

**WEST LOTHIAN COUNCIL  
CEMETERIES**

**TERMS AND CONDITIONS - RIGHT OF BURIAL IN LAIR**

**1. THE EXCLUSIVE RIGHT OF BURIAL**

- 1.1 Only one person will be registered as the lairholder except in the case of executors or trustees. Save for this exception joint ownership of a lair is expressly prohibited. The entry in the appropriate cemetery Lair Register shall be conclusive as the ownership of the right of burial.
- 1.2 No lairholder will have a claim against the Council for any loss or damage sustained, or which may be sustained, in consequence of working (including past or future working) of the mines, metals, minerals and stone in or under the ground comprising the lair or under any adjoining ground.
- 1.3 An exclusive right of burial includes a right on the part of the lairholder to inter any person in the lair providing the procedures for interments, as set out by the Council, have been complied with.
- 1.4 No lairholder shall have any right to use the lair until the lair certificate or such other documentation deemed satisfactory by the Council is exhibited to the Council and all purchase and burial dues have been paid.

**2. CERTIFICATE OF EXCLUSIVE RIGHT OF BURIAL**

The Registrar (who is the Officer authorised by the Council to act as registrar of Burials and Cremations or any person delegated to do so) shall furnish the purchaser with a certificate of right of burial. Except where the lair is opened through exercise of rights conferred on other parties through operation of law, a lairholder duly registered in the books of the Council shall have exclusive right to request that the lair be opened and production of the certificate together with satisfactory evidence of identification will be held as sufficient evidence of authority to make that request.

**3. LOSS OF CERTIFICATE OF EXCLUSIVE RIGHT OF BURIAL**

If a certificate is lost or destroyed, application for a duplicate may be made to the Registrar accompanied by any fee that may be set by the Council from time to time. Prior to the issue of any duplicate certificate there shall be submitted to the Registrar such evidence or information as he/she may reasonably require concerning the circumstances of the loss or destruction of the original certificate. A duplicate certificate shall be in such form and subject to such conditions as the Registrar may prescribe.

#### **4. TRANSFER OF CERTIFICATE OF EXCLUSIVE RIGHT OF BURIAL**

No lairholder shall be entitled to transfer any or all of their lairs without the consent of the Council. Any such transfer shall be made by an appropriate entry in the appropriate cemetery Lair Register. A record of the transfer may be endorsed upon the lair certificate or a new certificate issued, but no new certificate shall be issued until the original certificate has been produced and surrendered to the Council if required or otherwise accounted for to the satisfaction of the Registrar.

#### **5. SALE OF CERTIFICATE OF EXCLUSIVE RIGHT OF BURIAL**

A lairholder shall only be entitled to sell the right granted by a certificate to the Council for a price no greater than the original purchase price less an administration fee set from time to time by the Council.

#### **6. DEATH OF LAIRHOLDER**

6.1 On the death of a lairholder the right of succession to the lair will be governed by the Law of Scotland. The lair is capable of bequest, subject to the proviso that if more than one beneficiary is entitled to claim in terms of a will, the executors or, in the absence of any executors the beneficiaries, shall nominate one of their number as the lairholder.

6.2 In the event that the lairholder dies intestate, the lair forms part of the estate of the lairholder and falls to be distributed in accordance with the terms of Succession (Scotland) Act 1964 as amended and all relevant regulations made under that legislation subject to the proviso that if more than one beneficiary is entitled to succeed, they shall nominate one of their number as the lairholder.

6.3 On the death of a lairholder, his/her heir, beneficiary, successor or transferee, as ascertained in the manner provided above shall be entitled, on producing to the satisfaction of the Registrar such evidence or information as he/she may reasonably require, to be registered as lairholder in the appropriate cemetery Lair Register.

6.4 A record of the transfer may be endorsed upon the lair certificate or a new certificate issued, but no new certificate shall be issued until the original certificate has been produced and surrendered to the Council if required or otherwise accounted for to the satisfaction of the Registrar.

#### **7. FORFEITURE OF EXCLUSIVE RIGHT OF BURIAL**

Where there has been no interment in an unused lair for a period of 50 years from date of purchase or transfer, whichever is the later, the Council may order forfeiture of the right of burial therein, provided that such Notice of Intention to Forfeit shall be advertised in one national newspaper and two local newspapers and a period of twelve months allowed to elapse from the date of the most recent advert, whereupon, failing intimation of any claim to ownership, the Council may declare such exclusive right of burial to be forfeited and may dispose of the lair as new. In addition to

carrying out this advertisement procedure, the Council shall carry out such enquires to ascertain the intentions of the lairholder as may, in the opinion of the Registrar, be reasonable

## **8. MONUMENTS, MEMORIALS AND MEMORIALISATION**

The following apply to monuments, memorials and memorialisations:

- 8.1 These must be erected on the area set aside for same and 25 millimetres clearance must be maintained from the edges of the lair on which it is to be erected.
- 8.2 These must be restricted to a maximum height deemed appropriate by the Registrar.
- 8.3 Any inscription on these must be approved by the Registrar.
- 8.4 These must comply with current specifications and not protrude over any part of the lair requiring to be opened for future interments.
- 8.5 None shall be erected or any inscription added until the appropriate application form and plan/sketch showing the scale and/or proposed inscription, together with confirmation of the monumental mason who will be carrying out the works has been approved by the Registrar. The application needs to be made at least 21 days before any proposed erection/works.
- 8.6 These must only be erected at such place and time as permitted by the Registrar and in accordance with the National Association of Monumental Masons' Codes of Practice and current appendices to this.
- 8.7 These must be erected by a monumental mason approved by the Council who has exhibited evidence on request of sufficient public liability insurance cover.
- 8.8 Erection of these may be subject to a fee set by the Council from time to time.
- 8.9 Railings, kerbing, fencing, corner stones and gravel are not permitted. Any such items shall be removed by the Council and will be stored for a period of one month. A note will be placed on the lair informing of the removal.
- 8.10 If in consequence of a proposed interment a monument, memorial or memorialisation is required to be moved, the expense of doing so will be in addition to the usual interment fees.
- 8.11 The section and number of a lair must be cut clearly upon the left hand side of the monument or memorial base and the identifying mark of the memorial mason inscribed on the base of the headstone at the expense of the lairholder to the satisfaction of the Registrar.
- 8.12 Should any lairholder, following written notification to their last known address by the Council, fail to remove an unauthorised monument, memorial or memorialisation, then, after the expiry of 21 days from such notification, the Council may, but shall not be bound to, undertake the required removal. Any such removal shall be at the expense of the lairholder and the Council shall be entitled to recover the costs of

same and its expenses. In the event of the Council sending such notification to the lairholder or in the event of the Council undertaking such removal they shall be indemnified by the lairholder against any loss, damage or injury caused either by the condition of the monument, memorial or memorialisation, or in course of removal, other than loss, injury or damage caused through the fault or negligence of the Council, its employees or agents. The lairholder will forfeit any right to pursue the Council in respect of loss or damage to any such monument, memorial or memorialisation. The lairholder will not be able to purchase an exclusive right of burial in a lair in any Council cemetery where such expense or any part thereof remains unpaid.

- 8.13 The lairholder is liable for the risks of any damage by or to any unauthorised monument, memorial or memorialisation erected on the lair, and for all reasonable costs incurred by the Council in removing and returning to the lairholder any such monument, memorial or memorialisation. The Council will not be responsible for any theft of, loss or damage to such unauthorised memorial. On the death of a lairholder please refer to Section 6.
- 8.14 Any owner who engages in cleaning operations does so at their own risk.
- 8.15 Erection of a monument, memorial or memorialisation shall be performed to the satisfaction of the Registrar and shall be kept in good order and repair at the expense of the lairholder who has erected or permitted others to erect it.
- 8.16 The planting of trees and shrubs shall not be permitted without the permission of the Registrar. Any previous planting which is considered by the Council to be inappropriate because of potential interference to any memorial, grave, maintenance of the cemetery will be removed. If in the opinion of the Registrar any planting is growing to excess, then following written notification to their last known address, a lairholder will be obliged to cut back planting to the satisfaction of the Registrar. Should any lairholder fail to take such action following expiry of 21 days from such notification, then the Council may, but shall not be bound to, carry out the pruning required, at the expense of the lair holder and the Council shall be entitled to recover the costs of same and its expenses by due process of law.
- 8.17 No monument, memorial or memorialisation or part thereof shall be removed from the cemetery without the prior written consent of the Registrar.
- 8.18 No operations of any kind shall be permitted inside a cemetery or burial ground without the permission of an authorised council officer who must be satisfied that reasonable attempts have been made to obtain the consent of the lairholder before work commences. All residues of such works including rubbish shall be removed without delay, failing which the Council can carry out the removal and recover the costs and expenses from the lairholder or person who carried out the operations.

## **9. BABY BURIAL GROUNDS**

- 9.1 In addition to those conditions set out in section 8 of this document, the following condition applies specifically to Baby Burial Grounds.

**DATA LABEL: PUBLIC**

- 9.2 Memorials may be erected and must be restricted to a maximum height deemed appropriate by the Registrar. Any inscription on these must be approved by the Registrar.

**10 LAIR CONDITIONS RELATING TO INTERMENTS**

- 10.1 In most cemeteries the Council will allow two full interments with the possibility of a third subject always to suitable ground conditions. Up to 4 cremation caskets may also be interred in the lair at the discretion of the Registrar subject to the ground conditions.
- 10.2 The Registrar may, where necessary for good working practice or health and safety reasons instruct that a box containing soil from an adjacent grave be placed on top of a lair. This will be carried out in a manner which protects the lair on which the box is laid and that lair will be returned to its previous condition as soon as reasonably practicable after completion of the burial in the adjacent grave.
- 10.3 Unauthorised railings, kerbing, fencing, corner stones, gravel and similar required to be removed to allow support boards to be placed around adjoining lairs will be placed on the headstone area for removal within 21 days by the lairholder. Failing such removal they will be removed by the Council which reserves the right to recover removal costs from the lairholder.