EXPLANATORY MEMORANDUM TO

THE ARNOS VALE CEMETERY, BRISTOL (BURIAL RECORDS) ORDER 2007

2007 No. 2373

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty

2. Description

2.1. This instrument transfers ownership of the burial records to the Bristol City Council, and enables the Council to obtain records not already in its custody.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1. The Order amends primary legislation (the Bristol Cemetery Act 1837).Following discussions with First Parliamentary Counsel, his Office's clearance of this Order is not required as that Act is deemed to be a local Act by virtue of the Interpretation Act 1850.

4.2. Section 214 of the Local Government Act 1972 provides for prescribed local authorities to be burial authorities with the function of providing and maintaining cemeteries. Bristol City Council is such an authority by virtue of the Avon (Structural Change) Order 1995.

4.3. Under section 121 of the Local Government Act 1972, principal councils may purchase land compulsorily for any purpose for which they are so authorised by statue, but there is no provision for the compulsory purchase or acquisition of any associated records. However, section 254 of the 1972 Act gives the power to make by order incidental, consequential, transitional or supplemental provisions in connection with the Act. Such provisions must be necessary or proper for the general or any particular purpose of the Act, or be in consequence of any provisions of the Act or to ensure their full effect. An order to transfer ownership of the burial records, and to require the supply of such functions in relation to the cemetery it has acquired in circumstances where agreement to acquire the records cannot be achieved.

5. Extent

5.1. This instrument applies to England.

6. European Convention on Human Rights

6.1. Bridget Prentice MP, Parliamentary Under Secretary of State, Ministry of Justice has made the following statement regarding Human Rights:

"In my view the provisions of the Arnos Vale Cemetery, Bristol (Burial Records) Order 2007 are compatible with the Convention rights."

7. Policy Background

7.1. The main policy objective is to ensure that the burial authority has the powers it needs to enable it to discharge its statutory functions effectively. Such functions include maintenance of grave and burial plans, the grant and determination of burial rights, maintenance of a register of burials and disinterments, and making available such registers for public inspection.

7.2. Where a cemetery is acquired by a burial authority, there is no existing statutory power for the burial records relating to that cemetery to be acquired by the burial authority as well. Without such records or ready access to them, the burial authority cannot discharge its functions satisfactorily. Unless the relevant records can be consulted and maintained, there is a risk that the rights and interests of the burial and memorial rights holders may be compromised.

7.3. The Order therefore enables the Council to take ownership of the records relating to the cemetery it has acquired, and to obtain such records where they are not already in its custody. The Council and the Company have attempted unsuccessfully to reach a negotiated settlement for the transfer of the records to the Council, which are not already in the latter's custody.

8. Impact

8.1. No Regulatory Impact Assessment has been prepared since the impact is limited to a single company, the Bristol General Cemetery Company, which no longer has a cemetery to operate.

8.2. The effect of the Order is to divest the Bristol General Cemetery Company of the legal and beneficial ownership of the records relating to burials in the Arnos Vale cemetery, Bristol.

9. Contact

9.1. Any enquiries about the contents of this memorandum should be addressed to: Robert Clifford, Coroners Unit, Ministry of Justice, Email robert.clifford@justice.gsi.gov.uk, Tel: 0207 210 0042.