

Law Commission
1st floor, Tower
Post point 1.55
52 Queen Anne's Gate
London
SW1H 9AG

programme@lawcommission.gsi.gov.uk

31 October, 2016

Dear Sir / Madam,

Consultation on Burial and Cremation

Thank you for the opportunity to comment on a possible project to reform the law governing burial and cremation. This response is submitted on behalf of the Chartered Institute for Archaeologists (CIfA) a professional body representing archaeologists working across the UK and overseas and the Council for British Archaeology (CBA) representing the public voice for archaeology. Details of both bodies are provided in a separate appendix.

CBA and CIfA are primarily concerned in this respect with the effects of the law insofar as it affects archaeological research and members of both organisations play an active role in the archaeology of burials. Furthermore, CIfA is represented on the consultative forum of the Advisory Panel on the Archaeology of Burials in England (APABE).

Burials and Cremation

For many years archaeologists have dealt sensitively with human remains seeking, in appropriate circumstances, to excavate and study such remains and, where justifiable, to retain them in appropriate repositories so as to be available for further research and the application of new techniques. Such research has made (and continues to make) an invaluable contribution to our knowledge of the past.

Prior to 2007 such activity was regulated relatively smoothly for the most part through licences issued pursuant to provisions of the Burials Act 1857 and, to a lesser extent, through the operation of other legislation such as the Disused Burial Grounds (Amendment) Act 1981.

However, in 2007 the Ministry of Justice re-evaluated its approach to the grant of licences and decided that the Burial Act 1857 (under which licences were granted)

applied less widely than had previously been thought and that the Disused Burial Grounds (Amendment) Act 1981 applied more widely. It was also concluded that there were some instances in which human remains might be encountered by archaeologists which were not covered by any legislation and were governed solely by the common law.

This change of approach on the part of the Ministry of Justice produced great uncertainty and prompted widespread concern in the archaeological sector, not only as to the ability to excavate human remains, but also as to the terms upon which such remains could be excavated and retained. In the light of the concerns expressed the Ministry revisited its interpretation of the law and in 2008 effectively returned to its pre-2007 approach. At the same time the Ministry of Justice also considered reform of the law, for instance, to allow remains over a given age to be exhumed without a licence provided that such exhumations were undertaken by, or under the directions of, members of suitable, self-regulating, professional bodies (see the attached article by Andrew Tucker of the Ministry of Justice in the September 2009 edition of *The Archaeologist*). Unfortunately, the envisaged Legislative Reform Order was never introduced and a change of Government in 2010 meant that the opportunity was lost.

Since the 2010 election the Ministry has indicated that it *'has looked at the provisions of the 1857 Act again and has come to the conclusion that there is room to apply the provisions with more flexibility. This will allow licences to be granted with a wider range of disposal options for exhumed remains than re-burial alone, including the retention of remains indefinitely'* (see the attached Ministry of Justice statement). Practitioners report that the system is now working relatively smoothly and are concerned lest yet more change is made which risks re-introducing the uncertainty with which they have had to deal in the past.

For this reason, although there is an argument for pursuing the reforms envisaged in 2008, CIfA and CBA do not support calls for reform of burial law insofar as it relates to archaeological activity at this point in time.

We would be happy further to discuss the issues raised in this consultation insofar as they affect archaeology. In the meantime, if there is anything further that we can do to assist please do not hesitate to contact us.

Yours faithfully,

Dr Mike Heyworth
MBE FRSA FSA MCMi MCifA
Director, CBA

Peter Hinton
BA MCifA FRSA FSA FIAM FSA Scot
Chief Executive, CifA

APPENDIX

The Council for British Archaeology (CBA)

CBA is the national amenity society concerned with protection of the archaeological interest in heritage assets. CBA has a membership of 620 heritage organisations who, together with our thousands of members, represent national and local bodies encompassing state, local government, professional, academic, museum and voluntary sectors.

The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,300 members and around 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.