

RECORD OF MEETING HELD ON 15 APRIL 1996 AT THE DEPARTMENT OF
NATIONAL HERITAGE

Present: Mr A H Corner, Dr R Bland, Mr I Newton : Department of National Heritage.
Mr P Jenkins: Treasury Solicitors; Dr A Burnett: British Museum.
Mr D Jordan, Mr J Wells, Mr R Whalley, Mr J Fargher: National Council for Metal Detecting.

Subject: the Treasure Bill

General

1. The DNH opened the meeting by passing on Sir Anthony Grant MP's sincere apologies that he was unable to attend in view of urgent constituency business. The DNH would of course report the outcome of the meeting to Sir Anthony.

2. The NCMD queried whether Sir Anthony had ever received the critique of the Bill produced by Mr Jordan. In a Radio 5 debate with Mr Jordan, Sir Anthony had disavowed knowledge of the critique. Dr Bland said that Sir Anthony had been sent a copy by the Department (along with many other papers etc.), but that he may not have been aware of it.

3. The NCMD asked that all members of the Parliamentary Committee considering the Bill on 17 April be given a copy of the critique. The DNH would pass this request on to Sir Anthony.
Action: DNH

4. The NCMD requested a copy of the minutes of the meeting before 17 April if at all possible. They felt that the "note" of the meeting held on 27 November did not full reflect their understanding of what had (or had not) been agreed. They wanted to be sure that today's meeting was accurately recorded. The DNH would fax its record of the meeting as soon as possible (to Mr Whalley) Action DNH

5. The NCMD asked if the DNH could provide a forecast for the remaining stages of the Bill. There had been occasions in the past when the Bill had been taken into the next stage at very short notice. Mr Jenkins explained that this was entirely out of the Department's hands. Parliamentary business is only known about at very short notice; stages of Bills can be combined, and progress depends on the progress of other Bills. Even published times can be changed, again at very short notice. The department would keep the NCMD informed as and when it found out; Dr Bland said that he had in any case kept Mr Costello fully informed
Action DNH

6.. The NCMD requested copies of the minutes of the Treasure Bill Standing Committee as soon as possible after the meeting. Mr Jenkins said there were no minutes as such, but that committee proceedings are recorded - verbatim - in Hansard. There were copyright problems in the department sending photocopies to the NCMD It was therefore up to the NCMD to obtain Hansard as quickly as possible. We would mention the matter to Sir Anthony Grant, in case he could help. Action DNH

Specific issues

7 Franchises: Mr Jordan said that the Bill was intended to improve the level of knowledge about our heritage but it provided a means whereby the nation could quite legally be deprived of heritage items together with the knowledge associated with them. The NCMD recognised that there were difficulties with the legal position concerning franchise holders, and suggested

that a compromise might be, to write into the BT, a requirement for a franchisee to pay full market value to the finder as a reward for correctly reporting the find. He queried the circumstances where a franchisee surrendered an item to a museum. Would the museum be required to pay the full reward?. This was confirmed as being the intention. The NCMD believed that such provisions would encourage the proper reporting of finds from land which is the subject of a franchise.

8. Mr Jenkins said there were no known cases of franchisees failing to pay rewards to finders in the same way as the Crown. In franchise cases, when they arose, rewards were payable where a museum wished to acquire a find by paying the full market value. Unwanted objects are returned to the finder. There had been one case (where the Bishop of Worcester had a franchise) in which the Bishop had to obtain the Charity Commissions consent to forego his rights to Treasure Trove.

The Bishop had been most concerned to ensure that the finder had been rewarded, and the Department has worked closely with him and the Charity Commission to satisfactorily resolve the issue.

9). Dr Bland added that of the 47 franchise holders there were probably about 20 still in existence and less than six had been known to exercise their rights. The Duchy of Lancaster was always keen to ensure that finders were rewarded, and the rewards were approved by HM the Queen personally. The Corporation of London had in fact paid one reward which was higher than the market value. Also, those franchisees which still existed were limited in application. As an example, the franchise held by the City of Bristol was limited to those lands contained within the medieval boundary. A hoard discovered in Lawrence Weston, (now a suburb of Bristol) had been held not to fall within the terms of the franchise. The Treasure Bill merely formalised Franchisees' position

10) Mr Fargher said that the wider definition of treasure contained within the Bill would increase the rights of franchisees. When one considers the aims and purpose of the Bill, this compared unfavorably with the increased duties and potential for fines and/or imprisonment which could be imposed on finders. In this case, Mr Fargher said, law and justice did not coincide.

11. The government could not however legislate for unknown franchisees. Mr Jenkins foresaw that in the event that a franchisee did insist on his rights, the Government would challenge the continued existence and legality of the franchise in the Courts. Clause 9(7)(c) did not extend to franchise holders as they did not have an interest in the land as such.

12. The Dpt NH said it would be possible to approach known franchise holders to ascertain if they would comply with the practice of rewarding finders to be determined in the Code of practice. Those in agreement could be listed in the Code of Practice as agreeing to conform. The only problem with this approach was that it would draw attention to franchises where owners did not know they had them. There was agreement that DNH would make such an approach to known franchisees

Rewards

13. The NCMD requested clarification of clause 10 as contained in the Bill. It was being interpreted by the NCMD as a means whereby individuals reporting finds made by illegal means could be prevented from receiving a reward. Whilst the NCMD wholeheartedly supported this as a principle, there was concern that this clause could be used to the disadvantage of persons

behaving in a perfectly proper manner. Currently the reward paid to persons finding and reporting treasure was relate to the full market value of the find. Clause 10 appeared to remove that relationship. The DNH said that clause 11 effectively described the current practice in the payment of rewards There would be an exception that landowners and occupiers would be eligible for rewards under certain limited circumstances. This clause had to read in conjunction with the provisions in clause I I which dealt with the Code of Practice. A reward might be reduced if there had been trespass Mr Jenkins explains that there were various forms of trespass, intentional and unintentional eg where someone sways from a footpath, and we therefore had to be flexible when considering trespass. Rewards are ex-gratia and can be reduced, but in practice there were only 6 known cases in the last 50 years.

14. The NCMD queried the purpose of clause 10 as it appeared to provide a means whereby persons either unconnected with the original find or the landowner at the time of the find might be able to establish a right to any benefits accruing from the find Hence an agreement made between the landowner and the finder would be meaningless. Mr Jenkins explained that the purpose of the clause was to allow flexibility and might perhaps be applied in cases where land had been sold subsequent to a treasure find and would allow the reward to be paid to the new owner, if he was entitled to it under the terms of the purchase. The Department would not split rewards between old and new owners.

Legal force of Code of Practice

15. Mr Jenkins explained that the Code of Practice needed the approval of both Houses before it could come into effect. If a finder felt that he had not be rewarded properly under the terms of the Cop, he could apply for a Judicial Review.

Definitions

16). The NCMD queried the reason for the difference in age qualification in clause 1(1)(a) and 1(1)(b)

It appeared to be inconsistent and brought items circa 1800 within the scope of the legislation. The DNH explained that the “200 years” figure in clause 1(1)(b) was a compromise between the 300 years under other clauses, and the figure of 100 or 150 years as often applies in other countries. in any case, it only applied to objects designated under 2(1).

17. The NCMD noted that the wording of the clause dealing with “other objects”, clause 1(1)(a) had remained unchanged. various letters have been received from the DNH and statements made that, for an object to fall within the category of treasure it must contain 5% by weight of precious metal [Note: these letters were not intended as definitive statements of the Bill but were intended to give a summary of it and to assure people that there was no intention to impose restrictions on metal detecting.] This clause was worded such that the metallic content only must contain 5% precious metal. This would mean that a non metallic object which carried only a trace of gold would be treasure. The DNH confirmed that the figure related to the metal content only and not the whole object (eg an inlaid porcelain pot). The figure was intended to exclude plated objects The DNH stated that one of two amendments to be tabled in Committee was to raise the minimum precious metal content from 5% to 10%.

18. The NCMD pointed out what they saw as the very practical difficulties in determining the level of 10% precious metal contained in an object for the man in the street. Whilst it is practicable to do this it does require very expensive X-ray fluorescence equipment or similar, if (image to the object is to be avoided. This type equipment is not likely to be readily accessible to the

majority of people. The NCMD felt that the figure previously determined in law of 50% was more realistic.

The DNH/BM could not agree to a figure of 50%, as suggested by the NCMD. Although this level had been determined by the Lord Denning judgment, experience had shown it to cause many anomalies. There were many fold, cg hoards, where the precious metal content ranged from 40% to 601%, and some hoards have to be split. In other cases, juries had accepted metal content as low as 10% A figure of 5% or 10% would provide clarity from an analytical point of view, whereas 50% would only lead to a lot of uncertainty.

19. The DNH/BM acknowledged that drawing lines was always difficult. If the definition caught a number of finds which had not been envisaged, the Secretary of State could always disclaim ownership It was up to the NCMD to come up with a better definition.

Penalties

20. The DNH confirmed that a court must prove an intention by a finder to lie or fail to report a find. Finders with reasonable excuse would have a defense against prosecution. In cases of doubt, finders should report. ”

Notification to Coroners

21. The NCMD asked if the 14 day period could be extended to 28 days, to allow for example if a finder was about to go on holiday. The DNH said a change was unnecessary: going on holiday would probably be acceptable to a court. Clause 8(1)(2)16) protected the position of finders who did not immediately realise they had found potential treasure.

Scope of Bill

22. The NCMD made reference to various reported continents in the media which suggested that the proposed legislation would only apply to detector users, whereas it would apply to everyone and would include archaeologists It was requested that the position should be made clear The DNH confirmed that this was correct and would make arrangements for this to be confirmed during a speech in one of the debates on the Bill. (Action: DNH)

Portable Antiquities discussion document

23. The NCMD confirmed that they were drawing-up a detailed critique of the paper.

Other points

24. In response to a question the DN H indicated that the second amendment being proposed to the committee was a technical nature and added the Duchy of Lancaster to the provisions dealing with franchisees. ,

25. The NCMD requested that some protection is afforded the details of reported find locations. it was likely that this information would be added to SMRS and hence would be accessible to those who may be engaged in illegal activity to the detriment of the landowner.

NOTE The NCMD said that the detector user who makes a report should be involved in all subsequent investigation of the site which would encourage the co-operation that was apparently being sought.

Where sites were not to be investigated within a reasonable time, it was inappropriate to exclude the (detector user who made the original report. There was also concern about reported circumstances where legitimate users had had their permission to search withdrawn following the reporting of finds.