

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

## Response Form

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**I have read and understood the disclosure of responses statement and I agree with its terms**

YES - Yes

~~NO~~

## **Introduction**

The Treasure Act 1996 (The Act) replaced the common law of treasure trove in England, Wales and Northern Ireland in 1997 (Scotland has its own law of treasure trove). Under the Act, finds that are declared treasure by the coroner belong to the Crown. The Secretary of State for Digital, Culture, Media and Sport is responsible for the treasure process and for the preparation and publication of a Code of Practice associated with the Act. Northern Ireland has its own Code, which reflects its different legislation governing archaeological digging.

When a find is declared treasure it is offered to a local or national museum. If a museum expresses an interest in acquiring the find, the finder and landowner and/or occupier of the site become eligible for a share of a reward matching the market value of the find which is paid by the museum. This value is recommended to the Secretary of State by a committee of experts, the Treasure Valuation Committee (TVC). This recommendation can be reviewed by the Secretary of State.

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**

The aim of the proposed changes are to improve the treasure process making it more efficient and focused on the aim of preserving significant finds for public collections, and 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.

## Scope of Consultation

The scope of the consultation is divided into five parts. You may wish to complete the whole survey or just the parts most relevant to you.

The five parts are:

- **Section 1: Changes to the Codes of Practice.** The Code has not been updated fully for nearly 20 years. We are proposing amendments which reflect current practice and changes to the treasure process which will make it more efficient. We are not asking specific questions in the consultation where the changes are purely administrative.
- **Section 2: Changes in the definition of treasure.** Under the Act the Secretary of State has the power to change the definition of treasure through secondary legislation. The proposed changes consulted on here are a static date for treasure, a definition based on the value of a find, and the extension of the definition of treasure to include single gold coins minted from AD43 to 1344 and base metal objects of Roman date, found together.
- **Section 3: Exemption of finds subject to Church of England legal controls.** The Act removed the condition that a find had to have been buried with an apparent intention by the owner to retrieve it, in order to be defined as treasure. This meant that finds that were subject to the Church of England's legal controls were also subject to the Act. During the passage of the Act, the Government undertook to address this issue. We are proposing that finds subject to the legal controls are exempted from the definition of treasure.
- **Section 4: Commencement of sections of the Coroners and Justice Act 2009 (The 2009 Act) Chapter 4 of the 2009 Act relates to treasure.** We propose to commence some provisions of the 2009 (although not the implementation of a central treasure process under a dedicated Coroner for Treasure) which will improve the treasure process. These would introduce an exemption from the coroner's duty to investigate, a duty on a person acquiring an article that might be treasure to report it and an extension of the time available to prosecute offences under the Act.
- **Section 5: The sustainability and long term future of the treasure process.** There has been an increase in the amount of annual treasure cases from below 100 in 1997 to over a thousand yearly since 2014. This success has put a strain on the resources available for the treasure process. We are asking for comments on some initial proposals for managing this problem, further suggestions, and also allowing space for general comments.

## About You

Are you responding as a member of the public or on behalf of an organisation or interest group?

~~Member of the public~~

[Yes](#) On behalf of an organisation

~~On behalf of an interest group~~

What is the name and address of the organisation or interest group?

Name of Organisation	<a href="#">Community Landscape Archaeology Survey Project (CLASP)</a>
Your Name	<a href="#">David Hayward MBE</a>
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If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:

We have fifty-five Individual members and twelve societal members. Additionally all members of societies, if not individual members, are categorised as associate members.

Views obtained by way of discussion with relevant representatives and officers.

Also listening to the experience of others outside of the organisation.

We may wish to contact you in order to discuss your response in more detail.

If you are happy to be contacted, please provide your details below. If not, please move on to the next question.

Name	Dave Hayward
Email Address	chair_trustees@claspweb.org.uk

## Section 1 - Revisions to the Codes

### Questions 1 and 2 relate to Section G of the Codes and Paragraphs 43 to 46 of the Consultation Document.

When a find appears to meet the definition of treasure in the Act, the local coroner holds an inquest to decide if it is treasure. The find is also offered to a museum.

If the museum delays in expressing an interest in acquiring the find, this can lead to further delay in the treasure process and the coroner holding an unnecessary inquest

We propose to introduce a 28 day time limit for museums to express an interest with no answer being an expression of no interest

We propose to ask the coroner to consider delaying an inquest until the museum expresses an interest if the 28 day time limit has expired

#### Question 1

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

*Is twenty-eight days sufficient for a museum to be able to collate all the relevant information to make a decision? Perhaps there should be a process to extend this where justifiable grounds could be illustrated. Should be twenty-eight working days.*

**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?**

*No comment*



**Questions 3 and 4 relate Section H of the Codes, Paragraphs 63(3) and (4) E/W Code and 53(3) and (4) NI Code and Paragraph 47 and 48 of the Consultation Document**

Sometimes museums have had to withdraw their interest at a late stage, because they didn't appreciate fully the possible value of a find. This means there is a waste in resources and a delay in returning the find to the finder.

We propose to ask museums to research the value of a find before expressing an interest

**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 3**

*No comment*

**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?**

*No comment*

**Question 5 relates to Section H of the Codes, Paragraph 63(4) E/W Code, 53(4) NI Code and Paragraphs 49 – 55 of the Consultation Document**

Under Section 6(3) of the Act, the Secretary of State can disclaim a find, which is then returned to the finder. The administrative procedure is outlined at Paragraphs 48 – 50 E/W and 39 – 41 NI.

At the moment finds that are part of a hoard cannot be disclaimed individually until after the inquest. Where a museum only wishes to acquire part of a hoard, this can cause unnecessary work and expense and a delay in returning the find to the finder.

Paragraph 63(4) E/W and 53(4) NI deal with the administrative procedure for disclaiming part of a hoard following an inquest.

To make the guidance clearer, we intend to add a paragraph to this section stating that where part of a hoard is disclaimed, the administrative procedure at Paragraphs 48 -50 E/W and 39-41NI will be followed

We also propose that the Treasure Secretariat tells the coroner that an inquest is necessary on only part of hoard, so that any finds not wanted by the museum could be returned to the finder at an early stage

**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?**

*No comment*

**Questions 6 and 7 relate to Paragraphs 67E/W and 56NI and Paragraphs 56 – 58 of the Consultation Document**

Interested parties can submit their own evidence and valuations to the Treasure Valuation Committee (TVC) when they are considering the value of any reward.

So that all evidence is considered together at an early stage, we propose to add to the Codes at this point a time limit of 28 days for interested parties to submit their evidence and valuations. This will run from the circulation of the provisional valuation.

Additionally, where the TVC confirm their original valuation at a second view, they will only consider a further view at their own discretion.

**Question 6**

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

*Is twenty-eight days sufficient, should there be a facility for extension. If it is twenty-eight days then that should be specified as working days.*

**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)?**

*No comment*

**Question 8 relates to Paragraphs 67 E/W and 56 NI and Paragraphs 59 – 62 of the Consultation document**

Figures provided by the Treasure Secretariat show that in 2015, nearly a third of treasure finds were valued at less than £115, the average cost of a provisional valuation.

We propose that the Treasure Secretariat screens finds in future, and that lower value finds are valued at first view, by the TVC. Interested parties would be able to submit their own evidence and valuations. This would save money and time in the treasure process

**Question 8**

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

*Seems logical!*

**Questions 9 and 10 relate to Paragraph 70 E/W Code, Paragraph 59 NI Code and Paragraphs 63 - 66 of the Consultation document**

Once the TVC's recommendation is accepted by the Secretary of State the finder and landowner and/or occupier are asked for their bank details. There is currently no time limit for the details to be provided. The Treasury Secretariat and DCMS are holding money from the backlog of cases where the interested parties have not provided details, which is not a good use of public money. In order to manage resources more efficiently we propose to introduce a six month time limit for interested parties to provide details. This six months would begin from the notification of the amount and the allocation of the reward

**Question 9**

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

No

**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?**

*Agreed*

**Questions 11 and 12 relate to Paragraph 70 E/W Code, Paragraph 59 NI Code and Paragraphs 67 - 73 of the Consultation document**

The treasure process can be delayed where the landowner and/or occupier is not identified. The finder is responsible for reporting a find and providing information about the landowner and/or occupier. Circumstances may arise where the finder is unable to provide the information. For example, because they haven't recognised a find as possible treasure for a long period of time and are unable to recall where they made the find. If we take forward the proposal to extend to acquirers a duty to report a possible treasure object or coin to the coroner (See Paragraphs 121 - 133 of the Consultation document) the acquirer may well not know where the object or coin was found. We propose that where the landowner and/or occupier's details remain unknown the Treasure Secretariat or SCMS would retain the landowner and/or occupier's share of the reward for 12 months before it would be 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 the landowner and or occupier would be retained for 12 months and then returned to the museum?**

*Sensible*



**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?**

*Agreed*

**Questions 13 and 14 relate to Section J Rewards, Paragraph 81 E/W Code, Paragraph 70 NI Code and Paragraphs 74 - 77 of the Consultation document**

The Codes state that archaeologists and those engaged on an archaeological excavation or investigation are not eligible for a reward. The TVC decide when an interested party meets that definition.

Misunderstandings can arise where a finder subsequently takes part in an archaeological investigation on the site of their find. We propose to add the following definitions of an archaeologist and of those engaged in archaeological excavation in the Codes to provide clear guidance to interested parties and the TVC. 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?**

*Whilst the definitions are agreed there could perhaps be a rethink on this in as much if the item(s) were located by an archaeological excavation being carried out by a charitable body then that organisation should benefit from any item that is subsequently declared to be Treasure. If this was agreed then it must be clearly stipulated that no individual (s), whether a member(s) that organisation or not should be able to benefit.*

*Again if this proposal was accepted there should perhaps be a requirement for the benefiting charity to utilise these monies on agreed research and be required to submit a final paper indicating their results to the Archaeological Data Service and elsewhere if appropriate.*

**Question 14**

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

*Sensible so that everybody knows where they stand!*

**Question 15 relates to Section L Speed of Handling Cases Paragraph 87 E/W Code, 76 NI Code and Paragraphs 78 - 81 of the Consultation document**

The Codes contain deadlines which aim to provide focus for the institutions and individual who participate in the treasure process. Research by the Treasure Secretariat indicates that delays occur at the beginning and the end of the process. In order to address this we propose to replace the current deadlines with those below, focusing on the beginning and end of the process. The curator or FLO's provide reports for the coroner, which puts forwards the reasons why a find falls under the Acts definition of treasure. We will 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 Registry, in accordance with Paragraph 12 of the Chief Coroner's guidance: Treasure - A Practical Guide for Coroners 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?**

*Sensible*

**Question 16 relates to Paragraph 87 E/W Code, After Paragraph 79 NI Code and Paragraphs 82 – 84 of the Consultation document**

When a reward is finalised the acquiring museum is invoiced for that amount, with payment expected within three months. Understandable delays in payment can occur, but we appreciate that this can be frustrating for the interested parties. We propose therefore 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?**

*No comment*

**Section 2 - Revisions to the definition of treasure in the Act**

**Questions 17 and 18 relate to Section 1.1 (a) of the Treasure Act 1996 and Paragraphs 85 - 88 of the Consultation document**

Under Section 1.1 (a) of the Act, treasure is defined as objects 300 years old or older. This means that shortly a large volume of mass produced articles could be bought into the scope of the Act. In order to focus resources on significant archaeological, cultural and historical finds we propose to change the definition from a sliding date into a static date of pre- 1714. We understand that there is a risk that significant objects could not be preserved for public collections, and we have addressed this at length in the Consultation document.

**Question 17**

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

*Whilst the concept is understood it could possibly cause certain larger value finds being lost. Are there any exclusions that should be considered. If a collection of items that fall within the definition of Treasure, hidden by a 'modern' manufacturer in the 19<sup>th</sup> century, were located and they represented a significant collection should they not fall within the Treasure process?*

**Question 18**

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

*No comment*

**Questions 19 and 20 relate to changes under Section 2(1) of the Act and Paragraphs 89 - 94 of the Consultation document** Research by the British Museum indicates that most finds worth over £10,000 would usually fall within the current definitions of treasure. However, there are rare and important articles such as the Crosby Garrett helmet which do not, and have consequently been sold into private collections. 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. Details of how we see the process working, and the management of the risks of defining a find as treasure based on its financial value are considered in the consultation document in Paragraphs 87 - 92.

**Question 19**

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

*Agreed*

**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?**

**Question 20**

*Strict export licences*

*Make lottery funding a legitimate good cause to purchase and retain these items in the public domain.*

**Questions 21 and 22 relate to a change under section 2(1) of the Act and to Paragraphs 95 to 97 of the Consultation document**

Currently single gold coins do not fall under the definition of treasure. We propose to add a definition to include all single coin finds of any origin dated between AD43 and 1344, when Edward III re-introduced gold coinage in England. Recorded finds of coins of this time are rare, and indicate the lack of gold coins circulating at that time. The aim of this change is to focus resources on significant coins and avoid bringing into the scope of the act more common finds.

**Question 21**

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

*Agreed*

**Question 22**

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

*Whilst the date of 1344 is understood for the later cut off date there should perhaps be no earlier cut of date. Important coins from before AD43 have been located and should be treated with equal importance to those from after that date.*

*A simple definition of any single gold coin from before AD1344 might be better.*

**Question 23 relates to a Change under Section 2(1) of the Act and Paragraphs 98 to 100 of the Consultation document**

In 2009 the Royston Roman hoard was only preserved for a public collection because one object had a small amount of silver in it. In order to ensure that significant objects are preserved for public collection, we propose to extend the definition of treasure. The definition will include closed deposits (where objects and/or coins are believed to have been intentionally buried together) of base metal objects, where at least two of the objects are of Roman date.

**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?**

*Why just Roman? What is Roman? Does it include material from sources other than ethnic 'Roman' sources during the 'Roman' period? This is a loose and poor definition.*

*Are similar finds from other eras not equally important?*



### **Section 3 Exemption of objects subject to Church of England statutory regimes**

#### **Question 24 and 25 relate to changes under Section 2.2 of the Act and Paragraphs 101 – 118 of the Consultation document**

The Act removed the common law requirement for a treasure find to have been apparently buried with an intention to retrieve by the original owner. This brought into the scope of the Act objects which had been buried in association with human interments in ground consecrated according to the rites of the Church of England. These objects are also subject to the Church of England's own systems of control, which are part of primary legislation.

The Government undertook to address this situation during the passage of the Act. We propose that finds that fall under the Church of England's own systems of control are exempted from the definition of treasure. Further details of the systems of control and the proposed exemptions can be found in the Consultation document.

#### **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?**

*No comment*

**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?**

*No comment*

**Question 26 relates to the commencement of Section 29 of the Coroners and Justice Act 2009 (the 2009 Act) and Paragraphs 122-123 of the Consultation document**

Section 29 of the Act provides that the coroner can decide not to begin or continue with an investigation where the Secretary of State disclaims a find that has been reported as possible treasure. We propose to commence this provision which would remove the need for the coroner to hold an inquest where no museum has declared an interest in an object or coin 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?**

*This could be dangerous, how widely would museums be informed that an article had been found and was available for possible acquisition?*

## Section 4 Commencement of measures in the Coroners and Justice Act 2009

### Questions 27 and 28 relate to the commencement of Section 30 of the 2009 Act and Paragraphs 124-134 of the Consultation document

Since the introduction of the Act, the environment in which it operates has changed, the introduction of online markets has made it easier for the rare unscrupulous finder to sell an undeclared find. In order to address this problem we propose to commence Section 30 of the 2009 Act. This would insert Section 8A into the text of the Treasure Act and would create a duty on anyone who acquired a possible treasure object or coin to report it to the coroner. Section 8A 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. In addition, commencing Section 30 will introduce a presumption when offences under Section 8 of the Treasure Act are prosecuted that, in the absence of other evidence, finds in England and Wales were made after the commencement of the Treasure Act.

#### 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?**

*Positive*

**Question 28**

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

*No*

**Question 29 relates to the commencement of Sections 8B and 8C of the Treasure Act and Paragraph 135 of the Consultation document.**

Section 8C will increase the length of time allowed for proceedings under Section 8.

**Question 29**

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

*Positive*

## Section 5 The long term future of the treasure process and its sustainability

### Questions 30 and 31 relate to the long term sustainability of the treasure process and Paragraphs 136

– 143 There has been increase in annual treasure cases from below 100 per year in the mid-1990s to over a thousand per year since 2014. The overwhelming majority of these finds have been made by metal detectorists who have been instrumental in preserving unique finds such as the Ringlemere Cup for public collections and the creation of the PAS database. Given this increase in cases the question of the long term financial sustainability of the treasure process arises and how it can continue to support the aims of the Act to preserve objects of cultural, historic and archaeological importance for the public.

In order to address this we have put forward some suggestions on the future form of the process. These are:

- the introduction of a process similar to that in Scotland, whereby all archaeological objects become the property of the Crown;
- 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

The aim of these suggestions is to open 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?**

*Agreed, support positive steps being currently taken to provide training and an Institute for Detectorists.*

**Question 31**

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

*Not currently*

**Question 32 relates to additional comments on the proposed changes and to Paragraphs 144 of the Consultation document**

**Question 32**

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

*We are very concerned that the proposal for licensing of archaeologists has been included in the consultation for the Treasure Act and not as a separate discussion. The implications for this going far beyond the Treasure Act. It virtually seems that this has been added as an afterthought with no wider discussion or even an identified requirement for this action. The consultation paper provides no indication as to the thoughts behind this process nor the standards and requirements to be met to be granted a licence. Who will administer and oversee a scheme? Will there be an appeals mechanism? What sanctions would be available for breaching terms of a licence and who will administer them?*

*If there is to be a scheme there should be clearly defined national standards for a licence to ensure consistency. The issue and supervision of licences should however perhaps be down to properly resourced local authority archaeologists. There must be proper discussion on this subject and legislated for separately to the Treasure Act.*