

Change to the granting of exhumation licences from 1 January 2015

Background

1. On 1 January 2015, section 25 of the Burial Act 1857 will be amended to simplify exhumation procedures in a small number of cases involving consecrated ground. This document explains how the change will affect applications to the Ministry of Justice for a licence (whether the burials are recent or of archaeological interest).

Current system

2. The Secretary of State for Justice grants licences to exhume human remains in accordance with section 25 of the Burial Act 1857 (as amended). Currently, the law requires a licence from the Secretary of State unless “a body is removed from one consecrated place of burial to another by faculty” granted by the Church of England authorities.
3. The Church of England has to authorise exhumations from consecrated ground and other ground under its jurisdiction. Therefore, due to the wording of the Act, there are certain circumstances where **both** a licence **and** the Church’s authorisation may be required, for example, when a body is removed from consecrated ground and then reburied in the same place or in unconsecrated ground.

New system

4. From 1 January 2015, the procedure will be simplified. Section 25 of the Burial Act 1857 will be amended by the Church of England (Miscellaneous Provisions) Measure 2014.
5. From this date, you will only need approval from **either** the Secretary of State **or** the Church of England, depending on the current location of the remains. This change will eliminate the small number of cases where approval was needed from both.
 - Exhumations from land which is subject to the Church of England’s jurisdiction will need the Church’s authorisation (a faculty or the approval of a proposal under the Care of Cathedrals Measure 2011). This includes consecrated ground in cemeteries.
 - Exhumations from land which is *not* subject to the Church of England’s jurisdiction will need a licence from the Secretary of State.

Transitional arrangements

6. The process of applying for a licence will not change. We will issue updated forms and guidance notes, but will still accept the current application forms.
7. If you hold a licence which was granted under the old system, from 1 January 2015 it will be treated as if it were granted under the new system. So you will still be able to use it, and any conditions on the licence will still apply. The only difference is that if the licence is not required under the new system, it will no longer be valid.
8. Any Church of England faculty or approval under the Care of Cathedrals Measure 2011 granted before 1 January 2015 will continue to be valid, subject to any conditions attached.

Links to legislation

Current wording: <http://www.legislation.gov.uk/ukpga/Vict/20-21/81/section/25>

New wording: <http://www.legislation.gov.uk/ukcm/2014/1/section/2>

Transitional provisions: <http://www.legislation.gov.uk/uksi/2014/2077/schedule/made>