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Submitted to Law Commission consultation on burial and cremation
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About you

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Response on behalf of organisation

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Chapter 1: Introduction

Chapter 2: Approaches to regulating burial grounds

Consultation Question 1.

Not Answered

Please share your views below:

Consultation Question 2.

Not Answered

Please give your views here:

Please give views here:

Consultation Question 3.

Not Answered

Please give views here:

Consultation Question 4.

Not Answered

Please give views here:

Chapter 5: Record keeping

Consultation Question 15.

Not Answered

Please give views here:

Not Answered

Please give views here:

Consultation Question 16.

Please give views here:

There appears to be some confusion in the consultation document about the nature of Historic England's role in maintaining and operating HERs. There is no central control of HERs by Historic England. Rather, they are hosted and maintained – mostly – by local authorities, often at County level. Some are outsourced to third parties, shared across authorities, or, rarely, maintained by some other organisation (including Historic England directly, in the case of Greater London). Other exceptions include the National Trust, and some National Park Authorities. Historic England has a limited role in providing information to, and coordinating approaches of local authorities and other providing Historic Environments.

We would generally welcome a proposal for records of disused burial grounds to be hosted within Historic Environment Records, in recognition of the heritage significance of these sites and because HERs are already a crucial data source for spatial planning. However, we note a concern about resourcing for this additional work. We have not been able to assess the volume of additional work that is likely to accrue from this provision. This will need to be considered with local authorities.

The consultation also notes at 5.80 that there is not a single national access point for HERs, and that local practices may vary. We would be more confident that this situation would be ameliorated over time if Government implemented the provision from the Levelling-up and Regeneration Act 2023 which would place HERs on a statutory footing. Implementing this provision would also likely catalyse the development of new, better, standards for HERs and any such regulation could contain information about burial ground record responsibilities. It would also prevent local authorities from withdrawing funding or otherwise weakening critical functions of HERs due to them being seen as discretionary services during a time of budgetary challenge.

We are not competent to comment on the suitability of the GRO as an alternative.

Consultation Question 17.

Not Answered

Please give views here:

Chapter 6: Grave reuse and reclamation

Consultation Question 18.

Not Answered

Please give views here:

Consultation Question 19.

100 years; or

Please write in a different period, if preferred:

Please give views here:

It is common in professional archaeological practice to consider 100 years as the analogous period for 'living memory', which influences various choices and need for special sensitivity when dealing with the remains of individuals whose relatives may still be living. We would agree with the consultation paper paragraph 6.85 and support change to the law to specify 100 years elapse before grave re-use. We would welcome the simplicity and coherence of this with the Human Tissue Act 2004, and guidance for the heritage sector on human remains (e.g. DCMS Guidance on the Care of Human Remains in Museums, 2005). These both recognise burials of less than 100 years as requiring different treatment from so called 'ancient' burials which are generally deemed to be archaeological in nature.

We also note that, in reference to paragraph 6.89, that human remains should be disinterred in a sensitive and way and reburied in a sensitive way, not just an emphasis on the latter.

Please give views here:

Please give views here:

Consultation Question 20.

Not Answered

Please give views here:

Not Answered

Please give views here:

Consultation Question 21.

Yes

Please give views here:

We do not object to these proposals. However, we note that if moving remains from previously disused (i.e. re-opened) burial grounds, there may be archaeological implications to the removal and reburial of remains which should be considered. Please see our answer to question 29 for more details.

Consultation Question 22.

Not Answered

Please give views:

Consultation Question 23.

Not Answered

Please give views here:

Consultation Question 24.

Yes

Please give views here:

We are content with these proposals, however, we are concerned about the suggestion at paragraph 6.121 that there will not be a consultation with Historic England in all cases. While this may be appropriate in cases where there is clearly no historic or archaeological interest, it would be helpful to stipulate the basis on which this judgement is to be made. This would reduce ambiguity and provide assurance that a Secretary of State could not decide that consultation with Historic England is not necessary for inappropriate reasons.

We note that there are various issues that can arise with 'lift and deepen' approaches that could impact archaeologically sensitive remains. For example, lift and rebury can impact on the preservation and completeness of the burial, often requires a wider area of impact extending across other graves to permit safe access, can expose inter-cutting graves, and additional unexpected burials within a graveshaft. Archaeological assessment may be useful to help gauge risks of these issues, and other factors, such as the wider density of burials across a site.

We therefore expect that there will be many circumstances under which an appropriate archaeological assessment and mitigation strategy will be necessary, which underlines our point about the value of clear conditions under which consultation with Historic England will be necessary.

Not Answered

Please give views here:

Not Answered

Please give views here:

Chapter 7: Closure and reopening of burial grounds

Consultation Question 25.

Not Answered

Please give views here:

Consultation Question 26.

Not Answered

Please give views here:

Please give views here:

Not Answered

Please give views here:

Consultation Question 27.

Not Answered

Please give views here:

Not Answered

Please give views here:

Consultation Question 28.

Not Answered

Please give views here:

Consultation Question 29.

Yes

Please give views here:

We support the proposal for provision to reopen burial ground which have been previously closed to new interments, with the proviso that the Secretary of State takes into account the archaeological significance of those burial grounds. We would recommend taking specialist advice (for example, a professional archaeological desk based assessment and/or field evaluation) to ascertain the impact on the potential significance of heritage assets, and on the potential archaeological interest of ancient burials. There may be scope for restrictive regulations to ensure that clearly significant archaeological sites would be exempt from the provision. For example, reopening could be limited to consecrated graveyards which closed to new interments within the last 150 years.

Consultation Question 30.

Not Answered

Please give views here:

Please give views here:

Consultation Question 31.

Please give views here:

Chapter 8: Exhumation and building on disused burial grounds

Consultation Question 32.

Yes

Please give views here:

We support this provision. ClfA members are generally supportive of increasing penalties to help combat the illicit sale of human remains. Archaeologists are well aware of the proper processes for exhumation and the need for licensing required for their work, however, accidental disturbance of human remains during archaeological interventions is possible. We would regard a test of recklessness an appropriate one to enable the differentiation between instances of intentional harm (e.g. removal of bones from burial grounds for the purpose of illicit sale) and the – thankfully very rare – cases of accidental disturbance of remains such as those possible during archaeological excavations.

Consultation Question 33.

Yes

Please give views here:

As above, we support the proposal for increased penalties for unlawful exhumation as part of necessary action to deter illicit disturbance of human remains. We are particularly concerned about the disturbance of archaeological sites and the recovery of human bone intended to be sold. However, we do wish to manage the risks legal faced by archaeological companies, and not increase them unnecessarily. We hope that regulations would be capable of distinguishing between cases of deliberate disturbance of burials with intent, for example, to retrieve human remains for illicit sale, and cases of accidental disturbance of remains, e.g. by archaeological professionals during the course of their work.

Consultation Question 34.

Not Answered

Please give views here:

Consultation Question 35.

Not Answered

Please give views here:

Consultation Question 36.

Yes

Please give views here:

We are content with the proposal to extend this provision to all private and local authority burial grounds, provided that requirements to ensure that appropriate archaeological processes are required by regulation for any development works.

Not Answered

Please give views here:

Not Answered

Please give views:

Chapter 13: The treatment of ashes after collection from crematoria

Consultation Question 52.

Not Answered

Please give views here:

Consultation Question 53.

Please give views here:

Consultation Question 54.

Not Answered

Please give views here:

Neither option provides appropriate recognition for archaeological cremated remains, which may be identified by archaeological techniques. For instance, the identification of evidence of cremation pyres, or the discovery of cremated bone fragments. There may be instances where such remains have been buried directly into soil, and instances where burial containers no longer survive. Archaeologists can, and do, however, identify discrete deposits in soil during archaeological excavations, and they may be recovered separately. These remains are often highly archaeologically significant, both for what we can learn from the scientific study of the cremated bone, and for the artefacts that are often found with the remains.

We are concerned that either approach outlined in the consultation document could create a heritage protection loophole which would remove protection from archaeologically sensitive burial sites. These sites may be identifiable by metal-detector and contain precious grave goods.

We recommend attention is given to providing appropriate caveated protection for such archaeological grave sites in consultation with Historic England.

Please give views here:

As stated above, it may be appropriate to add an additional circumstance to the pragmatic approach's alternative test which covered where burials are interred in an identifiable context, whether or not ashes were interred in an urn/container, or that container still survives. Other identifiers may be possible, such as positioning with 'grave goods' or proximity to other known archaeological sites/remains. It is possible that an age-based test would also help to distinguish

Again, we recommend discussion with experts (e.g. Historic England) to ascertain what age-based test, and what other identifiers may be appropriate.