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Cillíní graveyards and burial in unconsecrated ground

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This paper provides a brief overview of *cillíní* graveyards, in which unbaptised babies, suicide victims and others have traditionally been buried throughout Ireland. It provides a brief summary of the practice, sets out the limited degree of legislation which exists to regulate cemeteries in Northern Ireland, describes the Local Authorities' Cemeteries Order in England, and refers to a review of burials legislation carried out in Scotland.

Key Points

- *Cillín* (or plural, *cillíní*) is an Irish term used to refer to a burial ground in which unbaptized children, and some adults, have traditionally been interred. Until the 1960s, such burials were considered unsuitable for inclusion within consecrated ground by the Roman Catholic Church in Ireland.
- It is likely that there are several hundred such burial grounds in Northern Ireland, and several thousand throughout Ireland.
- During the 1960s, the Code of Canon Law was changed so that unbaptized children could potentially be buried on consecrated ground.
- No detailed legislation, regulations or guidance exist covering human burials in Northern Ireland. The Cemeteries Clauses Act 1847 is in force in England, Scotland, Wales and Northern Ireland, but detailed provisions relate largely to the Church of England. For non-Church of England sites, the legislation makes it clear that it is currently for those churches to organise their own cemeteries as they see fit.
- No specific planning policy statement exists on cemeteries. The Northern Ireland Environment Agency has published guidance addressing the specific issue of the relationship between cemeteries and sources of groundwater, but guidance does not state how cemeteries should be protected or marked.
- If a *cillín* is an historic site, it may fall within the remit of *PPS6: Planning, Archaeology and the Built Heritage*. However, such sites would have to be recognised as being of some antiquity to fall within the remit of PPS6, and burials which took place in the 1950s and 1960s may not be suitable for consideration under that particular guidance.
- In England, the Local Authorities' Cemeteries Order 1977 indicates that while religious practice at the graveside is left to the particular denomination concerned, the situation and protection of graves is regarded as a civil matter and is set out in more detail in legislation.
- In Scotland, a Burial and Cremation Review Group was set up in 2005. This group found that there was no single statute or coherent body of legislation encompassing burial law. It recommended that all extant legislation should be repealed and consolidated into a single act.
- Should there be greater protection of *cillíní* from the pressures of development and reuse of land? Indeed, is there a need to recognise *cillíní* as a distinct form of land use within the planning process, and should records of the location of *cillíní* be drawn together and maintained as a coherent archive?

Executive Summary

Cillín (or plural, *cillíní*) is an Irish term used to refer to a burial ground in which unbaptized children, and some adults, have traditionally been interred¹. Until the 1960s, such burials were considered unsuitable for inclusion within consecrated ground by the Roman Catholic Church in Ireland.

The practice of *cillíní* burial, while often described as a ‘folk tradition’, is thought to derive from the Christian belief that those who are not baptised have not been cleansed of ‘Original Sin’. It is likely that there are several hundred such burial grounds in Northern Ireland, and several thousand throughout Ireland.

During the 1960s, the series of reforms implemented by the Second Vatican Council included a change to the 1917 Code of Canon Law. Regarding those to whom an ordinary church funeral and burial on consecrated ground are to be allowed, the revised code states, ‘*Children whose parents had intended to have them baptised but who died before baptism, may be allowed Church funeral rites by the local Ordinary*’.

No detailed legislation, regulations or guidance exist covering human burials in Northern Ireland. The Cemeteries Clauses Act 1847 is in force in England, Scotland, Wales and Northern Ireland, but detailed provisions relate largely to the Church of England. For non-Church of England sites, the legislation makes it clear that it is currently for those churches to organise and maintain their own cemeteries in the way in which they see fit. Furthermore, Section 49 makes it clear that the church does not have to bury anyone within its consecrated ground, ‘or to place any monument, gravestone, tablet, or monumental inscription’, should it choose not to. Under current legislation, it would seem that no church can be obligated to retrospectively recognise a burial.

No specific planning policy statement exists on cemeteries. The Northern Ireland Environment Agency (NIEA) has published guidance notes on *Cemeteries, Burials and the Water Environment*, but these address the specific issue of the physical relationship between cemeteries and sources of groundwater. Current guidance does not state in any further detail how cemeteries should be laid out, protected, or marked.

If a *cillín* is an historic site, it may fall within the remit of *PPS6: Planning, Archaeology and the Built Heritage*². However, such sites will presumably have to be recognised as being of some antiquity to fall within the remit of PPS6. For example, burials which took place in the 1950s and 1960s may not be suitable for consideration under that particular guidance. Furthermore, *cillíní* sites will have to be recognised and identified in order to be considered under PPS6. If they are not present within the Sites and

¹ Murphy, E. 2011. ‘Children’s burial grounds in Ireland (*Cillíní*) and parental emotions towards infant death’, *International Journal of Historical Archaeology*, 15: pp409–428; other terms used include *calldragh*, *calluragh*, *cealltrach*, *ceallúnach*, *ceallúrach*, and *lísín*.

² Department of the Environment. 1999. *PPS6: Planning, Archaeology and the Built Heritage*: http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pps06-archaeology-built-heritage.pdf

Monuments Record, and no obvious, visible features exist, the very unmarked and marginal nature of *cillíní* may conceivably result in their remaining unrecognised and, thus, being destroyed, particularly where there is no longer any living memory of their existence.

In terms of legislative provision for burials elsewhere, in England, the Local Authorities' Cemeteries Order 1977 brings together a range of different provisions for the practice of burial. While religious practice at the graveside is left to the particular denomination concerned, the situation, circumstances and protection of graves is regarded as a civil matter and is set out in more detail in legislation. For example, it obligates any burial authority to register all burials on its land, and to maintain a plan showing and allocating distinctive numbers to all of the graves within its care.

In Scotland, a Burial and Cremation Review Group was set up by the Scottish Health Minister in 2005 to review and make recommendations on how legislation could be changed to better serve the needs of the public in terms of burial and cremation rights and practices. This group commented that there was no single statute or coherent body of legislation encompassing burial law. It was highlighted that law had evolved in a piecemeal fashion with no broad framework for the provision of burial facilities, determining service standards, or regulating burial practice or procedure.

The Review Group presented a report, containing 33 recommendations, to the Scottish Government at the end of 2007. Among these recommendations, it was suggested that all extant legislation should be repealed and consolidated into a single act, in order to make responsibilities for the circumstances of burial much clearer. Indeed, it was recommended that, 'regardless of ownership, all cemeteries, burial grounds of whatever type, and crematoria should be subject to the proposed new legislation'. After a period of 75 years, burial grounds should be available for re-use, provided that exhumation is conducted in accordance with a 'new streamlined administrative procedure'. The Scottish Government considered the report and decided to consult on all of the Review Group's recommendations. However, no legislation was brought forward.

The information provided in this paper highlights a number of potential issues. For example, should there be greater protection of *cillíní* from the pressures of development and reuse of land? While burials on unconsecrated areas of church land could potentially be retrospectively blessed (and protected from development) by the church, is a new legislative and planning framework required to identify and protect those on non-church land? Indeed, is there a need to recognise *cillíní* as a distinct form of land use within the planning process? What records of the location of *cillíní* exist, and should these be drawn together and maintained as a coherent archive, for consultation by both relatives and planners?

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1 Introduction: Definition of a *cillín* burial ground

1.1 Overview

Cillín (or plural, *cillíní*) is an Irish term used to refer to a burial ground in which unbaptized children, and some adults, have traditionally been interred³. Until the 1960s, such burials were considered unsuitable for inclusion within consecrated ground by the Roman Catholic Church in Ireland⁴. The practice of burial on unconsecrated ground was also sometimes applied to those with learning disabilities, strangers, unrepentant criminals, those who had been shipwrecked, and people who had committed suicide⁵.

The places used for such burials include the margins of established cemeteries; deserted churches and graveyards; archaeological sites including megalithic tombs, earthworks and castles; natural landmarks and boundary ditches; sea or lake shores; islands; and cross-roads⁶. While the practice is thought to have originated in the seventeenth century, recent research has indicated both that it may have been in existence as early as the seventh century, but also that it is very much a twentieth century phenomenon.

It has been estimated that there are at least 97 *cillíní* for County Antrim alone⁷, so it seems likely that there are several hundred such burial grounds in Northern Ireland, and potentially thousands throughout Ireland.

Some have suggested that there is a distinction between the use of marginal areas of large, urban cemeteries – such as Milltown Cemetery – and the smaller, more traditional *cillíní* used by rural communities⁸. There are instances of the latter sometimes having been well cared for with careful grave demarcation and maintenance. Some *cillíní* have more recently been blessed by the Catholic Church⁹.

³ Murphy, E. 2011. 'Children's burial grounds in Ireland (*Cillíní*) and parental emotions towards infant death', *International Journal of Historical Archaeology*, 15: pp409–428; other terms used include *caldragh*, *calluragh*, *cealltrach*, *ceallúnach*, *ceallúrach*, and *lísín*.

⁴ This practice is not unique to Ireland; it also existed in medieval England, and until more recent times in Scotland. It seems that the Church of Ireland has traditionally taken a less decided stance on unbaptized infants, usually incorporating them into normal cemeteries: Church of Ireland. 1960. *Book of Common Prayer and Administration of the Sacraments and other rites and ceremonies of the Church according to the Use of the Church of Ireland*. Association for Promoting Christian Knowledge: p280.

⁵ Hamlin, A & Foley, C. 1983. 'A women's graveyard in Carrickmore, County Tyrone, and the separate burial of women', *Ulster Journal of Archaeology* 46: pp41–46, cited in Murphy 2011 (as above).

⁶ Ó Súilleabháin, S. 1939. 'Adhlacadh leanbhí', *Journal of the Royal Society of Antiquaries of Ireland* 69: pp143–151, cited in Murphy 2011 (as above).

⁷ Regan, G. 2012. 'Archaeologist Uncovering More Secrets of Ireland's Cillíní in Belfast, Part 2 of 3': http://thewildgeesegenealogy.blogspot.co.uk/2012/01/archaeologist-uncovering-more-secrets_13.html Accessed 29.5.13.

⁸ Dixon, C. 15.8.12. 'Cradle to the grave', *Irish Examiner*: <http://nia1.me/1hn>

⁹ Gannon, P. 1999. 'Sméaróid', in P.Gannon (ed) *The Way It Was*. Renvyle: p147; Ó Muircheartaigh, M. 2004. *From Dún Síon to Croke Park: The Autobiography* –. Penguin Ireland: p2; also Dixon 2012 (as above).

1.2 Theological position

The practice of *cillíní* burial, while often described as a ‘folk tradition’, is thought to derive from the Christian belief that those who are not baptised have not been cleansed of ‘Original Sin’. St Augustine of Hippo stated in the fourth century that the souls of unbaptized children were condemned to hell because of their Original Sin¹⁰.

The medieval concept of ‘Limbo’ introduced a compromise, albeit one which may often have been painful for the relatives concerned. The state of Limbo has been described as ‘a kind of in-between state, neither the happiness of heaven nor the torments of hell’¹¹. The influential fourteenth century theologian St Thomas Aquinas taught that, due to the existence of Limbo, unbaptized infants would not suffer after death. Canon Law 1239 stated that infants who die without baptism were not to be buried in a blessed cemetery¹².

During the 1960s, the series of reforms implemented by the Second Vatican Council included a change to the 1917 Code of Canon Law. Regarding those to whom an ordinary church funeral and burial on consecrated ground are to be allowed, the revised code states¹³,

Children whose parents had intended to have them baptised but who died before baptism, may be allowed Church funeral rites by the local Ordinary...

Church funeral rites are to be denied to the following, unless they gave some signs of repentance before death:

1. *Notorious apostates, heretics and schismatics;*
2. *Those who for anti-christian motives chose that their bodies be cremated;*
3. *Other manifest sinners to whom a Church funeral could not be granted without public scandal to the faithful.*

If any doubt occurs, the local Ordinary is to be consulted and his judgement followed.

By 1995, the issue of Limbo is not mentioned in the Catholic Catechism at all. It is stated instead that, ‘With respect to children who have died without Baptism, the liturgy of the Church invites us to trust in God’s mercy and to pray for their salvation’¹⁴.

¹⁰ Murphy 2011 (as above): p410.

¹¹ Walsh, M. 2005. *Roman Catholicism: The Basics*. Routledge: p109; cited in Murphy 2011 (as above).

¹² Woywood, S. 1957. *A Practical Commentary on the Code of Canon Law*. New York; cited in Murphy 2011 (as above).

¹³ Canon Law Society of Great Britain and Ireland. 1983. *The Code of Canon Law*. In English translation. The Canon Law Society Trust.

¹⁴ Catholic Church. 1995. *Catechism of the Catholic Church: Pocket Edition*. Veritas: p289; cited in Murphy 2011 (as above).

Further confirmation of this position came in 2007, with a publication by the International Theological Commission. This describes a position where there is no division between baptized and unbaptized infants¹⁵:

When the question of infants who die without baptism was first taken up in the history of Christian thought, it is possible that the doctrinal nature of the question or its implications were not fully understood...The conclusion of this study is that there are theological and liturgical reasons to hope that infants who die without baptism may be saved and brought into eternal happiness, even if there is not an explicit teaching on this question found in Revelation.

2 Cemetery legislation, regulations and guidance in Northern Ireland

No detailed legislation, regulations or guidance exist covering human burials in Northern Ireland.

2.1 Legislation

The Cemeteries Clauses Act 1847 is in force in England, Scotland, Wales and Northern Ireland¹⁶, but detailed provisions relate largely to the Church of England.

Section 39 states that for the 'burial of persons not members of the Church of England', it is for 'the company' to decide how those burials should be carried out ('the company' here refers to those authorised to construct the cemetery, ie the Church or other authority). **In other words, it is currently for other churches to organise and maintain their own cemeteries in the way in which they see fit.** Furthermore, Section 49 makes it clear that the church does not have to bury anyone within its consecrated ground, 'or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery', should it choose not to. Under current legislation, it would seem that no church can be obligated to retrospectively recognise a burial.

2.2 Cemetery guidance notes

The Northern Ireland Environment Agency (NIEA) has published guidance notes on *Cemeteries, Burials and the Water Environment*¹⁷. These notes, as the title suggests, address the specific issue of the physical relationship between cemeteries and sources of groundwater, in order to ensure that cemeteries comply with the Water (Northern

¹⁵ International Theological Commission. 2007. *The Hope of Salvation for Infants Who Die Without Being Baptised*. <http://nia1.me/1hw>

¹⁶ *Cemeteries Clauses Act 1847*: <http://www.legislation.gov.uk/ukpga/Vict/10-11/65>

¹⁷ Northern Ireland Environment Agency. 1992. *Cemeteries, Burials and the Water Environment*:

Ireland) Order 1999 and the Groundwater Regulations (Northern Ireland) 2009. The notes include guidance on the approximate location of new grave cuts. For example, any new grave cuts must be at least 10m from the nearest field drain, 50m from any watercourse, and 250m from any spring, well or borehole used for drinking water.

These guidance notes do not state in any further detail how cemeteries should be laid out, protected, or marked.

In August 2011, the Water Management Unit within the Department of the Environment published *A Guidance Note for Planning Officers and Applicants Seeking Planning Permission for New Cemeteries and Extensions to Existing Cemeteries*. This note is intended to inform planning officers in making a decision regarding the suitability of new cemeteries and extensions to existing cemeteries, particularly with regard to potential pollution to ground water supplies¹⁸.

2.3 Planning guidance

No planning guidance exists in Northern Ireland which is specific to cemeteries. However, it would seem that some attempts at detailed provision have been made in the Belfast Metropolitan Area Plan 2015. Within this, 'Policy PU1 Cemetery Provision' states that planning permission will be granted where there 'is adequate infrastructure in place and no detrimental impact' on factors such as the visual amenity of those living in close proximity to the site, the landscape character, or built heritage interests¹⁹. However, such considerations are intended to be applied in the future, and will presumably not be extended retrospectively to existing cemeteries, or any other land used previously for burials.

PPS 8: Open Space, Sport and Outdoor Recreation defines cemeteries and churchyards as having a public value as open spaces, but is not specific about how they should be used, protected or facilitated.

If a *cillín* is an historic site, it may fall within the remit of *PPS6: Planning, Archaeology and the Built Heritage*²⁰. This guidance advises that one of the factors which will qualify a site as being of archaeological importance will be if it has an 'association with a person or event in local tradition'. Such sites may be of particular note within the context of 'Local Landscape Policy Areas', which 'consist of those features and areas within and adjoining settlements considered to be of greatest amenity value, landscape quality or local significance and therefore worthy of protection from undesirable or damaging development'.

¹⁸ Department of the Environment. 2011. *A Guidance Note for Planning Officers and Applicants Seeking Planning Permission for New Cemeteries and Extensions to Existing Cemeteries*: http://www.doeni.gov.uk/niea/planning_guidance_note_cemeteries.pdf

¹⁹ Planning Service of Northern Ireland. 2004. *Belfast Metropolitan Area Plan 2015. Strategic Plan Framework: Public Services and Utilities Other*: http://www.planningni.gov.uk/index/policy/dev_plans/devplans_az/bmap_2015.htm

²⁰ Department of the Environment. 1999. *PPS6: Planning, Archaeology and the Built Heritage*: http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pps06-archaeology-built-heritage.pdf

It is recognised within PPS6 that archaeological monuments can include ‘sites for ritual, worship and burial’, and that ‘the siting of such places was important to the people who built them and was closely related to their landscape’. It is stated that the Department (ie DoE) will ‘have regard to the desirability of preserving such remains and their settings’. However, if it is deemed permissible that development proceeds, PPS6 advises that an area of potential archaeological importance can be assessed and evaluated, and then mitigation (ie recording, excavation and removal) will then be carried out. Therefore, there is no guarantee under PPS6 that a *cillín* site will remain undisturbed if a planning application is submitted which includes its redevelopment.

Some burial grounds of a historic nature may be listed in the Northern Ireland Sites and Monuments Record. However, as recent research has indicated, it is likely that many *cillíní* sites are not yet recorded and therefore are not currently part of the NISMR.

PPS6 may not be suitable as a method for protecting *cillíní* sites during any potential development process for two key reasons. Firstly, such sites will presumably have to be recognised as being of some antiquity to fall within the remit of PPS6. For example, burials which took place in the 1950s and 1960s may not be suitable for consideration under that particular guidance. Secondly, *cillíní* sites will have to be recognised and identified in order to be considered under PPS6. If they are not present within the Sites and Monuments Record, and no obvious, visible features exist, the very unmarked and marginal nature of *cillíní* may conceivably result in their remaining unrecognised and, thus, being destroyed, particularly where there is no longer any living memory of their existence.

3 Legislative provision for burials in other jurisdictions

3.1 England

In England, the Local Authorities' Cemeteries Order 1977²¹ brings together a range of different provisions for the practice of burial. While religious practice at the graveside is left to the particular denomination concerned, the situation, circumstances and protection of graves is regarded as a civil matter and is set out in legislation.

For example, it obligates any burial authority to register all burials on its land, and to maintain a plan showing and allocating distinctive numbers to all of the graves within its care. It is also stated that the burial authority must keep a cemetery ‘in good order and repair, together with all buildings, walls and fences thereon and other buildings provided for use therewith’.

The legislation states that a burial authority may ‘apply to the bishop of the diocese in which a cemetery is situated for the consecration of any part thereof’, and also can ‘set apart for the use of a particular denomination or religious body any part of a cemetery

²¹ Local Authorities' Cemeteries Order 1977: <http://www.legislation.gov.uk/uksi/1977/204/article/23/made>

which has not been consecrated'. However, the Order also states that 'a burial authority may at the request of a particular denomination or religious body prohibit the interring or scattering of cremated human remains in or over a part of the cemetery set apart for their use'.

With regard to stillborn babies, in Section 11 4(b) it is stated that,

Where the burial is that of the body of a still-born child or of the cremated remains thereof the words "Still-born child of" with the names of both or one of the parents shall be written in the column headed "Names in full", the column headed "Age" shall be left blank and the address of the parents or parent shall be entered in the column headed "Address".

Under the Order, any relative of the deceased may be granted the right to 'place and maintain, or to put any additional inscription on, a tombstone or other memorial on the grave space, grave or vault'. This right can be held for up to 100 years, and no grave can be opened for the purposes of burying another without the consent of relatives. After that period, memorials can be removed. A detailed record of disinterment must be kept, and that record made accessible to anyone for inspection free-of-charge.

3.2 Scotland

In Scotland, a Burial and Cremation Review Group was set up by the Scottish Health Minister in 2005 to review and make recommendations on how legislation could be changed to better serve the needs of the public in terms of burial and cremation rights and practices.

During consideration, the Review Group commented that there was no single statute or coherent body of legislation encompassing burial law. It was highlighted that law had evolved in a piecemeal fashion with no broad framework for the provision of burial facilities, determining service standards, or regulating burial practice or procedure.

With this in mind it was identified that:

- There was nothing within legislation covering how burials of people from different faiths should be arranged, nor who should maintain burial grounds dedicated to particular faiths.
- There was no provision within legislation permitting the disposal of non-viable foetal remains meaning that authorities providing such a service may be in breach of the law.²²

On the back of this, the Review Group recommended that there should be a general power to set apart a portion of a cemetery for the use of members of a particular faith or denomination. In relation to disposal of foetal remains, the Review Group

²² B&C Review Group. May 2005. *Review of Burial and Cremation Legislation*: <http://www.scotland.gov.uk/Resource/Doc/924/0013079.doc>

recommended that a legislative framework was required to allow burial and cremation authorities to provide such a service. In this respect, the Review Group referred to the situation in England and Wales where the Home Office has recognised that burial and cremation authorities carry out sensitive disposal for foetal remains and as such indicated that no action would be taken against these authorities.

The Review Group presented its report, which contained 33 recommendations, to the Scottish Government at the end of 2007. It was published on the Scottish Government website in April 2008 and can be viewed at

<http://www.scotland.gov.uk/Publications/2008/03/25113621/0>

Among these recommendations, it was suggested that all extant legislation should be repealed and consolidated into a single act, in order to make responsibilities for the circumstances of burial much clearer. Indeed, it was recommended that, 'regardless of ownership, all cemeteries, burial grounds of whatever type, and crematoria should be subject to the proposed new legislation'. After a period of 75 years, burial grounds should be available for re-use, provided that exhumation is conducted in accordance with a 'new streamlined administrative procedure'.

It was stated in the recommendations that gravestones, monuments and memorials should, wherever possible, be retained at or close to their original site. It was suggested that general provisions for cemetery management should be introduced, similar to the English Local Authority Cemeteries Order 1977.

However, while the issues were clearly explored, the Review Group concluded that there was no need to underpin the issue of the disposal of foetal remains by statute, due to guidance that already exists. It was recommended that the Scottish Government should update the 1992 NHS circular on disposal of foetal remains.

The Scottish Government considered the report and decided to consult on all of the Review Group's recommendations, and as a consequence the 2010 consultation did not include any legislative proposals in relation to the issues previously discussed, nor did it address the issue of provisions for unmarked graves or burial on unconsecrated ground.²³

²³ Consultation on Death Certification, Burial and Cremation. 2010: <http://www.scotland.gov.uk/Publications/2010/01/26131024/13>

4 Further considerations

The information provided in this paper highlights a number of potential issues. Among these are the following:

- Should there be greater protection of *cillíní* from the pressures of development and reuse of land?
- While burials on unconsecrated areas of church land could potentially be retrospectively blessed (and protected from development) by the church, is a new legislative and planning framework required to identify and protect those on non-church land?
- Should there be a standardised approach to the protection and regulation of unconsecrated burial grounds?
- Is there a need to recognise *cillíní* as a distinct form of land use within the planning process?
- What records of the location of *cillíní* exist, and should these be drawn together and maintained as a coherent archive, for consultation by both relatives and planners?
- If the church does *not* recognise *cillíní* on its land as formal burial grounds, and provide the same protection as consecrated ground, is legislation required in order to harmonise the treatment of burials in *cillíní* with formal burial grounds?
- On a broader issue, while there are some planning guidelines regarding the location of cemeteries in relation to water and other infrastructure, would it be appropriate to have a specific planning policy for cemeteries?