

METAL DETECTING AND SCHEDULED MONUMENTS THE LAW



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA



INTRODUCTION

Many people own and use metal detectors in Scotland – as individuals, as members of clubs, or as participants in archaeological projects. This leaflet is for users of detectors, as well as landowners, occupiers, and managers of land containing archaeological sites and monuments. It sets out the legal position regarding metal detecting on scheduled monuments, the types of activity that require consent, and how that consent may be obtained. Information is also provided in relation to the laws affecting sites which are not scheduled. Understanding these processes helps to ensure that Scotland's archaeological sites and monuments are protected for the future.

Archaeological remains of any kind are an important and finite resource. Digging or disturbance of archaeological sites and the removal of objects and artefacts can result in irrevocable loss and damage to sites. This affects the ability to understand our past and diminishes archaeology's contribution to Scotland's national story. Excavation of sites or artefacts must therefore be carried out in a controlled way and to the highest standards. Responsible metal detecting can have an important part to play in research into our past, where disturbance of sites is controlled and finds are recorded and reported on.



It is an offence to use a metal detector on a scheduled monument without consent. Application forms for this type of consent, known as Section 42 consent, are available on our website at: www.historicenvironment.scot/metal-detecting. Section 42 consent is required to use metal detectors or conduct certain types of geophysical survey within a scheduled monument.

KEY ISSUES

1. Metal detecting on scheduled monuments requires Section 42 consent to be granted by Historic Environment Scotland. Metal detecting on a scheduled monument without Section 42 consent is an offence.
2. Types of metal detecting requiring consent include:
 - Hobbyist metal detecting
 - Metal detecting as part of a wider programme of archaeological research
 - Geophysical survey (such as magnetometry or ground penetrating radar)
3. Scheduled monuments are archaeological sites which are recognised as being of national importance and are legally protected to ensure they are preserved for future generations.
4. If you think you have found something of archaeological significance (termed a 'portable antiquity') in Scotland, you are required by law to report it to the Treasure Trove Unit (www.treasuretrovescotland.co.uk) Failing to report any found portable antiquity is an offence. The term portable antiquity covers 'any ownerless item which is portable, has been humanly manufactured or modified, is of any size, type or material, and has been found in Scotland.'



ADVICE TO USERS OF METAL DETECTORS

What is a scheduled monument?

Scotland is home to more than 8,000 scheduled monuments. Scheduled monuments are archaeological sites with cultural significance deemed to be of national importance by Historic Environment Scotland. They are legally protected under the Ancient Monuments and Archaeological Areas Act 1979 (www.legislation.gov.uk/ukpga/1979/46/contents).

The aim of scheduling is to preserve our most significant sites and monuments as far as possible in the form in which they have been passed down to us today. Consent to carry out any work to a scheduled monument will only be granted when there is a strong justification for doing so. This can range from works necessary to secure the preservation of a monument to work that is demonstrably in the wider public interest.

© Richard Jones



© Tessa Poller

How to find out if a monument is scheduled

Scheduled monuments can be viewed on Historic Environment Scotland's publicly available mapping resource, PastMap: www.pastmap.org.uk. PastMap allows you to view the locations of all scheduled monuments, and follow links to the legal documents explaining the protection of each individual site. Digital shapefiles of Scotland's scheduled monuments are freely available at: www.portal.historicenvironment.scot/spatialdownloads. If you are in any doubt about whether an area of land is scheduled or where the boundaries of the protected area are, you can contact Historic Environment Scotland's Heritage Directorate for advice at: hmenquiries@hes.scot.

What types of work require consent?

You must apply for Section 42 consent to use any equipment capable of detecting metal within a scheduled area. A metal detector is defined as 'any device designed or adapted for detecting or locating any metal or mineral in the ground'. This definition includes devices used for:

- Hobbyist metal detecting
- Magnetometry



© Tessa Poller

- Gradiometry
- Ground-penetrating Radar

Section 42 consent will normally be granted for geophysical surveys. For metal detecting surveys, Section 42 consent will normally only be granted where the survey forms part of a wider research strategy, and provision is made for the conservation and reporting of finds.

You do not need Section 42 consent to metal detect within an Inventory Battlefield or Inventory Garden or Designed Landscape.

What happens if you do not obtain consent?

It is a criminal offence to carry out unauthorised work to scheduled monuments, and this includes metal detecting without consent. Historic

Environment Scotland will investigate reports of unauthorised works in line with our compliance policy.

The table below sets out the offences and penalties in relation to metal detecting on scheduled monuments without consent.

Offence	Fine
Unauthorised use of a metal detector.	On summary conviction, to a fine not exceeding £1000
Removal of any object of archaeological or historic interest discovered through unauthorised metal detecting survey.	Up to £10,000 on summary conviction or on conviction on indictment, to a fine.

Metal detecting on sites that are not scheduled

Landowner permission is required to metal detect anywhere in Scotland. Access rights under Scottish land reform legislation apply to all scheduled and unscheduled archaeological sites, as well as to land in general (for example farmland

or moorland). For further details, including guidance on metal detecting, please see the Scottish Outdoor Access Code: www.outdooraccess-scotland.scot.

What to do if you find something while metal detecting

If you think you have found something of archaeological significance in Scotland, you are required by law to report it to the Treasure Trove Unit (www.treasuretrovescotland.co.uk) or an appropriate intermediary (e.g. a museum). If the finder does not declare the find, the offence of theft is committed. Failing to report any found portable antiquity is an offence punishable by a fine or a term of imprisonment, or both. The term portable antiquity in Scotland covers 'any ownerless item which is portable, has been humanly manufactured or modified, is of any size, type or material, and has been found in Scotland.'

Under the Common Law *bona vacantia*, the Crown has prior rights to all previously owned property that now has no traceable owner or heir. Objects are claimed for their archaeological or historical importance rather than financial value, so objects do not have to contain precious metals to be considered Treasure Trove. The finder of an object deemed to be

Treasure Trove is eligible for a reward to recognise their role in securing the object for the national heritage interest. This is known as an *ex gratia* award. More information about Treasure Trove law in Scotland can be found at: www.gov.scot/resource/doc/253350/0075060.pdf. The Treasure Act 1996 does not apply in Scotland.

The Treasure Trove Unit provides advice as to which objects should be claimed by the Crown. If an object is claimed, the finder invariably receives any *ex gratia* award that is the outcome of proper reporting. So far as the objects themselves are concerned, the law is clear: finders are not keepers, and neither do landowners have prior rights.



ADVICE TO LANDOWNERS, OCCUPIERS AND MANAGERS

What should I do if detectorists ask to work on a scheduled monument?

If someone asks you for permission to metal detect on a scheduled monument on your land, you should inform them that the site is legally protected, that they require prior

written permission from Historic Environment Scotland for metal detecting on a scheduled monument, and refer them to us. If they ignore you, or simply start work without seeking permission, and you think they are on a scheduled area, please contact Police Scotland as soon as possible. You should also contact Historic Environment Scotland through the contact details at the end of this leaflet.



If you are aware of metal detectorists working near a scheduled monument, be sure that you and they are aware of the exact limits of the protected area on the ground. If you permit work that damages a scheduled monument, this may be an offence. Page 5 of this booklet provides information on how to find out about the location of scheduled monuments.

What if my land contains no scheduled monuments?

Some landowners, such as the Ministry of Defence, have a blanket ban on the use of metal detectors on their land. If you are in receipt of any grants or



subsidies through the Scotland Rural Development Programme, or earlier agri-environment schemes, check the terms of the schemes because they may contain a condition that does not permit metal detecting on any archaeological site, scheduled or not.

Many metal detectorists are members of associations such as the National Council for Metal Detecting: www.ncmd.co.uk, or the Federation of Independent Detectorists: www.fid.org.uk.

These associations have nationally agreed codes of conduct for responsible metal detecting, which all members follow, and encourage co-operation and responsive exchanges with other responsible heritage groups.





FURTHER ADVICE

For more information about Historic Environment Scotland's role and legal status, visit: www.historicenvironment.scot/historic-environment-legislation

SCHEDULED MONUMENTS

Historic Environment Scotland have produced a series of guidance notes about managing change in the historic environment. The guidance note discussing works to scheduled monuments can be found at: www.historicenvironment.scot/historic-environment-legislation

Application forms for Section 42 consent for metal detecting can be found at: www.historicenvironment.scot/metal-detecting

For general enquiries, please email: hmenquiries@hes.scot

SITES WHICH ARE NOT SCHEDULED

Your local authority can advise you further about non-scheduled archaeological sites. The contact details of each local authority's archaeology officer can be found at: www.gov.scot/Topics/farmingrural/SRDP/RuralPriorities/RPContactUs/LAArchaeologOfficers

TREASURE TROVE AND FINDS REPORTING

To report finds or for further information, contact:

Treasure Trove Unit
c/o National Museums of Scotland
Chambers Street
Edinburgh EH1 1JF

Tel: 0131 247 4355
info@treasuretrovescotland.co.uk





HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

Historic Environment Scotland is the lead public body established to investigate, care for and promote Scotland's historic environment.

OGL

©Historic Environment Scotland 2018

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence v3.0 except where otherwise stated.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this document should be sent to us at:

Historic Environment Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Telephone: +44 (0) 131 668 8600
www.historicenvironment.scot

You can download this publication from our website at www.historicenvironment.scot