

## Your legal rights and responsibilities

*We have tried to make this document as comprehensive and, above all, as accurate as possible. If you know better in any respect, please tell us. There is already more than enough misleading information issued by organisations that ought to know better. We hope this will act as a corrective.*

### In brief

- The personal representative (executor or administrator) has a prior right to take charge of a dead body unless i) the coroner wishes to examine the body or ii) the person died of a disease which makes the body infectious
- The right to take possession starts at the moment of death
- You do not have to use an undertaker
- There is no legal requirement to hold a funeral
- Dead bodies are not infectious (except in certain circumstances)
- You do not have to accept responsibility for disposing of someone who has died
- If no one accepts responsibility for disposing of a dead person, it becomes the job of the state
- Funeral wishes are not legally binding
- An executor or administrator can be replaced under certain circumstances
- The death must be registered
- Failure to dispose of a body may result in prosecution
- The person who engages an undertaker is responsible for paying the bill
- You may bury a dead person on your own land
- A buried body can only be moved with permission
- There is no legal definition of ashes
- Under certain circumstances it may be necessary to seek permission to exhume ashes
- The application procedure for cremation is designed to rule out foul play
- You don't have to bury or cremate someone who has died. You can preserve them
- A one-off open-air funeral pyre is probably not illegal
- There is no statutory bereavement leave

### Who does a dead body belong to?

It is an historic principle of English common law that there is no property in a dead body. No one owns the body of a person who has just died: "the only lawful possessor of a corpse is the earth."

When this law was established a dead body was, indeed, "worthless". The only thing to do with it was dispose of it by means of "lawful and decent burial" – according to the rites of the established Church, of course.

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Over time the law in this area has become vague and inconsistent and new laws are needed to make sense of things as they are now. Today, dead bodies do have potential value. A dead body can be used for medical research, as a teaching aid, for tissue donation or as an anatomical exhibit. What's more, it is now possible to convert a dead body into a piece of property by "work or skills" – see below, [Alternatives to disposal](#).

If it is simply your intention to arrange for someone who has died to be buried or cremated, all you need to know is that the law recognises the **right of certain people to take possession of a dead body** without delay. Note: taking possession is not the same thing as having ownership.

The law assumes that the person who assumes the right to take possession of a dead body recognises a duty to dispose of it. In most cases, this is exactly what the possessor does --- but you don't have to.

It is unlawful to:

- Detain a body (against, say, the payment of a debt).
- Refuse to deliver a body to the executors for burial
- Conspire to prevent a lawful and decent burial
- Dispose of a body to prevent an inquest
- Sell a body for dissection
- Expose a body in a public place if to do so would shock public decency

For more information on the legal status of a dead body, click [here](#)

### What does disposal mean?

According to the Births and Deaths Registration Act 1953, disposal means "by burial, cremation or any other means".

This raises the question: by what other means? There is presently no conventional alternative to burial or cremation in the UK, but in the US some disposals are carried out by means of [alkaline hydrolysis](#). A process involving the pulverising of a freeze-dried corpse has been announced, but no successful trial has been known to have taken place and the process seems still to be at the concept stage.

### What is a funeral?

Official guidance often uses the term 'funeral arrangements' wrongly to mean disposal arrangements. It may seem kinder to talk about a funeral rather than disposal but it is also, in this respect, misleading. Though we normally think of a funeral as an event comprising a ceremony together with either cremation or burial, the law doesn't. The law concerns itself exclusively with disposal.

A funeral is a farewell ceremony or event at which a dead body is present before it is buried or cremated. A funeral fulfils an emotional and sometimes also a spiritual need. **There are no laws governing funerals: you don't have to have one.**

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Any denomination of Christian can conduct a funeral in a Church of England burial place. If necessary, the vicar can be given a simple legal notice instructing him or her not to do so. In other venues, anyone can lead a funeral – there's no official qualification for the job. You can do anything you like at a funeral so long as it is within the law – and the regulations of the venue.

### Who has the right to take possession of a dead body?

The coroner has a superior right, if s/he chooses, to take temporary possession of a dead body in order to find out the cause of death. Learn more [here](#). When the coroner has completed his/her examination, the body will be released to the **personal representative** of the person who has died.

A hospital has the right to detain the body of anyone who has died of a notifiable disease if it is deemed that their body may be infectious.

**If the person who died made a will**, and the coroner does not wish to take possession of the body, an executor, whether a family member or not, has the immediate right to act as **personal representative** and take possession of the body. The executor has the right to delegate this to a family member, but the executor also has the right to overrule a family member.

**If the person who died did not make a will**, you can find out who the rightful **personal representative/s** is/are by consulting the [Non-Contentious Probate Rules, rule 22](#). You do not need to apply for a letter of administration if the person who has died had little money and no property – in other words, an estate.

In the case of the death of an adopted child, adoptive parents have a better right to possession than natural parents, but natural parents have a better right than foster parents.

*Note 1:* if the person who died was not married to, or in a civil partnership with, his/her partner, the living partner has no automatic right to make funeral and/or disposal arrangements. If, however, the person who died made a will and appointed an unmarried partner as executor, s/he has full power to act as personal representative.

*Note 2:* It is often assumed that the term **next-of-kin** has the prior right to take charge. Next-of-kin is often used in a very unclear way to mean, for example, an emergency contact. When someone is alive, next-of-kin have certain rights, but when that person dies, unless the next-of-kin is named as an executor, it is the **personal representative** who takes charge.

### Your right to take possession starts at the moment of death

The person with the right to take possession of the body has the right to do so *as soon as death happens*. There's no need to produce any documentation or pick up a medical (cause of death) certificate on the way out, you can get that later. Find out what all your rights are in this area by clicking [here](#).

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If someone dies at home you can keep them there. If someone dies in a hospital or a hospice you can bring them home. Don't let anyone tell you otherwise. If they do, show them [this](#).

You don't have to hide the body from view but you must not expose it naked in public or in such a way as to outrage public decency, for which you can be prosecuted. You don't have to take a body anywhere in a coffin. You don't have to take a body to a funeral in a coffin – ordinary clothes, a shroud, blanket, sheet or other wrapping will suffice. More info [here](#).

**You have the right to care for the body of someone who has died at home.** To find out what you'll need to do, go to the [Do It All Yourself](#) page of the website.

### What, so you don't have to use an undertaker?

No you don't! You may be told, even by people in authority who ought to know better, that when someone dies you must engage a funeral director. **WRONG.** *You* are in charge: the person who has died is *your* responsibility. It is entirely up to you to decide whether or not you want to pay someone else to undertake matters on your behalf.

You employ an undertaker to do those things for you, and only those things, which you decide to delegate to him/her. An undertaker is an agent.

Undertakers are not subject to any statutory regulatory framework: anyone can call themselves an undertaker.

If you engage the services of an undertaker you are protected by consumer protection laws. Find out what your rights are [here](#) and [here](#).

### But aren't dead bodies highly infectious?

Dead bodies pose no risk of infection unless the final illness was one of a very few which continue to pose a risk to the living for some time after death, in which case you will be told. Microorganisms involved in the decomposition of a dead body are not pathogenic. More information [here](#).

### Do you have to accept responsibility?

A parent has a duty in common law to bury (ie, bury or cremate) their child if they can afford to and in *R v Stewart* (1840) Chief Justice Denman made this judgement: "We have no doubt ... that the common law casts on someone the duty of carrying to the grave, decently covered, the dead body of any person dying in such a state of indigence as to leave no funds for that purpose ... It would seem that the individual under whose roof a poor person dies is bound to carry the body decently covered to the place of burial."

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A hospital counts as a householder in law, which is why it will arrange and pay for a funeral for any patient who has died and whose body has not been claimed.

A local authority has a duty to arrange burial or cremation who dies in “residential accommodation for persons aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them; and residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.” (National Assistance Act 1948 PIII, S21)

In theory the owner of any premises (eg hotel, private house) where someone dies has a common law duty to bury or cremate at their own expense, but this has never, as far as we know, been tested in law.

If no one will accept responsibility for burying or cremating a dead person, “It shall be the duty of a local authority to cause to be buried or cremated the body of any person who has died or been found dead in their area, in any case where it appears to the authority that not suitable arrangements for the disposal of the body have been or are being made otherwise than by the authority.” (Public Health (Control of Disease) Act 1984 S46). A local authority may recover expenses from the estate, if any, of the person who died: “An authority may recover from the estate of the deceased person or from any person who for the purposes of the National Assistance Act 1948 was liable to maintain the deceased person immediately before his death expenses incurred.”

A local authority funeral, or public health funeral, is a simple and dignified affair to which people are invited. It is often called a paupers’ funeral, especially by the media. This is an alarmist and stigmatising term, and it is wholly misleading. A public health funeral today is nothing like a pauper’s funeral of yesteryear.

The value of the Social Fund Funeral Payment for people on benefits is declining. When introduced in 1988 by a Conservative government it was set at a level where it would cover the entire cost of a simple, dignified funeral. It was downgraded to a ‘substantial contribution’ to funeral expenses by a Labour government in 1988 and those who are eligible for a Funeral Payment now find themselves with a shortfall which many make up for by taking out a loan.

For those who cannot afford the full cost of a simple funeral, does there exist an option of refusing to accept responsibility and, instead, leaving their local authority to do its duty? The answer to this question has to be probably. We are aware of no prosecution for failing to discharge this duty, nor of civil proceedings to recover costs from those held responsible.

However, Brent Council, as of 1 March 2013, is proposing to do just that – see [here](#). Brent council says: “Since funeral expenses are a first charge on an estate, the deceased's bank or building society will normally be willing to release funds directly to the undertaker for payment of the funeral account.” This is correct. “But where this is not possible, the Council should notify the **next of kin** or anyone appointed to act on behalf of the deceased (e.g. **Power of Attorney, deputy or financial representative**) of the debt and refer this immediately to legal services so that consideration can be given to initiating civil debt recovery proceedings either against the estate or an **executor** personally if appropriate.”

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The Good Funeral Guide has challenged this and is awaiting a response from Brent council. The term 'next of kin' is close to meaningless. The responsibilities of anyone acting with Power of Attorney or as a deputy end at death. As for targeting an executor when there is no estate, well, executors cannot be held to their duty and forced to hold the legal status of executor but, on the contrary, may resign their duty at any time. An interpretation of Brent council's intentions is that they are likely to intimidate vulnerable people.

### Does it matter what the person who died wanted?

Until the Human Rights Act 1988, a person's wishes or instructions concerning their funeral were not legally binding on their personal representative/s, who could dispose of their body as they saw fit. The reason for this was that a will is an instrument designed for the sole purpose of disposing of property. There is no property in a dead body, therefore there is no legal requirement to honour funeral wishes.

Funeral wishes are still not, as a matter of course, legally binding but, in certain circumstances, a court of law may order that they are carried out. [Article 8 of the Human Rights Act 1998](#) has been invoked by one judge when pronouncing that funeral wishes *are* binding on personal representatives (Borrows v HM Coroner for Preston [2008]), but dismissed by another judge on the grounds that dead people do not have human rights (Ibuna v Arroyo [2012]). [Article 9 of the Human Rights Act 1988](#) may or may not uphold the funeral wishes of those with strong religious beliefs who expect to be disposed of in accordance with those beliefs. The law has yet to be tested in this matter.

In certain circumstances a judge may remove an executor or administrator who is at odds with either other executors/administrators or members of the family – see [Removing and replacing a personal representative](#) below.

### When family members and executors can't agree

When family members have strong and differing views and beliefs, they may find it difficult to agree about funeral arrangements (among other things). When a dispute cannot be settled amicably, or through arbitration, only a judge in a court of law can settle it.

If you opt for cremation, the [application form](#) will ask you: **Is there any near relative(s) or executor(s) who has not been informed of the proposed cremation?** This is to prevent someone from cremating a body without their knowledge. It also covers a circumstance where an executor refuses to arrange disposal and someone else undertakes to do so instead.

The form will also ask you: **Has any near relative or executor expressed any objection to the proposed cremation?** In such a circumstance, the objector can seek an injunction in a court of law to prevent the cremation.

If the disputed means of disposal is burial, an objector can seek an injunction to stop it.

In the same way, personal representatives may go to court to settle a dispute about the destination of cremated remains, usually called ashes.

## Removing and replacing a personal representative

Under certain circumstances a court may rule to remove and replace a personal representative.

The [Senior Courts Act 1981, section 116](#), states: *'If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.'*

[The Non-Contentious Probate Rules 1987](#) (rule 27.6) similarly allow for an administrator to be passed over. Find out more [here](#).

## Registering the death

Your legal duty is to satisfy the state that:

- cause of death has been reported by a 'qualified person' within 5 days: excellent info [here](#). A 'qualified person' is defined [here](#) at 16 & 17 (a funeral director is not allowed to do this; an executor who is not a relative cannot do this either, unless there is no relative and the executor was present at the death.) The purpose of registration is to ensure that the death has been certified (Medical Certificate of Cause of Death) and recorded (Certificate of Registration of Death); foul play has been ruled out; and accurate health and disease information has been recorded.

So: the death must be certified by a doctor who provided care during the last illness and who saw the person who has died within 14 days of death (28 days in Northern Ireland) or after death.

There is no legal definition of death in the UK

The death must be notified by a qualified person to the [registrar](#) within 5 days and registered within 14 days:

The registrar will issue:

- a [Certificate for Burial and Cremation](#), also known as the **green form**, giving the go-ahead for the person's body to be buried or for you to apply for cremation. A green form will not be issued if a coroner needs to issue an alternative document for a burial or cremation. If the person who died was reported to the coroner, find out what happens next [here](#).
- a [Certificate of Registration of Death](#) (form BD8, often called a death certificate) for use in dealing with the dead person's state pension or other benefits.

If you want to bury the person who has died you can now go ahead – unless the death happened in England or Wales and you wish to take the body for burial or cremation to another country, even Scotland, Northern Ireland, the Isle of Man or the Channel Islands. You'll need to have the permission

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of the coroner. You apply for this by filling in [Form 104 \(Form of Notice to a Coroner of Intention to Remove a Body out of England\)](#). The registrar should be able to give you that form - as mentioned at the bottom of "Part B" on the **green form** which the registrar will give you.

If the death happened abroad, see [here](#).

Failure to register a death is a summary offence punishable by a fine.

### Responsibility for disposing of the body

Having registered a death, a registrar will, unless notified, subsequently make enquiries concerning the disposal of the body. Normally, the burial ground or crematorium will notify the registrar. See 5 and 6 [here](#).

You will not be required to sign an undertaking to dispose of the body; there is just an assumption that you will.

If you fail to dispose of the body in good time you may face prosecution for preventing a lawful and decent burial (cf [Rausing](#)) and/or conspiracy to prevent burial. If the body is decomposing, you can see why; as, also, if you were displaying the body in a manner likely to outrage public decency. But if you wish to care for a dead body at home in a responsible way, what you are doing is legal – as, also, if you wish to preserve the body in some way - see [Alternatives to conventional disposal](#) below.

### Who pays for a funeral?

Reasonable funeral expenses are recoverable from the deceased's estate, on which they have first claim.

The person who makes arrangements with a funeral director makes him or herself responsible for paying the bill. A funeral director will be reluctant to enter into a contract if he or she is aware of family disagreements. Having entered into a contract, a funeral director has every right to answer directly to the contractee and no one else.

Claimants of means-tested benefits and tax credits may be eligible for a contribution to funeral expenses from the Social Fund. See [here](#).

### Burial

You can bury the person who has died in a private or a local authority cemetery, Church of England or other religious burial ground, nature reserve, your own or other land, as long as the owner gives prior permission.

If you want **to bury on your own land** – in your garden, perhaps – you are advised to make sure that the body will not pose a health hazard by polluting water supplies. So: the site should be more than

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30m from any spring or any other body of water. The site should be 10m from any dry ditch or field drain. The site should be at least 50m from any well, borehole or spring. Stay clear of water, gas and electrical services.

Check there is no covenant on the land that could prohibit a burial. Ensure there are no byelaws preventing the burial. Be prepared to take a hit on the value of your property. Be aware that a subsequent owner may apply for an exhumation licence and have the body moved. In England & Wales the landowner must make and protect a land burial register but not in Scotland. Damage to, alteration or destruction of could result in life imprisonment.

If you want to bury someone in your garden in England and Wales, read [this](#). In Scotland, read [this](#). It is the view of John Bradfield that "you may hear of various distances of graves from ditches, ponds, wells and so on. Those distances are used for oil storage tanks so have nothing to do with burials. The Environment Agency has stated that there is no evidence of any problems with burials in any places."

If you want **to bury in a local authority cemetery**, you can pay for burial in what's called an **unpurchased grave**, sometimes known as a common grave or a public grave. The rights to the grave remain with the landowner, who can bury anybody else they want in the grave. For this reason, you cannot erect a headstone or other memorial. Some local authority cemeteries have within them an area set aside for natural burial.

You can buy through a lease **exclusive right of burial** in a grave for a fixed term, often extendable. Note: you buy exclusive right of burial in the plot, you don't own the plot itself; the land remains the property of the owner. The lease of the plot (maximum 100 years, often 30) is recorded in a Deed of Grant. You can say who else may be buried in the grave. You will probably be able to have a headstone put up, but check first.

By offering leases a burial ground enables its graves to be re-used if legislation is brought in to enable it. London burial authorities already enjoy limited rights to reclaim and re-use old graves. If graves throughout the UK are going to be re-used it is likely they will adopt a technique called 'lift-and-deepen', whereby skeletal remains are reburied at the bottom of the 'new' grave.

Some local authorities have an area set aside for **natural burial**. Read [this](#).

There are **private burial grounds**, most of them natural burial grounds, which operate according to their own rules. Check before you buy. Read [this](#).

You can **bury someone at sea**. Sea burial is difficult to arrange and very expensive which is why only around twenty of them happen every year. You can only do it where there is no hazard to shipping, especially fishing vessels. These places are the Needles, off the Isle of Wight and the waters south of Newhaven in Sussex. You need to obtain a licence from the Marine Management Organisation or, if you are in Wales, from the National Assembly. It's free. It will tell you precisely what you have to do. For example the body must be tagged in case it should accidentally be freed from the coffin and washed ashore. The coffin must be weighted and have many holes bored in it to let the water in.

More information [here](#).

### Exhumation

Once a body is buried it cannot be disturbed or dug up and moved without permission.

If the body is in a consecrated section of a cemetery and you want to rebury it in consecrated ground, you need a Bishop's Faculty. Check with your diocese.

If the body is in consecrated ground and you want to re-bury it in unconsecrated ground you need both a [Ministry of Justice licence](#) and Bishops Faculty – useful info [here](#).

If the body is in unconsecrated ground and you want to re-bury it in unconsecrated ground you need a [Ministry of Justice licence](#).

Some argue, based on very clear decisions from the highest judges in the land, that the MoJ cannot legally issue exhumation licences for private land. The MoJ disagrees, pointing to recent court cases over a RC priest and Richard III. One had been buried in the grounds of a former RC school and the other what had become a car park. In neither of those cases were the courts asked to examine earlier judgments. More importantly, they were not asked to decide whether or not exhumation licences can be issued for private land. In both cases, the courts were asked to decide different questions about exhumation licences. [John Bradfield](#) sought assurances from the MoJ that the courts would be told, "the truth, the whole truth and nothing but the truth". As that was not done, he is now alleging that the courts were deliberately misled. In a criminal case, that would result in imprisonment.

A coroner can order an exhumation if s/he wants to examine the body.

Under certain circumstances, such as for the purposes of town planning, bodies can be moved. Section 2 of the Disused Burial Grounds (Amendment) Act 1981 concerns the disposal of human remains. It provides that where there is land contains human remains, no building shall be erected on that land (s.2 (1)), unless:

The building is erected in accordance with Section 3 of the Disused Burial Grounds Act 1884, which provides that it is not lawful to erect any buildings upon disused burial grounds, unless the purpose is to enlarge a church, chapel, meeting house, or another place of worship.

The said remains have been removed and created or otherwise dealt with lawfully. (s.2 (1) (a));

Any tombstones, monuments or memorials relating to the deceased persons have been dealt with lawfully (s.2(1)(b) (Disused Burial Grounds (Amendment) Act 1981).

### Cremation -- ashes

There is no legal definition of ashes. They may be property, they may not be.

What are ashes? Two conflicting definitions have been variously applied by crematoria and those advising the bereaved. They are:

1. Ashes are what remains of a human body minus any metal after the last flame has died

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2. Ashes are *all* that remains of the human body + coffin ash + ash from anything placed in the coffin minus any metal after the last flame has died.

In practice it is impossible to tell coffin ash apart from body ash: they cannot be separated. Furthermore, in the perception of the general public, ashes are *all that remains after cremation*. For these two reasons Lord Bonyon in his Report of the Infant Cremation Commission 2014, recommended that cremation ashes be defined in Scottish law as:

**“all that is left within the cremator at the conclusion of the cremation process and following the extraction of all metal.”**

At the present time it is not known whether the Scottish or English parliaments will act upon this recommendation.

Bones from foetuses as young as 17 weeks have been shown to survive cremation.

### Ashes – what you can do with them

The law governing the disposal of ashes is muddled. This is because, the Cremation Act, 1902, supposed that everyone would want to bury ashes after cremation. It did not envisage people wanting to scatter them.

Inasmuch as ashes do not constitute a health hazard, nor do they outrage public decency, you can do what you like with them. But if you bury them in a local authority-run cemetery and subsequently want to dig them up and move them, you may encounter difficulties.

Local Authorities Cemeteries Order 1977, which applies to local authority cemeteries, defines “burial” as including both “human remains” and “cremated human remains”. All interments are recorded in the burial register and there can only be an exhumation with a faculty or a licence. An exception, it seems, is Northern Ireland, where the recording of an ashes burial is at the discretion of the cemetery manager.

Local Authorities Cemeteries Order 1977 is consistent with the Burial Act 1857: “it shall not be lawful to remove any body, or **the remains of any body**, which may have been interred in any place of burial, without licence.”

What, then, constitutes an interment? In practice, if the buried ashes you want to dig up are in a container, constitute a ‘discernible mass’ and have been recorded in a burial register, you’ll need an Exhumation Licence or a Bishop’s Faculty. But if you’ve buried them in your garden you can dig them up as often as you like.

Whether or not ashes have the status of property remains untested.

More about the legal status of ashes [here](#). More information on scattering ashes [here](#).

### Cremation – the application process

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If you want to cremate the person who has died there's more paperwork than for burial. You must

- apply for cremation by filling in the form you can download [here](#). If you are not paying a funeral director to deal with the crematorium, you'll find useful guidelines [here](#).
- ensure that a second doctor certifies cause of death.

The reason why a second doctor must certify the death is to avoid a situation where a) doubt is later expressed concerning cause of death or b) it is suspected the person has been murdered by their doctor (cf Dr Shipman) or somebody else. If a body is buried it can be dug up ([exhumed](#)) and tested. If it's been cremated it can't.

When you apply for cremation, the doctor who first certified the death *plus* a second doctor must support your application. The guidelines they follow are [here](#). The forms they fill in are, for the first doctor, [here](#) and for the second doctor [here](#).

These forms – the application for cremation plus certification of cause of death by both doctors – are examined by the medical referee at the crematorium. More info [here](#). When the referee is satisfied, they fill in this form [here](#).

If you want to inspect the medical certificates submitted by the two doctors (Forms [Cremation 4](#) and [Cremation 5](#)) before the medical referee authorises the cremation you can do that. Find out your rights [here](#).

For all other information concerning the Cremation Regulations 2008, click [here](#).

### Alternatives to immediate disposal

There are four alternatives to immediate disposal, none of which is available to you unless the dead person made provision when they were alive and you give the go-ahead when that person is dead. If the person who has died opted for one of these, you ought to know all about it. These alternatives are:

- **Donation of the body to medical science.** There is no upper limit on the amount of time a body so donated may be retained but in practice it is normally between 3–5 years.
- **Cryonic preservation:** keeping the body frozen in liquid nitrogen until medical science can find a way of reviving it
- **Plastination:** a process whereby water is drawn out of the body and replaced by polymers which set hard, after which it is posed and displayed in a [Bodyworlds](#) exhibition.
- **Long-term preservation** of the body.

### Alternatives to disposal

The power of the law to require disposal has been successfully challenged. In 1984 a tramp named Diogenes lay dying. Before he passed away he bequeathed his body to the painter Robert Lenkiewicz. Lenkiewicz accepted the gift and, when Diogenes died, he embalmed his body. Before long, Plymouth City Council officials, concerned that Diogenes hadn't been buried or cremated, came looking for his

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body, determined to dispose of it themselves if the artist wouldn't. Lenkiewicz hid Diogenes and refused to tell them where he was. Years passed. Lenkiewicz died and Diogenes was discovered in a drawer. The council returned and more angry wrangling ensued until in 2002 the coroner ruled that, because the body had been embalmed, Lenkiewicz and then his estate had the right to continued possession of it for as long as Diogenes complies with laws governing environmental health and public decency.

If, therefore, you were to preserve a body in, say, your deep freeze, there is arguably no reason why anyone should require you to dispose of it.

The legal maxim that 'the only lawful possessor of a corpse is the earth' has also been challenged. In 1998 the artist Anthony-Noel Kelly exhibited casts of body parts which had been smuggled out to him by lab technician Niel Lyndsay from the Royal College of Surgeons. Both were arrested and charged with stealing human body parts. At the trial, the defence submitted at the close of the prosecution case that (i) parts of bodies were not in law capable of being property and therefore could not be stolen, and (ii) that the specimens were not in the lawful possession of the college at the time they were taken because they had been retained beyond the period of two years before burial stipulated in the Anatomy Act 1832, and so did not belong to it. The trial judge rejected those submissions, ruling that there was an exception to the traditional common law rule that there was no property in a corpse, namely that once a human body or body part had undergone a process of skill by a person authorised to perform it, with the object of preserving it for the purpose of medical or scientific examination, or for the benefit of medical science, it became something quite different from an interred corpse and it thereby acquired a usefulness or value and it was capable of becoming property in the usual way, and could be stolen. The same applies to body parts "if they have acquired different attributes by virtue of the application of skill of dissection and preservation techniques for exhibition and teaching purposes".

Whether or not this means that cremation ashes acquire the status of property is untested.

### Open-air cremation

The right to cremate a body was established in 1884 by the remarkable [William Price](#). When Price was brought to court on a charge of cremating his son in public, the judge ruled that burning a dead body is not a misdemeanour unless it constitutes a public nuisance. The London-based Cremation Society had until that time been deterred from firing up its crematorium at Woking for fear of prosecution. As one authority has written, "The worthy, social elites who founded the Cremation Society played their part in the movement - but it took Price's shamanic balls of steel to actually do the deed." Indeed, establishing the legality of cremation was very much a Welsh achievement (see *Williams v Williams*).

The verdict in the Price case paved the way for the [Cremation Act 1902](#) which forbade anyone to "knowingly carry out or procure or take part in the burning of any human remains" anywhere but a crematorium, a crematorium being defined as "any building fitted with appliances for the purpose of burning human remains," including "everything incidental or ancillary thereto."

Nevertheless, when, in 2005, David Wrigglesworth cremated his mother in his back garden, Judge James Stewart QC said: "By burning her body, you did not, the public may be surprised to hear,

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commit a criminal offence." The grounds for this judgement were the same as in the Price case: no public nuisance was proved.

In 2010 Davinder Gai won the right to be burned by traditional fire on a pyre within a structure with sunlight shining directly on his body.

As a result of the Gai case, the Ministry of Justice hastily directed that "the way is not now open automatically for funeral pyres to be held. Burning bodies anywhere other than in a crematorium notified to the Secretary of State for Justice remains a criminal offence." [\[Source\]](#)

This is disputed. Legal authorities give the opinion that:

- Cremation laws do not prevent one-off open air pyres
- No planning permission is required for a one-off pyre
- If there is uncertainty on the law, and the Crown Prosecution Service decides to take a case to court, the judgment would have to be in favour of the Defendant because any uncertainty about the actual wording of the law and its meaning must tip the balance in their favour.
- There is nothing in law about pyres having to be away from public view.

[John Bradfield](#), (who was involved in the Davinder Gai case), believes that it would be illegal to have a pyre in a place where a member of the public would suddenly and unexpectedly find they are very close to and can see a body burning on a fire, e.g., simply by walking along a public footpath.

If you want to run the risk of burning someone on an open-air pyre, be sure first to submit an application for cremation to a local crematorium. This will enable you to demonstrate that the person who died was not murdered and spare you prosecution on a serious charge.

### Bereavement leave

There is no entitlement to statutory bereavement leave in England, Wales or Scotland.

A bereaved person has no legal right to take time off after a bereavement beyond time off to make funeral arrangements and time off to attend the funeral. More detail [here](#). In the words of [Acas](#): "Employees cannot expect to be granted leave automatically. When leave isn't granted, they may have to use their holiday allowance."

Employment Rights Act 1966 57A:

*An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary ... (c) in consequence of the death of a dependant.*

A dependant is classed as a spouse or civil partner, a child, a parent, a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

## A Good Funeral Guide factsheet

Some workplaces will have an entitlement to bereavement leave written into their contracts of employment. If not, time off, if any, is awarded at the discretion of the employer.

### Various

The body of a baby, child or adult may be moved anywhere within England and Wales without charge or permission and without using a coffin, as long as the work of the coroner is not obstructed. A coroner must, however, consent before the body can be taken out of England and Wales. The belief that fees must be paid on crossing boundaries probably derives from the payment of tolls on old turnpike roads. Bodies do not magically create rights of way over private land.

No cause of action lies in tort in relation to the mutilation of a corpse – see [here](#). Note that this ruling is open to challenge under [Section 8 of the Human Rights Act](#).

Under the [Sexual Offences Act 2003](#), section 60, it is unlawful to sexually penetrate a corpse. More information [here](#).