



Statement on burial law and archaeology

1. In the light of a further review of the burial legislation in relation to the archaeological excavation of human remains, and as an immediate first stage of reform, the Ministry of Justice proposes to proceed on the following basis with immediate effect:
 - Exhumation licence applications under the Burial Act 1857 will be considered wherever human remains are buried in sites to which the Disused Burial Grounds (Amendment) Act 1981 or other burial ground legislation¹ does not apply. **This will reverse the recent change of practice and is expected to apply to the majority of archaeological excavations.** When licenses are issued, a time limit, normally of up to two years, will be set for re-interment of human remains; it will be possible to apply for an extension when circumstances justify this.
 - The 1981 Act and other burial ground legislation will be regarded as applying only to extant burial grounds, in use or disused, which have not evidently been put to some other use. This legislation will not be regarded as applying to burial grounds which have been previously cleared of human remains, which have been built over or otherwise converted to commercial or residential use, or which have been put to agricultural use or have become uncultivated countryside. **This approach will mean that relatively few burial sites of interest to archaeologists are likely to be subject to this legislation with the additional requirements it imposes.** For sites to which the 1981 Act and similar Acts apply, directions will set a time limit, normally of up to two years, for re-interment of human remains; it will be possible to apply for an extension where circumstances justify this.
2. To assist archaeologists in making applications for exhumation licences or directions, a new form designed to collect the minimum information required is now available upon request.
3. During the course of the year, as a second stage of reform, consideration will be given to amending existing burial ground legislation so that it can be more responsive to 21st century needs. The aim will be in particular to allow otherwise lawful and legitimate activities, such as the archaeological examination of human remains, to proceed without the constraints of legislation not designed to deal with such issues, and with retrospective effect as far as possible. In taking this forward, the Ministry of Justice aims to continue to work closely with the Department for Culture Media and Sport, English Heritage, and relevant professional bodies.
4. Any archaeologist wishing to seek assistance in any particular case is invited to contact the Ministry of Justice on 020 3334 6388. Answers to frequently asked questions appear in the annex attached.

Coroners Unit, Ministry of Justice, April 2008

¹ eg Town & Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, Channel Tunnel Rail Link Act 1996, etc.

Annex: frequently asked questions

Q1. Do I now need to apply for a licence where I have previously been told that I did not need one?

Not if the remains have already been removed from the ground. If remains have not yet been disinterred, an application may now be made.

Q2. Does an extant burial ground have to be recognisable as such?

Not necessarily; but a site which has clearly passed into other use is not an extant burial ground. In cases of doubt, contact the Ministry of Justice.

Q3. Will the Ministry of Justice continue to issue exhumation licences for trial pits in advance of site development work?

Yes (subject to the usual considerations).

Q4. Will the Ministry of Justice always require a firm date and details of arrangements for the re-interment of remains?

No. If no firm arrangements are proposed in the application, a time limit, normally of up to two years, will be specified in a licence or directions. For large and complex archaeological sites, a longer time limit may be specified if circumstances justify this; such cases should be discussed with Ministry of Justice.

Q5. Will it be possible to extend a time limit for re-interment if research has not been completed?

Yes, if circumstances make this reasonable. Apply to the Ministry of Justice, if possible before the expiry date on the licence (or directions).

Q6. Once study has been completed, will it be possible for remains to be deposited in a museum or church so that they are accessible for future research rather than re-interred?

This will be considered as part of the second stage of reform. It is intended that this should be possible, subject to appropriate conditions and safeguards, if acceptable and justified by circumstances.

Q7. Will remains from sites excavated under the DBG(A)A 1981 have to be re-interred within two months?

No. The Ministry of Justice is satisfied that the two month time limit specified in the Disused Burial Grounds (Amendment) Act 1981 relates to the time limit for reporting re-interment after re-interment has taken place. It does not impose a time limit between exhumation and re-interment, for which a time limit will be specified as in Q4.