

HISTORIC ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Ancient Monuments Etc

Section 17 – Restrictions on use of metal detectors

113. Under section 42 of the 1979 Act (restrictions on use of metal detectors) it is an offence to use a metal detector in a protected place in Wales without the written consent of the Welsh Ministers. A “protected place” is a place which is:
- i. the site of a scheduled monument or a monument which is under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act, or
 - ii. situated in an area of archaeological importance.
114. Under section 42(7), it is a defence for the accused to prove that he or she had taken all reasonable precautions to find out whether the place where the metal detector was used was protected and did not believe that it was. This defence places responsibility on the accused to show that appropriate precautions were taken, but does not test whether the accused’s belief that the site was not protected was a reasonable belief.
115. **Section 17** disapplies the section 42(7) defence in relation to Wales and replaces it with the new defence in section 42(8), which requires the accused to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place, and that he or she did not know, and had no reason to believe, that it was a protected place.