
Changes to legislation: Local Government Act 1972, SCHEDULE 26 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 26

Section 214.

CEMETERIES AND CREMATORIA

Discharge of functions of burial authorities

1 In relation to a cemetery or crematorium maintained immediately before 1st April 1974 by a burial board, joint burial board or committee which ceases to exist by virtue of section 214 above the functions conferred by the said section 214 and this Schedule shall, subject to the provisions of any order made under section 254 above, be exercised on and after that date by whichever of the following burial authorities is relevant:—

- (a) where the area of the board or committee becomes wholly comprised on that date in a parish or community having a parish or community council, whether separate or common, that council;
- (b) where that area becomes comprised in two or more such parishes or communities, the councils of those parishes or communities, acting jointly;
- (c) where that area becomes wholly comprised in a parish not having a parish council, the parish meeting of the parish;
- (d) where that area becomes wholly comprised in two or more parishes not having parish councils, the parish meetings for those parishes acting jointly;
- (e) where that area becomes wholly comprised in two or more parishes of which one or more have, and one or more have not, parish councils, the parish council or councils and the parish meeting or meetings of the parish or parishes not having parish councils, acting jointly;
- (f) where that area becomes wholly comprised in a community not having a community council or in two or more such communities, the council of the district in which that community or those communities become comprised or, where they become comprised in different districts, the councils of those districts acting jointly;
- (g) where that area becomes wholly comprised in two or more communities of which one or more have, and one or more have not, community councils, the community council or councils and the council or councils of the district or districts in which the community or communities not having community councils become comprised, acting jointly;
- (h) in the case of an area in England none of which becomes comprised in a parish, the council of the district in which it becomes comprised or, where it becomes comprised in two or more districts, the councils of those districts acting jointly;
- (i) where that area becomes comprised partly in a parish or parishes and partly in an area which is not a parish, the parish council or councils or parish meeting or meetings, as the case may be, of that parish or those parishes and the council or councils of the district or districts in which it becomes comprised, acting jointly.

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- 2 Where by virtue of paragraph 1 above the functions conferred by section 214 above and this Schedule become exercisable by two or more burial authorities, then, unless a joint board is established under section 6 of the ^{M1}Public Health Act 1936 to exercise those functions, it shall be their duty to make arrangements under Part VI of this Act for the discharge of those functions by a joint committee of those authorities.

Marginal Citations

M1 1936 c. 49.

- 3 Section 6 of the ^{M2}Public Health Act 1936 (establishment of joint boards to perform the functions of local authorities under the Public Health Acts) shall have effect as if the provisions of the ^{M3}Cremation Acts 1902 ^{M4} and 1952, section 214 above and this Schedule were part of that Act and as if the reference to local authorities and their districts—
- (a) so far as those sections relate to functions with respect to cemeteries, included references to burial authorities and their areas; and
 - (b) so far as those sections relate to functions with respect to crematoria, included references to burial authorities, other than parish meetings, and the areas of such authorities.

Marginal Citations

M2 1936 c. 49.

M3 1902 c. 8.

M4 1952 c. 31.

- 4 Where in pursuance of paragraph 2 above two or more burial authorities make arrangements under Part VI of this Act for the discharge of their functions by a joint committee, and if any of those authorities wish, and one or more of the others do not wish, to alter the arrangements, the arrangements may be changed or ended—
- (a) where those authorities are the councils of parishes ^{F1} . . . or groups of parishes ^{F1} . . . situated in the same district, by the council of that district;
 - [^{F2}(aa) where those authorities are the councils of communities or groups of communities situated in the same principal area, by the council of that principal area;]
 - (b) in any other case, by the Secretary of State.

Textual Amendments

F1 Words in Sch. 26 para. 4(a) repealed (1.4.1996) by 1994 c. 19, s. 66(5)(8), Sch. 15 para. 65(2), **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F2 Sch. 26 para. 4(aa) inserted (1.4.1996) by 1994 c. 19, s. 66(5), **Sch. 15 para. 65(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

- 5 In the following provisions of this Act, that is to say, sections 101 to 106, 111, 112, 124, 125, 139 and Part I of Schedule 13 so far as they relate to functions conferred by section 214 above and this Schedule, any reference to a local authority or a parish

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- council shall include a reference to a parish meeting or, as may be appropriate, the parish trustees of a parish, and section 109 above shall not apply to those functions.
- 6 Notwithstanding anything in section 150 above, a parish or community council or parish meeting may by resolution declare any expenses incurred by them in the discharge of functions under section 214 above and this Schedule to be chargeable only on such part of their area as may be specified in the resolution, and any such resolution may be varied or revoked by a subsequent resolution of the council or meeting, as the case may be.
- 7 If the constituent local authorities of a joint committee of burial authorities are unable to purchase by agreement and on reasonable terms suitable land for the purpose of enabling the committee to exercise their powers under section 214 above and none of those authorities is a district council [^{F3}or Welsh principal council], the committee may represent the case to the council of the district [^{F4}or Welsh principal area] in which their area or any part of it is situated, and thereupon section 125 above shall apply as if the committee were a parish or community council and their area were a parish or community.

Textual Amendments

- F3** Words in Sch. 26 para. 7 inserted (1.4.1996) by 1994 c. 19, s. 66(5), **Sch. 15 para. 65(3)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F4** Words in Sch. 26 para. 7 inserted (1.4.1996) by 1994 c. 19, s. 66(5), **Sch. 15 para. 65(3)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

- 8 The district council [^{F5}or Welsh principal council] in making and the Secretary of State in confirming an order under that section as applied by paragraph 7 above shall take account of the needs of the whole area of the committee even if it is partly outside the district [^{F6}or (as the case may be) principal area].

Textual Amendments

- F5** Words in Sch. 26 para. 8 inserted (1.4.1996) by 1994 c. 19, s. 66(5), **Sch. 15 para. 65(4)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F6** Words in Sch. 26 para. 8 inserted (1.4.1996) by 1994 c. 19, s. 66(5), **Sch. 15 para. 65(4)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

- 9 Land acquired in pursuance of paragraph 7 above shall be conveyed to one or more of, or of the bodies qualified to hold land on behalf of, the constituent local authorities.

Provision and management of cemeteries

- 10 Sections 15 ^{F7}. . . of the ^{M5}Public Health Act 1936 shall apply to the carrying out of works by the council of a district or London borough or the Common Council outside their respective areas for the purpose of a cemetery or crematorium as they apply to the construction of sewage disposal works by such a council outside their area.

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Textual Amendments

F7 Words repealed by S.I. 1974/595

Marginal Citations

M5 1936 c. 49.

11 (1) Subject to the provisions of any order made under section 214(3) above, the council of a district or London borough and the Common Council may make byelaws with respect to the management of any cemeteries provided by them and a parish^{F8}. . . council or parish meeting may adopt for any cemetery provided by them any byelaws made under this paragraph by the district council and duly confirmed.

[^{F9}(1A) Subject to the provisions of any order made under section 214(3) above, a Welsh principal council may make byelaws with respect to the management of any cemetery provided by them and a community council may adopt for any cemetery provided by them any byelaws made under this paragraph by the principal council and duly confirmed.]

(2) The confirming authority in relation to byelaws made under this paragraph shall be the Secretary of State.

Textual Amendments

F8 Words in Sch. 26 para. 11(1) repealed (1.4.1996) by 1994 c. 19, s. 66(5)(8), Sch. 15 para. 65(5), **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F9 Sch. 26 para. 11(1A) inserted (1.4.1996) by 1994 c. 19, s. 66(5), **Sch. 15 para. 65(5)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

^{F10}12, 13.

Textual Amendments

F10 Sch. 26 paras. 12, 13, 18–23 repealed by S.I. 1974/628

14 Until the first order under section 214(3) above takes effect, the^{M6}Cemeteries Clauses Act 1847, except sections 15, 25, 27, 28, 30 to 35, 60, 66 and 67, shall be incorporated with this Act, but—

- (a) when the first order under that subsection takes effect, the said Act of 1847 shall cease to apply to cemeteries provided by local authorities, and
- (b) section 10 of that Act (cemeteries not to be within a certain distance of houses) shall cease to have effect on 1st April 1974.

Marginal Citations

M6 1847 c. 65.

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Saving, amendments and modifications of enactments

15 Section 214(1) above shall not affect the power to make an Order in Council under section 1 of the ^{M7}Burial Act 1853 or section 2 of the ^{M8}Burial Act 1855 with respect to the discontinuance of burials; and—

- (a) the power to make such an Order shall, notwithstanding anything in section 5 of the said Act of 1853 (which precludes the exercise of that power in the case of cemeteries provided under any Act of Parliament or with the approval of the Secretary of State) be exercisable in relation to all cemeteries provided under section 214 above or in Greater London provided otherwise; and
- (b) section 51 of the ^{M9}Burial Act 1852 shall apply to cemeteries in which burials are discontinued by virtue of this paragraph as it applies to burial grounds in which interments are discontinued under that Act;

but nothing in any such Order shall prevent the interment of the body of any person in the Cathedral Church of St. Paul, London, or in the Collegiate Church of St. Peter, Westminster, if Her Majesty signifies Her approval that the body be so interred.

Marginal Citations

- M7** 1853 c. 134.
- M8** 1855 c. 128.
- M9** 1852 c. 85.

^{X1}16 In section 1 of the ^{M10} Burial Act 1859, for the word “churchwardens”, in the first place where it occurs, there shall be substituted the words “burial authority”, for the words from “church wardens” in the second place where it occurs to “situate” there shall be substituted the words “council of the district or London borough or the Common Council of the City of London, as the case may be” and for the word “churchwardens”, wherever it subsequently occurs, there shall be substituted the word “Council”.

Editorial Information

- X1** The text of Sch. 26 para. 16 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

- M10** 1859 c. 1. (22 Vict.).

17 In Part III of Schedule 5 to the ^{M11}Public Health Act 1875, the paragraph relating to section 83 of the Act 11 and 12 Vict. c. 63 shall in Greater London apply only within the outer London boroughs and shall outside Greater London apply to, and only to, a church or other place of public worship—

- (a) to which it applies immediately before 1st April 1974 or would have so applied if the building had then been completed; or
- (b) the building of which begins on or after that date.

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Marginal Citations
M11 1875 c. 55.

^{F11}18–23

Textual Amendments
F11 Sch. 26 paras. 12, 13, 18–23 repealed by S.I. 1974/628

24 It shall not be necessary for the Secretary of State to approve any table of fees as required by section 9 of the ^{M12}Cremation Act 1902, but any burial authority for the purposes of that Act shall keep such a table and it shall be available for inspection by the public at all reasonable times.

Modifications etc. (not altering text)
C1 Sch. 26 para. 24 extended by S.I. 1977/293, art. 5(2)

Marginal Citations
M12 1902 c. 8.

25 A burial authority within the meaning of section 214 above shall also be a burial authority for the purposes of ^{F12}. . . the ^{M13}Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970.

Textual Amendments
F12 Words repealed by S.I. 1974/628

Marginal Citations
M13 1970 c. 29.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 80(3B) omitted by [2021 asc 1 Sch. 2 para. 1\(3\)\(c\)](#)
- s. 101(6ZA) inserted by [2023 c. 55 Sch. 12 para. 2](#)
- s. 123(2C) inserted by [2023 c. 55 s. 75](#)
- s. 131(2)(n) and word inserted by [2023 asc 3 Sch. 13 para. 16](#)