

CHAPTER 72

THE GRAVES (REMOVAL) ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 72

THE GRAVES (REMOVAL) ACT

An Act to provide for the removal of graves from land required for public purposes.

[28th March, 1969]

[GN. No. 8 of 1969]

Act No.
9 of 1969

Short title **1. This Act may be cited as the Graves (Removal) Act.**

Interpretation **2. In this Act, unless the context otherwise requires-**
“cemetery” means any area or place appointed or set aside as a cemetery by an appropriate authority under any written law;
“dead body” means the human remains of a deceased person;
“grave” includes a burial vault, tomb, mausoleum or coffin and any gravestone, tablet, inscription, monument or memorial to the dead associated therewith;
“Minister” means the Minister responsible for lands;
“persons interested” means-
 (a) in the case of a war grave, the Commonwealth War Graves Commission; and
 (b) in the case of any other grave, the relatives of the deceased person whose dead body is buried therein;
“public purpose” means any of the purposes specified in section 4 of the Land Acquisition Act;
“war grave” has the meaning ascribed to that term in the War Graves Act.

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Power of Minister
to cause removal
of graves

3. Subject to the provisions of this Act, where any land on which a grave is situated is required for a public purpose the Minister may cause such grave and any dead body buried therein to be removed from the land and, in such case, shall

take all such steps as may be requisite or convenient for the re-instatement of the grave and the re-interment of the dead body in a place approved by him for the purpose.

Notice of
intention to
remove graves

4.-(1) Where the Minister is satisfied that any land on which a grave is situated is required for a public purpose he shall before causing a grave or dead body to be removed therefrom, give notice of his intention to do so and every such notice shall-

- (a) be served on persons interested as shall, after reasonable enquiry, be known to him;
- (b) where the land is or forms part of a cemetery appropriated to the burial of members of a particular religious community, be served on the controlling body of the religious community concerned; and
- (c) be published in *Gazette* as soon as may be practicable after the Notice has been served.

(2) Notwithstanding the provisions of subsection (1), where the President has certified that any land on which a grave is situated is urgently required for a public purpose he may direct that such notice of intention be dispensed with or be published in such manner or served on such persons as he may specify.

(3) A notice required by this section to be served on any person shall be served either personally or shall be left at his last usual place of abode or business, if any such place can after reasonable enquiry be found, and in case that person is absent from the United Republic or if that person or his last usual place of abode or business after reasonable enquiry cannot be found, such notice shall be affixed upon some conspicuous part of the land in respect of which the notice is given.

(4) Where a notice under this section has been published in the *Gazette* the removal of a grave or a dead body buried therein from the land in respect of which the notice is given shall not be invalid by reason only of any irregularity in the service of the notice or by reason of it having been published prior to its service on the persons required to be served therewith.

Contents of notice **5.**—(1) Every notice under section 4 shall include—

- (a) a description of the land from which it is intended to remove the grave or dead body;
- (b) an address at which particulars of the graves and dead bodies may be inspected;
- (c) the name or description of the cemetery or burial ground where it is proposed to re-inter such dead bodies and the manner in which it is proposed to re-instate such graves or any parts thereof; and
- (d) a statement as to the right of a person interested—
 - (i) to lodge with the Minister an objection in writing to the intention or any proposal contained in the notice within such period as may be specified, being not less than twenty-one days from the date of publication of the notice in the *Gazette*; and
 - (ii) to notify the Minister in writing that the person interested will, subject to the approval of the Minister, himself undertake the removal of a grave or dead body within two months from the date of publication of the notice in the *Gazette*.

(2) Where any of the particulars specified in paragraph (b) of subsection (1) cannot, after reasonable enquiry, be ascertained, it shall be sufficient if such details are given in the notice as would enable the graves to be identified.

Minister may
authorise removal
of graves

6.—(1) At the expiration of such period as is specified in a notice under section 4 or on compliance with the terms of a direction under subsection (2) of section 4, and after considering any objections which may have been lodged with him, the Minister may authorise any person to enter upon the land to which the notice or direction relates and to undertake the removal of any grave situated or dead body buried therein.

(2) Subject to the provisions of section 7, all persons either generally or specially authorised in this behalf by the Minister under this section shall be entitled to do all such acts and things as may be necessary or requisite for the removal, transportation and re-instatement or re-interment of a grave or dead body.

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(3) For the avoidance of doubt it is declared that, for the purposes of the provisions of section 127 and section 128 of the Penal Code, the persons referred to in subsection (2)-

- (a) shall not be deemed to commit a trespass in any place of worship or in any place of sepulture or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead; and
- (b) shall be deemed to have lawful authority to disinter the dead body of a person.

Conditions of
removal of graves

7.-(1) The removal, transportation and re-instatement or re-interment of a grave or dead body authorised under this Act shall be undertaken-

- (a) as far as is possible, with due regard to the views of the persons interested and the religious susceptibilities of the members of the religious community to which the person belonged whose grave or dead body it is;
- (b) with due solemnity and respectful treatment of the dead;
- (c) so far as is practicable, without unnecessary damage to the grave and the dead body;
- (d) so that a dead body which is disinterred is transported and re-interred without undue delay;
- (e) under such conditions of privacy as ensures that no dead body is exposed to public view;
- (f) in a manner which is not injurious to public health; and
- (g) in accordance with such directions as may be given by a public officer appointed by the Minister to supervise the undertaking.

(2) The Minister shall appoint a public officer to supervise the undertaking referred to in subsection (1) and the public officer may, in addition to any other powers which may be conferred upon him by or under this Act-

- (a) permit the removal and re-interment of a dead body to be accompanied by such religious rites or ceremonies as are appropriate to the religious community to which the person belonged whose dead body is removed; and

(b) direct that a dead body which is disinterred shall, instead of being re-interred, be cremated in the manner customary among the members of the religious community to which the person belonged whose dead body is removed.

(3) Direction under paragraph (b) of subsection (2) shall not be given except on an application in that behalf made by the persons interested or, in the absence of such persons, the controlling body of the religious community concerned.

Approval of
places to which
graves may be
removed

8.—(1) The Minister may approve places to which graves or dead bodies may be removed under this Act and where he proposes to approve a cemetery as such a place he shall, before approving the cemetery, consult the authority which appointed or set aside the area as a cemetery as to its suitability for that purpose.

(2) Notwithstanding any other written law, where the Minister has approved a place for the purposes of subsection (1) no permission or approval of an authority referred to in that subsection and no permit of any other person shall be required for the re-interment of a dead body in such place in accordance with the provisions of this Act.

Compensation
payable in certain
cases

9.—(1) Where the removal of a grave or dead body is undertaken by a person interested, the Minister may, on behalf of the Government, pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation as may be agreed upon or determined in accordance with the provisions of this section.

(2) The compensation payable under this section shall be limited to the reasonable expenses incurred in the removal, transportation, reinstatement and re-interment of the grave or dead body and any placatory or expiatory rites or other ceremony accompanying such removal and re-interment.

(3) A claim for compensation may be made by a person interested where he has duly notified the Minister that he

himself would undertake the removal of the grave or dead body and the undertaking has been approved by the Minister and carried out in accordance with the provisions of this Act and any directions given thereunder.

(4) Every claim for compensation shall be submitted in writing by the person interested, to the public officer appointed under subsection (2) of section 7 who may, after requiring the production of any evidence in support thereof or otherwise satisfying himself that such claim is reasonable, agree to the claim.

(5) Where any dispute or disagreement arises as to the right of any person to claim compensation, the amount of compensation or the apportionment of compensation between the persons entitled where there is more than one person interested, the dispute or disagreement shall be determined by the Minister whose decision shall be final and conclusive.

Penalty for
obstruction

10. A person who wilfully hinders or obstructs any person duly authorised by the Minister from entering upon any land in pursuance of the provisions of this Act or exercising any of the rights or powers conferred by section 6, or who molests, hinders or obstructs any person carrying out any of the duties imposed upon him by or under this Act, commits an offence and on conviction shall be liable to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding two years or to both.

Minister may
make regulations

11.-(1) The Minister may make regulations for the better carrying out of the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations-

- (a) prescribing forms of notices, objections, applications and claims to be given or made under this Act;
- (b) providing for the approval of places to which graves and dead bodies may be removed pursuant to the provisions of this Act and for the upkeep and maintenance of such places;

(c) in relation to any matter provided for in subsection (1) of section 7; and

(d) prescribing the powers and duties of a public officer appointed under subsection (2) of section 7.

(2) There may be annexed to the contravention of any regulation made under subsection (1) a penalty of a fine not exceeding two thousand shillings or imprisonment for a term of one year or to both.
