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N.B.

this report is a personal perception of the contents of a meeting and their implications for the hobby. They are not the official minutes, which will be agreed and published jointly at the conclusion of correspondence and discussions. My fellow delegates have allowed me to report on this meeting in my own way, without interference of any sort.

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#### NATIONAL COUNCIL FOR METAL DETECTING

An informal record of a meeting held at the Dept. of National Heritage.  
Cockspur Street. London.  
on Monday 27th November 1995.

Present for National Heritage :-

Hugh Corner	National Heritage
Ian Newton	National Heritage
Paul Jenkins	H.M.Treasury
Roger Bland	British Museum / National Heritage Liaison

Present for NCMD :-

Dennis Jordan, Gerald Costello, Bob Whalley, Trevor Austin John Fargher.

Apologies :-

John Wells Chairman NCMD - called back home two hours before meeting because of sudden serious illness in family. Professor Andrew Palmer T.T. Expert - ill.  
Andrew Burnett British Museum - called to another meeting.

## Preamble to the Meeting.

This was the third in a series of consultative meetings called to address the concerns and objections of the hobby to the contents of Lord Perth's Treasure Bill - since revised and now titled "House of Commons Bill 103". The first two meetings were in October and November of 1994 and, in the intervening twelve months, the D.o.N.H. has been consulting with other bodies, including the Home Office, over the points we raised. Following a letter from John Wells, 24th October 1995, expressing concern that we should have to wait so long for movement on the matter, Hugh Corner "plied at length in early November. His letter addressed some but not all) of the points we had raised, intimated that there were areas where difficulties still lay, and expressed the hope that the NCMD would be able to support the bill in its revamped form. This meeting was convened to seek out areas of common ground and highlight others where difficulties still impeded progress.

The NCMD team met in London on the evening of Sunday 26th November and entered into a wide-ranging discussion on how individual team members viewed and interpreted the implications of the bill, what difference the proposed changes would make, and where we thought there was room for movement or the need to entrench.

After working together for so long, it is not surprising that there was unanimity on the part of the team.....limited by the knowledge that H.M. Government was "determined to introduce legislation."

On Monday morning the team met again, went through the letter from National Heritage, para' by para', and formulated a detailed response. In addition, we listed other areas of concern which we intended to raise and identified and agreed areas which we would "hold in reserve" for future discussion.

The meeting opened on time at 3.00 p.m., with all the usual niceties.

Hugh Corner, for N.H., welcomed the team.. He made an opening statement apologising for the long silence, expressed hope that the proposed changes contained in his letter would meet our needs, and declared that the purpose of the meeting was.....To explore NCMD response.....derine NCMD attitudes.....and seek NCMD support for the bill. All of this he put into the context of Baroness Trumpington's speech in the House of Lords on 7th June which underlined the determination of this government to modernise "archaic" law to suit the current needs of the heritage.

In the unfortunate absence of John Wells, Dennis Jordan made our opening address. He acknowledged that efforts had been made to meet our concerns and that there had been significant movement in some areas, but stated that our main concerns encompassed more than the three points identified by N.H. Your representatives suggested that the bill was poorly worded, that there were areas requiring clarification and terms which needed to be defined accurately. These would then need to be written into the law prior to any consultation at the Code of Practice stage as this in itself would not be sufficient to quell our current concerns. Several examples of such matters were identified, were acknowledged as unsatisfactory by N.H. who could give no immediate answers, and were taken away for clarification.

Amongst these matters was the interpretation of the number and metallic content of associated coins required to constitute "Treasure" under the new bill. In its present form, we suggested, the bill was both unworkable and unreasonable. Dennis Jordan pursued the "5% precious metal content" clause with some vigour.....

Who had come up with the 5% idea? Where? When? Why? Apparently, the answers to these questions are shrouded in the darkness of time past when the bill was being formulated by the Surrey Archaeological Society?) and are now unanswerable. The NCMD's case for comment hinged upon the ruling by Lord Denning when, as Master of the Rolls, during the Overton case he stated that object matter for Treasure Trove had to have a "substantial" content of precious metal.....and that "substantial" should be at least 50%. By this ruling, the common law had been given a firm legal precedent which we could and do accept. We then suggested that the distance between 5% and 50% was quite dramatic and, again, asked why there was such widespread support for the lower figure. Paul Jenkins, for the treasury, suggested that "5%" was more precise than "substantial", while Roger Bland for the B.M. argued categorically that the lower figure was to suit the needs of archaeology rather than any other consideration. Together with alterations to numbers of coins requiring reporting it would, he suggested, reduce the need to consider how to split hoards of mixed coinage at Treasure Trove inquests

To the obvious understanding and appreciation of Messrs Comer and Newton of N.H. the NCMD'S care that it was unreasonable to expect the Sunday-only detector user to judge 4% within-the-law against 5% or 6% outside-the-law was repeated. 5...6.....10.....or even 15% precious metal in an alloy might not be clearly discernible in an object removed from the ground, we argued. There was a danger of making criminals from law-abiding citizens by imposing such poor and indefensible yardsticks.

Roger Bland suggested that the Code of Practice could include lists and categories of coins not required for reporting, such as later Roman antoniniani which were accepted as being debased below the 5% level. We agreed to consider this proposal until it was developed sufficiently well, but suggested that it should be a Schedule to the Act rather than a matter for the Code of Practice.

Treasure Trove Inquest Juries.

The NCMD opened debate on this matter with a statement that we were unanimous in our objection to the removal of juries from T.T. inquests. It was, we said, "the ultimate safety net" for our members who had reason to mistrust/distrust a system which otherwise involved the potential for archaeologically inexperienced coroners to be swayed by advice from archaeology ombudsmen who were biased in their views on metal detecting. To give the coroner discretion to summon a jury where he considered it necessary was not in the best interests of our own members and, therefore, could not be imported as a viable concession in this matter. Paul Jenkins said that our objection had been raised at the Home Office where a ruling was given that, even now, coroners did not need to summon a jury for Treasure Trove inquests if they considered it unnecessary.

Roger Bland said that local museum and archaeologists need not be involved and that it could be written into the Act that coroners must take their advice from the British Museum when necessary. This went some way to meeting our concerns but, in addition, Dennis Jordan asked it also be written into the Act that at the point of deliberation/decision in cases where a jury has not been summoned.....in addition to the coroner and the consultant archaeologist (or his report).....the detector user or his representative (solicitor/T.T. expert) should be present and able to make representations.

National Heritage will report back on this.

landowners' Rights.

The NCMD team highlighted its responsibilities to the landowners upon whose land the hobby is allowed to carry out its activities. An assurance was given that the NFU and the CLA were currently involved in their own negotiations regarding the proposed bill and that they were being kept up to date in all matters.

The Crown's Right to Disclaim.

In the most recent letter from N.H., Roman and mediaeval ringers had been given as examples of material which, although subject to Treasure Trove, might be disclaimed by the Crown before inquest and returned to the finder. To remove possible future legal difficulties in such cases, we suggested a letter of provenance should be issued at the time the object is disclaimed. This would allow sale of the item, if wished, without problems from the police or suspicious dealers. Paul Jenkins replied that a letter of provenance could not be supplied, but a letter or form of waiver relinquishing claim to the object could and would be issued.

The NCMD team was somewhat concerned with the list of advisors to which the Secretary of State could turn in these matters as it contained organisations which were traditionally anti-detecting and currently held in low esteem by the hobby. It was suggested that the T.T. Reviewing Committee might be acceptable as this was an independent group. The answer given was that the list was somewhat meaningless in that the Secretary of State could turn to any individual or body for advice (usually the B.M.) and that the ultimate responsibility for any decision would be his (or hers in the case of Virginia Bottomley).

Franchise-Holders.

It had been the NCMD, at the first meeting at N.H., which had pointed out the number of franchise-holders other than the Crown (40+) who could claim items put up for Treasure Trove inquest and dispose of them where and when and how they liked, with no rewards for finders necessary. In so doing, they would defeat the whole professed purpose of the bill, with both Crown and finder losing out. It seems likely that attempts to close up this massive loophole were the cause of the long time span between meetings, and there was an obvious frustration on the part of the N.H. team.

They claimed that they could not remove the rights of franchise-holders without compensation.....even if they actually knew who they all were. More to the point, they claimed that the majority would be likely to waive their

rights in favour of the Crown and the D.o.N.H. would be prepared to contact all the major franchise-holders for an undertaking that, in the event of future finds of Treasure from their franchises, the finder would be rewarded at the full market rate. The N.H. team admitted that they had considered a two-tier system in which franchise-holders would still have been eligible for their rights in precious metals, but not in the wider interpretation of "new treasure." This, they had been advised by their legal experts, was unrealistic and unworkable.

Dennis Jordan, for the NCMD, recognised that there had been a significant attempt to overcome the problems we had raised and suggested that if the Crown could guarantee finders a full reward in such cases it would go a long way to overcoming our objections to the franchise-holder weakness in the bill.

#### Liability under the Proposed Act.

In response to a direct question, the N.H. team gave the definitive reply that archaeologists, both professional and amateur, would be bound by the Act to exactly the same degree as detector users. There would be no exemptions, or cases made and accepted for variation in application of the law. There would be a "level playing field" for all.

#### Codes of Conduct.

The NCMD once again highlighted a situation wherein the hobby has a self-imposed strict Code of Conduct, but is still the subject of an ever-growing flurry of leaflets published by Police/Archaeology which may give the impression that there is something slightly unsavoury about our activities. On the other hand, it was pointed out that Archaeology, both professional and amateur, could apparently do what it liked with no guidelines as to conduct either self-imposed or from professional bodies. It is, we suggested, time for archaeology to be bound by such a Code and used Professor Newman's statement that "there is more harm done to the heritage by bad archaeology than by detector users" as support for the case being made. This was readily taken on board by N.H., with the comment that the CBA were the people to be responsible for a Code. We asked for pressure to be applied.

#### Public Image.

Following on from the last topic, the NCMD team made the case that the contribution made to the heritage by detector users is immense, but that this is neither acknowledged nor promoted by the establishment. We thought that press releases from N.H., the CBA, and other establishment bodies promoting the positive aspects of the hobby were long overdue and should be addressed as a matter of some urgency if traditional suspicions and distrust were to be overcome.

We made the case that National Heritage itself should be recommending closer ties with NCMD clubs and club members to Local Authorities and Museums via whatever channels were available to it.

Response from N-H- was both immediate and positive. Roger Bland intimated that pressure was already being exerted on local museums and archaeologists, and that there should already be signs of changing attitudes at local levels. He also said that there were people on both sides with entrenched views who would never accept such changes.

Hugh Corner produced the draft of the forthcoming Treasure Trove Reviewing Committee's Annual Report which, he said, was going to be a much improved and glossy document with coloured illustrations. In it there is prominent recognition of the hobby and its contribution. This will be given the widest possible circulation and publicity upon release, including release to the press from N.H.

We await the outcome as a first step along the road.

#### Descheduled Sites.

Your team reminded N.H. of the NCMD'S earlier objections to the scheduling of massive numbers of sites which could not possibly be examined within current manning and finance levels, or before acid rain and nitrate fertilisers had destroyed the material within the topsoil. It also used this opportunity to remind those present that if a metal detector user was to identify a significant site, previously unknown, and in so doing was banned from visiting that site again, the whole national relationship would break down. In the case of a new site being discovered, archaeology would have to conduct its investigations (with the detector users) as an equal partner) within a short but reasonable time from the report, or let the detector users carry on with his own search.

N.H. was also reminded of the NCMD'S position that examined sites should be descheduled rapidly, and that all descheduled sites should be notified to the NCMD for possible further investigation by our members. Ian Newton noted the comments, while Roger Bland said that provision of lists of descheduled sites could not carry permission to search. This would have to be negotiated with landowners.

The meeting closed with an agreement to correspond but no dates fixed or suggested for possible future meetings.

#### FOOTNOTES.

I. It has been clear all along, but confirmed beyond doubt by the House of Lords debate of 7th June 1995 and the recent issue of a Green Paper on the subject, that H.M.G. has embarked with determination upon a series of legislative steps involving the heritage and portable antiquities. The adoption of Lord Perth's bill, albeit with

many changes and revisions, is only the first step along the road of change. Change is inevitable.....but not necessarily always to our disadvantage.

2. In this scenario, the NCMD has been faced with choices.....

a) To drum-bang and march, opposing everything on principle, refusing to talk to anyone on anything we don't like the look of. This would be to adopt a Canute-like stance and, in the process, we would be drowned in a sea of legislation over which we have had no influence because we have had no contact and no input.

b) To do as detector users in Southern Ireland and other countries did.....stay quiet and say nothing ! Say nothing now equals do nothing for detector owners in those places.

c) To take the pragmatic approach, be logical, be reasoned, be reasonable, be articulate and literate, attempt to change ill-founded attitudes, attempt to limit restrictive change, attempt to negotiate out injustice, attempt to have safeguards and advantages built-in, attempt to slow down unwelcome inevitabilities.....and, in so doing, elevate the hobby to an accepted, inspected position within the heritage hierarchy, where it belongs.

It will not surprise me to hear a limited few of our members opt for course (a) above.

3. Recognising that Portable Antiquities legislation is to follow, and that the areas of this bill and the next overlap, it was by choice we omitted to raise certain topics previously discussed, and new ones which we would have otherwise identified at the meeting of 27th November. It was to our advantage to do so. For pretty obvious reasons these areas will not be listed here or elsewhere.

4. It is felt. by the NCMD team that there had been a genuine effort to meet at least some of our concerns prior to this meeting. Not enough in themselves, and not all areas of concern had been addressed. But, there had been enough significant. movement in some areas to get close to agreement.

5. It would be foolish of the NCMD team.....or its grassroot members....to ignore the pressures which have been placed upon the National Heritage team by the CBA, Museums Services and others, and to think that our interests are the only' consideration. It was obvious from the tone and pace of the meeting (not an unpleasant experience that N.H. is being pressured from other places for a speedy result.

Realistically, other than waiting for specific answers to legitimate enquiries, or the consideration of positive new proposals put forward by either the NCMD or N-H-, I feel we cannot expect to meet time after time, covering the same ground, with no apparent agreement reached. It is my interpretation of the situation that the N.H.

team is being backed into a corner by events and powerful outside influences and will sooner, rather than later, demand decisions which will bind both sides.

Before this is done, I am certain that the NCMD Executive will put any proposals received before the membership.

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NCMD Team Member.  
30th November 1995.