



Department for  
Digital, Culture,  
Media & Sport

# **Revising the definition of treasure in the Treasure Act 1996 and revising the related codes of practice**

Public consultation

February 2019  
Department for Digital, Culture, Media and Sport

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# Executive Summary

## Introduction

This consultation deals with proposed changes to the Treasure Act 1996 ('the Act'), its associated Code of Practice ('the Code') and the process for finds that may be treasure following a review of the treasure process. The aim of the Act is to ensure that important archaeological items are preserved in public collections.

## Aim of the proposed changes and the consultation

We propose to improve the treasure process so that it is more efficient, that it is focused on the aim of preserving significant finds for public collections, and that it is more rational and easier to understand. We are also keen to ensure that there is a sustainable future for the treasure process.

The aim of the consultation is to gather views on the proposed changes, and obtain information that will help us to assess the impact of these changes on groups and individuals. We also ask for opinions, suggestions and evidence which will support the development of future policies on the Act, the Code and the treasure process.

## The Treasure Act 1996 and the Code of Practice

The Act covers England, Wales and Northern Ireland; Scotland has its own law on treasure. The Act replaced the common law of treasure trove. It widened the definition of treasure and set out the process for dealing with possible treasure finds.

The Act gives the Secretary of State for Digital, Culture, Media and Sport ('the Secretary of State') the power to revise the definition of treasure, to disclaim treasure finds and to take decisions on rewards paid under the Act. The Secretary of State is also required by section 11 of the Act to publish and regularly review a Code of Practice in connection with the Act.

There are two Codes, for England and Wales, and Northern Ireland. In Northern Ireland, the Historic Monuments and Archaeological Objects (NI) Order 1995 prohibits searching for archaeological objects without the permission of the Department of the Environment in Northern Ireland and there is also a different administrative process.

## **The Portable Antiquities Scheme in England and Wales**

The Portable Antiquities Scheme ('PAS') is active in England and Wales. Local Finds Liaison Officers ('FLOs') record finds on a database and advise finders if a find is treasure. Under local agreements the FLO reports treasure finds to the coroner.

## **The Treasure Secretariat at the British Museum**

The Department for Digital, Culture, Media and Sport (DCMS) retains responsibility for treasure policy but administration of the treasure process was transferred to the Treasure Secretariat at the British Museum in 2007.

## **The treasure process**

Under the Act, a find that might meet the definition of treasure contained in section 1 of the Act has to be reported to a coroner. Under local agreements, finds are reported to FLOs in England and Wales, and National Museums Northern Ireland (Ulster Museum) in Northern Ireland who pass the report on to the local coroner.

The FLO or curator prepares a report for the coroner on how the find meets the definition of treasure in the Act, and offers the local museum the find for acquisition. If no museum declares an interest in acquiring the find, the find is disclaimed and returned to the finder. Otherwise the coroner holds an inquest and if the find is declared treasure it becomes the property of the Crown. The finder and the landowner and/or occupier then become eligible for a reward.

The Secretary of State decides on the amount and share of the reward, acting on the advice of the Treasure Valuation Committee ('the TVC'). This is a committee of experts who decide on the market value of the find, which is the basis of the amount of the reward. The TVC commissions a provisional valuation from an approved valuer. The acquiring museum, the finder and the landowner and/or occupier can submit evidence and private valuations to the TVC.

The TVC will assess the evidence and make a recommendation on the value and how the reward is shared between the interested parties to the Secretary of State. The TVC will also recommend if there should be any abatement (reduction) in the reward for behaviour, such as only partial reporting of a hoard, which breaches the Code.

The museum will pay the reward to the Treasure Secretariat (or on occasion to DCMS) who will release the find to the museum and pay the reward to the interested parties.

## **Background to the proposals in the consultation**

Since 1997 the success of the Portable Antiquities Scheme (PAS) and the increase in interest in metal detecting has seen treasure cases rise from 79 in 1997 to 1,267 in 2017<sup>1</sup>. The growth of online markets means that there is more scope for a small minority of unscrupulous finders to sell unreported finds. In addition, the operation of the Act over the last 21 years has raised issues, such as limitations with the current treasure definitions, which we welcome the opportunity to address.

## **The current operation of the Act**

Since the introduction of the Act, certain important finds such as the Crosby Garrett helmet<sup>2</sup> have not been acquired by a public institution but have been sold on the open market because they did not meet the definition of treasure.

The increase of 1,500% in reported finds between 1997 and 2017 demonstrates the growing awareness of the treasure process, but raises a risk that the process will be overwhelmed. The review of the treasure process has identified the need for revisions to the definitions and processes so that resources can be focused on the most significant finds.

The Code contains extensive guidance, but is out of date and can be confusing. For example, Paragraph 3 talks about the extension of the PAS from 2003 and Paragraph 81 states that an archaeologist or anyone engaged on an archaeological excavation or investigation is not eligible for a reward, but does not define those terms.

The Act's definition of treasure brought objects associated with human burials in ground consecrated according to the rites of the Church of England into its scope. These objects were already covered by the Church of England's own legal system so are currently subject to two legal jurisdictions. During the passage of the legislation in 1996 the Government undertook to exempt these finds from the definition of treasure in future.

Finds can be disclaimed by the Secretary of State at any stage in the treasure process. Where no museum expresses an interest in acquiring a find it can be disclaimed before the inquest, however a question remains as to the coroner's duty to investigate a possible treasure find.

The growth of online markets has given the rare unscrupulous finder an outlet to sell an unreported find and currently there is no sanction on someone who knowingly buys such a find.

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<sup>1</sup> Treasure Act Annual Report 2016, published December 2018 -

<https://finds.org.uk/documents/treasurereports/2016.pdf>

<sup>2</sup> Crosby Garrett helmet wikipedia entry - [https://en.wikipedia.org/wiki/Crosby\\_Garrett\\_Helmet](https://en.wikipedia.org/wiki/Crosby_Garrett_Helmet)

The last full review of the treasure process took place over 15 years ago, although there was a partial review in 2007. We continue to work closely with our immediate stakeholders and would welcome a wider understanding of the views of the public and interested parties on the possible future of the treasure process.

### **Proposals following the review of the Act and Code**

This consultation seeks opinions on our proposals for addressing the issues outlined above. We propose to:

- Introduce changes in the administrative process to speed up and rationalise the treasure process
- Update the Code to reflect these and other changes in policy and practice
- Revise the definition of treasure in the Act to focus the process on significant archaeological, cultural and historical finds
- Exempt finds that fall under the Church of England's systems of control
- Commence section 30 of the Coroners and Justice Act 2009, to avoid delay and prevent unnecessary work for the coroner and the Treasure Secretariat, and to extend to the acquirer of an object the duty of reporting a possible treasure object or coin to the coroner

### **Devolution**

Culture is a devolved responsibility, however the Secretary of State is responsible for the Act in England, Wales and Northern Ireland. There are differences between the nations, based on the different legal frameworks for treasure and on the volume of finds found. We hope to have responses from interested parties that will reflect the variety of experiences.

### **Conclusion**

The aim of the Act is to preserve significant finds for public collections. The proposals are aimed at supporting and promoting that aim. In addition to consultation responses, we will be inviting individuals and groups to speak to DCMS officials, and we are hoping for responses which will give us an insight into the views of everyone interested in the Act.

# Information on the consultation and how to respond

## Topic of the consultation

The topic of the consultation is a set of proposed changes to the Act and its associated Codes of Practice. In addition it deals with proposed changes to the definition of treasure, the exemption of finds associated with burials in land consecrated according to the rites of the Church of England from the treasure process and commencing some sections of the Coroners and Justice Act 2009. We are asking for views and suggestions on the future direction of the treasure process.

## Scope of the consultation

The scope of the consultation is a request for views on the changes proposed in order to update the Codes, make the definition of treasure more suitable for meeting the aims of the Act, exempt finds that are currently subject to two different legal processes and commence sections of the 2009 Act that will make the treasure process more efficient. We are also asking for comments on possible changes to the Act and process in the future, to reflect the growth in the number of treasure cases each year.

## Geographical Scope

The geographical scope of the consultation is England, Wales and Northern Ireland, where the Act applies. Scotland has its own separate law of treasure trove. Northern Ireland has its own Code to reflect its different regulations on archaeological digging.

## Relevance

The consultation is relevant to all individual and groups and organisations interested in the treasure process. This includes, but is not limited to, archaeologists, coroners, curators, Finds Liaison Officers and metal detectorists. We welcome comments and observations, particularly where these are supported by empirical evidence.

## Body responsible for the consultation

The consultation is being carried out by the Department for Digital, Culture, Media and Sport, in accordance with the Act, on behalf of the UK Government.

## Length of the consultation

The consultation starts on 1 February 2019 and ends at 11.45pm on 30 April 2019.

## Enquiries

If you have any enquiries, please contact [treasure@culture.gov.uk](mailto:treasure@culture.gov.uk)

## Disclosure of Responses and Data Protection

The Department for Digital, Culture, Media and Sport (DCMS), 100 Parliament St Westminster, London SW1A 2BQ, is the data controller in respect of any information you provide in your answers. Your personal data is being collected and processed by DCMS, which processes your personal data on the basis of informed consent. We will hold the data you provide for a maximum of 2 years.

You can find out more here:

<https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport/about/personal-information-charter>

We will process the names and addresses and email addresses provided by respondents, and information about which organisations respondents belong to, where this is provided. We will also process the information that you provide in relation to your views on the proposed changes contained in the consultation, which may of course include commercially sensitive data.

When the consultation ends, we will publish a summary of the key points raised on the Department's website: [www.gov.uk/DCMS](http://www.gov.uk/DCMS). This will include a list of the organisations that responded, but not any individual's personal name, address or other contact details. All responses and personal data will be processed in compliance with the Data Protection Act 2018 and the General Data Protection Regulation.

If you want some or all of the information you provide to be treated as confidential or commercially sensitive, it would be helpful if you could clearly identify the relevant information and explain why you consider it confidential or commercially sensitive. Please note that DCMS may be required by law to publish or disclose information provided in response to this consultation in accordance with access to information regimes: primarily the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 2018 and the General Data Protection Regulation. If we receive any request to disclose this information, we will take full account of your explanation, but cannot give you an absolute assurance that disclosure will not be made in any particular case. We will not regard an automatic disclaimer generated by your IT system as a relevant request for these purposes.



Your information will be processed by a 3rd party service provider Qualtrics. DCMS control all information input and retained using the Qualtrics software.

Your personal data will not be sent overseas and will not be used for automated decision making.

If, during completion of the survey you decide to withdraw your response, you will need to contact DCMS via email ([dcmsdataprotection@culture.gov.uk](mailto:dcmsdataprotection@culture.gov.uk)) asking that your response be deleted. Please note we may require you to provide us with some of your responses to the survey (identifying information) e.g. organisations name, to allow the correct survey response to be deleted.

Once you have submitted your response to the survey you will not be able to withdraw your answers from the analysis stage. However, under the Data Protection Act 2018 (and the General Data Protection Regulation), you have certain rights to access your personal data and have it corrected or erased (in certain circumstances), and you can withdraw your consent to us processing your personal data at any time.

You have the right to lodge a complaint to the Information Commissioner's Office about our practices, to do so please visit the Information Commissioner's Office website:

<https://ico.org.uk/concerns/>.

Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF  
[casework@ico.org.uk](mailto:casework@ico.org.uk) Telephone: 0303 123 1113 Textphone: 01625 545860 Monday to Friday, 9am to 4:30pm

If you need any further information please contact us: [dcmsdataprotection@culture.gov.uk](mailto:dcmsdataprotection@culture.gov.uk)

## How to respond to the consultation

You can reply to the consultation:

- Online
- By downloading and completing the response form
- By email

### Online

You can reply to the consultation online here. You do not have to reply to all parts of the consultation, you can reply only to the parts that interest you. You should note that there is a 1250 character limit for responses online. The online consultation contains a Disclosure of Responses statement which you must read, understand and agree in order to complete your response.

### Response Form

You can also reply by downloading and completing the response form and sending it to [treasure@culture.gov.uk](mailto:treasure@culture.gov.uk). You do not have to reply to all parts of the consultation, you can reply only to the parts that interest you. You should note that there is a 250 word limit for responses on the form. The Response Form contains a Disclosure of Responses statement which you must read, understand and agree. If you do not your response may be considered invalid and would not be considered as part of the consultation.

### Email

We would encourage respondents to reply online or using the response form, but you can if you wish reply by email to [treasure@culture.gov.uk](mailto:treasure@culture.gov.uk).

You must include:

- Name (first name and surname)
- Email address
- Whether you are responding as an individual or on behalf of an organisation (and if an organisation, please include the name of this organisation)

You must read, understand and agree the Disclosure of Responses statement contained at pages 8 and 9 of this consultation document.

Please add the following text to your response:

*'I have read and understood the 'Disclosure of Responses statement' for this consultation.'*

Please include the above information in your consultation response. Failure to include all the above information in your consultation response will render the response invalid, in which case your consultation response may not be considered.

We may wish to contact you in order to discuss your response in more detail. Please state on your consultation response that you are happy to be contacted (if you agree to be contacted, we will use the email address you include on your consultation response).

Hard copies of the consultation will only be made available on request. Please contact [treasure@culture.gov.uk](mailto:treasure@culture.gov.uk) for further information.

The Government will consider all responses and publish a response document in due course, but will not respond to comments on an individual basis.

### **Compliance with Consultation Principles**

This consultation is in line with the government's Consultation Principles. This can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance>

# Introduction

## Treasure Trove

1. From medieval times the common law of treasure trove applied in England, being extended at later dates to Wales and Northern Ireland.
2. The common law in England, Wales and Northern Ireland meant that any discoveries of gold or silver finds that had been deliberately hidden with the intention of recovery, and where the owner or heir could not be identified, belonged to the Crown.
3. In practice this meant that finds such as the Mildenhall Treasure, a collection of Roman silver buried and not reclaimed, was treasure. The Sutton Hoo hoard (finds made when an Anglo-Saxon ship burial was excavated in the 1930s) was judged by the coroner not to be treasure as it had not been buried with the intention of recovery.
4. Under treasure trove, as now, it was for the local coroner to rule if a find was treasure. From the early 20th century it became the practice for the finder to be rewarded where a find was acquired by a museum. The find would be returned to the finder in cases where it was not acquired by a museum.

## The Treasure Act 1996

5. The common law of treasure trove was superseded in 1997 by the enactment of the Treasure Act 1996 ('the Act') applying to England, Wales and Northern Ireland. Scotland had, and still has, its own separate law of treasure trove. The aim of the Act is to ensure that important archaeological items are preserved in public collections.
6. The Act governs the definition and ownership of treasure and the process for dealing with finds, including the payment of rewards. Under section 1 of the Act any object/s (or groups of coins), whether hidden or lost, and which meets the definition of treasure belongs to the Crown or its franchisees.
7. Section 2 of the Act gives the Secretary of State power to designate additional classes of finds as treasure and to exempt other classes of items from the treasure process by way of order.

## **The Treasure Act Code of Practice for England and Wales**

8. Under section 11 of the Act the Secretary of State must prepare a Code of Practice relating to treasure, keep that code under review, and revise it when appropriate. The Treasure Act Code of Practice for England and Wales ('the Code for England and Wales') was established in 1997 and then reviewed in 2000-2001, resulting in major revisions in 2002.
9. In 2006 the Code was partially reviewed and many aspects of the administrative processes associated with the Act were transferred from the Department for Culture, Media and Sport (now the Department for Digital, Culture, Media and Sport - 'DCMS') to the British Museum.
10. In England, Wales and Northern Ireland, finds of treasure are recorded with the British Museum, Amgueddfa Cymru/National Museum of Wales and National Museums Northern Ireland (Ulster Museum) respectively who also provide advice to coroners about these finds. The Treasure Team at the British Museum acts as the secretariat to the Treasure Valuation Committee (further details below) and administers payment of rewards. These bodies are collectively referred to as the 'Treasure Secretariat' throughout this document. In instances where the British Museum is acquiring a find, DCMS administers the payment of the reward.
11. The bulk of the Code remains as drafted in 2002.

## **The Treasure Act Code of Practice for Northern Ireland**

12. There is a separate Code of Practice for Northern Ireland. This reflects the Historic Monuments and Archaeological Objects (NI) Order 1995, which does not allow searching for archaeological objects without the permission of the Department of the Environment, and the different administrative process that applies in Northern Ireland. The Portable Antiquities Scheme ('PAS', details below) does not extend to Northern Ireland and all treasure cases are dealt with by National Museums Northern Ireland.
13. As a result, administrative changes in the Code, such as a reference to the role of PAS in the treasure process, will not be reflected in the Code for Northern Ireland. In addition, the exemption for finds that fall under the Church of England's legal system is not applicable in Northern Ireland. Where the Codes differ we will refer in this document to the 'E/W Code' for the Code to England and Wales and 'NI Code' for the Code for Northern Ireland.

## **The treasure process**

14. In England, Wales and Northern Ireland, a person who finds an object which they believe, or have reasonable grounds to believe, is treasure (as defined in section 1 of the Act) has a legal obligation to report such objects to the coroner for the area in which the discovery is made.
15. In Northern Ireland reports are usually made to the Department of the Environment or the National Museums Northern Ireland. In England and Wales reports are usually made through the Finds Liaison Officer ('FLO') under the Portable Antiquities Scheme ('PAS').
16. PAS is a voluntary scheme where finders report finds of archaeological importance. The FLOs will advise finders where a find may be treasure and will report the find to the local coroner. FLOs are usually attached to the local museums in England, but the Amgueddfa Cymru National Museum Wales deals with the treasure process in Wales.
17. Where a museum declares an interest in acquiring an object the coroner is informed that a treasure inquest will be required. When no museum is interested the object is disclaimed, there are further details of this process at Paragraph 49 - 55 below.
18. The coroner will then hold an inquest to decide if the find meets the definition of treasure under the Act. Where the coroner does rule that the find is treasure, the Act provides that it will be owned by the Crown or its franchisees<sup>3</sup>, and will be offered to museums for acquisition. Should the coroner rule that the find is not treasure it will be returned to the finder, landowner and/or occupier to do with what they wish.
19. Under section 10 of the Act, where a find is acquired by a museum, the finder, the landowner and/or the occupier may be eligible for a reward. This would normally be a share of an amount equivalent to the market value of the find. The Secretary of State for Digital, Culture, Media and Sport (the Secretary of State) decides if a reward should be paid, what the value of the reward should be and how it should be shared between the finder and landowner and/or occupier.

## **The Treasure Valuation Committee**

20. Sections 10(2) and (3) of the Act give the Secretary of State the power to determine if a reward is payable for a find, and the details of the reward. In particular if the

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<sup>3</sup> Franchisees are bodies and individuals who have been granted the right to claim treasure finds by the Monarch. The principle franchisees are the Duchies of Lancaster and Cornwall, and the Cities of London and Bristol.

Secretary of State has decided a reward is payable, he is obliged to determine the market price under section 10 (3) (a) in *'whatever way he thinks fit'*.

21. The Secretary of State has designated the Treasure Valuation Committee ('TVC') to determine the market price of finds that are subject to the treasure process. TVC members are public appointees and are expected to demonstrate extensive knowledge, expertise and experience before being selected to join the committee.
22. Their role is to assist the Secretary of State by using their knowledge, skill and expertise to evaluate the evidence before them, and recommend a valuation based on that exercise. The TVC terms of reference are detailed in the Codes at Paragraphs 67 to 79 in the E/W Code and 54 to 59 in the NI Code.
23. The TVC is made up of market experts, a finders' representative and curators. They commission experienced dealers to provide a provisional valuation on finds. The finder, the owner of the land where the find was made and the museum that wishes to acquire the find can all submit their comments and evidence to the TVC, including privately commissioning their own valuations.
24. In order to assist interested parties to submit evidence, the TVC publish guidance on the PAS website ([finds.org.uk](https://finds.org.uk)). If they find it necessary, the TVC can commission further valuations where this would assist their deliberations on value.
25. The TVC will re-consider a valuation if new evidence or information is submitted to them. An interested party can ask the Secretary of State to review a valuation recommendation by the TVC. The Secretary of State's decision is subject to judicial review and the process is subject to the Parliamentary and Health Service Ombudsman.

### **Payment of rewards**

26. Where the Secretary of State determines that a reward should be paid, this is paid by the museum that wishes to acquire the find. This can be financed by the museum's own funds but often requires assistance from the funding body and public appeal. The museum is invoiced by the British Museum (or DCMS where the British Museum are acquiring the find) and when the sum is received, the British Museum or DCMS will pay the reward to the finder and landowner and/or occupier (if applicable). The find is then released.
27. DCMS encourages interested parties to waive rewards; on average a quarter of all finds acquired by museums have seen one or more of the interested parties have not claimed the reward to which they eligible. This reduces the administrative costs

associated with the treasure process, and, most importantly, increases the amount of finds entering public collections. Where the finder or landowner and/or occupier waives their reward they will receive a certificate signed by the Minister.

### **Consultation on the Act and the Code**

28. We have conducted a review of the Act and the Codes and are proposing changes which we consider will support the preservation of important and significant finds for the public.

29. We have opened this consultation for public comments on the proposed changes. It will last twelve weeks. In addition to the request for written responses DCMS officials will be speaking to interested parties, both individuals and groups, to understand further their views on the treasure process and the proposed changes.

### **Structure of the consultation**

30. There are three parts to the consultation:

- this consultation document;
- an Appendix A which outlines changes to the Codes on which we are not directly consulting as they are either purely administrative or reflect other elements in the consultation. The appendix also includes consultation questions on the Code, where these are on proposed changes on policy or the treasure process; and
- an online questionnaire.

31. We would advise that respondents look at the consultation in conjunction with the Codes. The E/W Code is available online at the gov.uk website.<sup>4</sup> Please contact (email address to be added) for an online copy of the NI Code. It should be noted that the NI code is likely to be revised to take account of current Departmental/Heritage organisation responsibilities and the impact these have on the treasure process.

32. Details of how to respond to the consultation are included at the beginning of this document.

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<sup>4</sup> The Treasure Act 1996: Code of Practice - <https://www.gov.uk/government/publications/treasure-act-1996-code-of-practice-2nd-revision-england-and-wales>



## **The aim of the consultation**

33. The consultation is aimed at simplifying and clarifying the treasure process under the Act and the Code and improving administrative functions.

34. We are seeking views on:

- Revisions to the Codes that would reflect the current treasure process and simplify that process;
- Revisions to the definition of treasure which would better support the aim of the Act to ensure that museums can acquire finds of historical, archaeological or cultural importance;
- The making of an order to exempt from the treasure process objects found in association with human burials that are covered by the Church of England's legal system of controls;
- Commencement of sections 29 and 30 of the Coroners and Justice Act 2009. These sections provide, respectively, an exception to the coroner's duty to investigate where the Secretary of State or franchisee has disclaimed an article and a duty to notify the coroner of an find which might be treasure;
- and
- The long-term future of the treasure process and its sustainability.

## **Next steps**

35. We are aware that there will be varying views and experiences across the different groups who have an interest in the treasure process, and therefore in this consultation. We are keen to hear your views, and it would be very helpful if you can provide evidence to support your contribution.

36. We will be collecting responses through an online survey, emails and written responses. We will also speak with individuals and stakeholder groups during the twelve weeks of the consultation. At the end of that period we will analyse responses and publish the Government Response.

37. We also plan to re-draft some paragraphs of the Codes to make them easier to understand.

38. Some changes proposed in the consultation, such as those in the definition of treasure, will require secondary legislation in the form of Statutory Instruments. The amended Code will also have to be approved by both Houses of Parliament.

39. The environment in which the treasure process functions has changed radically since it first came into effect in 1997. We expect that there will be continuing policy and process development that will ensure that it continues to meet its aim of preserving important archaeological, cultural and historic finds for the public.

## Revisions to the Codes of Practice

40. The Codes have not been updated fully since the 2001 review and consequently parts of them are out of date, do not reflect current practice or are not sufficiently clear. In addition to addressing these problems we intend to include some changes in administration and policy that would make the treasure process more efficient.
41. All the proposed revisions to the texts of the Codes are detailed in Appendix A to this consultation document. All proposed policy and process changes are being consulted upon. We are not consulting on changes that are purely administrative.
42. We have indicated the section and paragraph numbers of the Codes that relate to the proposed changes. The first number is the paragraph number in the England and Wales Code, the second the paragraph number in the Northern Ireland Code.

### **Section G: Procedure when a find has been reported to a coroner; Treasure inquests**

#### **Beginning of Section G in the Codes**

43. Since 1996 there has been a sizeable increase in the amount of finds going through the treasure process, from 79 in 1997 to 1,267 in 2017. This increase has made additional demands on the resources of coroners, the Treasure Secretariat and the TVC and has led to a significant rise in the amount of money spent on valuations.
44. Where no museum declares an interest, a find can be disclaimed without going through the treasure process, ensuring that resources are focused on objects that will be acquired by museums. We give further details of that process below.
45. We propose to insert two paragraphs at the beginning of Section G of the Codes to provide guidance on this element. We aim at efficient use of the resources and time involved in holding an inquest on a treasure find and do not seek to fetter in any way the discretion of the coroner to hold an inquest.
46. The paragraphs would:
  - Introduce a time limit of 28 days from the date that the FLO makes a request for an expression of interest from a museum. The museum should respond

within those 28 days, with no answer being taken as an expression of no interest; and

- Ask coroners to consider waiting until the Treasury Secretariat/National Museum Wales/National Museum Northern Ireland advises them if there is a museum interested in acquiring the find before holding an inquest;
- Amend Paragraph 50 E/W so that it states that it is the Treasure Secretariat (and not the coroner) who writes to the landowner and/or occupier to give them 28 days to object to the return of the find to the finder. If the Treasure Secretariat do not receive a reply within 28 days, they will release the find to the finder.

#### **Question 1**

**Do you agree that introducing a time limit for an expression of interest would help to speed up the treasure process?**

#### **Question 2**

**What do you think would be the impact of asking the coroner to delay an inquest until an expression of interest is made or the 28 day time limit has expired?**

### **Section H Acquisition of Treasure**

#### **Paragraph 63 (3) and (4) E/W Code, 53 (3) and (4) NI Code**

47. On occasion museums have withdrawn their interest at a late stage in the treasure process because they had not previously fully appreciated the possible value of a find. Where this happens the find will often be returned to the finder after following a process that ultimately proved unnecessary and so resulted in a waste of resources.
48. In order to try and avoid this scenario we propose to insert between points (3) and (4) a sub-paragraph advising that museums consult past Treasure Annual Reports or auction results (or seek the advice of the Treasure Secretariat) before expressing an interest in acquiring a find in order to gain a realistic idea of its value.

#### **Question 3**

**Do you consider that the requirement for museums to research possible value before expressing an interest would reduce the waste of resources caused to the acquiring museum and to the British Museum, National Museum Northern Ireland and National Museum Wales who administer the treasure process?**

**Question 4**

**Do you consider that this suggestion is sufficient to reduce the waste of resources or do you think that there are other actions that would increase the efficiency of the process?**

**Following Paragraph 63 (4) E/W Code, 53 (4) NI Code**

49. Section 6(3) of the Act allows the Secretary of State to disclaim the Crown's title to a treasure find at any time. If no museum wishes to acquire a find, the FLO and the Treasure Secretariat will agree to recommend to the Secretary of State that the find be disclaimed.
50. If this is accepted the Treasure Secretariat will write to the coroner advising them that it is not necessary to hold an inquest, and ask them to contact the landowner and/or occupier to confirm that they are content that the find is returned to the finder. If no objections are raised, the find is returned.
51. Paragraph 63 (4) of the E/W Code and Paragraph 53 (4) of the NI Code deals with the procedure followed where a museum does not wish to acquire all of the objects that make up a find. In these circumstances the objects that are not acquired will be disclaimed in accordance with Paragraphs 48 - 50 of the E/W Code and Paragraph 39 - 41 of the NI Code.
52. This current guidance states that where a find consists of several individual items that make up a hoard, the articles cannot be disclaimed individually before the coroner has declared the articles that make up the hoard to be treasure.
53. Under the current definition of treasure the status of an item that is part of a hoard can be dependent upon the articles with which it was found. For example, a number of extremely rare Roman millefiori glass bowls were only declared treasure because they were found with a bronze vessel with a very small silver component that fell within the definition of treasure in the Act. For this reason a partial hoard cannot be disclaimed until after it has been declared treasure.
54. In order to ensure that there is consistency in the treatment of finds which are disclaimed, we propose to add a new paragraph following Paragraph 63(4) in the E/W Code and Paragraph 53 (4) in the NI Code. This would clarify that where a museum decides not to acquire any or all parts of a find following a coroner's ruling that it is treasure, the disclaiming process outlined at Paragraphs 48 - 50 of the E/W Code and Paragraph 39 - 41 of the NI Code would apply.

55. In addition, we propose that the Treasure Secretariat would inform the coroner that an inquest is necessary on only part of the hoard. This would mean that any items in the hoard that the museum was not interested in acquiring could be returned to the finder at an early stage, rather than after the coroner had held the inquest.

**Question 5**

**What effect would clarifying that the Paragraph 48 - 50 and 39 - 41 process will apply where a museum withdraws interest at any stage in the treasure process have?**

## **Section I Valuation of Treasure**

### **Paragraph 67 E/W Code, 56 in NI Code**

56. The TVC's consideration of their recommendation on a reward to the Secretary of State is an open process. All interested parties - finders, landowners and/or occupiers and curators - can make relevant comments on museum reports of finds and on valuations and provide evidence themselves. Where these comments and/or evidence are not provided promptly this can cause delay in the treasure process.

57. In order to avoid delay, we propose to state in this paragraph that there is a 28 day limit from the date that valuations or recommendations are circulated to the interested parties for them to provide further information should they wish to do so.

58. This time limit would apply after parties have been informed of the provisional valuation and following the TVC's first review. Additionally, where the TVC confirms their own initial valuation at a second view, they would not, in future, review further except at their own discretion. This would save time and resources and ensure the TVC could decide not to re-review the same cases multiple times.

**Question 6**

**What do you think the effect would be of having a time limit on the submission of evidence and comments?**

**Question 7**

**What do you think would be the effect of having a general rule that the TVC will only consider a case twice (this can be increased at their discretion)?**

## **Screening process**

### **Following Paragraph 67 E/W Code, Paragraph 56 NI Code**

59. As part of the review, we have looked at the value for money provided by expert valuations.
60. Figures for 2015 (the most recent year available) show that half of the valuations that year were less than £250. 1,005 cases were declared as treasure and 307 finds were acquired by museums. The total cost of provisional valuations that year was £38,865. This means a cost for valuation of roughly £115 per find. Of the 307 cases acquired by museums, 100 were valued at less than the £115 average cost of a valuation, in some cases the valuation was as little as £5 or £10.
61. In view of this we propose that in future the Treasure Secretariat should screen lower value finds. Rather than commissioning a provisional valuation on these finds, they would be valued, at the first view, by the TVC. Interested parties would be able, as now, to submit their own valuations and comments.
62. We consider that this proposal would help to manage the additional work and costs associated with the increase in the volume of cases passing through the treasure process. We would insert a new paragraph giving details of this proposed screening process.

#### **Question 8**

**What do you think the effect of screening lower value finds would be?**

## **Payment process**

### **Following Paragraph 70 E/W Code, Paragraph 59 NI Code**

63. The TVC recommends a valuation for the find, and also how it should be divided between the interested parties. They will also, on occasion, recommend that a reward is abated (reduced). Once the recommendation is accepted by the Secretary of State, the finder and landowner and/or occupier are asked for their bank details in order for the Treasure Secretariat or DCMS to process the reward.
64. At the moment there is no time limit for details to be provided. As a result both the Treasure Secretariat and DCMS have a backlog of old cases where the interested parties have not provided details. Consequently both bodies hold money that they are unable to pay out or reallocate elsewhere in the process, sometimes for years.

65. This is not a good use of public money and so in order to address this and to reduce the time taken to process cases we propose to allow six months for finders and landowners and/or occupiers to submit their bank details, with this time limit beginning upon notification to them of the amount and allocation of the reward.

66. The Treasure Secretariat, or DCMS, will write to the finders and landowners and/or occupiers in old cases. They will be given a further six months to provide their bank details, so they are in the same position as the parties in new cases.

**Question 9**

**Do you think that there are any disadvantages to only allowing six months for bank details to be submitted?**

**Question 10**

**In those circumstances, would it be appropriate for any reward that cannot be paid to the desired recipient because they have not provided bank details to be returned to the acquiring museum?**

**Following Paragraph 70 E/W Code, Paragraph 59 NI Code**

67. During the review of the treasure process we identified that delay occurs where the landowner and/or occupier is not identified. This not only leads to difficulty in administering a case but can also result in the landowner and/or occupier's unclaimed reward being retained by the Treasure Secretariat or DCMS indefinitely.

68. It is the responsibility of the finder to declare the find, and to provide information about the landowner and/or occupier. This is not always possible however. There are cases where a finder has not realised a find could be treasure for years after it has been found, and cannot recall where they found it.

69. We have proposed elsewhere in this consultation that the duty to report a possible treasure find to the coroner is extended to anyone buying the object (details below at Paragraph 124 - 134). If this proposal is taken up it is likely that a buyer would not know where the find was originally found and they would not be able to provide information about the landowner and/or occupier.

70. We need to address two different sources of delay: where the details of the landowner and or/occupier are known and where they are not. In order to do this we will insert two paragraphs at this point.

71. In the majority of cases the landowner and/or occupier's details should be known to the finder as they should have sought permission before searching on any land. Equally, there is usually little benefit to the finder in not reporting the landowner



and/or occupier's details as the reward would still be divided between them if they could subsequently be identified, as below.

72. We consider therefore that a proportionate proposal would be to insert a paragraph at this point reminding finders of their responsibility to ensure that the landowner and/or occupier's details are reported to the coroner. As this is not a change in policy or in process we are not asking a specific question about this proposed change in the consultation.

73. In circumstances where the landowner and/or occupier's details remain unknown for any reason, we propose to introduce a change in the treasure process where the Treasure Secretariat or DCMS would retain the landowner and/or occupier's reward for 12 months before it is returned to the museum.

**Question 11**

**Do you see any disadvantages in the suggestion that in circumstances where a landowner and/or occupier cannot be identified, the reward money payable to them would be retained for 12 months and then returned to the museum?**

**Question 12**

**In those circumstances, would it be appropriate for any reward that cannot be paid to the desired recipient because they cannot be identified to be returned to the acquiring museum?**

## **Section J Rewards**

### **Following Paragraph 81 E/W Code, Paragraph 70 NI Code**

74. Paragraph 81 of the E/W Code and Paragraph 70 of the NI Code states that archaeologists and those engaged on an archaeological excavation or investigation are not eligible for a reward when a find is declared treasure and acquired by a museum. The Codes state that where there is any doubt the TVC decide when a finder is an archaeologist or a person engaged on an archaeological excavation or investigation.

75. That doubt can arise where a finder takes part in archaeological activity following their find, as encouraged in the E/W Code. A finder would not be eligible for a reward on any further finds that they made during that activity. We foresee that this could lead to misunderstandings and undermine good relations between finders and archaeologists.

76. In order to avoid misunderstanding we consider that it would be helpful to have definitions of an archaeologist and of those engaged in archaeological excavation or investigation in the Codes. This would mean that there would be clear guidance available to finders, archaeologists, museums and the TVC.

77. We propose to add the following definitions, provided by the British Museum, to the Code at the present paragraph 81 and 70. We believe that they would provide clarity and help to avoid any misunderstanding about the eligibility for a reward of those involved in archaeological activity.

- **Archaeologist:** A professional, student, volunteer or amateur engaged on a planned study of the landscape where the primary goal is to understand past activity through an assessment of all traces of human activity
- **Archaeological excavation or investigation:** A planned study of the landscape that aims to record all traces of human activity thereon. It can be conducted by professional units, educational institutions or societies

**Question 13**

**Do you consider that the proposed definitions of archaeologist and archaeological excavation or investigation are accurate?**

**Question 14**

**Do you see any disadvantages in having these definitions in the Code?**

## **Section L Speed of Handling Cases**

### **Paragraph 87 E/W Code, 76 NI Code**

78. The treasure process can be long and complex, and requires inputs from a variety of institutions and individuals. In an attempt to regulate the process this paragraph suggests general time limits for some of the stages. These include a three month limit between the valuation being “agreed” and the reward being received by the Treasure Secretariat or DCMS from the museum and paid out to the interested parties, a six-month time limit for finds to be disclaimed before the inquest, and a twelve-month limit for the complete process.

79. This paragraph, as it is currently written, is too long and is difficult to read. It is misleading because it implies that the final valuation of a find is a matter of agreement between the parties when it is, in fact, a decision by the Secretary of State. In addition the time limits it suggests are vague and do not focus on the points in the process where research by the Treasure Secretariat indicates cause the most delays, at the beginning and at the end.

80. We propose to re-draft the paragraph, clarifying and adding more detail about the process and referring to other proposals which are aimed at reducing the time the process takes, if these are accepted. These are administrative changes and so we do not intend to consult individually on these.

81. We also propose to include time limits that focus on the beginning and end of the process, before the item has been declared treasure, and after the valuation has

been finalised, as below.

- The curator or FLOs provide reports for the coroner, which puts forwards the reasons why a find falls under the Act's definition of treasure. We propose that these should be written within three months of the find being reported.
- Coroners should consider holding inquests within three months of receiving a request to do so from the Treasure Secretariat, in accordance with Paragraph 12 of the Chief Coroner's guidance<sup>5</sup>.
- Museums should endeavour to pay for acquisitions within three months.

**Question 15**

**Do you think that these times would improve the rate at which treasure cases are resolved?**

**After Paragraph 87 E/W Code, After Paragraph 79 NI Code**

82. Once the valuation of a find has been finalised, the museum is invoiced for the reward amount and has three months to make payment. Once the money is received it is passed on as a reward to the relevant parties.
83. There can be delays at this point, for example where the museum is relying on a public appeal for funds.
84. Although this delay is understandable, we appreciate that it can be frustrating for the recipients of the reward. In view of this we propose that where a payment has been delayed longer than three months the acquiring museum would be required to provide an explanation and an indication of the expected time for payment.

**Question 16**

**Can you see any disadvantages to a requirement for acquiring museums to explain delays in payments?**

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<sup>5</sup>Treasure - A Practical Guide for Coroners

<https://www.judiciary.uk/wp-content/uploads/2016/07/treasure-a-practical-guide-for-coroners.pdf>

# Revisions to the definition of treasure in the Treasure Act 1996

## Section 1.1 (a) of the Treasure Act 1996 - 300 year rule

85. Under section 1.1 (a) of the Act, treasure is defined as objects 300 years old or older. The Industrial Revolution and consequential mass production began in Britain in the 18th century. Consequently an increasing number of lower value mass produced finds will be defined as treasure under the 300 year rule, most of which will be disclaimed. We are aiming to avoid the need for these finds to go through the treasure process, although they will still be recorded by PAS.

86. Our proposal is to change the definition from a sliding date to a static date of pre- 1714. This is the date that the first Hanoverian king, George, came to the throne and so provides a clear historic reference point which avoids the bringing into scope of a high volume of low value finds.

87. There is of course a risk of objects that should be preserved being lost due to this change in the definition. We consider that there are several ways that this risk can be managed:

- Objects that are not treasure but are considered national treasures<sup>6</sup> will be subject to the export deferral process if an application is made to export the find from the UK. The export controls for archaeological material have a lower age limit.
- An example of how this process has worked to save non-treasure items for the public can be seen in the history of a base metal Roman figurine of a man wearing what appeared to be a woollen hood that was reported to the PAS in 2017. As it was made of base metal it did not meet the definition of treasure and was returned to the finder who sold it to a buyer abroad.

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<sup>6</sup> The Reviewing Committee on the Export of Works of Art was established in 1952, in accordance with the recommendations of the Waverley Committee. It assesses objects that may be subject to the export deferral process against the three "Waverley Criteria"

- Is it closely connected with our history and national life?
- Is it of outstanding aesthetic importance?
- Is it of outstanding significance for the study of some particular branch of art, learning or history?

When an object is assessed as meeting one or more of these criteria, a decision on whether or not to grant an export licence is normally deferred in order to allow an opportunity for the object to be acquired by a UK museum.

- The figurine was judged by the Reviewing Committee to be of national importance because it was one of the earliest representations of woollen cloth found in Britain. The export licence was deferred and the figurine was eventually sold to Colchester Museum.
- Under section 1.1 (c) of the Act items that would have been treasure trove will still continue to be defined as treasure; there is no age limit under common law. For example, a hoard of 19th and 20th century coins found in a piano in Shropshire in 2016 were declared treasure under this provision.

88. We consider that these provisions lessen the risk of an important article being lost to the public as a result of the change to a static date.

**Question 17**

**Do you think that changing to a static date is a good idea?**

**Question 18**

**Do you think 1714 is an appropriate date?**

## Change under section 2(1) of the Act - Definition of treasure by value

89. We propose to designate an additional class of treasure for the purposes of section 1(1)(b) of the Act: objects that meet the age criterion (i.e. are at least 200 years old when found) and have a value of over £10,000. Our aim is that this definition should be flexible enough to capture important objects while excluding finds that are more common and less likely to be acquired by museums.
90. Research by the Treasure Secretariat at the British Museum indicates that most finds worth over £10,000 would fall within the current definition of treasure in the Act. However, there are rare and important articles within this threshold, such as the Crosby Garrett helmet found in 2009, which do not fall under the definition of treasure and have consequently been sold into private collections.
91. Under the Act the finder has a duty to report possible treasure within 14 days where there are reasonable grounds to believe that an article is treasure. This duty would apply in relation to the proposed new designation where the finder had reason to believe that an find was worth over £10,000. This could be dependent on their own expertise or research, advice sought from a dealer, an offer to buy either in person or online, advice from a FLO, or any other credible source.
92. As part of the treasure process the FLO or museum curator writes an expert report for the coroner giving details of how a find meets the definition of treasure under the Act. Where a find may be defined as treasure because of its potential value, we propose that additionally the TVC would be asked to recommend an initial value. The Treasure Secretariat would provide this to the coroner as an expert report. The finder, landowner and or/occupier could submit evidence to the TVC or to the coroner, as now.
93. Guidance on sources of information on the possible value of an item would be available in the Codes and on the PAS website.
94. We are aware that there may be some feeling that defining a find by its monetary value could overshadow the archaeological or historic importance that it may have and understand that its monetary value is not the only thing that defines its importance. However, the aim of the Act is to preserve objects of national importance for public to enjoy. The Treasury Secretariat's research indicated that market price, which is largely based on the archaeological or historic importance of an object, was the best indicator of objects that are rare and important but currently fall outside the treasure definition.

**Question 19**

**What view do you have of the proposed value based definition and what impact would it have?**

**Question 20**

**Do you think that there is any more appropriate way to ensure that important finds which do not currently fall within the definition of treasure are retained?**

**Change under section 2(1) of the Act - Single gold coins defined as treasure**

95. We propose to introduce a new designation for treasure: single gold coins dated between AD43, the beginning of the Roman period, and 1344, the year that Edward III successfully re-introduced English gold coinage. Currently single gold coins do not fall within the definition of treasure. Coins from this period of history are comparatively rare- on average the PAS database records only 10 a year, and this can be seen as an indication of their archaeological cultural and historic importance.
96. Many of these coins would have been of interest to museums, but only 8 of 255 coins from the period AD43 to 1327 have been acquired over the last 20 years, including a very rare Anglo-Saxon gold shilling from Wiltshire which was eventually bought by a museum, and was unrecorded until that time.
97. We propose to include all gold coins, of whatever origin, within these dates as their rarity is an indication of the lack of gold coins in circulation at that time. The aim of this proposal is to focus the resources of the treasure process on preserving rare and important gold coins for public view, without bringing more common coins within the definition.

**Question 21**

**What view do you have of the proposed designation for single gold coins and what impact would it have?**

**Question 22**

**Would AD43 to 1344 be the most appropriate dates for defining single gold coins as treasure?**

## **Change under section 2(1) of the Act - Inclusion of base metal Roman objects in the definition of treasure**

98. Currently the Treasure Designation Order 2002 includes objects made of base metal which must be one of at least two base metal objects in the same find of prehistoric date. The designation of an important Roman hoard found in Royston in 2009 as treasure was, for example, based on a small silver statue base found with material which would otherwise not have been protected. We hope to lessen the risk of the preservation of other Roman hoards being dependent on such chance inclusions.
99. We propose to extend the definition of treasure to include an find (other than a coin) which includes base metal, which when found as part of a closed deposit, is one of at least two base metal objects in the same find which are of Roman date. The aim of the proposed addition to the definition is to ensure that important Roman finds are similarly protected for the public.
100. In this context a closed deposit means that the objects are believed to have been intentionally buried together at the same time.

### **Question 23**

**What do you think the impact would be of widening the definition of treasure to include objects any part of which is base metal, which form part of a group of articles of Roman date intentionally buried together?**



# Exemption of objects subject to Church of England statutory regimes

## Background

101. Before the Act came into force, the common law definition of treasure included a requirement that the objects had been hidden or buried with the apparent intention that the owner would return and reclaim them. The coroner who considered the Sutton Hoo burial goods, uncovered in the 1930s, ruled that they were not treasure because they had been buried with no intention of being retrieved.
102. The definition of treasure under the Act does not include this requirement. Potentially, this could result in a conflict over jurisdiction of finds that are associated with Church of England burials.
103. The Church of England has a specific legal status as the established church in England. This includes a legal system of control that relates to moveable articles connected to cathedrals, churches and land, including burial grounds, that fall under its jurisdiction in England. This is covered in more detail below.
104. Finds associated with human burials that were subject to the Church of England's legal system of control could not have been considered treasure before the Act came into force. This is because they had not been buried with the intention of being retrieved.
105. When the Act removed that requirement this meant that the finds would potentially be subject to two different legal regimes. This concern was raised by the Church of England during the passage of the Act and the Government undertook to address this problem.
106. Below we give details of the Church of England controls, and suggest that the problem could be addressed by exempting from the definition of treasure objects that are subject to them.

## Church of England legal systems of control

107. The Church of England has a unique legal regime in relation to moveable articles. The regime has separate systems for cathedrals and parish churches, these are:
  - The **Care of Cathedrals Measure 2011 ('the Measure')**. The Measure consolidated previous legislation, and amongst other matters it sets out a

system of controls over certain works to a cathedral, its contents and surroundings. The **Care of Cathedrals Rules 2006** explain how the processes required by the Measure work.

- **Faculty Jurisdiction** which deals with parish churches, and churches licensed for Church of England public worship and burial grounds. It licenses repairs, alterations or extensions to a church building or changes to its contents or churchyard.

### **Care of Cathedrals Measure 2011**

108. Section 7 of the Measure makes a special provision for an object which:

*‘but for an order under section 2.2 of the Treasure Act 1996 ... would be treasure within the meaning of that Act and which is found in or under the Cathedral church and its precinct.’*

109. Section 2 of the Measure states, amongst other things, that objects to which section 7 applies require statutory approval before any sale, loan or disposal, since they are objects of “architectural, archaeological, artistic or historic interest”.

110. Section 7 states that the discovery of such a find must be reported to the Cathedrals Fabric Commission and by them to the Secretary of State. Where such a find is to be sold, the cathedral must offer the British Museum or a registered museum an opportunity to purchase it.

111. **Care of Cathedral Rules 2006** Part 7 and Schedule 1 set out more detailed rules on whether a find is treasure, display to the public and sale.

### **Faculty Jurisdiction**

112. A faculty is a licence that authorises changes to church buildings, their contents and graveyards. Faculty Jurisdiction is the Church of England’s regulation of these changes. It applies to all parish churches, other churches and burial grounds (including sections of local authority cemeteries) consecrated according to the rites of the Church of England.

### **Proposed Order under section 2(2) of the Act**

113. We propose to introduce an Order under section 2(2) of the Act which would exempt from the treasure process:

- Objects subject to the Faculty Jurisdiction which were found on land which itself is subject to the Faculty Jurisdiction and is held or controlled by an ecclesiastical corporation, parochial church council or diocesan board of finance; and
- Objects found within the precincts of a cathedral, which but for provisions of the Treasure Act 1996 would be subject to section 7 of the Care of Cathedrals Measure 2011.

114. This proposal would be consistent with other legislative changes which have addressed the situation where consecrated land and buildings were subject to ecclesiastical and secular statutory regimes. These include the disapplication (the making of a law or legal requirement not applicable in certain circumstances) of Listed Building regulations and secular controls over the exhumation of bodies in consecrated ground.

### **The effect of an exemption**

115. The following list sets out details of the effect of the proposed exemption:

- Objects subject to the exemption would belong to the original owner or their successor. Where they cannot be identified the object would belong to the owner or occupier of the land or building.
- The incumbent of the benefice and the Parochial Church Council (PCC), or the Dean of Chapter of the Cathedral would be considered the occupiers of the land.
- Where an find is associated with a tomb, the heirs or personal representatives of the deceased would own the object, but it would be subject to the jurisdiction of the consistory court.
- Anyone finding an object on consecrated ground would be legally obliged to surrender it to the Minister or Churchwarden of the parish church, or the Chapter of the Cathedral. Failure to do this could result in proceedings under the Theft Act 1968.
- The exempted articles would be the responsibility of the relevant ecclesiastical authorities. It is envisaged that they would be retained indefinitely by the incumbent and PCC or Cathedral Chapter in the church or cathedral.
- The find could not be sold or disposed of lawfully, without a faculty from the consistory court, or approval under the Measure. The legal presumption under the Faculty Jurisdiction is against the sale of church treasures and approvals are granted sparingly.
- Support and advice is available from the Church Buildings Council or Cathedrals Fabric Commission on the conservation and treatment of the

objects. Where retention is impractical the ecclesiastical authorities can order an object be deposited in a museum. It is possible that the churchwardens may be permitted to sell to a registered museum.

- The Church of England would enter into a Memorandum of Understanding that objects that fall under the Faculty Jurisdiction would be offered to the British Museum should there be a decision to sell or otherwise dispose of them.
- The Church of England and British Museum would issue guidance in relation to the process for dealing with finds that would otherwise be designated as treasure.

116. This is an extensive explanation because we consider it is important that those contributing to this consultation have a clear understanding of the background to the proposal, its implications and enough information to decide if it provides sufficient protection for finds.

117. We have considered whether it would be appropriate to have similar exemptions extended to other religious denominations within the UK. However, no other religious denomination is subject to a legally enforceable system which would protect important archaeological, historic or cultural objects.

118. The aim of the proposal is to prevent the confusion caused by having finds subject to two legal processes. This only applies to finds that are subject to the Measures and Faculty Jurisdiction. Where objects do not fall under those legal processes we believe that they are best protected by falling under the Act, rather than creating individual legal processes for each religious denomination.

**Question 24**

**What do you think the effect would be of limiting objects that fall under the Care of Cathedrals Measure 2011 and the Faculty Jurisdiction to one legal system?**

**Question 25**

**Do you consider that the Care of Cathedrals Measure 2011 and the Faculty Jurisdiction are sufficient to protect finds which fall under those systems?**

# Commencement of measures in the Coroners and Justice Act 2009

## Background

119. The aim of Part 1 of the Coroners and Justice Act 2009 ('the 2009 Act') was to establish a more effective, transparent and responsive system for investigation of deaths by coroners, putting bereaved families at the heart of the system.
120. Chapter 4 of the Act relates to treasure, and it includes provisions for a centrally run treasure inquest system overseen by a national Coroner for Treasure. These provisions have not been commenced, and as the Government does not propose to take forward a central system at this time, we do not intend to commence them at the moment.
121. There are, however, other provisions which we believe would improve the efficiency of the Act, if implemented, in its aim of preserving objects of outstanding historical, archaeological or cultural importance. These are explained below. In all circumstances, provisions would be amended to change the phrase 'Coroner for Treasure' to 'Senior Coroner'.

## Section 29: Exception to duty to investigate

122. Section 29 of the Act provides that the coroner can decide not to begin or continue with an investigation where notice is received from the Secretary of State on behalf of the Crown, or any franchisee, disclaiming title to a find that has been reported as possible treasure.
123. We believe that commencing this provision would make the treasure process more efficient, as it would remove the need for the coroner to hold an inquest where no museum has declared an interest in an object and would allow it to be returned to the finder.

### Question 26

**What effect do you think giving coroners the power not to conduct an inquest into treasure would have?**

### **Section 30: Duty to notify Coroner for Treasure of acquisition of certain objects**

124. When the Treasure Act was implemented in 1997, it was considered that the benefits of declaring a possible treasure find would outweigh any gains that a finder might make from selling an item that was not declared. The finder would receive the market valuation of the declared find as a reward, whereas selling illegally would generally mean that the finder would be forced to accept less than the market price.
125. Since coming into force, the internet and online markets have changed the environment in which the Act operates. Now it is possible for the rare unscrupulous finder to sell undeclared objects (in other words, objects which have not been reported as possible treasure) without being asked to prove a legal provenance to the buyer.
126. We consider that this problem can be addressed by commencing section 30 of the 2009 Act. This would insert section 8A into the text, creating a duty on a person who acquires a find that they reasonably believe to be treasure to report it to the coroner. This section would create a criminal offence of failing to notify the coroner where a possible treasure finds has been acquired and there has been no investigation.
127. We have considered whether commencement of this provision would be burdensome for buyers or sellers. We would expect that generally a buyer would seek confirmation that a possible treasure object had been through the correct process prior to them purchasing it. Where a find has been disclaimed, the finder will have received a release letter, which can be easily referred to in the details of the object online.
128. There are also records for objects that did not fall within the treasure process. In England and Wales objects that have been recorded on the PAS database are easily searchable. The presumption is that if they are recorded the FLO would have considered if they might be treasure and advised the finder accordingly. Again these details could be included in the find details in an online market description, and this may well encourage finders to record articles on PAS.
129. In Northern Ireland, because of the Order that limits archaeological digging, there are considerably less cases per year than in England and Wales, and we consider it should not be difficult for a buyer to confirm that they had either declared the article or that it had not been considered as meeting the definition of treasure.

130. Should we commence section 30 of the 2009 Act, section 30(2) will amend section 10 of the Treasure Act. This would make any person notifying the coroner of a possible treasure find under section 8A eligible for a reward. The aim is that this would act as an additional incentive for buyers to report possible treasure objects.
131. We consider that these amendments are a logical extension of the duty of a finder to report a possible treasure object. They would also prevent the 'laundering' of potential treasure finds, as any person acquiring the find who becomes aware that it may meet the definition of treasure would now under the same duty to notify the coroner as a finder.
132. Currently, in seeking to show that an offence has been committed under section 8 of the Treasure Act - because an object of treasure that has not been reported was found after the commencement of the Act or the Order - the burden of proving that the find was made after the commencement rests with the prosecution.
133. Following commencement of section 30 of the 2009 Act, there will be a presumption under section 30(8), in the absence of evidence to the contrary, that the find was made in England and Wales after the commencement of the Treasure Act.
134. We will amend Section B of the Codes to reflect this change.

**Question 27**

**What effect do you think the extension of the duty to report a possible treasure find to a person who acquires a find would have?**

**Question 28**

**Do you have any other comments on these proposals to commence these elements of the 2009 Act?**

**Offences under section 8 or 8A of the Treasure Act 1996: Period for bringing proceedings**

135. By way of additional deterrent, this paragraph proposes to commence sections 8B and 8C in the 1996 Act. Section 8C will increase the time for proceedings to be brought for an offence under section 8 or 8A. Those proceedings may be brought up to six months after the date on which a prosecutor is aware of sufficient evidence, with a long stop of three years.

**Question 29**

**What effect do you think extending the lengthening of time for bringing proceedings for prosecution would have?**



## The long term future of the treasure process and its sustainability

136. This part of the consultation deals with the long-term sustainability of the treasure process.
137. The volume of treasure cases has increased considerably since 1997, from below 100 per year to over a thousand per year since 2014. There have been some unique finds saved for the nation, such as the Ringlemere Cup, and these successes have been achieved in parallel with the successful creation of the PAS, an unequalled source for both academic research and public information.
138. One of the biggest difficulties with regard to the treasure process is its long term financial sustainability. The rise in administrative costs resulting from the substantial increase in the amount of cases has so far been managed by the British Museum and DCMS but if, as seems likely, the number of treasure cases continues to rise, a revised approach will be required.
139. Metal detecting is an activity that is included in the DCMS Taking Part survey, which records the engagement of the public in cultural and education activities, reflecting the interest in history and archaeology that drives the overwhelming majority of metal detectorists.
140. We recognise the contribution that the activities of metal detectorists have made to meeting the Act's aim of preserving objects of archaeological, cultural and historic importance for public collections. One example of this is the Vale of York hoard which was discovered and preserved by two experienced detectorists and is considered 'a find of global importance'<sup>7</sup>.
141. Our aim therefore is to have a treasure process that supports the intention of the Act and encourages positive behaviour. In order to continue its success, however, the process must have a sound financial underpinning.
142. To this end we are putting forward several initial suggestions as the basis of discussion on the future form of the treasure process. These are:
  - the introduction of a process similar to that in Scotland, whereby all archaeological objects become the property of the Crown;

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<sup>7</sup> British Museum Press Release, October 2007

- strengthening educational outreach to the full spectrum of the metal detecting community in order to encourage the proactive reporting of finds and adherence to the Code of Practice for Responsible Metal Detecting and the treasure process; and
- the introduction of a regulation as in Northern Ireland where archaeological digging of any sort (both by professional archaeologists and others) is only allowed by permit.

143. We are aware that these suggestions would involve considerable changes to the current process. We emphasise that the aim in raising them within the current consultation is to open some initial debate and to encourage other suggestions for the long term sustainability of the treasure process.

**Question 30**

**What are your views on these preliminary suggestions on the future form of the treasure process?**

**Question 31**

**Do you consider that there is a different approach to changing the process which would support its long term sustainability?**

**Additional Question**

144. We have included a section for additional comments. In both the online consultation and any written submissions, this will be limited to 250 words.

**Question 32**

**Do you have any additional comments on the proposed changes to the Code and to the legislation governing the treasure process?**

## Appendix A

<b>Proposed Administrative Changes to Code of Practice (where a section is omitted, no change is proposed)</b>		
<b>Code of Practice Paragraph E/W</b>	<b>Code of Practice Paragraph NI</b>	<b>Proposed Change</b>
<b>Section A Summary</b>		
1	1	The summary will be amended to reflect changes resulting from the review of the Codes
3	N/A	A paragraph will be added to reflect the extension of PAS in England and Wales and the role of the FLOs
<b>Section B Commencement of the Act and Treasure (Designation) Order 2002</b>		
4	4	This paragraph will be amended to reflect changes following the consultation
<b>Section C Definition of treasure</b>		
6	6	This paragraph will include examples that will clarify that where finds are made up of distinct components, these will be treated as individual associated articles
12	12	The section from “this is likely...” to “as treasure” will be deleted as it is no longer relevant
15	15	The last sentence in this paragraph will be removed as it adds nothing to the sense of the section
16	16	This paragraph will be re-drafted to provide guidance on how the interval between individual finds on the same site will affect the definition of the finds as treasure
18	N/A	Should the proposed changes to the definition of treasure to ahead, This paragraph would be re-drafted to reflect the proposed exemption from the treasure process of finds that fall under the jurisdiction of the Church of England
<b>E Guidance for finders and others concerned with treasure</b>		
23	20	This paragraph will be re-drafted to reflect the current process in E/W and the different process in NI
		The paragraph will also include the direction that where a finder cannot recall the find site, they should report it to their local coroner
24	21	This paragraph will be amended to reflect the extension of the prosecution time limit to three years

Code of Practice Paragraph E/W	Code of Practice Paragraph NI	Proposed Change
After 24	After 21	A paragraph will be inserted to remind interested parties that a reward may be abated if the coroner's directions are not followed. See Paragraph 79(v) of current Code
25	22	This paragraph will be amended <ul style="list-style-type: none"> <li>to clarify the responsibility of archaeologists to liaise with the FLO in E/W</li> <li>to clarify the responsibility of archaeologists to liaise with the Department of Environment and Ulster Museum in NI</li> </ul>
26	23	Added to this paragraph will be <ul style="list-style-type: none"> <li>a reminder to organisers of their responsibilities and direction to the Guidance note</li> <li>a reminder of the 1995 order in the NI Code</li> </ul>
29(i)	26(i)	A paragraph will be added stating the landowner and/or occupier should be made aware that if a find is determined to be treasure, their details will be passed to the British Museum and/or DCMS
32	28	Added to the paragraph will be <ul style="list-style-type: none"> <li>a direction for the finder to check the status of the occupier of the land</li> <li>a clarification that if different to the owner the latter should be approached for permission and will share in reward</li> </ul>
33	29	Added to this paragraph will be <ul style="list-style-type: none"> <li>clarification of "<i>whole of find</i>" as discrete depositional event</li> <li>guidance that non-treasure find leads to further finds in same depositional event which are treasure, finder will be eligible for a reward</li> <li>finders should be encouraged (where appropriate) to be involved in archaeological dig</li> </ul>
38	33	Added to this paragraph will be <ul style="list-style-type: none"> <li>guidance on reporting finds to the FLO in E/W</li> <li>guidance on reporting finds to the Ulster Museum in NI</li> </ul>
After 38	After 33	A paragraph will be added reminding finders that failure to follow the coroner's directions is grounds for an abatement in the reward. See Paragraph 79(v) of the current E/W Code and Paragraph 68(v) of the current NI Code
39	34	Added to this paragraph will be a reminder on data protection - the landowner and or/occupier should be made aware that their details will be shared
39e	34e	Phrase " <i>if known</i> " will be removed as it contradicts guidance that finders must seek permission of landowner

Code of Practice Paragraph E/W	Code of Practice Paragraph NI	Proposed Change
39i	34i	This paragraph will be amended to read <i>“A precise location will be needed, to the equivalent of at least an eight-figure grid reference where possible”</i> to improve identification of find location

<b>F Secretary of State’s power to disclaim objects</b>		
After 48	After 39	Added will be <ul style="list-style-type: none"> <li>• a paragraph explaining the proposed changes to procedure</li> <li>• a paragraph reflecting the commencement of s29 of the CJA 2009, providing an exception to the duty to investigate</li> </ul>
49	40	The final sentence will be replaced by <i>“Part of a find may be disclaimed where a museum only wishes to acquire one or several items from a hoard”</i>
50	41	Added to the paragraph will be <ul style="list-style-type: none"> <li>• a section reflecting the role of the Treasure Secretariat in E/W in disclaiming finds and asking Coroner and FLO to release objects</li> <li>• a section reflecting the role of the UM and Dept of Environment in NI</li> </ul>
51	42	Added to this paragraph will be <ul style="list-style-type: none"> <li>• a reminder of the legislation on commercial activity on ivory object</li> <li>• guidance directing finders to Arts Council England in relation to export licensing for objects of cultural interest</li> </ul>
52	53	Added to this paragraph will be <ul style="list-style-type: none"> <li>• a reminder that archaeological objects can be disclaimed if the landowner has waived rights</li> </ul>
After 52	After 53	A paragraph will be added as a reminder that archaeologists and landowner should discuss the possibility of a potential treasure and agree an approach
<b>G Procedure when a find has been reported to the coroner, treasure inquests</b>		
Pre 53	Pre 44	<b>Questions 1 and 2, Paragraphs 43- 46 of consultation document</b> We propose to add a paragraph <ul style="list-style-type: none"> <li>• to indicate a time limit of 28 days for expressions of interest from museums and for the coroner to be asked to delay in E/W</li> <li>• to reflect the different process in NI</li> </ul>
55	46	Added to this paragraph will be <ul style="list-style-type: none"> <li>• guidance on nature and extent of reports</li> <li>• there will possibly be different guidance on reports in NI which can be more extensive than in E/W</li> </ul>

Code of Practice Paragraph E/W	Code of Practice Paragraph NI	Proposed Change
59	50	Added to this paragraph will be guidance that where the Treasure Secretariat has recommended that an object is not treasure, the process outlined in Paragraph 50 in E/W Code and Paragraph 41 in NI Code will be followed
62	51	A paragraph will be added to reflect <ul style="list-style-type: none"> <li>• current PAS practice in England and Wales</li> <li>• current practice in NI</li> </ul>
<b>H Acquisition of treasure</b>		
After 63 (3)	After 53(3)	<b>Question 3 and 4, Paragraphs 47-48 of consultation document</b> We propose to add a paragraph to advise museums to research possible valuation before they express an interest in a find
After additional paragraph following 63 (4)	After additional paragraph following 53 (4)	<b>Question 5, Paragraphs 49-55 of consultation document</b> We propose to add a paragraph indicating that where a local museum withdraws interest and the national museums do not wish to acquire the article, the disclaimed procedure in Paragraph 48-50 of the current E/W Code and Paragraph 39-41 of the current NI Code will be followed.
<b>I Valuation of treasure</b>		
Beginning of Section	Beginning of Section	A paragraph will be added reminding finders that any treasure that contains an element of ivory will be subject to the legislation on commercial ivory activity which may affect its value
65	54	Added to this paragraph will be <ul style="list-style-type: none"> <li>• links to TVC minutes and valuation guidance</li> </ul>
66	55	Added to this paragraph will be <ul style="list-style-type: none"> <li>• an indication that the TVC can take into account sales information (at their discretion)</li> <li>• advice on cleaning and valuation</li> </ul>
67	56	<b>Questions 6 and 7, Paragraphs 56-58 of consultation document</b> We propose to add to this paragraph <ul style="list-style-type: none"> <li>• a reminder that there is a 28 day limit to providing further information after the provisional valuation</li> <li>• that the TVC will not review further following a second review (this can be extended at their discretion)</li> </ul>
After 67	After 56	A paragraph will be added giving guidance on the submission of evidence

<b>Code of Practice Paragraph E/W</b>	<b>Code of Practice Paragraph NI</b>	<b>Proposed Change</b>
After additional paragraph following Paragraph 67	After additional paragraph following Paragraph 56	<b>Question 8, Paragraphs 59-62 of consultation document</b> We propose to add a paragraph outlining the process whereby low value objects can be screened for valuation by the TVC without a provisional valuation
After 70	After 59	<b>Question 9 and 10, Paragraphs 63-66 of consultation document</b> We propose to add a paragraph to indicate that there will be a 6 month deadline for providing payment details. If the details are not provided, the British Museum will hold that money for 12 months before returning it to the museum
<b>J Rewards</b>		
71	60	Added to this paragraph will be a reminder that the landowner and/or occupier can forego their reward
After 71	After 60	A paragraph will be added outlining changes caused by amendment of Treasure Act under S30 of CJA <ul style="list-style-type: none"> <li>● anyone acquiring has a duty to report</li> <li>● anyone acquiring where find is declared treasure is entitled to reward</li> </ul>
After additional paragraph following Paragraph 71	After additional paragraph following Paragraph 60	<b>Question 11 and 12, Paragraphs 67-73 of consultation document</b> We propose to add a paragraph indicating that <ul style="list-style-type: none"> <li>● the finder has responsibility for providing details of the landowner</li> <li>● if the landowner cannot be traced their share of the reward is deposited with TR and then returned to the museum after 12 months</li> </ul>
74	63	The text of this paragraph will be clarified to indicate that where the award is abated, other parties receive only the proportion of the award that they would otherwise have received
78	67	The text of this paragraph will be clarified to indicate that “whole find” means that specific find, not all the archaeological articles found in the area
78	67	Added to this paragraph will be an indication that a finder of a non-treasure article may be entitled to a reward where there is a subsequent find during an archaeological excavation of an article which is designated as treasure. See Paragraph 33 of current E/W Code and Paragraph 29 current NI Code
79	68	A section will be added to this paragraph clarifying that landowners and/or occupiers can also have a reward abated

Code of Practice Paragraph E/W	Code of Practice Paragraph NI	Proposed Change
79	68	A section will be added to this paragraph clarifying that anyone entitled to a reward under S30 of the CJA 2009 can have a reward abated
79 (viii)	68 (viii)	This text will be amended to include damage by cleaning
79 (ix)	688 (xi)	This text will be amended to include a failure to follow the Responsible Detecting Code
80	69	This text will be amended to clarify that where finder, landowner and /or occupier has their award abated, the other interested parties are not automatically entitled to the whole of the value of the find as a reward
81	70	<b>Question 13 and 14, Paragraphs 74-77 of consultation document</b> We propose to add to this text a clarification of the definition of archaeological excavation or investigation
<b>L Speed of handling cases</b>		
87	76	We propose to re-draft this paragraph to correct errors, clarify the treasure process and (where appropriate) reflect other proposed changes that have been accepted. We will not consult specifically on those changes.  We will, however, consult on the proposed additional targets for cases <b>Question 15, Paragraphs 78-81 of consultation document</b> We propose to remove the overall targets for cases and replace them with suggested individual times <ul style="list-style-type: none"> <li>● Reports for Coroners to be written within three months</li> <li>● Coroners should consider holding inquests within three months of receiving a request to do so from the Treasure Secretariat</li> <li>● Museums should pay for acquisitions within three months</li> </ul>
After 87	After 76	<b>Question 16, Paragraphs 82-84 of consultation document</b> In order to reduce delays in the process we propose that where a payment has been delayed longer than three months the museum would be required to provide an explanation and an indication of the expected time for payment
89	78	We propose to update this paragraph to reflect changes that result from the review