in an existing cemetery.

(2) An order takes effect from the date specified in the order.

(3) An order does not apply where the burial is in a family tomb in the existing cemetery.

(4) A person who uses a cemetery for a burial in contravention of an order under this section commits an offence and is liable on conviction to a fine not exceeding €3,417.

### **No burials outside cemetery**

**20.**—(1) Except where subsection (2) applies, no burial may take place outside a cemetery or a monastery.

(2) In exceptional circumstances, the Administrator may give written permission for a person to be buried outside a cemetery or a monastery.

### **Power to close cemetery on public health grounds**

**21.**—(1) A local authority may order that an existing cemetery is no longer to be used for burials where the local authority—

(a) considers that continued use of an existing cemetery is a danger to public health; and

(b) there is another cemetery which can be used by local residents.

(2) A person who uses a cemetery for a burial in contravention of an order under this section commits an offence and is liable on conviction to a fine not exceeding €3,417.

### **Income from cemetery**

**22.** A local authority must use all income derived from a cemetery for its maintenance and operation.

### **Requirement for appropriate place of burial**

**23.**—(1) Subject to the following provisions, a local authority must provide a place of burial in a cemetery that it administers for all local residents and any other person who dies within its administrative area.

(2) If a deceased person is of a religious community not served by the cemetery, the Administrator may approve that the person be buried in another cemetery.

(3) The Administrator, by order made as a public instrument, may approve the creation of a cemetery to serve the needs of persons of a religious community not served by an existing cemetery.

### **Depth of graves**

**24.** A person who buries a deceased person must ensure the surface of a coffin or other container is at least 4 feet from the surface soil adjacent to the grave.

### **Court may order exhumation**

**25.**—(1) Except for the purpose specified in section 26, an order of the court is required for a person to exhume a body or parts of a body.

(2) Any person may apply for an order.

(3) The court must specify in the order the conditions governing the exhumation and the arrangements for reburial.

## **Ossuary**

**26.** The relics of a deceased person may be exhumed for the purpose of placing and keeping them in an ossuary—

- (a) where the deceased person has no family tomb; or
- (b) where the deceased person has a family tomb, with the approval of the direct descendants of the deceased person.

## **Offences**

**27.** A person who contravenes section 24 or 25 commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding €256, or to both.

## **Coroners (Consolidation and Extension) Ordinance 1989**

**28.** This Ordinance does not limit the power of a coroner exercising functions under the Coroners (Consolidation and Extension) Ordinance 1989(a).

## **Register of burials**

**29.** A local authority must maintain a register of burials which take place within its administrative area.

## **Regulations**

**30.—(1)** The Administrator may make regulations as a public instrument for the more effective application and enforcement of this Ordinance.

(2) Without limiting subsection (1), regulations may make provision for—

- (a) the size of plots;
- (b) the allocation of plots, subject to allocation being in order of the date of death of a person;
- (c) the criteria for determining the price of a plot;
- (d) the operation of cemeteries and conduct of funerals;
- (e) the operation of undertakers;
- (f) licences required for burial and the maintenance of a register of burials;
- (g) the arrangement of graves in a cemetery and materials which may be used for memorials;
- (h) the construction and use of an ossuary.

## **Delegation of functions to the Republic**

**31.—(1)** The following functions are general delegated functions for the purpose of the Delegation of Functions to the Republic Ordinance 2007(b)—

- (a) the functions of the appropriate person in sections 10, 13 and 14;
- (b) the functions of the Administrator in sections 11, 20 and 23(2).

(2) The functions of the appropriate person in sections 5(1) and 6(3) are qualified delegated functions for the purpose of the Delegation of Functions to the Republic Ordinance 2007.

## **Repeals**

**32.** The following Ordinances are repealed—

- 
- (a) Ordinance 21/1989, amended by Ordinances 38/2002 and 24/2013.
  - (b) Ordinance 17/2007, amendment by Ordinance 8/2012.

- (a) Burials Ordinance<sup>(a)</sup>;
- (b) Public Health (Burial and Exhumation) Ordinance <sup>(b)</sup>.

**Savings**

**33.**—(1) Orders made under the repealed Ordinances continue in force and are deemed to have been made under this Ordinance.

(2) Appointments, authorisations, approvals and any other action taken by a local authority under the repealed Ordinances are deemed to have been made under this Ordinance.

(3) In this section, the “repealed Ordinances” means the Ordinances repealed by section 32.

**Limit of application**

**34.**—(1) Subject to the Cemeteries of Religious Communities (Burial and Exhumation) Ordinance 2016<sup>(c)</sup>, this Ordinance applies to cemeteries which are administered by the religious groups specified in subsection (2).

(2) The religious communities are—

- (a) Armenians
- (b) Maronites;
- (c) Roman Catholics; and
- (d) any other religious community to which the Cemeteries of Religious Communities (Burial and Exhumation) Ordinance 2016 applies.

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(a) Cap 247.  
(b) Cap 257.  
(c) Ordinance /2016.



## EXPLANATORY NOTE

*(This note is not part of the Ordinance)*

1. This explanatory note relates to the Cemeteries (Burial and Exhumation) Ordinance 2016 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The Ordinance reflects the Republic’s Law Number 257(I)/2004, as amended by law Number 45(I)/2007. It updates provisions relating to the creation and maintenance of cemeteries and the making of exhumation orders by repealing re-enacting, with amendments, the Burials Ordinance (Cap 247) and the Public Health (Burial and Exhumation) Ordinance (Cap 257).
3. Sections 4 to 9 make provision for the creation of a new cemetery or expansion to an existing cemetery by a community council or a municipal council (“a local authority”). A decision to create or expand a cemetery must be approved by the Area Officer, in the case of a decision by a Community Council and by the Chief Officer in the case of a decision by a municipal council. Land may be acquired by compulsory acquisition in accordance with the Land Acquisition Ordinance (Cap 226), or by way of gift.
4. Sections 10 to 14 make provision for the cost of the acquisition of land and the costs of fencing, provision of water and electricity etc. to be paid by contributions of local residents served by the cemetery. There is a right of appeal to the Administrator against the amount of the contribution. Non-payment of the contribution is a criminal offence.
5. Sections 15 to 24 make various provisions about the use and maintenance of cemeteries. A local authority may grant a right to use a plot in a cemetery, but this does not create any rights in private law. There is a power for a local authority to prohibit burials in a cemetery on public health grounds or where a new cemetery has been created. Graves must be at least 4 feet from the surface. It is a criminal offence to contravene an order prohibiting use of a cemetery or to cause a person to be buried in a grave less than 4 feet deep.
6. Section 25 provides a power for a court to make an exhumation order. A court order is not needed where remains are to be placed in an ossuary in accordance with section 26.
7. Under section 29, a local authority must maintain a register of burials.
8. Section 30 gives a power for the Administrator to make regulations. Under section 32 the functions of an Area Officer, the Chief Officer and all the functions of the Administrator, except the power to make legislation, are delegated to the Republic. Section 32 repeals the Burials Ordinance (Cap 247) and the Public Health (Burial and Exhumation) Ordinance (Cap 257) with savings in section 33 for any actions taken under the repealed Ordinances.
9. Section 34 provides that the Ordinance applies to cemeteries maintained by Armenians, Maronites and Roman Catholics, subject to modifications in the Cemeteries of Religious Communities (Burial and Exhumation) Ordinance 2016.

SBA/AG/2/LD/396