

Referral of the proposal for the introduction of an application fee for the use of metal detectors

The National Heritage Board has submitted a memorandum with proposals for the introduction of fees for metaldetecting matters. (dnr.Ku2016/01648/KL). Interested parties have now an opportunity to comment on the proposal.

Reviewing Bodies:

1. Ekonomistyrningsverket.
2. County Administrative Board of Stockholm County
3. County Administrative Board in Kalmar County
4. County Administrative Board of Halland County
5. County Administrative Board of Örebro County
6. County Administrative Board in Uppsala County
7. County Administrative Board of Jämtland County
8. County Administrative Board of Västerbotten County
9. University of Gothenburg
10. Trafikverket
11. Skogsstyrelsen
12. Boverket
13. National Historical Museums
14. Sametinget
15. Företagarna.
16. Arkeologikonsult
17. Sveriges Hembygdsförbund
18. Sveriges Metallsökarförening.

The referral replies given in five copies (one original and four copies) must be filed with the Ministry of Culture, 103 33 Stockholm, by 30 September 2016. Copies of the submission should also be sent in electronic form (Word format) to ku.remissvar@regeringskansliet.se.

Enter our registration number Ku2016/01648/KL

The comments on the referral may be published on the Government website.

One purpose of the referral is that the government wants views on the proposals.

Government authorities are required to respond to the referral.

An authority determines however, on its own responsibility if it has any opinions to report on the matter.

If the authority does not have any comments, the response given should make this clear.

For **other reviewing bodies** the referral means an invitation to leave comments.

(signed)

Daniel Ström

Expedition- and Legal Affairs Manager

Ministry of Culture
103 33 Stockholm

Proposals on the introduction of application fees for metal detecting matters

The National Heritage Board proposes that application fees for the usage of metal detectors and carriage thereof is to be introduced from 1 July 2017. Prior to the proposed introduction, the National Heritage Board has consulted with the County Administrative Boards cultural and environmental forums. The proposal, with a statement of the constitutional amendments needed and what consequences the proposal is expected to get, can be seen in the attached memorandum.

(signed)

Knut Weibull, Senior Antiquarian

Introduction of an application fee in metal detecting matters

Summary of legislative proposals

The National Heritage Board proposes that a filing fee for applications for the use and carrying of metal detectors is to be introduced. The fee should not correspond to the full coverage of costs but follow fee class 2 in 10 § Fees Ordinance (1992:191), corresponding to SEK 700. Each geographical area which is included in the permit application should be considered as a chargeable case.

The National Heritage Board proposes, *firstly*, that Chapter 2 of 20 § Cultural Act (1988: 950) (KML) is modified and *secondly* that a new paragraph, 10a § is introduced in the Cultural Regulation (1988: 1188) (KMF).

Current wording

The County Board handles permits to operate and carry metal detectors.

Proposed wording

Chapter 2 20§ KML
The County Board handles permits to operate and carry metal detectors.
The applicant shall pay an application fee. The government, or the authority that the government has authorized, may issue more detailed regulations on the application fee.

Current wording

Proposed wording
10a § KMF
Application fee for the application for the use of, or carrying metal detectors in accordance with Chapter 2 20 §, second paragraph of the Cultural Act (1988: 950) shall be charged in accordance with the charge class 2 in 10 § Fees Ordinance (1992:191).

The law and regulation amendment should enter into force on 1 July 2017.

Chapter 2 20 § second paragraph shall not apply to cases where the application was made before the entry into force.

Background

Since the 1st of January 2014, a license is required to use metal detectors in Sweden and to bring metal detectors into areas of ancient monuments except when driving on public roads. It is clear from Chapter 2. 18 § KML. Moreover, it is the law that an individual cannot obtain permission to use metal detectors in order to look for ancient finds. When considering license applications, the archaeological situation in the area is to be critical, ie a permit should not be given in or near an ancient monument or a place where unknown ancient monuments or ancient finds can be expected. In the ancient monument densest areas in the country (in any case, Öland and Gotland) licensing should be extremely restrictive(cf. Prop. 2012/13:96, page 55, and the Appeal Court in Jönköpings judgment of 8 September 2015 in case no. 356-15.) As a result of the National Heritage Board's regulations and general advice on ancient monuments and metal detectors (KRFS 2016: 1), it is clear that the license period, as a rule should not exceed one year.

Problem description

Since the amendment in 2014, the number of applications for the use of metal detectors has multiplied. In 2012 the County Administrative Boards received 409 cases, compared with 2153 in 2015. This is an increase of approximately 1200%. More than nine-tenths of the applications came from hobby users. Many of them are searching in several counties simultaneously and the applications often covers a large number of areas. Because of the large amount of applications, the County Administrative Boards can not make a decision within a reasonable time.

Metal detector applications are time consuming because the County Administrative Boards in each case not only has to make an assessment of the existence of ancient monuments, but also do a thorough assessment of the risk if unknown ancient monuments and archaeological finds will be encountered. This must be done for each geographical area and because an application can cover many areas, the processing time is long. In addition to this, there is the work and cost for the registration, care and preservation of any ancient finds encountered and for any eventual archeological surveys.

The County Administrative Boards have an extensive duty to protect the cultural interests of the environment particularly regarding planning issues, infrastructure and energy supply. A large portion of the resources will now instead be used to process requests for the use of metal detectors.

Suggested solution

The National Heritage Board proposes that a fee for applications for the use and carrying of metal detectors is to be introduced. Such a charge would reduce the number of applications and would probably have a dampening effect on the number of geographical areas included in the applications.

A well-balanced fee level should also not affect the applicants (mostly hobbyists) unreasonably hard. Anyone who needs to use metal detectors in his or her business may be granted a so-called general permit for a larger area and / or for a longer time than one year (see Chapter 2, 10§ KRFS 2016:1). In this way, the fee is not unfair to that group either.

Legal background

Chapter 9. 1§ Constitution Act (1974:152) states:

"Parliament decides on taxes and duties to the State and of the state budget"

From 3§ of the Fee Regulation (1992:191) it is clear that an authority may only charge fees for goods and services if provided by law or regulation, or by a specific decision from the government. 4§ in the same regulation lists a number of exceptions to the general rule above. In that provision it is clear that an authority, if it is consistent with the authority's duty under the law, instruction or other regulation, may provide a number of goods and services if the business is of a temporary nature or minor extent. The list of goods and services is exhaustive and includes among other things the rental of premises and equipment and the provision of magazines and other publications. None of the exceptions listed in 4 § is applicable to the application fees.

To introduce the application fees in metal detector matters, a change in the KML and KMF is therefore needed.

Size of the fee

Regarding the determination of the size of the fee, one can either assume that the fee should correspond to the costs in full - which is the main rule - or that it will be governed by the 10§ Fee Regulation. To make an exception to the rule a regulatory support is needed(see § 5 second paragraph of the Fee Regulation). Since the direct target of the application fee is not to save money for the County Administrative Boards but to reduce the number of applications, the National Heritage Board suggests departing from the general rule and instead set the fee with support from the different fee classes found in 10 § Fee Regulation. There are 10 different classes, where fee class 1 corresponds to 250 SEK and fee Class 10 corresponds to 38 000 SEK. The amounts in the different classes are updated regularly.

The National Heritage Board proposes that fee Class 2 is applied, which means that the fee is set at 700 SEK. The sum appears to be reasonable based on the interest of reducing the number of applications on one hand and the interest of individuals to practice their hobby without excessive costs on the other. One can compare the charge level with that of the application fee for a license to hold a firearm, see Chapter 16 1§ second paragraph of Firearms Regulation (1996: 70), or notifications of video surveillance, see 5 § Camera Surveillance Regulation (2013:463), which is also 700 SEK.

It is clear from Chapter 2 of 2 § 4 of the National Heritage Board's regulations and general advice on archaeological explanations and metal detectors (KRFS 2016:1) that a permit application shall include information about the geographical area covered by the application with the area limits marked on the attached map. Each geographical area which is included in the application should be considered as a chargeable case (cf. 8 § Camera Surveillance Regulation). Otherwise, an applicant can apply for a wide range of areas within a single application, and thus defeat the purpose of the new regulation.

Practically around the charge

The fee is charged when the application is filed and the handling of the case does not begin until the fee is fully paid.

If the fee is not paid, the licensing authority shall request the applicant to pay. The order shall contain information that the application may be rejected if the fee is not paid within the prescribed time. This is evidenced by the 11§ first paragraph of the Fee Regulation.

Consequences

Affected

The introduction of fees affect both the County Administrative Board, which is the authority responsible for licensing the use of metal detectors, and those who are recipients of the County Administrative Boards decisions, ie the applicants.

The impact on the County Administrative Boards workload

A charging fee is assumed to mean a reduction in the number of applications, and that the applications will contain fewer geographic areas. The consequence will be that the workload of the County Administrative Board will be reduced and that applications will be faster to process. Some tasks will be added when the County Administrative Board must ensure that the application fee is paid and that the applicant will have to pay if this was not done, but the workload will nonetheless be reduced overall.

EU legal consequences

The introduction of application fees will carry no EU legal consequences.

Assessment of the need for special information campaigns

The National Heritage Board will carry out information campaigns when the changes in the constitution enters into force. These efforts will notably include a revision of

the National Heritage Board's regulations and general guidelines for metal detectors as well as the Authority's guidelines on the same subject. They will also include information seminars for the County Administrative Board in connection with the entry into force.

Specific consequences for companies

The entrepreneurs who use metal detectors in their business will be affected in that they are imposed a new fee. The possibility for the County Administrative Boards to issue general licenses means that these traders can not be considered to be affected in any way unreasonable. The regulation is not expected to have any impact on competition between companies and no special consideration needs to be given to small enterprises regarding the design of the fee.