



APPENDICES FOR THE HUMAN REMAINS CALL-OFF CONTRACT 2008

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APPENDIX 1

Exclusions from this Contract

The contract will not normally be used in response to discovery of skeletons during development controlled under **planning legislation**. However, HS will give sympathetic consideration to any special case made to it by local authority archaeologists, for instance, in the case of a householder carrying out work on his or her own house.

In keeping with Historic Scotland's usual practice, any ground excavations at **Properties in Care** will be undertaken or monitored by competent archaeologists. In the event of human remains being discovered, work in the relevant area will normally be halted immediately. The location will be recorded but the remains themselves will normally be covered and left in situ. Under exceptional circumstances at Properties in Care (for example, when drastic remedial action is required to stabilise historic building fabric threatened with severe damage or imminent collapse), Historic Scotland may consider it necessary to disinter human remains. Under such circumstances, Historic Scotland will apply to the Court for a warrant. If the warrant is granted, the disinterment would normally be undertaken by competent archaeologists, to be followed as appropriate by reburial. However, such work can normally be planned well in advance and the contractor should not expect to be normally called on to deal with discoveries of human remains at Properties in Care.

This contract does not include excavation of remains found undersea.

APPENDIX 2

Disposition of Human Remains

Historic Scotland (subject to any Court judgements made in specific cases) considers itself to be responsible for making the decision on the final disposition of human remains recovered from excavations which it has sponsored. It will not normally agree to the re-burial of prehistoric human remains. It will not normally advocate the re-burial of pre-modern remains but will pass them to an appropriate museum, typically one in the same locality as the find site, for long-term safe-keeping. Nevertheless, Historic Scotland recognises that the re-burial of late medieval, post-medieval or modern human remains will occasionally be considered appropriate. If specifically requested to do so, Historic Scotland may agree to pass on human remains for re-burial after scientific studies have been completed, provided it is satisfied that the request is reasonable and well-grounded. Historic Scotland accepts the position of certain religions that have a strong need for immediate re-burial of their dead.

APPENDIX 3

Treasure Trove

In **Scotland** all newly discovered archaeological objects, whatever material they are made from, and regardless of the intrinsic value of that material, and regardless of whether they were hidden or lost, belong to the Crown under the legal principle of *bona vacantia*. This principle further defined within Scots common law as *quod nullius est fit domini regis* (i.e. that which belongs to nobody becomes our Lord the King's [or Queen's]).

The system whereby archaeological objects are dealt with under *bona vacantia* is known for convenience in Scotland as “Treasure Trove”, though it is important to distinguish this legal construct from that defined within the Treasure Act 1996 in England and Wales (see <http://www.opsi.gov.uk/acts/acts1996/1996024.htm>), which does not apply in Scotland.

In Scotland, in order to exercise its rights over archaeological finds under *bona vacantia*, the Crown Office relies on the recommendations of the Scottish Archaeological Finds Allocation Panel (SAFAP). Archaeologists working in archaeological projects funded by Historic Scotland should report all finds to Historic Scotland's Collections Unit who will liaise between SAFAP and the archaeologist on disposal. The Collections Unit will also monitor adherence to proper standards of packaging and submissions documentation and will report to Historic Scotland's Inspectorate when submissions for disposal fall below the required standard. Non-compliance will impact on the payment of the grant or fees.

Full details of how the Treasure Trove system works in Scotland are available at the following website: <http://www.treasuretrovescotland.co.uk>.

It is important to note that the introduction in England and Wales of the Dealing in Cultural Objects Offences Act 2003 affects archaeologists wishing to remove finds from Scotland for purposes such as conservation, post-excavation analysis and preparation for publication.

This legislation requires holders of archaeological artefacts to be able to demonstrate their rightful ownership of these artefacts. The police in England and Wales may deem such artefacts to be illegally held or “tainted” if such ownership cannot be demonstrated. It is essential therefore for archaeologists based outside Scotland who undertake work in Scotland to apply for and receive prior written consent from the Treasure Trove Secretariat (see Information for archaeology units and other fieldworkers on the Treasure Trove in Scotland website) before they remove the artefacts from Scotland. In effect this provides the archaeologist with a temporary loan of the artefacts for the duration of the post-excavation period. This process also makes the archaeologist responsible for the repatriation of the artefacts at the appropriate time.

An application form for such consent is available via the Treasure Trove in Scotland website and should be accompanied by a full finds list.