



# Management of Memorials



May 2012

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## 1. Executive Summary

- 1.1 The following guidance considers the historic problems faced by burial authorities caused by past poor installation methods and ways of dealing with unstable, hazardous memorials. It goes on to consider how the installation of new memorials should be managed and standards enforced so that burial authorities can be confident that memorials will be more likely to remain safe and the bereaved receive a better product.
- 1.2 The standards referred to in this guidance are:
  - The British Standard 8415 being the primary standard (At the time of writing, BS8415:2005+A2:2012 was the current standard as issued in April 2012).
  - The BRAMM Blue Book and National Association of Memorial Masons Code of Working Practice being the appropriate industry codes of practice that inform the memorial mason how to achieve the requirement of the British Standard.
- 1.3 With more confidence in enforced memorial installation methods burial authorities should consider permitting larger and more elaborate memorials so as to increase choice to the bereaved. Permitting the bereaved to personalise a memorial through its design will assist in reducing the placing of memorabilia that has become problematic in more recent years on what have been described as sterile lawn sections.
- 1.4 Burial ground design should ensure that areas of ground are left undisturbed at the head of each grave to allow the headstone to be placed upon it. Burial ground providers can provide concrete beams for the memorials, however, if any part of the memorial construction is provided by the burial ground it must be provided to an approved standard.
- 1.5 All grave digging and other maintenance operations that are carried out by the burial authority should be carried out by trained staff, in such a way that it will not de-stabilise any memorials.
- 1.6 All memorials should be inspected on a minimum 5 yearly cycle. The initial inspection should be designed to be undertaken within a 12 to 18 month period, from the issue of this document. The inspection should be fully documented, identifying all dangerous or unstable memorials.
- 1.7 **A dangerous or unstable memorial is defined as one that will move and continue to fall to the ground with the exertion of a force of 25kg or less.** It should be noted that a memorial that moves under pressure does not necessarily pose a danger and should be judged against the afore mentioned definition.
- 1.8 In this guidance the simple hand test is the primary test for all memorials (except memorials over 2.5 metres in height or complex structures). The

Institute only advises the use of a force measuring device on memorials 500mm to 1.5 metres in height that PASS the simple hand test. This action is recommended so as to ensure consistency in maximum pressure applied and negate over-pressuring and subsequent accusations of causing damage.

1.9 When managing memorial safety in the burial ground it is essential that communication with the community is of the highest possible standard including the notification of all aspects of the inspection and making safe work. Administrative processes must be effective and all documentation associated with the sale of the grave rights should be carefully considered in the light of recommendations contained within this guidance.

1.10 Risk assessment is central to the memorial safety process and should be considered at all stages. As a minimum all persons involved in the memorial safety inspection should be suitably trained in the process.

**1.11** Memorial safety in burial grounds is a highly sensitive issue, do nothing and an accident or death could occur. In such circumstances it is possible for the person responsible for the management of the burial ground to be accused of criminal negligence. On the other hand if the proper notifications are not given to the public the manager could be found guilty of maladministration following an investigation by the ombudsman, or if there is an over reliance on the laying flat of memorials as the method of making safe the manager could be severely criticised by the public and the press. Proper consideration must be given to all aspects of the advice in this guidance.

## **2.0 INTRODUCTION**

### **2.1 General**

This guidance takes into account and includes the following:

- the overall duty of care placed on burial authorities in respect of safety within their cemetery/cemeteries
- The knowledge built up by Institute members since 1996 as a result of feedback from its members
- Matters and actions that can give rise to complaint by grave owners and ways and alternatives designed to reduce incidence of complaint
- The responsibilities of memorial owners, memorial masons and burial authorities
- Guidance on tackling the historic problem
- Guidance on an appropriate way forward designed to ensure reliable installations and good standards of workmanship

### **2.2 Responsibility and Liability**

- Responsibility for the overall safety (duty of care) within a burial ground lies with the burial authority, which has responsibilities under the Health and Safety at Work Act 1974 and the Occupiers Liability Act 1957 to ensure that, as far as reasonably practicable, their sites are maintained in a safe condition. This includes ensuring that anyone who enters the site to carry out work, such as a memorial mason, carries out such work in a safe manner and in such a way that others using the site will not be put at risk.
- Whilst the responsibility for general safety lies with the burial authority there are specific responsibilities relating to memorials that lie with both the owner of the memorial and the memorial mason responsible for installing it. The owner of the memorial is responsible for maintaining the memorial in a good condition and should be properly informed, in writing, of their and other party's responsibilities. They should also be encouraged to insure the memorial, just as they do their household property. When it comes to ensuring the memorial is erected safely, they are not the experts and this is identified in case law (*Brown v Cotterill* 1934). The expert is the memorial mason who erects the memorial and charges for his/her professional services.
- Memorial masons are legally liable for the work they carry out and should ensure that memorials are erected safely and in accordance with current standards available within the industry (such as quality specifications like the Appropriate industry code of practice or similar). This responsibility is placed on masons in the Consumer Protection Act 1987, the Sale of Goods Act 1979 (amended 1994), the General Product Safety Regulations 2005 and the Directive on Liability for Defective Products (85/374/EEC). The latter was implemented in the UK in August 2003. If masons do not carry out their work with due diligence they could face severe financial penalties. Claims for poor workmanship can be made up to 6 years after the memorial has been installed (5 years in Scotland). Should a burial authority identify a memorial that has become unstable due to non compliant

installation within 6 years of installation the memorial mason must rectify the matter free of charge. Should dispute ensue on this matter it should be referred to the local Trading Standards office.

- A burial authority should carry out regular inspections on their existing memorials, at least once every 5 years. Where this inspection programme identifies unsafe memorials they have a responsibility to ensure such memorials are not a danger to visitors and employees in the cemetery. Where possible, they should contact the owner, advise them of the problem and ask them to make the memorial permanently safe, usually by having it refixed (unless the memorial was installed within the previous 6 years as above). Obviously, if there is a clear defect with the way in which the memorial was installed then the owner may have some redress through the memorial mason who originally installed it.
- Where owners cannot be traced the burial authority has to make a decision on how to deal with the memorial. These options are dealt with later in this guidance.
- Burial authorities should record their approach to the inspection and making safe of memorials in a suitable memorial safety policy. Any health and safety enforcement agency (generally the HSE or local authority) would require a copy of this should an investigation ever be necessary.
- Where the ground has been consecrated in accordance with the rites of the Church of England the Church, through the local diocesan Consistory Court, has jurisdiction over such ground. A faculty has to be obtained from the church diocese giving permission to carry out inspection and making safe work and the church may wish to place their own restrictions on such work. This must be taken into account by the burial authority. It is suggested that all parties co-operate to ensure work is carried out to comply with current health and safety legislation. Where a faculty is not forthcoming a burial authority may have little option than to fence off the consecrated areas to prevent access and refer all enquiries to the relevant diocese.

## **3.0 INSPECTION AND MAKING SAFE – The Historic Problem**

### **3.1 General Issues**

Burial authorities have a duty under Health and Safety legislation to control the dangers that exist in their burial grounds. Burial authorities should already have organised an inspection and make safe programme to ensure these dangers have been removed. The legislation that applies to this area is extensive and varied depending on the location and type of burial authority, however, most burial authorities utilise the latest guidance as the best practice available and current. Appendix 3 deals with legal issues including the health and safety legislation applicable to memorial safety.

Suitable procedures should be adopted and adapted to local conditions to ensure compliance with Health and Safety legislation. Enforcement action may be considered by the HSE should an accident occur.

### **3.2 Management Issues**

**Raising Awareness** – Before commencing any memorial inspection programme it is essential that burial authority officers highlight the accidents and deaths that have been occurring in burial grounds throughout the country to those who make decisions and allocate finances for the authority. It will be important to be able to assess the cost of inspection and making safe and provide an argument for the additional funding that will be required. This may often prove difficult however, it is important that responsible officers make a case in writing to the senior management, elected members or diocesan representatives, identifying the health and safety requirements and potential penalties if ignored. Further to this it is often useful to show responsible officers /elected members the extent of the problem on a visit to the burial ground.

Once responsible officers/elected members are made aware of their responsibilities, steps must be taken to publicise the work that is to be carried out. Press releases, radio appearances, notices in the burial grounds and even workshop sessions in the burial ground where the public can witness the work to be carried out should be considered. All of these will ensure that the public are informed about the work to be carried out, why it needs to be done and how it will be done. The owner of any memorial that fails the inspection should be contacted if possible, by writing to the last known address. The notification should be written in a sympathetic manner stating that as the memorial has failed the owner is responsible for reinstating it to an approved specification (BS 8415). Further information regarding consumer protection law and the length of time to be given to have the memorial reinstated can also be given at this time.

Whilst advising the public of any forthcoming inspection and make safe programme consideration should also be given to an ongoing programme of inspection and any possible refurbishment work for the future. Making the public aware of the ongoing inspection programme and any potential improvement work will ensure public awareness of the whole process. Failure to complete an adequate notification process could be criticised by the Local Government Ombudsman.

**Warning Signs/Notices/Cordons/Temporary Supports** - Warning signs and other publicity alone will not protect the interests of a burial authority which must be actively working to remove the hazards posed by unstable memorials. Warning signs are a clear acknowledgement that hazards are present and an authority found to be doing nothing to remove such hazards is likely to be found negligent.

It is important that once a memorial has been found to be unsafe that a warning notice is placed on it, or the cordon surrounding the memorial, or the temporary support explaining why any action has been taken and advising the owner not to attempt to remove the cordon, temporary support systems or try to erect the memorial without using a registered memorial mason [The British Register of Accredited Memorial Masons (BRAMM Scheme) is discussed later in this guidance].

When cordoning a memorial consideration should be given to the size of the memorial and the length of time that the cordon might be in place. Long-term cordoning might require suitable fencing. When using cordons it is important to cordon the radius of the fall of the memorial so that if it does fall it will land within the cordoned area.

Temporary supports can be sturdy stakes driven into the ground vertically behind the memorial and secured with appropriate banding. Corner protection is advisable so that the banding does not cause damage. Whilst cordons are suitable for memorials up to 1.5m in height they might not be appropriate for taller memorials.

**Notifying Grave Owners** – Burial authorities must advise grave owners when memorials are found to be unsafe, although consideration of the practicalities of this process must be considered. This will mean writing to the last known address of the owners of memorials less than 30 years old (see LACO Schedule 3 Para. 4 for detail), in addition to all other publicity. This is an extremely important part of the process, as burial authorities have been severely criticised for not attempting to communicate with owners. There is a danger that if the proper notification process is not followed, including publicity of the process, warning signs and letters to grave owners, the authority could be reported to the Local Government Ombudsman and accused of maladministration of the process.

Whilst raising awareness cannot guarantee that there will not be complaints about the process it has been proved to reduce the numbers of complaints to a manageable level in most cases. Should complaints be received, experience has shown that the vast majority of unstable memorials are due to a lack of dowelling on construction and installation, or the use of unsuitable foundations.

**Training** – In addition to reading this guidance, it is essential that training is provided for persons who will be responsible for the inspection and making safe programme and to any others likely to be involved in the process. This has been reinforced in the Local Government Ombudsman's Special Report on Memorial Safety. Cost effective training and other advice is available from the ICCM. If contractors are to be used they should also be able to evidence training in the process. If you are responsible for a burial ground you are also responsible for ensuring work is carried out to a suitable standard. Evidence of training, adequate public liability insurance and suitable risk assessments and safe methods of working are all essential. Should any of the above be ignored and an



accident occurs it is likely that the authority could be severely criticised and held financially liable in any subsequent investigation.

**Risk Assessment** – Risk assessment has a central role to play in the inspection and making safe process. The following issues should be considered at each stage of the process:

A decision is required on where to start the inspection programme and in what order the work is carried out. The following are some of the areas to be considered as part of the risk assessment:

- ... *Identify hazards and their potential to cause harm* – consider the age, size deterioration, etc. of memorials
- ... *Numbers of visitors* – consider the numbers of visitors to certain areas and the effect this has on the likelihood of accident
- ... *Vicinity to main roads and paths* – consider the busiest areas of pedestrian traffic, usually in and around main roads, footways and entrances
- ... *Ground conditions* consider whether ground conditions will affect the stability of a memorial
- ... *Topography* – consider whether sloping ground could affect the stability of a memorial

Deciding on the most suitable means of making safe and ensuring that this is proportional to the potential risk:

- ... *Identify hazards and their potential to cause harm (large memorials)* – large memorials can kill and if they are unstable immediate action should be taken to remove the risk if at all possible by setting into the ground, repairing the memorial or by laying flat,. Cordoning and barriers may be inappropriate and a more substantial barrier, to standards indicated in HSE:HSG 151 – Protecting the Public, should be considered should the memorial not be able to be permanently made safe. Temporary support systems can be acceptable if properly constructed and if an inspection process is set up to ensure they remain safe. These should only be used for a limited period whilst informing owners and until the memorial can be permanently made safe.
- ... *Identify hazards and their potential to cause harm (lawn type memorials)* – consideration should be given to the fact that these smaller memorials tend to result in less serious injuries and, particularly if the memorials are back to back, they are less likely to fall in such a way as to result in a major injury. In addition to this the owners of lawn type memorials, as they are predominantly the newer memorials in a burial ground, are more likely to be contactable. Actions such as simply placing notices on 'back to back' type memorials, cordoning individual graves or even whole sections, dependant on the number of failures, may be considered by the authority to be an appropriate way of managing the risk. In addition to physical action each memorial should have a notice placed upon

it, as indicated previously. This type of action may be deemed both appropriate for the control of the risk and sensitive to bereaved families.

- ... *Identify hazards and their potential to cause harm (how unstable are the memorials)* – as memorials are inspected it will become obvious that some are inherently more unstable than others due to a variety of reasons. Where memorials are extremely unstable and could fall when the lightest force is placed against them consideration should be given to removing the hazard (not the memorial) by making the memorial safe in some way. This would be true of any memorial, but it should be remembered that the larger memorials are more likely to kill someone if they do fall and, therefore, the risk is greater.

Assessing the risk to employees carrying out any inspection or making safe work on memorials:

- ... Assess the range and extent of hazards - this will include such issues as the size of memorials, the likely stability/instability of memorials, ground conditions including presence of unstable vaults, kerbs etc., risks of falling masonry, lone working, topography, means of making safe, accessibility and many other issues specific to the burial authority's own burial grounds.
- ... Examine how these risks can be managed in such a way that they are significantly reduced including the use of lifting plant or equipment, methods of working that are safe, protective clothing that must be worn etc.
- ... The above should result in appropriate risk assessments and safe methods of working to be followed by staff working within the burial grounds. These should also be required of any contractors, funeral directors, memorial masons or other parties who work within the authority's burial grounds.
- ... Burial authorities should be aware of the range of abilities of their own staff, or contracting staff, who work in the burial grounds. Memorial safety risk assessments will need to be carried out for teams working on memorial safety work, grave digging and grounds maintenance. Staff working on all of these areas will need to be able to assess memorial safety and take appropriate action if dangerous memorials are identified. The actions each team are able to take may be different due to the range of equipment that may, or may not, be available to them.

The above risk assessment information is for guidance purposes only, lists are not to be considered all-inclusive but indicative of the types of risks that should be considered. Further guidance should be sought from officers that normally provide health and safety advice for the burial authority.

**Inspection and Making Safe** – the authority will need to consider how the necessary work will be undertaken. It should be remembered that the inspection work must be co-ordinated with the making safe of memorials. Once a memorial is identified as

dangerous, immediate action must be taken to significantly reduce or eliminate the risk, whether that be to make the memorial permanently safe by setting it into the ground or laying it down or whether it is temporarily made safe with some sort of support system or whether access is restricted by the use of a cordon or barrier. The inspection process should be managed in such a way as not to allow it to progress too far in advance of the making safe work, or delay the continuing inspection process.

Consideration must also be given to the range of personnel who might encounter dangerous memorials. It may be that a memorial safety team identifies the majority of memorials however gravediggers should be inspecting memorials before beginning their excavation. Grounds maintenance staff may also identify dangerous memorials. It is essential that consideration is given to how such staff may need to make memorials safe for the excavation and the funeral to proceed. This will include how such memorials will be reported back to the burial ground office to ensure they are properly recorded and dealt with.

If an authority is to use a contractor for this work they will have to firstly ensure that the contractor is not engaged on inspection works only, as they may be identifying dangerous memorials that the authority is not equipped to make safe. The contractor must supply the burial authority with risk assessments and safe methods of working and the authority must consider whether the Construction (Design and Management) Regulations 1994 (CDM Regs.) apply. Advice from the HSE is that these regulations will not normally apply to inspection, erecting or dismantling of memorials other than those of sufficient size to fall within the definition of a structure in the Regulations, in which case further guidance will be required.

The means of making safe a memorial can also have a significant impact on the progress of the work. Temporary support systems will result in the delay of the primary inspection as time and resource has to be spent on the regular re-inspection of the 'make-safes' to ensure they remain safe should they remain for a long period. It is recommended that temporary supports remain for 3 months which gives the owner sufficient time to make arrangements for repair. If the owner cannot be contacted the authority may lay such memorials flat or convert to monolith (where appropriate) after the expiration of the period. Repair of memorials will result in a considerable amount of time and money being spent on the repairs rather than being invested in the making safe of other potentially dangerous memorials. It is recommended that burial authorities concentrate on the initial inspection and making safe of memorials in such a way that they will be able to demonstrate a co-ordinated inspection and 'make-safe' programme that is not unduly delayed by re-inspection or repair works. Whilst repair might be considered appropriate in areas where the appearance of the cemetery requires consideration e.g. main driveway, an authority is not obliged to spend excessive amounts of public money on private property and is only obliged to make memorials safe. The authority is empowered to make safe dangerous memorials.

Prior to the start of an inspection it is clear that all of the above should be considered, however, there is also a range of other issues to take into consideration:

**Inspections on consecrated ground** – The Church diocese should be informed at the same time as the public or earlier, advising them of the work

that is required. It is likely that a Faculty will be required, (this should be considered in conjunction any relevant ecclesiastical law). Work should be carried out in accordance with any specific conditions contained within the Faculty. Where a Faculty is required attempts should be made to ensure the life of the Faculty is a minimum of five years, to match the recommended five-yearly inspection process. It should be noted that not all Diocese adopt the same approach therefore it is advised that contact is made with the Registrar for you Diocese before an application for a Faculty is made.

**Heritage value** – Some burial authorities may have a listed building on the site, or even have listed memorials. In such circumstances all memorials on the site may be covered by the same order. Approaches should be made to the local Planning Authority to obtain guidance on the extent of the listing. If the site is covered English Heritage will be interested and should be consulted before any work is carried out (in certain cases if work results in the damage to a listed memorial it could be considered to be criminal damage). Where a particular memorial is listed consideration should be given to having a structural engineer inspect the memorial, possibly one supplied by English Heritage. Even when memorials are not listed consideration should be given to their heritage value and care taken in the inspection and making safe process. Consideration should be given to maintaining photographic records of memorials that need to be dismantled to make them safe, as smaller parts can become 'portable' in the process and may be subject to theft. In some cases where inscriptions are of particular note it may also be beneficial to maintain a record, particularly if they exist on stones that are subject to weathering. Once a burial ground has been made safe, there will be a benefit to the community if it could be used as an educational resource with heritage and conservation trails developed where appropriate.

**Aesthetics** – The general aesthetics of the site and the reaction of the public should be considered when deciding what action to take in respect dangerous memorials if large numbers of memorials are laid flat.

**Maintenance** – laying memorials flat in areas where no kerbs exist will make maintenance considerably more difficult, it may also significantly add to the number of trip hazards present. This should be considered as it may also result in higher costs or lower standards of maintenance. Alternative methods should be considered in such circumstances, such as converting headstones to monoliths (setting memorials into the ground by one third of the height).

After all the above issues have been assessed consideration can be given to starting the inspection and making safe programme. A management of memorials flow chart, dealing with all the above issues, is attached to this guidance as Appendix 1.

### 3.3 The Inspection Process

There is often a large range of memorials in burial grounds ranging from the very small to the larger and more elaborate memorials, mausolea or box tombs. There is no single method of inspection however there is a methodology that should be followed to build in a large degree of consistency to the process. The basic principles of this method are as follows and should only be used by personnel that have received suitable training in accordance with this guidance.

All memorials - All memorials in the burial ground should be visually assessed as part of the overall risk assessment process. Memorials should be assessed bearing in mind the following issues:

- Are joints intact?
- Are kerbs etc breaking apart?
- Is the memorial leaning?
- Are the foundations (where evident) intact?
- What are the ground conditions like?
- Is it a hard or a soft stone?
- Intrusion of vegetation?
- Are faults or cracks present?

All of the above indicate potential dangers with the memorial and are an effective means of assessing a memorial prior to any physical inspection in order to identify the potential risks.

**The Institute does not recommend the blanket use of a force measuring instrument on all memorials however guidance on when this instrument is deemed necessary is included in the testing regimes below.** (Force measuring equipment should always be used in accordance with manufacturer's instructions and calibrated annually).

#### **Memorials up to 500mm-**

- Full visual inspection
- Hand Test only

These smaller memorials should be tested by hand only with the owner being advised if any joints or components have become detached. Generally, no temporary supports will be required to most memorials of this height however some books on rests might be laid flat to prevent them falling from their rests and breaking.

#### **Memorials 500mm to 1.5 m -**

- Full visual inspection
- Hand test – primary test
- Confirmatory test using a mechanical force measuring device only on those memorials that PASS the hand test
- Record all findings, immediate actions taken and future actions required

It is recommended that the simple hand test is the primary test. Force measuring equipment calibrated to 25kg should only be used as a final confirmatory test on memorials up to 1.5m **that PASS the simple hand test**. This should be used to provide a definitive force applied to the memorial and to further confirm the consistency of the inspector's initial tests on such memorials. In addition to the testing of memorials burial authorities may wish to record the failure force on memorials that have failed, thus providing evidence to any potential complainant that memorials have not been over-pressured.

Force testing equipment should not be used on listed memorials without first contacting English Heritage.

#### **Memorials 1.5m to 2.5m -**

- Full Visual inspection
- **Hand test only** (on non-complex structures). Certain memorials over 1.5m can fail a hand test yet pass a mechanical test due to the hand test being carried out at a higher point on the memorial than a mechanical test which takes place at shoulder height.
- Record all findings, immediate actions taken and future actions required

#### **Memorials over 2.5m and complex structures -**

- Full visual inspection
- Note any potential problems and cordon off if any present
- Seek the opinion of a structural engineer (if a structural engineer cannot be enlisted it is advised that a small group comprising the cemetery manager, a member of the cemetery staff and perhaps the safety officer can carry out the inspection and come to an agreed decision on action to be taken).

The inspection process is carried out in two distinctive phases. The first phase of the inspection process is the initial inspection. The initial inspection is aimed at obtaining the necessary information that is critical to identifying the safety of the memorial and, therefore, whether the memorial is an immediate danger to the public.

To identify an immediate danger it must first be defined what is meant by an 'immediate danger'. **A memorial that is an 'immediate danger' to the public is one that fails the testing procedure and will not withstand a force approximating 25kg. The memorial only fails if, as a result of the continuing application of 25kg or less, the memorial would continue to move and eventually fall to the ground.**

The initial inspection gathers simple facts that address whether the memorials pose an 'immediate danger' to the public. The details of which elements need to be recorded are contained below under, 'Inspection Records'. Burial authorities should be aware that it would be reasonable to carry out the initial inspection over a number of years, particularly where the authority has a high number of burial grounds and memorials to inspect. The obligation to maintain safe sites has been in place since the Health and Safety at Work Act 1974 and advice on the inspection of memorials has been available since 2000. Anyone inspecting the safety of the site would now expect to see considerable progress

made on the initial inspection and any burial authorities who may be only considering starting the process **should be looking to complete their initial inspection work within 12 to 18 months.**

Once the initial inspection is complete burial authorities can move on to the ongoing inspection programme. All memorials should be inspected at least every five years. Following the initial inspection there will be a high number of re-inspections that need to be undertaken to comply with the burial authority's programme and to ensure further deterioration is not taking place. On this second phase much fuller details of each memorial can be taken. Detail of the extent of the type of information that can be gathered is identified below in 3.4, 'Inspection Records'. Each authority must determine the amount of information required dependant on the type of burial grounds they are responsible for, the resources available to them and the level of service being provided.

**Burial authorities with limited funding should consider partnership working with larger authorities or with groups of small burial authorities.** This will spread the costs of the process and allow burial authorities to comply with health and safety legislation. Larger burial authorities may have equipment and trained staff they are able to hire at a cost effective fee or may even offer a free loan of some equipment.

Where a larger authority is unable to help, a number of smaller authorities can pool their resources to spread the cost of expensive resources. Groups of parish councils are already beginning to take advantage of group training for a very cost effective fee. Schemes are also now available where some of the national organisations will train trainers in memorial safety. Such trainers can then pass their knowledge throughout a larger group at a very minimal cost. This would work within a diocese for instance where a trainer could train wardens in parishes throughout the diocese.

### 3.4 Inspection Records

Every memorial must be inspected and a record maintained of the inspection. The initial inspection to identify the immediate dangers to the public does not exempt the authority from maintaining a record of every memorial inspected.

The results of the initial inspection will inform the following inspections so should be as complete as possible. The essential information required for the initial inspection is as follows:

Plot Section and Number

Name of deceased – normally this will be the name of the first interred

Size of memorial – Full details are not required at this stage, fuller details of size can be taken on the ongoing inspection. Simply identifying one of three sizes would be acceptable

- Below 1 metre – therefore less of a hazard as it is less likely to be the cause of a fatal accident
- Between 1 metre and 2.5 metres – posing a greater hazard as these memorials are more likely to cause fatal injuries
- Over 2.5 metres – likely to be unable to be physically inspected and requiring the attention of a structural engineer.

(Level of hazard needs to be risk assessed against all the other factors identified in 3.1.8 above)

Type of memorial - headstone, cross etc. This helps identify the memorial if plans are not of a high standard

Headstone material – This will not require the inspector to be an expert on different types of stone. The element critical to a stone's potential safety or otherwise is whether it is a hard or a soft stone. This differentiation is sufficient for the initial inspection. Fuller details can be taken on the ongoing inspection.

A number of elements need to be identified in order to assess the memorials condition:

- Are there any cracks in the memorial?
- Is the memorial leaning?
- Are the joints intact?
- Is the memorial rocking?

(A simple pass or fail is required for each of these on the initial inspection; fuller details can be gathered on the ongoing inspection process)

Comment on what action is required for the memorial inspected – This may be the immediate action required such as the cordoning or fencing off of a memorial and the action required in the future to make the memorial permanently safe, such as laying it flat, repairing it or setting it into the ground.

Priority of action – It is recommended that there be three simple classifications of the priority of action. This ensures records are easily maintained and will, therefore be properly utilised. The priorities suggested are :

- Priority 1 – Immediate action is required to make the memorial safe or to stop the public accessing the memorial. This could be the permanent removal of the hazard or the temporary making safe of the hazard.
- Priority 2 – The memorial is not an immediate danger to the public but is not fully stable and will, therefore, need to be monitored every 12 months to assess any further deterioration of the memorial.
- Priority 3 – The memorial is perfectly stable and will only need to be inspected in 5 years time.

(Further priorities can be added by burial authorities but it should be noted that this will complicate the record keeping and there should be good local reasons for adding priorities to the above list)

Failure force – useful as evidence should there be a complaint about the amount of force used to test memorials. Measuring the failure force, that is when a memorial has already failed the hand test and a mechanical force measuring device is applied in order to record the pressure at which the memorial failed, could be viewed as blanket testing using a force measuring device and hence attract criticism. Whilst burial authorities may measure failure force in this way they should consider carefully before commencing.



Digital Image – this could be maintained for two reasons and only where required. Firstly, this provides the authority with evidence of any failure and secondly, if a memorial is to be dismantled in any way then an image of its original construction is beneficial from a heritage viewpoint. Once it has been dismantled then parts become portable. It is not recommended that photographs of all memorials are taken as this will increase the time taken to complete the programme, just those that might be of heritage value, previously damaged memorials, where there is an implication for the authority etc.

Name of inspector – This is important so that the consistency of the inspection can be monitored and the inspectors assessed on an ongoing basis. All inspection work should be subject to a percentage audit to maintain the consistency of the process. Any inspectors identified as not achieving an acceptable standard of inspection will be identified for further training. All audits should be properly documented, a counter signature in the margin of the inspection sheet would be sufficient.

Date of inspection – This sets the benchmark for future inspections, whether annual or five-yearly

Further information can be gathered on the initial inspection, dependant on the type of burial ground, or even which section within the site is being considered.

Some examples of these are as follows:

- Vandalism – useful in burial grounds where the effects of vandalism need to be monitored
- Weathering – may be useful where soft stone memorials utilised in exposed areas
- Complete – is the memorial complete or are components missing? Useful on listed sites or sites of significant heritage value where this information may be important.

### **3.5 Analysis of findings**

Once inspections commence and inspection sheets and data begin to be delivered to the office a simple analysis can be undertaken designed to identify any common problems.

Mason – A high failure rate on new memorials erected by a particular mason would alert a manager to inspect and assess against BS8415 and the appropriate industry code of practice. Non-compliance can be dealt with thus ensuring that future installations will not cause problems.

Ground conditions – may be useful when used with a sub-code on very complex kerbed and vaulted areas where multiples of ground works may be necessary to make the area safe. May also relate to areas of very soft ground or ground liable to subsidence.

Attached, as Appendix 2, is a flow chart indicating the essential elements of an initial inspection. This inspection is geared to identifying the critical elements that will clearly identify dangerous memorials.

In all cases the inspection should be recorded on an inspection sheet, either electronically or manually. It is advised that only essential information is gathered during the initial inspection when the workload will be at its highest. Subsequent inspections i.e. the yearly or 5 yearly inspection should take less time to complete as the vast majority of hazards will have been dealt with during the previous initial inspection.

Burial authorities should aim to complete the inspection of 20% of the total number of memorials each year, in addition to all of the priority 2 annual inspections. A great deal of more detailed information can be gathered on the ongoing inspections should the burial authority so wish.

The maintenance of electronic records is recommended to simplify the maintenance of re-inspection records and allow such records to be manipulated as required by grouping records in different ways, e.g. by masons in alphabetical order, or by priority action order.

## **4.0 DESIGN, CONSTRUCTION AND INSTALLATION – PREVENTING CONTINUATION OF THE PROBLEM**

### **4.1 General Introduction**

The design, construction and installation of new memorials are central to the ongoing safety of our burial grounds. Until relatively recent times memorials had not been designed to withstand a specific design force, this has now been addressed since the introduction BS 8415, which is a performance specification, and the British Register of Accredited Memorial Masons (BRAMM) Blue Book and National Association of Memorial Masons (NAMM) Code of Working Practice which inform masons on how to achieve the requirement of the British Standard. All memorials should be installed to such a specification.

It is recommended that all burial authorities specify in their cemetery regulations that all memorials should be installed in accordance with BS8415 and the appropriate industry code of practice. All burial authorities should insist on such standards of installation.

In order for a burial authority to enforce the above standards it is recommended that the British Register of Memorial Masons Scheme (BRAMM), or equivalent, is adopted. The BRAMM scheme is discussed later in this guidance however burial authorities should evaluate any alternative.

### **4.2 Memorial Design**

Burial authorities should give consideration to the safe design of memorials. There is no doubt that memorials erected to the Commonwealth War Graves Commission standards, being a monolith construction fitted into a concrete kerb/shoe below ground level, is one of the safest designs of vertical memorials available. Whilst monolith memorials will remain safe indefinitely, they are not ideal in enabling the bereaved to personalise though design, which could result in a build up of unauthorised memorabilia as is commonly seen on lawn sections. Should this type of installation be the only type permitted burial authorities are encouraged to provide new grave purchasers with details of how and where unique memorials might be obtained. It has been shown that once one or two more elaborately designed and carved headstones have been installed on a burial section, they will be seen by others with an increase in their numbers following.

With the introduction and enforcement of BS 8415 and industry standards larger more elaborate memorials can be considered provided that burial authorities enforce the standards of installation and act whenever a non-compliant installation is identified (see the BRAMM scheme)

Designs can be very varied, there should be no problem allowing any memorial made of suitable materials, including stone, wood or stainless steel, even a glass memorial has been successfully and safely installed. Memorials up to a height of 1.5m are perfectly acceptable if installed correctly. The main criteria are that these memorials are using inherently safe materials, that they are designed to comply with BS 8415 and that they are installed in such a way that they will remain safe for many years, provided they are

not de-stabilised by a third party e.g. Vandalised, Storm damaged, struck by mowing equipment.

The provision of such choice combined with the application of management rules and regulations together with the adoption of the BRAMM scheme (or equivalent) should encourage the bereaved to express themselves through the design of an approved memorial, rather than adding numerous unauthorised memorials to the grave. Memorials that are imposed upon the bereaved due to an extreme response to health and safety requirements are likely to cause long term management problems in the burial ground. It is proven through research that families look for more than a standard memorial when a close relative has died however anything other than the standard, off-the-shelf, sterile lawn memorial might not be available therefore the provision of good information is essential.

#### **4.3 Responsibility of Owners of Memorials**

All burial authorities should advise owners of memorials that maintenance is their responsibility and to have this carried out on a regular basis following installation. Burial authorities should also advise all owners that their memorials will be subject to a minimum five-yearly inspection and that any defects reported with regard stability should be corrected by the owners of the memorials. This information can be sent whenever a new deed for the exclusive right of burial is sent out and included in the terms and conditions relating to the grave purchased. Terms and conditions can be printed on the reverse of the deed.

#### **4.4 Memorial Construction and Installation**

Burial authorities should insist that memorial masons install memorials in accordance with BS 8415 and the appropriate industry code of practice every time a memorial is fixed or re-fixed into the burial ground. This will ensure that all new memorials are installed to a suitable standard and any memorials that are removed for any reason, such as a further interment in the grave or for a new inscription, are also re-fixed to a suitably high standard. Wherever possible owners should be advised of the re-fixing of a memorial to improved standards and should be offered the same certificate of conformity as a new memorial. **Burial authorities should also obtain testing certificates from the manufacturers/installers to prove that memorials and any component ground anchor and lock-down systems have been designed to meet BS 8415.**

If jointed memorials are erected, burial authorities should ensure that these joints are guaranteed by masons to withstand the inspection process which will exert a force of 25kg against the memorial. Such joints should be fitted using mechanical bolting/lock down systems or new jointing resins, as prescribed in the appropriate industry code of practice. If this joint then fails, although the memorial will remain safe if fixed to the appropriate industry code of practice or equivalent, the mason should return and re-fix the joint. Bolting methods provide a mechanical fixing method that creates a compression joint, jointing compounds provide substantial additional strength to the joint, both can be used without any cement. The use of such bolting fixings and resins will ensure that joints will not fail when inspected and will allow memorials to be easily dismantled if so required.

Where cement is used as the jointing compound and this cracks under test pressure, it should be the responsibility of the memorial mason to repair this joint. Although the memorial will move it will remain safe, provided that it has been erected in compliance with standards however grave owners will lay blame on the burial authority for damaging memorials in these circumstances. If cement is used and applied properly it should be suitable for use in fixing however, should it give under test pressure this means that it was not used and applied properly and hence the responsibility of the memorial mason. Under product liability law a memorial should remain 'fit for purpose' for at least 6 years therefore whenever cement fails the mason has a duty to repair. The certificate of conformity or equivalent) issued by the mason as a condition of, for example, BRAMM provides longer term safeguards for both grave owners and burial authorities.

All new foundations should be installed on virgin ground that will not be disturbed by future burials as specified in BS 8415 and appropriate industry codes of practice. All such foundations should be installed to approved standards as indicated in the appropriate industry code of practice of Practice. This will ensure that memorial subsidence on new installations is effectively controlled. Where ground is disturbed the use of stretcher foundations that will span the disturbed area should be used.

#### **4.5 Burial Ground Design Issues**

When designing new burial grounds due attention should be paid to the need to ensure the stability of memorials once they are installed in the burial ground.

- Lawn sections
  - 'back to back' memorials are advisable
  - Minimum 900mm wide strip of virgin ground or a raft foundation placed at 6.3m (21') centres.
  - In cohesive ground each grave plot should measure a minimum of 2.7m (9') by 1.2m (4') this should be in addition to the minimum 900mm strip of virgin ground or foundation. Plots should be enlarged if dug in non-cohesive ground and provision should be made to facilitate larger coffins or caskets, extending centres to 1.35m (4'6") or 1.5m (5')
- Traditional sections
  - The same principle should also apply on more individual plots within a traditional section
  - In cohesive ground each grave space should measure a minimum of 2.7m (9') by 1.2m (4') in addition to a strip of virgin ground 450mm wide. Consideration should be given to increasing the size of grave spaces where non-cohesive ground is present.

It is recognised that such grave plot sizes will not always be possible to achieve within existing grounds and can only be introduced whenever a new section, extension or cemetery is provided.

It is recommended that the excavation and backfilling of all graves should be carried out by trained staff. Guidance is available in the ICCM Code of Safe Working Practice.

**NOTE:**

*It is recommended that burial authorities consider both lawn sections and traditional sections within new burial ground designs and/or consider allowing memorials up to 1.5m in height. This approach will encourage a wider range of memorialisation. Maintenance costs in traditional sections must be considered, so charges for burial in each section should reflect this. By providing a better range of choice, problems with unauthorised memorials will be reduced along with many of the long term management problems. More importantly, this will allow the bereaved to express themselves through the memorial design rather than by the addition of a range of inferior quality unauthorised memorabilia. This improves the service to all burial ground users.*

## **5.0 MANAGEMENT AND ADMINISTRATION OF MEMORIAL SAFETY**

### **5.1 Memorial Rights, Guarantees and Insurances**

Most burial authorities within the UK issue one single deed for a grave. This deed gives the owner the exclusive right of burial in the grave **and** generally implies the right to erect a memorial, unless a separate deed relating to rights to erect and maintain a memorial is issued.

Very few burial authorities have any maintenance clauses referring to the inspection of memorials. This is an unsatisfactory situation given that guarantees are generally absent apart from, for example, the guarantee of conformity (to BS 8415) that the BRAMM scheme requires masons to provide. It is entirely reasonable to expect any memorial mason to guarantee that his/her installations conform to BS 8415 and should they fail to do so they should not be permitted to work in the burial ground. It is unreasonable for the burial authority to be expected to accept the potential liability for that memorial should they be unable to contact the family.

If the term of the exclusive right of burial is greater than 30 yrs consideration should be given to issuing a separate deed for the right to erect a memorial, the latter being issued for a maximum of 30 years. Compliance with BS 8415 and the Appropriate industry code of practice should ensure long-term stability and the memorial mason should issue a guarantee of conformity to the grave owner and burial authority, a copy of which will be maintained on file. If contact is lost with the grave owner during this time and the memorial becomes unsafe, it will in most cases be due to non compliance with BS 8415 and the appropriate industry code of practice and the authority will be able to contact the memorial mason direct. It should be noted that provided a memorial was installed in line with the required

standards an act of vandalism or storm damage will not be the responsibility of the memorial mason.

Burial authorities should not permit a memorial to be erected without a guarantee of conformity being issued to the grave owner and a copy being lodged with the authority. Memorial masons confident in their workmanship will issue these and may even enter into a maintenance arrangement with the owner. If the memorial becomes unsafe at any time the authority can check the work, if it does not comply with BS 8415 and the appropriate industry code of practice current at the time of installation, the memorial masons will be liable.

Any guarantees that are issued should cover all elements contained in the appropriate industry code of practice. It is important that joints are guaranteed to withstand 25kg of force during the inspection process. Any joints that are broken on inspection should be the mason's responsibility to repair. This will encourage bolting systems/resin fixing as the predominant methods of fixing jointed memorials instead of cement.

The right to erect a memorial should contain advice that the memorial will be inspected every five years. This would normally be included in the initial charge for the right to erect. Should the memorial be found to be unsafe the family will be advised and the memorial mason will be required to repair the memorial to approved standards (currently BS 8415 and the Appropriate industry code of practice), unless the memorial has been de-stabilised by a third party. Should the memorial be found to be unsafe after the right to erect has expired, the burial authority will be free to deal with the memorial in whatever way it sees as being reasonable, including the removal of the memorial if necessary. These terms should be contained within a separate deed for the right to erect a memorial.

In addition to any guarantee of conformity given by the memorial mason the authority is entitled to insist upon a valid insurance policy covering the memorial for a period of at least five years. This will cover the memorial to the first safety inspection. Confirmation that insurance has been sold to the grave owner should be given to the burial authority and maintained on file. If owners do not take out insurance an indemnity should be obtained indicating that the owner takes responsibility for any future damage to the memorial (excluding proven damage by the burial authority).

It is recommended that burial authorities carry out their own inspections or arrange for their own independent inspection of the memorials. Arrangements that rely on local memorial masons to carry out their own inspections and issue certificates of safety contain too many management difficulties to make this a practical option. Care should also be taken in not allowing masons to inspect competitors work.

Where independent inspectors are used a suitable specification should be prepared and due consideration should be given to the resulting make safe work. Supervisors of such work should receive training to ensure they understand the implications of the process.

## **5.2 Legislative Issues**

Memorial safety is a sensitive area and burial authorities have firm duties to maintain safe sites under the Health and Safety at Work Act 1974. In addition to this they must also work within other legislative frameworks to ensure that any actions they take are not found to be outside of their powers, leaving them open to criticism and possible prosecution.

Officers working towards ensuring their burial grounds are made safe must be aware of the legislative framework in which they work. A brief summary of the main legislation is attached to this guidance as Appendix 3.

## **5.3 Professional Conduct and Control**

Burial authorities should have standards of professional conduct for those who work in their burial grounds. These should be detailed within the rules and regulations for the burial authority. As memorials are a major element within the burial ground and there is evidence of poor standards of workmanship over the years, there should be some specific controls over the way they operate.



## 6.0 Registration of Memorial Masons

### The British Register of Accredited Memorial Masons scheme (BRAMM)

**Note: This section gives details of the BRAMM scheme however burial authorities should evaluate the benefits of this scheme against any other and consider their findings in the decision making process.**

Full details of the BRAMM scheme are available at [www.bramm-uk.org](http://www.bramm-uk.org)

### Management of the BRAMM Scheme

The scheme is managed by a board comprising 50% representation by burial authorities and 50% by memorial masons. This democratic balance is considered to be of paramount importance in ensuring that both authorities and memorial masons work together for the common good.

### Registering with BRAMM and Operating the Scheme

The following is a brief description of the steps to be taken by a burial authority:

1. Download, complete and return the BRAMM registration form for burial authorities (available from [www.bramm-uk.org](http://www.bramm-uk.org)) **There is NO CHARGE made to a burial authority that adopts the scheme.**
2. Take a report to your committee recommending that your authority adopts the BRAMM scheme. If committee approval is gained, amend your regulations to permits BRAMM registered masons only to erect memorials in your cemetery or cemeteries.
3. Give your local memorial masons 6 – 12 months notice of the change in your regulations so as to give them time to register their company with BRAMM and for their fixers to gain the BRAMM Fixer Licence. BRAMM arranges test days directly with memorial masons.
4. At the end of your notice period enforce your regulations and only permit BRAMM registered memorial masons to erect memorials in your cemeteries. All BRAMM registered companies and fixers are listed on the BRAMM website as are their insurance documents and risk assessments. Your authority will be given a password to access parts of the BRAMM website where you can check (particularly if a mason from outside of your area applies for permission to erect a memorial).
5. Monitor memorial masons working on your site via spot checks or via your normal inspection programme and report any malpractice to BRAMM who will investigate and take appropriate action should a memorial mason have failed to work to nationally accepted standards.

## **7.0 Unauthorised Memorials**

A large number of authorities experience difficulties with the control of unauthorised memorials. This can be directly related to a lack of choice in the type of memorials available. When considering providing a range of choice the cost of the permission to erect each type of memorial should be related to the whole life risk for the type of design together with the ongoing maintenance costs of sections in which they are placed.

The provision of new traditional sections where more flexibility is given on the size, type, design and even the material used for the memorial allows the personalisation of the grave, but uses the normal authorisation process. By providing this important option burial authorities can then insist on the removal of additional memorialisation, particularly on lawn sections where it upsets maintenance routines, but more importantly upsets those bereaved who wish to have an ordered tidy look to the section in which their relative is buried.

It is clear from experience throughout the country that the lack of choice makes the policing of additional memorialisation very difficult. There is no other alternative for the bereaved and they are often very upset that they are unable to personalise the grave. Unauthorised memorials then begin to grow unchecked creating the potential for further serious health and safety problems for the authority, such as spiked wrought iron fences.

Proper choice and proper control of unauthorised memorials through the management rules and regulations is, therefore, essential to the effective long-term control over memorial safety.

## **8.0 Communication**

Good communication is essential to ensure the successful management of memorial safety. Often the bereaved are not seen by the burial authorities until all the important decisions with regard to burial section and memorial have already been decided. These are decided with the funeral directors and memorial masons, before the family arrives at the graveside. This is often the first time that a burial authority will have direct contact with the family.

To ensure the bereaved understand their responsibilities with regard to choice and safety, it is essential that good quality information is provided to the funeral directors, the memorial masons, the clergy and all others regularly involved in the arrangement of funerals. It is also important that all these people actually co-ordinate with each other to ensure that the best possible service is provided to the bereaved, particularly as the service is fragmented between so many.

The burial authority should provide interesting leaflets on the subject and ensure that regular liaison meetings take place with all the parties involved in the

provision of the service, allowing an exchange of views and objectives for the provision of the service.

As the funeral directors and memorial masons will act as agents for the Council in the sale of grave space and memorial rights, taking a joint approach improves the chance of good information reaching the bereaved so that they will be able to make an informed choice.

## **9.0 Management Rules and Regulations**

Burial authorities must have rules and regulations to control their burial grounds; however they should be seen as fair and equitable at all times. They must be easily understood by all who read them and not too complicated. Every rule or regulation should be able to be qualified if questioned.

It is important that all the issues highlighted in this guidance are brought together through the management rules and regulations. This will form the backbone of the burial authorities drive for memorial safety on their sites and should receive the full support of their governing bodies, whether they are councillors, directors or parishioners.

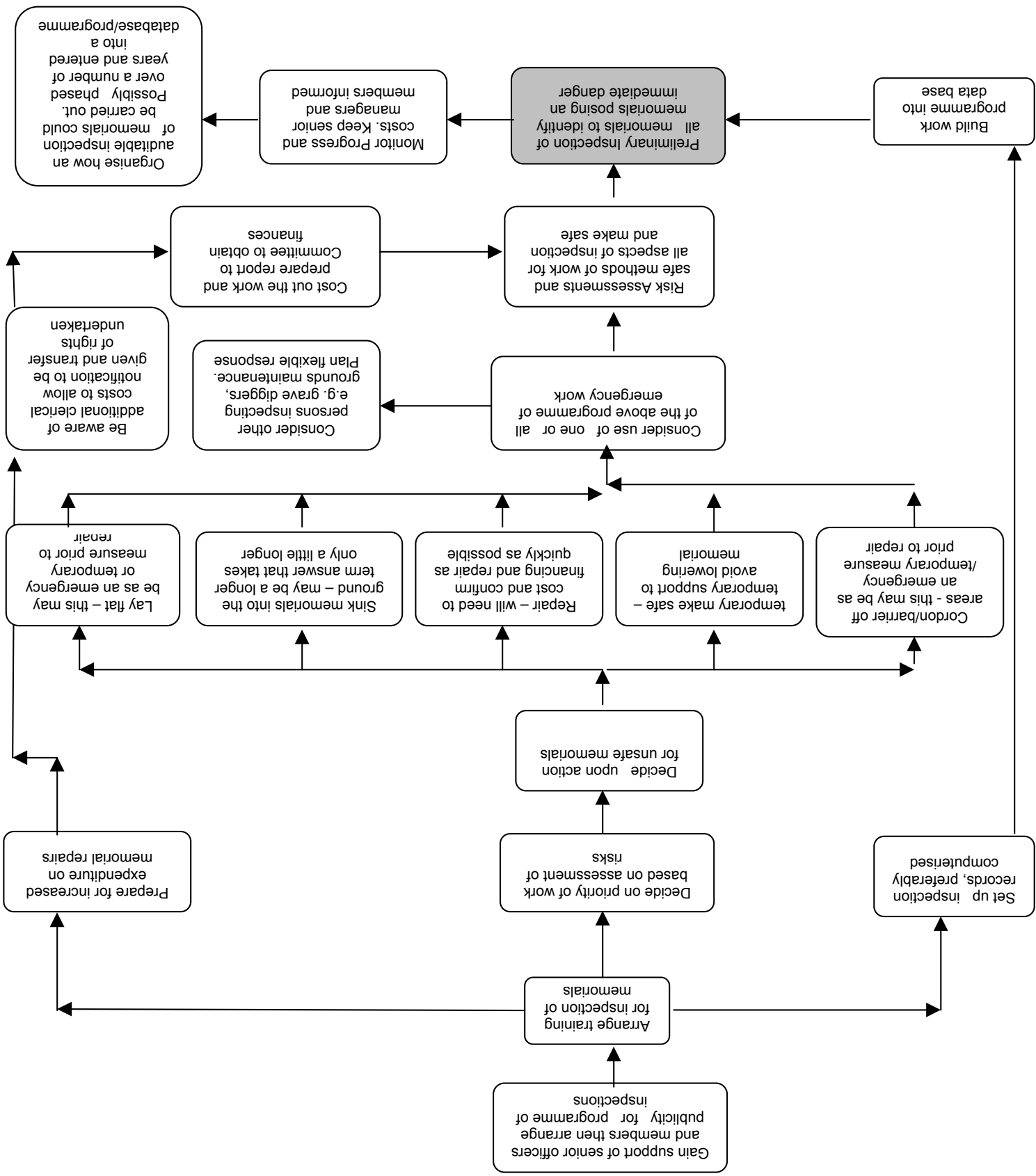
As part of the improved communication process these rules and regulations should be issued to all funeral directors, memorial masons, clergy and other bereavement organisations to improve the information available to such persons and therefore to the public.

Management rules and regulations for burial grounds have tended to remain static over the years and it is now important that this ceases to be the case. Rules and regulations should be provided in such formats that are able to be amended and re-issued as circumstances change through the years.

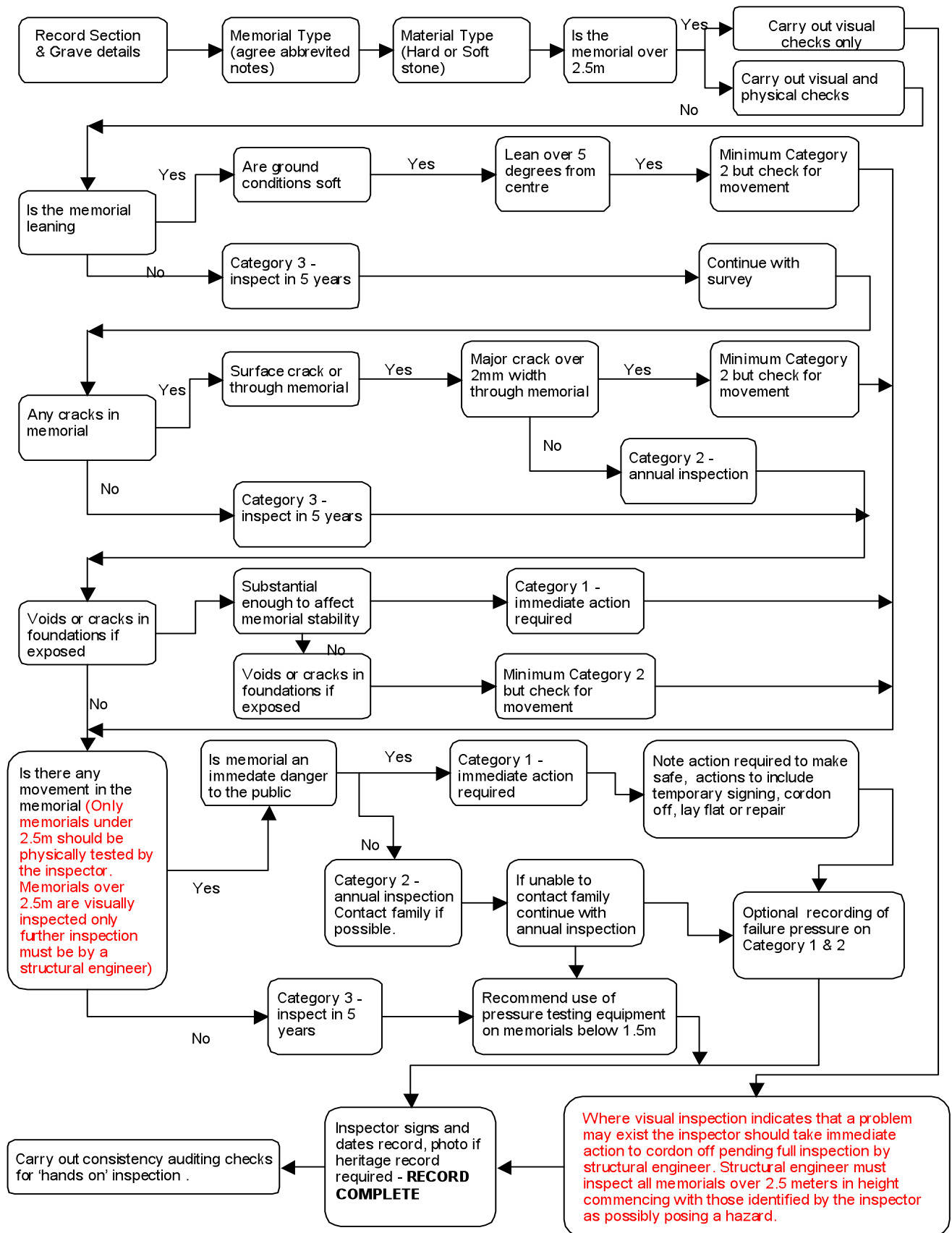
## 10.0 Glossary

Burial Ground	<i>Area set aside for interment such as Public or private cemetery, open or closed churchyard.</i>
Burial Authority	<i>Organisation responsible for managing a burial ground.</i>
Contractor	<i>Any person who is employed by the burial authority, or by a third party, to carry out work within the burial ground. This will include memorial masons, funeral directors and may also include grounds maintenance staff and gravediggers.</i>
Dowel	<i>A pin to align and to prevent movement between adjacent elements of a memorial.</i>
Dangerous Memorial	<i>A memorial that fails an inspection at less than 25kg.</i>
Faculty	<i>Written permission from the Church of England for prescribed work to be carried out.</i>
Foundation	<i>A part of a structure in direct contact with and transmitting load to the supporting ground.</i>
Force Measuring Equipment	<i>Equipment used to measure the force applied to a memorial during the inspection process.</i>
Grave (Lair in Scotland)	<i>A place of burial below ground level which may or may not be lined.</i>
Lawn Memorial	<i>A jointed memorial with an upright stone fitted to the back of a base stone. This type of memorial is often between 600mm (2') and 1200mm (4') in height and is a more modern design often found in abundance on lawn sections of English and Welsh cemeteries.</i>
Memorial	<i>An object erected in a burial ground in memory of a deceased person.</i>
Memorial Mason	<i>A tradesperson responsible for installing memorials.</i>
Monolith memorial	<i>One piece memorial buried between 25% and 35% into the ground. Under some ground conditions it may be advisable to fit the memorial into a "shoe" foundation piece.</i>
Temporary Support System	<i>A system designed to reduce the risk of a memorial injuring anyone. Recommended only for use on a temporary basis.</i>

# APPENDIX 1 - Management of Memorials – Flow Chart



## APPENDIX 2 – Initial Inspection Process



## **APPENDIX 3 - LEGAL ISSUES**

### **Introduction**

It must be remembered that memorial safety issues can only be dealt with in accordance with the legislation that exists to ensure the proper control within local burial grounds. The legislation is wide and varying, for instance legislation for the control of churchyards it is very different to legislation for the control of cemeteries. The following section deals with the legal aspects that surround memorials in local authority burial grounds in England and Wales. It is a definitive piece of legislation that is used by all English and Welsh local authorities and is now being used as best practice guidance for Scottish and Northern Irish Authorities, by many privately run burial grounds and by a number of church dioceses. When used in conjunction with the Health & Safety at Work Act 1974 in England, Scotland and Wales and the Health & Safety at Work (Northern Ireland) Order 1978 in Northern Ireland, it seeks to ensure that a safe environment is provided for burial ground staff and visitors.

### **Statutory requirements**

Powers and duties of local authorities in respect of cemeteries are contained within the Local Authorities' Cemeteries Order 1977.

#### **Article 3**

- (1) Subject to the provisions of this order a burial authority may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery.
- (2) Nothing in this paragraph (1) shall be construed as authorising –
  - a) any action in relation to any chapel provided as mentioned in article 6(1)(b) [a chapel of the Church of England].
  - or
  - b) any action in relation to any vault, or any tombstone or other memorial, other than action which is necessary to remove a danger which arises by reason of the condition of the vault, or tombstone or other memorial itself.

#### **Article 10**

- (1) A burial authority may grant, on such terms and subject to such conditions as they think proper.

To the owner of the exclusive right of burial (or to any person who satisfies them that he is a relative of the person buried in the grave or vault, or is acting at the request of such a relative and that it is impractical for him, or such relative, to trace the owner of the right so described), the right to place and maintain, or put any additional inscription on a tombstone or other memorial on the grave space, grave or vault in respect of which the right so described subsists.

Burial Authorities are permitted to grant the right to place and maintain a memorial "on such terms and subject to such conditions as we think proper". **This means the burial authority should be in control of what they consider to be suitable terms and conditions.**

- (7) A burial authority shall also have power to agree with any person, on such terms and subject to such conditions as they think proper, to maintain any grave, vault tombstone or other memorial in a cemetery for a period not exceeding 100 years from the date of the agreement.

Burial Authorities are also specifically permitted to enter into a maintenance agreement again, "on such terms and subject to such conditions as we think proper". **This means they are also in control of the conditions within a maintenance agreement.**

#### **Article 14**

If a burial authority remove from a cemetery any tombstone or other memorial placed therein otherwise than in the exercise of a right granted by, or otherwise with the approval of, the burial authority or any predecessor of theirs, the burial authority may recover the cost thereby incurred by them-

- (a) from the person to whose order the tombstone was placed;
- (b) within two years from the placing of the tombstone or memorial, from the personal representative of such person, as a simple contract debt in any court of competent jurisdiction.

This means Burial Authorities can remove unauthorised memorials and charge the owner for their removal.

#### Article 15

- (1) Subject to the provisions of this article a burial authority may charge such fees as they think proper—
- (a) for or in connection with burials in a cemetery;
  - (b) for any grant to place and maintain a tombstone or other memorial in a cemetery otherwise than in a chapel provided as mentioned in article 6(1)(b); or
  - (c) for any grant of a right to put an additional inscription on such a tombstone or other memorial.

**This means Burial Authorities can charge a fee that they consider “proper”.**

#### Article 16

- (1) A burial authority may—
- (a) put and keep in order any grave or vault, or any tombstone or other memorial, in a cemetery; and
  - (b) level the surface of any grave, consisting wholly or substantially so of earth or grass, to the level of the adjoining ground.

In respect of any grave levelled by them in exercise of the powers set out in (b), the burial authority may, and shall if so requested in writing by—

The owner of a right described in article 10(1)(a)(i) or (ii) in respect of the grave; or a relative of any person buried in the grave, provide at their own expense such identification mark as they consider adequate.

- (2) A burial authority may, subject to and in accordance with the provisions of Schedule 3—
- (a) remove from the cemetery and destroy—
    - (i) any tombstone or other memorial on a grave of which all material particulars are illegible or which is dilapidated by reason of long neglect;
    - (ii) any kerbs surrounding a grave (whether containing any commemorative inscription or not) together with the foundation slabs of such kerbs;
    - (iii) any tombstone or memorial, not falling within (i) or (ii), on a grave, except where the owner of the right to place and maintain it in the cemetery has, before the date specified in the notice under paragraph 3 of schedule 3 as the date before which the carrying out of the proposals will not be commenced, requested that it shall be re-erected in the cemetery or elsewhere;
    - (iv) any surface fittings not falling within (i), (ii), or (iii), or any other flowering or other plants on a grave; and
    - (v) any railings surrounding a grave, a tombstone or other memorial on a grave or a grave space;
  - (b) alter the position on a grave of, or re-erect at another place in the cemetery or elsewhere, any tombstone or other memorial on a grave;
  - (c) level the surface of any grave, other than a grave described in paragraph (1)(b), to the level of the adjoining ground;
  - (d) alter the position of any railings surrounding a grave or vault, a tombstone or other memorial or a grave space;
  - (e) re-erect at another place in the cemetery a memorial other than one on a grave or vault or in a chapel provided as mentioned in article 6(1)(b).

Any reference to a grave in (a), (b) or (c) or in Schedule 3 other than paragraph 1, thereof, includes a reference to a vault constructed wholly or substantially so below the level of the ground adjoining the vault.

**This means Burial Authorities can carry out a range of work to memorials, as long as the correct procedures are followed, as detailed in Schedule 3. It must be remembered that the correct procedures must be followed whilst the memorial remains the property of the owner of the right.**



#### Article 10

(5) A burial authority may, at the expiration of the period of any grant-

- (a) move to another place in the cemetery; or
- (b) remove from the cemetery, for preservation elsewhere or destruction, any tombstone or other memorial which has not been removed from the cemetery by the owner of the right to place and maintain it in the cemetery.

**This means Burial Authorities can move or remove memorials at the expiration of the period of grant.**

#### **Health and Safety**

This section identifies relevant legislation. Reference should also be made to the ICCM document "Code of Safe Working Practice for Cemeteries" and the training provided by the ICCM Diploma Course and the ICCM Cemetery Operatives Training Scheme.

Health and safety in burial grounds managed by or on behalf of local authorities is enforced by the Health and Safety Executive. With other burial grounds it is normally the local authority environmental health department that act as the enforcement agency. Inspections and investigations, and any subsequent action by these enforcing bodies take place within the context of the HSC's Enforcement Policy Statement, see '<http://www.hse.gov.uk/pubns/hsc15.pdf>.'

#### Statute Law

Whilst common law is important with regard to employers and public liability in claims for compensation for accidents and damages, it is secondary to criminal law such as the Health and Safety at Work Act 1974 (Health and Safety at Work (NI) Order 1978 in Northern Ireland) and its supporting regulations.

**Health and Safety at Work Act 1974** (equivalent legislation is included in the Northern Irish Order).

This is the key statute concerning health and safety.

#### A) Employers

The general statutory duty of employers is contained in section 2(1) of the Act:

"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees". (It must be remembered, however, that whilst the authority is ultimately the employer, all levels of management have responsibilities under this Act. This should be clearly explained in each authority's health and safety policy, along with how these responsibilities should be met.)

This duty is sub-divided into the following:

- a) the provision and maintenance of plant and work systems that are safe and without health risks;
- b) arrangements for ensuring safety and freedom from health risks in the use, handling, storage and transport of articles and substances;
- c) provision of information, instruction, training and supervision necessary to ensure health and safety;
- d) maintenance of a place of work and all means of access and egress, under the employer's control, which are safe and without risks to health.

In addition, section 3 of the Act requires that every employer conducts his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment, but who may be affected, are not exposed to risks to their health and safety.

The courts have interpreted the provisions of the Act in various cases that are of significance in that precedents have been set. For example, in *R. v. Swan Hunter Shipbuilders Ltd. (1982)*, the employer's duty to provide information and instruction to ensure the health and safety of his own employees extends to provision of information, instruction and training to persons working on an employer's premises who are not his employees or in a contractual relationship with him. This would be relevant where persons other than those directly employed by the burial authority carry out work on memorials and would, of course, extend to members of the public using the burial grounds. (Case studies will be added to our web site [www.iccm-uk.com](http://www.iccm-uk.com) for further guidance in this area.)

## B) Employees

Section 7 of the Act places the following duties on all employees:

- a) to take reasonable care for the health and safety of himself and of other persons who may foreseeably be affected by his acts or omissions at work;
- b) to co-operate with his employer to enable the employer to comply with duties placed upon him by statutory provisions.

Section 8 of the Act requires that employees must not intentionally or recklessly interfere with or misuse anything provided by their employer for the purposes of health and safety.

### **Management of Health and Safety at Work [Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations (Northern Ireland) 2003]**

The emphasis in modern legislation is upon the management of health and safety. The starting point for this is risk assessment. Under the Management of Health and Safety at Work Regulations 1999, employers are required to undertake a suitable and sufficient assessment of all risks to the health and safety of employees and others arising at or from a work activity.

It should be remembered at this stage that a hazard is something with the potential to cause harm, whilst the risk is the likelihood that this potential will be realised. It is the risk that must be assessed.

It is the employer's responsibility to ensure those carrying out assessments are competent to do so and review them as necessary. To ensure the competency of staff, employers must ensure they have suitable and sufficient information, instruction and training. If this is not provided there is an inherent fault in the authority's health and safety procedures.

The risk assessments are not an end in themselves, but a means to introduce measures to eliminate or control risks to the health and safety of their employees and other affected by their activities. The regulations require employers to ensure that they put into place the necessary management arrangements to implement the preventative and protective measures identified during any assessment process.

General risk assessments are required under the Management of Health and Safety at Work Regulations 1999. However, whilst undertaking such assessments more detailed assessments may be required under other regulations. Some of these other regulations are listed below. However, a risk assessment does not have to be duplicated in order to satisfy an identical requirement under a different set of regulations.

- Management of Health and Safety at Work Regulations 1999 *[Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations (Northern Ireland) 2003]*
- Control of Substances Hazardous to Health Regulations 1999 *[The Control of Substances Hazardous to Health (Amendment) Regulations (Northern Ireland) 2005]*
- Manual Handling Operations Regulations 1992 *[Manual Handling Operations Regulations (Northern Ireland) 1992]*
- Personal Protective Equipment at Work Regulations 1992 *[Personal Protective Equipment at Work Regulations (Northern Ireland) 1993]*
- The Noise at Work Regulations 1989 *[Noise at Work Regulations (Northern Ireland) 1990]*
- The Confined Spaces Regulations 1997 *[Confined Spaces Regulations (Northern Ireland) 1999]*
- The Construction (Health, Safety and Welfare) Regulations 1996. *[Construction (Health, Safety and Welfare) Regulations (Northern Ireland) 1996]*

Assessments must be reviewed when necessary, such as when there are changes in the work itself, work methods or the work environment.

Under the Health and Safety (First Aid) Regulations 1981, *[Health and Safety (First-Aid) Regulations (Northern*

*Ireland) 1982]* the employer is required to provide, or ensure that there are provided, such equipment and facilities as are adequate and appropriate, in the circumstances, for enabling first-aid to be rendered to his employees if they are injured or become ill at work.

Following the risk assessment carried out under the Management of Health and Safety at Work Regulations 1999, where risks cannot be controlled by other means, appropriate safety signs must be provided and maintained. The Health and Safety (Safety Signs) Regulations 1996, [*Health and Safety (Safety Signs and Signals) Regulations (Northern Ireland) 1996*] indicates that such signs may warn persons of the risks and necessary control measures.

It should be recognized that the requirement to do risk assessments also applies to Contractors including Memorial Masons working in the burial grounds. They have the same duty to ensure that their work activities do not put authority employees and members of the public at risk. This applies to the self employed as much as it does to employees.

#### Risk Reduction and Control

Any risk reduction programme can be facilitated and made more effective when a hierarchical approach is adopted:

- a) Prevent exposure to a risk by ceasing to carry out that activity.
- b) Substitute the activity for a less hazardous one;
- c) Enclose or separate off the activity;
- d) Reduce the numbers of people exposed to the hazard;
- e) Reduce the period of exposure;
- f) Provide personal protective equipment.
- g) Provide suitable and sufficient information, instruction and training of employees

#### Safe Systems of Work

The provision of safe systems of work was part of an employer's duty of care under common law and it was made a statutory requirement by Section 2 of the Health and Safety at Work etc. Act 1974.

Safe systems of work are required to be put into place where the hazards identified by the various risk assessments undertaken cannot be eliminated and a degree of residual risk remains.

In *Bolton Metropolitan Borough Council v. Malrod Insulations Ltd. (1993)*, it was held that the duty to provide a safe system of work is not confined only to the times when the employee is actually working; it applies whenever the employer makes available an unsafe system of work, even when it has not yet been put into use.

#### Common Law

Under common law all employers owe a general duty of care to their employees so as to avoid injuries, diseases and deaths occurring at work, *Wilsons & Clyde Coal Co Ltd v. English (1937)*. All employers must:

- a) provide a safe place of work, with safe means of access and egress;
- b) provide and maintain safe appliances, equipment and plant for doing the work;
- c) provide and maintain safe systems of work;
- d) provide competent and safety-conscious personnel.

The duty is owed to each employee as an individual, so that the particular needs of individuals must be taken into account, *Byers v. Head Wrightson & Co Ltd (1961)*.

Employees are similarly bound by the general duty to take reasonable care imposed by the common law of negligence. Each person should ensure that he takes 'reasonable care' that his actions or omissions do not cause someone else to suffer injury or loss, *Donoghue v. Stevenson (1932)*.

#### Duty of Care to Others

The employer owes a common law duty of care to any visitors to the burial ground. Everyone, not just an employer, is under a common law duty to take reasonable care in respect of others who may be foreseeably injured by their activities, *Donoghue (or McAlistar) v. Stevenson (1932)*. This applies to trespassers as well as lawful visitors, *Herrington v. British Railways Board (1972)*.

In addition, the Occupiers' Liability Act 1957 section 2(2) states:

"The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there."