

PRESTON UNDER SCAR PARISH COUNCIL

GUIDANCE NOTES ON THE GRANT AND TRANSFER OF EXCLUSIVE RIGHTS OF BURIAL IN PRESTON UNDER SCAR CEMETERY

1. Introduction

This guidance has been prepared to provide information for prospective purchasers of Exclusive Rights of Burial in Preston under Scar Cemetery on the process for purchasing those rights and on any subsequent transfer of those rights to another person. It is not exhaustive. The law relating to grave “ownership” is complex, particularly in circumstances where the owner has died and ownership of the grave needs to be transferred. Circumstances may arise where the owner(s) of an Exclusive Right of Burial may need to seek their own legal advice.

2. Grave “Ownership”

When “buying a grave” it is important to understand that what you are actually buying is the *Exclusive Rights of Burial* in a grave for a specified period of time. You are not buying the grave freehold – Preston under Scar Parish Council retains ownership of the land at all times.

An *Exclusive Right of Burial* gives you the right to:

- be buried in the grave or plot concerned (this includes the burial of cremated remains)
- place an inscribed memorial on the grave

A grave owner is responsible for ensuring that any memorial is in a safe condition and for paying for any repairs that may be required in the future.

Any resident of the Parish of Preston under Scar has the right to purchase an *Exclusive Right of Burial* in the Parish Cemetery. Former and non residents of the Parish may, at the discretion of the Parish Council, also purchase an Exclusive Right of Burial.

The current period for which Exclusive Rights may be purchased is 100 years.

The Parish Council charges a one-off fee for the grant of Exclusive Rights. This is payable in full at the time the rights are granted. No further fees or charges will be payable to the Parish Council. The fee paid to the Parish Council for the Exclusive Rights does **not** cover any fees charged separately by an Undertaker/Funeral Arranger etc.

Ground conditions in Preston under Scar Cemetery are such that each grave plot can only accommodate one coffin or 2 caskets/urns for ashes.

Anyone who wishes to purchase an *Exclusive Right of Burial* should contact the Parish Clerk by email: clerk@prestonunderscar-pc.gov.uk

3. Deeds of Grant

If you decide to purchase an *Exclusive Right of Burial*, you will be issued with a document called a “*Deed of Grant of Exclusive Rights of Burial*”. This will state the name(s) of the individual to whom rights have been granted, the plot number, the period of time for which the rights have been purchased and the fee paid.

It is important that you keep your Deed of Grant safe as this is a legal document. You should make sure that your family, or other person who will be responsible for organising your burial, knows where this document is kept as they will need to produce this to the Parish Council’s representative before burial can take place.

In circumstances where Exclusive Rights have been granted to a single individual, it will be necessary for the ownership of those rights to be transferred to another person to enable them to authorise the erection of a memorial. This is a requirement of burial law. The transfer of rights is covered in more detail in section 4 below.

4. Transfer of ownership of Exclusive Right of Burial

a) You may, while living, transfer your Exclusive Right to another person. To do this, you need to complete a *Form of Assignment*. This is available from the Parish Clerk by email: clerk@prestonunderscar-pc.gov.uk. This form will require your signature and that of one other person as witness.

b) The ownership of Exclusive Rights may also be transferred to another person after your death – in fact, this will be necessary for someone to authorise the erection of any memorial headstone on your grave. The following paragraphs outline the process in various circumstances:

- **If the grave owner is deceased and left a valid will** and an estate of sufficient value to require the Grant of Probate to Executors, the ownership of the grave can be transferred to the Executor.

The Executor must produce an original copy of the Grant of Probate with the seal included or a certified copy of the Grant of Probate. If the Executor wishes to transfer the deed to someone else, an *Assent of Executor or Administrator form* must be completed. This form is available from the Parish Clerk, email: clerk@prestonunderscar-pc.gov.uk.

- If the estate is not of sufficient value, ownership may be transferred to the executor named in the will as long as they have a Statutory Declaration and can produce the will. Should the Executor then wish to transfer the deed to someone else, an *Assent of Executor or Administrator form* must be completed.

- **If the grave owner is deceased and Letters of Administration have been obtained** or the will is not valid, and the estate was of sufficient value as to require the Grant of Letters of Administration, the ownership of the grave can be transferred to the Administrator.

The Administrator must produce an original copy of the Letters of Administration with seal included or a certified copy. If the Administrator then wishes to transfer the deed to someone else, an *Assent of Executor or Administrator form* must be completed.

- **If the grave owner is deceased and there is no Grant of Probate or Letters of Administration or Will (ie deceased owner dies intestate)**, applicant for transfer of ownership will need to complete a *Statutory Declaration*. This is a legal document which must be signed in the presence of a Magistrate, Commissioner of Oaths or Solicitor. A *Statutory Declaration form* is available from the Parish Clerk, email: clerk@prestonunderscar-pc.gov.uk.

The *Statutory Declaration* must set out clearly the facts regarding the original purchase of the Exclusive Rights of Burial, the death of the registered owner, intestate or otherwise and the relationship of the applicant to the registered owner. The original Deed of Grant and a certified copy of the owner’s death certificate should accompany the Declaration. If the original Deed of Grant has been lost, suitable wording to that effect should be incorporated into the Declaration. It is essential that the written agreement of all the next of kin of the deceased owner to the transfer of ownership should be obtained and attached to the Declaration.

Deceased owner survived by e.g.	Application made by	Consents needed
Spouse	Spouse	None
Spouse	Son/daughter	Transferred to spouse – then can be assigned to son/daughter
No spouse but four children	Son/daughter	All children, irrespective of legitimacy (unless chosen to renounce rights)
No spouse or children – but three brothers or sisters	Brother/sister	Both other brothers/sisters (unless chosen to renounce rights)

Neither the Parish Council nor the Parish Clerk can become involved where there is a family dispute over any ownership or where relevant consents have been withheld. In these circumstances the ownership cannot be transferred and no memorial application can be processed. The various next of kin need to reach an agreement. Please note that stepchildren do not come into the order of succession.

5. Renunciation (Renouncement of Rights)

Renunciation is when a registered owner does not wish to retain their “rights”. In this case a *Form of Renunciation* needs to be completed. This is available from the Parish Council, email: clerk@prestonunderscar-pc.gov.uk.

A *Form of Renunciation* can be used when a grave is claimed by more than one person, one of whom wishes to give up their rights to ownership.

6. Certificates

All certificates etc supplied with transfer applications must be original documents or certified copies. These will be copied and returned to the applicant.

Glossary of Forms

Deed of Grant of Exclusive Right of Burial or of Interment of Ashes – certificate required to enable the Grantee to be buried in the grave or plot concerned (this includes the burial of cremated remains). A legal document.

Form of Assignment – used if the owner is alive and wishes to transfer their rights to someone else. The Grave Deed will also be required. If not available, proof of identity will be required eg passport or utility bill.

Grant of Probate – granted to the Executor(s) of a will once the document has been proven in court. To be legally acceptable, it must be sealed (embossed).

Letters of Administration – when a person has died intestate (without a will) the next of kin can apply to the courts to be made Administrator of the Estate.

Form of Assent of Executor or Administrator – used when transferring ownership from an Executor or Administrator

Statutory Declaration Form

1. Used to transfer ownership from deceased owner when no official documents have been issued
2. Declarations can either be based on a will that did not go to Probate, claiming ownership by the Executor, or
3. By the next of kin if no will was left by the deceased

Form of Renunciation – used:

1. By the registered owner if they do not wish to retain their rights
2. Where, following the death of the grave owner, only one member of the family wishes to take on the ownership of the grave. The remaining members of the family must renounce their interest in the grave to enable the rights to be transferred.