SUBMISSION FROM THE NATIONAL COUNCIL FOR METAL DETECTING (NCMD) SCOTTISH REGION

1. The National Council for Metal Detecting (NCMD) Scottish Region, submitted a consultation response to Historic Scotland on 2 July 2009 concerning the proposal within paragraph 2.8 of the draft Scotland on 2 July 2009 concerning the proposal within paragraph 2.8 of the draft Bill that section 42(7) of the Modifications of the Ancient Monuments and Archaeological Areas Act 1979 should be removed.

2. The NCMD considered that the defence statement in s42(7) of the 1979 Act should remain for a number of reasons which were detailed in its response to Historic Scotland and which were subsequently discussed with them at a meeting on 1 October 2009.

3. The amended Bill, as it now stands, no longer contains the original proposal to remove the defence statement, and the position may be best summarised as follows—

Section 42 existing wording—

(6) In any proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest

(7) In any proceedings for an offence under subsection (1) or (3) above, it shall be a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he used the metal detector was a protected place and did not believe that it was.

Proposed changes within the current Bill—

(4) In section 42 (restrictions on use of metal detectors)—

(a) in subsection (6) for the word “prove” substitute “show”,
(b) in subsection (7)—

(i) for the words “prove that he had taken all reasonable precautions” substitute “show that—

(a) he had taken all reasonable steps”,

(ii) for the words “and did not believe that it was” substitute; “and (b) he did not know and had no reason to believe that that place was a protected place”.

4. The NCMD Scottish Region is pleased to note that the proposed changes mean that its main concern is no longer relevant and that, for all practical purposes, the defence statement remains with only minor changes to modernise the drafting.
5. The Council does, however, feel that the remaining concerns raised in its letter to Historic Scotland regarding the accessing and interpreting of Historic Scotland information on scheduled areas are yet to be addressed, but these would appear to be internal operational or policy matters which, I understand, are under consideration by Historic Scotland.

Alastair Hacket
Secretary
24 July 2010