

GUIDANCE NOTE ON APPLICATIONS FOR THE REMOVAL OF HUMAN REMAINS

The current law relating to the removal of individual buried human remains is contained in **Section 25 of the Burial Act 1857** which states that:-

“Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, 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 under the hand of one of Her Majesty's Principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence.”

This means that any person who wishes to exhume buried remains has to apply to the Ministry of Justice (MoJ) for a licence to permit it.

The MoJ will normally grant exhumation licences to the next of kin, subject to any other necessary consent, where the application is made for private family reasons.

The application form

We require details of the applicant, the deceased and place of burial. The applicant should complete Part A and then send the form to the Burial Authority (the person in charge of the burial ground where the deceased is buried) for completion of Part B. Part C only needs to be completed if the death occurred between 1914 and 1947. In this case, the form will need to be sent to the Commonwealth War Grave Commission for their observations.

If the remains are buried within consecrated ground then consent from the Church of England will also be required.

Consecrated ground

Consecrated means a burial ground that has been consecrated in accordance with the rites of the Church of England and not merely blessed by the vicar during the funeral service, e.g. consecrated by the Roman Catholic Church or the Church in Wales. Your burial authority will be able to advise you. If the present burial plot is within consecrated ground you may need to apply for a faculty. The Burial Authority will be able to advise you of the contact details of the local Diocesan Office if not known. The table below illustrates the requirements:

From	To	Authority required
Moving remains from consecrated ground ¹	To a different grave plot that is also consecrated	Faculty ²
Moving remains from consecrated ground ¹	Re-interring in exactly the same grave	Faculty + MOJ licence
Moving remains from consecrated ground ¹	To unconsecrated ground	Faculty + MOJ licence
Moving remains from unconsecrated ground	To consecrated or unconsecrated ground, or reinterment in the same grave	MOJ licence

¹ Consecrated ground refers only to ground consecrated in accordance to the rites of the Church of England.

² In certain cases, the diocesan registrar may advise that a faculty is not required. In that case, applications for a licence will be considered if a letter from the diocesan registrar to that effect is produced with the application.

The consents required

There are a number of factors which the MoJ considers before issuing a licence to exhume human remains:-

Grave Owner

The application must be made with the consent of the owner of the exclusive rights of burial relating to the grave. This is because a MoJ licence is permissive only: it does not require the remains to be removed, and the grave owner must therefore be prepared to grant access. If the grave is a public or common one, which could mean that unrelated remains may be buried there, and if so may have to be disturbed, then the permission of any surviving relatives would be required. It is the applicant's responsibility to obtain this permission.

Next of kin

- The consents of all the next of kin of the deceased are required. The priority given in accordance with that set out in the Administration of Estates Act 1925 or the Civil Partnerships Act 2004 (which provides civil partners will equal rights to spouses). This means that if the spouse or civil partner is alive, then this person is the next of kin. Thereafter it is defined that the deceased's mother and father, and children, if any. Thirdly, joint status would be given to the deceased's brothers and sisters, grandparents and grandchildren.
- If contact has been lost with any of the surviving relatives it is the applicant's responsibility to undertake a search for that relative. There are a number of ways of trying to trace lost relatives one being the Salvation Army. Licences are unlikely to be issued without all of the required consents.
- Applications will also be considered from any person, but in such cases it will be important to explain why the application is not being made by a relative.

Objections

It is the applicant's responsibility, even if they are the nearest surviving relative, to state whether there could be objections to the exhumation from other relatives, as it may be necessary to take such objections into account. However, this does not necessarily mean that a licence would be refused.

If the consent of the grave owner is not given, then the Ministry of Justice would not normally be prepared to issue a licence.

The MOJ is unable to become involved in any family dispute and will not normally issue a licence until objections or disagreements between next of kin with the same degree of kinship have been resolved.

Other Frequently Asked Questions

Divorced parents

Former married couples or civil partners have no jurisdiction on the remains of their former partners. However their rights remain for any children that they may have had. This applies even if the absent parent did not participate in the funeral of the deceased. In addition, the role of the grave owner still applies in the event that the absent parent has that right.

Exhumation within 12 months of death

Those wishing to exhume and cremate the remains of a person who has died within the last 12 months must include the standard death certification with any application before a MOJ licence is issued.

Garden Burials

Should an exhumation be requested the permission of the next of kin would be required as well as the owner of the land (which may have changed if it has been sold). We recommend that any burials are either recorded on the deeds or must be declared on point of sale

Long term partner

Long term partners and what are called common law partners have no legal rights unless they are the grave owner. In the case that the other partner is not divorced the original wife/husbands permission would also need to be sought.

Non viable foetuses

A foetus that has not survived more than 24 weeks' gestation does not require an exhumation licence. The applicant should contact its Burial Authority in the first instance. Those in doubt should contact this office.

Remains being sent abroad

Those wishing to send whole body remains abroad for reburial are required to submit to us:

- an application for a MOJ licence
 - a letter from the carrier (e.g. airline or shipping company) confirming they are prepared to transport the remains
 - a letter from the overseas cemetery confirming that the body can be reinterred there
- A faculty may be required if the body is interred in consecrated ground.

Once a licence is granted, the applicant must give advance notice to the Coroner in whose district he remains are interred, of the intention to remove the body from the UK. The coroner will then consider issuing an out of Country (England and Wales) Order. Applicants are also advised to contact the Consulate/Embassy in the UK of the country where the remains are to be reburied to check if further documentation may be required by their customs authority

Those wishing to send whole body remains abroad for *cremation* require the relevant MOJ licence or a Faculty to exhume the body. Before the licence is issued the applicant must provide us with a letter from the overseas crematorium where the remains are to be cremated. Those wishing to send cremated ashes abroad for reburial require the relevant MOJ licence or Faculty to exhume the ashes if appropriate. Applicants are advised to contact the airline to check for any specific requirements they may have.

Ashes can be transported as hand luggage. However In all the above cases, it is advisable to carry all documentation if escorting remains overseas.

Remains scattered or buried without a container

Unless the remains can be identified a licence would not be required

Returning ashes to the UK

There are no specific permissions that have to be obtained. It is recommended, however, that cremation documentation and the death certificate is readily available on return to the UK, in case customs officials enquire as to the contents of the container.

Roman Catholic and Churches in Wales

Applications concerning exhumations from or to Churches that come under the above jurisdiction are treated in the same manner as those for any other non-Church of England application.

Stillborn burials

The definition of a stillborn is a child that has not taken a breath following birth.

Time Frame for licences

A licence for a straight forward application would be given a three month timescale from the date of issue unless there are other extraneous circumstances.