

Legal Situation

Many of the memorials laid down, that still require attention are dated late 1800's and early 1900's with a lot of these in perpetuity. Since the Local Authorities Cemetery Order (LACO) 1974, which was superseded by LACO 1997, grave rights may only be 'sold' for a maximum of 100 years. However, any grave rights sold previously in perpetuity must still be honoured.

So the first issue is whether rights have expired or not:

If the rights **have expired**, under LACO 1977 10(5) we may remove memorials.

However, it is important to remember notice of intentions.

- War Grave Commission should be contacted on any removals as they may be war graves;
- Also to fulfil our moral obligation we should write to the owner although it is not a legal requirement; and,
- Also wise to consult with relevant religious bodies.

It is also important that checks are made with all records to ensure a memorial is not removed, which we are contractually bound to maintain LACO 1977 Schedule 3 para.1 (a).

If the rights have **not expired** some other statutory authority to remove memorials must be found. LACO 1977 10(5) above, does not apply.

In order to understand legislation memorials must be categorised. This is done as follows.

Category 1. Unsafe memorials. These can be dealt with under Article 3, but only to remove the danger and not to remove the memorial from the grave space.

Category 2 – other memorials – where we need to get consent of the owners if any removal is desired because:

- there are maintenance agreements in force;
- they are covered by 'modern' legislation;
- the 20-year minimum period (Schedule 3 para 1 (d)) which relates to a memorial that has been placed on the grave within the last 20 years. In a case like this no action may be taken without the permission of the owner of the rights. The whole point of this is to enable local authorities to clear out old, neglected sections of the cemeteries. This 20 year minimum clause suggests that if a memorial has been placed on a grave under rights granted by later legislation, the memorial will not be dilapidated and will not justify removal; or,
- they have Architectural importance.

Category 3 – other memorials - schedule 3 para 4 - specific written consents are not required, but objections must be considered. This is where circumstances have occurred within the last 30 years. These circumstances are where:

- A burial in a grave has taken place,
- The right to place and maintain, or the permission to place, the tombstone or other memorial has been granted or renewed,
- The right, or permission, to place any additional inscription on the tombstone or other memorial has been granted; or
- Notification of any assignment or transmission of the right to place and maintain the tombstone or other memorial, or of the address of the owner of such right or of the person granted permission to place it.

All within the 30 years preceding the first display of the notice under para 3.

This also applies to any other grave under article 16 (2) (c) of LACO.

Therefore schedule 3 para 4 and 5 list these various circumstances, which, if they have occurred within the last 30 years, require the burial authority to serve notice of their intentions specifically on the owner of the rights rather than just by general notices.

The general requirement is to place notices in the cemeteries and in newspapers in accordance with paragraph 3 of Schedule 3 (as in Category 2) but specific written consents are NOT required. However, the owners must be written to and served a notice and objections need to be considered as a result of the notices served.

This category requires the serving of notices outlining the intentions of the Council specifically on the owner of the rights rather than just by general notices. Any objections must be actively considered.

The above covers the removal of memorials within local authority cemeteries, and apart from where the rights have expired (which in many cases an authority has no record of) the task can be quite onerous.