



Exhuming Human Remains: Frequently Asked Questions

Exhumation

How do I apply for a licence to exhume human remains?

An application form for the exhumation of human remains is available upon request. Part A of the form can be completed by anyone but it should be signed by the next of kin and those of equal kinship (i.e. if a child is the next of kin, then all the children would need to sign the form). We will also require the consent of the grave owner. Part B of the form is to be completed by the burial authority.

Where all required consents are present, we aim to process cases within 20 working days but applications will be dealt with immediately if we are told that there is a need for urgency (eg a funeral is dependant on the exhumation).

What if I cannot obtain the consent I need?

If the person whose consent you need is not immediately available, you should explain the circumstances in a covering letter. Without the consent, however, a decision on the application is likely to be delayed.

If you do not know the identity or the whereabouts of any person whose consent is necessary we would normally expect you to show that appropriate enquiries had been undertaken. This could be, for example, by advertising in a newspaper circulated within the appropriate area (eg the person's last known whereabouts).

What is the cost of a licence?

There is no fee for an exhumation licence. There are likely to be fees charged by the burial authority and whoever undertakes the exhumation

Do I need a licence to remove foetal remains?

The removal of a buried foetus under 24 weeks' gestation does not require an exhumation licence. Arrangements may therefore be agreed with the land owner and the holder of the burial rights to the grave. A licence is required for the exhumation of a buried foetus over 24 weeks' gestation.

International

What do I need to do if taking remains abroad?

You must give advance notice to the coroner in whose district the remains are lying that you intend to remove the body from this country (including where remains are to be moved to Scotland). The coroner will then advise whether he or she intends to make any enquiries into the death before they can be taken out of the country.

If you are proposing to exhume cremated remains and take them abroad, we do not require any additional information for the purpose of an exhumation licence,

If the remains are not cremated, we will also require written confirmation

- from the cemetery or crematorium abroad that they are willing to accept the remains for burial or cremation, as appropriate; and
- from the airline confirming that they are willing to transport the remains, with details of any special requirements (for example, how the remains are to be contained).

In all cases, we recommend that you check with the authorities of the country of destination whether they have any particular requirements.

What if I want to bring remains into the UK?

If a death occurs abroad, the death should be registered according to the local regulations and a death certificate obtained (in some cases, the death may also be registered with the local British Embassy or High Commission). To bring the remains back to England and Wales you may need authorisation from the relevant authorities of the country where the death occurred.

For cremated remains, you do not need permission under burial or cremation legislation to bring them into this country. However, we recommend keeping the cremation documentation and the death certificate readily available on return to the UK, as evidence of the contents of the container.

Further information can be found on the Foreign & Commonwealth website at:

www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/death-abroad

Exhumation of human remains for archaeological purposes

What authority is needed to exhume human remains for archaeological purposes?

An exhumation licence is required and should be obtained beforehand from the Minister of Justice. There are two exceptions to this:

- (a) when excavation is to be from ground consecrated according to the rites of the Church of England and the remains are to be re-interred in consecrated ground (in which case a faculty only is required); or
- (b) where the site is subject to burial ground legislation (in which case exhumation should be undertaken in accordance with the requirements of the legislation and any directions issued by the Ministry of Justice).

Accidental disturbance of human remains

If remains are found unexpectedly on a site not known to be a burial ground, they should not be removed. In such circumstances, consideration should be given to asking either the local environmental health officer and/or an archaeologist/local historian to assess the remains. If it is concluded that they are modern it may be necessary to involve the police. If the police have no interest and it is necessary to exhume the remains, an application for a licence should be made to the Ministry of Justice immediately. Licences cannot be issued in respect of remains that have already been excavated.

Can remains excavated for archaeological purposes be retained?

Licences and directions will normally require excavated remains to be reburied, but may allow archaeologists up to two years to do so. Applications to extend this time limit may be approved where justified.

Development of former burial grounds

Is it possible to build on a former extant burial ground?

Yes, subject to obtaining any necessary planning permission and to compliance with the burial legislation which applies to the land in question (normally the Disused Burial Grounds (Amendment) Act 1981)

In broad terms, all the human remains on the site will need to be removed unless they will not be disturbed by the building work and an order to this effect is obtained from the Ministry of Justice. It will be necessary to advertise the proposals in advance and allow relatives of those buried there to have an opportunity to make their own arrangements for re-burial if they wish. The costs of removing the remains are to be met by the developer.

It is also necessary to decide what to do with any memorials. Records of the disposal of human remains and memorials will need to be deposited with the General Register Office and the local authority.

Is it possible to object to the development of a burial ground?

Under the Disused Burial Grounds (Amendment) Act 1981, relatives and personal representatives can object to and prevent the development of a burial ground if the remains are less than 50 years old. In other cases, any objections would have to be made and considered within the planning process.

Removal of memorials

Unless there is some intension to build on the burial ground and/or remove/disturb human remains, there is provision under burial legislation to prohibit the removal of the memorials and landscaping the burial area.

However, the general position regarding memorials is that they remain the property of those who originally purchased them and their removal or destruction without the consent or agreement of the owners (or their descendants) may give grounds for criminal or civil proceedings.

Developers or land owners may wish to contemplate making their intentions known to families of the deceased either through direct contact (if details are known) or via a notice in a local newspaper. This would allow relatives to make their own arrangements regarding the memorials. Such notices would not, however, necessarily protect developers or landowners from proceedings and it may be helpful to obtain independent legal advice in advance.

Consideration should also be given to making a photographic record of the headstones and a burial plan for future reference.

If there are any war graves at the site, developers/land owners must contact the Commonwealth War Graves Commission (CWGC) before contemplating any removal of memorials. The CWGC can be contacted on 01628 507142.

Burial

Can I bury human remains in my garden?

There is nothing in burial law to prevent the owners of private land from burying cremated or non-cremated remains on their own land (eg in gardens, fields or other appropriate spaces). However, depending upon the circumstances, planning permission may be necessary and there may be public health implications. For these reasons, the local authority planning officer and the local authority environmental health officer should be consulted beforehand.

Anyone contemplating such a burial is strongly recommended to consider the longer term implications, bearing in mind that an exhumation licence will still be needed if the remains need to be removed in due course (eg if the land is sold). In any event, a record of any burial on private land should be kept, preferably with the deeds of the property. The presence of the remains should also be declared when the property is sold.