Andrew Miller MP
Chair
Science and Technology Committee
House of Commons
London
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ARCHAEOLOGICAL INVESTIGATION OF HUMAN REMAINS

Thank you for your letter of 14 October about licensing the exhumation of human remains for archaeological purposes under the Burial Act 1857.

Burial legislation in England and Wales makes it an offence to exhume human remains without a licence and it has been the practice of successive Governments, since at least the early 1900s, to regard the legislation as governing the excavation of ancient remains just as much as more recent burials. Archaeologists have therefore long been accustomed to the need to apply for exhumation licences to enable them to remove and study ancient remains.

In the course of the previous Government's review of burial legislation, however, it became clear that the 1857 Burial Act contained no express powers to authorise the retention of remains for archaeological purposes and that the conditions attached to any licence issued under that Act would need to be consistent with the underlying purpose of the Act – to ensure that human remains were dealt with decently and respectfully. In these circumstances, it was decided, after discussion with DCMS, English Heritage and representatives from relevant professional archaeological organisations, that exhumation licences should be issued with a time limit for re-burial of the excavated remains, normally for up to two years. [This was thought to allow sufficient time for archaeological research work in most cases]. In the meantime, consideration would be given to possible amendments to the legislation. A statement to this effect, together with advice in the form of questions and answers, was issued in April 2008. I enclose a copy.

The question of screening excavations was not part of the review of the legislation, and is a practice which has long been felt to be necessary to avoid the risk of causing offence or distress to the public. Complaints about unscreened excavations undertaken by archaeologists are still made to the department from time to time. Although the
screening requirement does not amount to a prohibition on public access, we appreciate that the use of screens could inhibit public understanding of archaeologists' work. We are therefore always ready to consider sensible arrangements in particular circumstances which will balance the public interest in such work with the right of individuals who find such excavations upsetting.

No changes to burial legislation were, in the event, introduced by the previous Government, and we are now considering whether this is something that might be possible to take forward. As you say, the 1857 Burial Act was never designed to regulate modern archaeological practices in relation to human remains and there is much to be said for bringing the legislative framework up to date. As part of that, we may well wish to consider whether the constraints on the retention of ancient human remains can be relaxed, with retrospective effect if appropriate, although we also have to recognise that some people place great store on leaving such remains undisturbed, and would be opposed to unrestricted archaeological research or, for example, the routine display of such remains in museums.

My officials have worked with DCMS, English Heritage and archaeological professionals in order to ensure, as far as possible, that the existing legislation is applied in a proportionate and pragmatic way. We have not received any formal representations against the licensing scheme introduced in 2008 or against the normal screening requirements. Indeed, a number of professional archaeologists have advised us that, even if changes to the legislation were possible which would be welcome, the present arrangements have not given rise to particular difficulties. There is provision for applications to be made to extend re-burial conditions where the remains are still required for study, and a number of such cases have already been received and approved.

You mentioned in particular the application in respect of the Stonehenge remains. We have now considered that application and you will be pleased to learn that we have decided that an extension to the re-burial condition would be justified. I note that you understand that retention might be required beyond 2015. If so, a separate application would need to be made nearer the time.

We recognise the valuable contribution that archaeologists make to the study of human history and the need for an appropriate legislative framework to enable them to undertake their otherwise lawful activities. However, any disturbance of human remains, even from antiquity, can raise sensitive issues, and we will need to address these with care.

Once we have concluded our review of the case for legislative reform, I will write to you again.

KENNETH CLARKE