



England and Wales: The Laws on Treasures

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ENGLAND AND WALES

THE LAWS ON TREASURES

The law on treasures in England and Wales was originally contained in the common law rules of treasure trove. This was abolished with little opposition in the late 1990's as it became increasingly ineffective. A statutory regime replaced the common law and took into account technological advances which has given more individuals the ability to find ancient treasures. The new law simplified and expanded the description of treasure, allowing more objects to fall under its provisions. The position of finders and landowners was also clarified in relation to the circumstances in which rewards can be paid when treasures are found.

Common Law

The law in the England and Wales relating to treasures found by individuals was initially contained in the ancient common law rules of treasure trove. It provided that any object made substantially of gold or silver which had been deliberately concealed with an intention to recover and whose ownership could not be ascertained belonged to the Crown.¹ The law's initial purpose was to add to the revenue of the Crown. This purpose evolved over the years as more emphasis was placed on the preservation of such finds rather than the "enrichment of the Crown."² The common law was recently reformed by the Treasure Act 1996³ (TA) to reflect this change in purpose as well as to respond to technological advances which vastly increased the number of archeological finds.

New Statutory Code

The Treasure Act abolishes the common law rules of treasure trove and requires that certain criteria be met before an object falls under its ambit. To fall within the Act, the treasure(s) must be at least 300 years old and have a metallic content of precious metal that is at least 10 percent. If a coin is 1 of 10 or more found at the same site, then it is classified as a treasure regardless of its metallic composition. Any objects in the same find as a treasure within the definition of the Act are also considered to constitute treasure, regardless of whether they were found at the same time as the others, provided that they are "reasonably associated both in geographic distance and in time with something that is clearly a treasure."⁴ A coroner's inquest

¹ Attorney-General of the Duchy of Lancaster v GE Overton (Farms) Ltd [1982] 1 All ER 524.

² Catharine MacMillan, TREASURE TROVE, 146 NLJ 6760 at 1346.

³ Ch. 24.

⁴ *Supra* note 2 at 1348.

determines whether an object meets this requirement.⁵ This provision ensures that the Act applies to any objects which initially had been placed together and had become scattered over time.

Definition of Treasure

As it is difficult to be all encompassing when defining treasure, many objects of archeological or historical significance fall outside of the definition in the Act. To ensure that the law has the ability to apply to a broad variety of objects, the Act provides the Secretary of State with the power to designate a class of objects to fall within the scope of the Act if they were at least 200 years old and of outstanding historical, archeological, or cultural importance.⁶

While preserving the definition of treasure contained in the common law of treasure trove,⁷ the Act removed the requirement that treasure falling within the new definition had to have been hidden with the intention of recovery. This requirement was difficult to prove and excluded a number of significant objects, such as burial offerings.

A consultation on the operation of the Treasure Act found that the failure to include objects with any base metal was leading to the omission of many objects of significant archeological importance from the Act and recommended that the definition be broadened.⁸ The Secretary of State acted upon the recommendations and extended the definition of treasure to include, from January 1, 2003, one of at least two base metal objects that are from a prehistoric date and part of the same find, or any object which is of prehistoric value and contains gold or silver.⁹

Ownership of Treasure

Under the Act, ownership of any treasure that is found is vested in the Crown, unless there is a franchisee in existence or the original owner or his/her heirs can show that the object belongs to them. The main franchise-holders in existence today are the Duchies of Lancaster and Cornwall, the Corporations of London, and the City of Bristol.¹⁰ All but the franchise of the Corporations of London, which has a long standing policy of granting rewards for treasure finds, have stated their intention

⁵ Treasure Act 1996 Code of Practice at 12.

⁶ TA at §1.

⁷ TA at §1(1)(c).

⁸ Department for Culture, Media and Sport, Report on the Operation of the Treasure Act 1996: Review and Recommendations, October 2001.

⁹ The Treasure (Designation) Order 2002.

¹⁰ The Treasure Act, Information for Finders of Treasure, at <http://www.britarch.ac.uk/cba/potant15.html>.

of following the provisions of the Act and the Code of Practice.¹¹

The finder of an item which he/she reasonably believes is a treasure has a legal duty to notify the coroner in his/her district of the find within 14 days of either the find, or when the finder reasonably believes that the object is a treasure.¹² If the finder does not comply with this section and does not have a reasonable excuse for failing to do so, he/she is guilty of an offense and can be imprisoned for up to four months and/or fined up to £5,000.¹³ The penalties have been criticized for not being extensive enough due to the potential that the cost of the find may be greater than the cost of complying with the Statute.¹⁴

When the coroner receives any treasure he/she has the authority to hold an inquest into the treasure and inquire who its finders are.¹⁵ When conducting an inquest into the treasure, the coroner must notify the British Museum if his/her district is in England; the National Museum of Wales if his/her district is in Wales; or the Department of the Environment for Northern Ireland if his/her district is in Northern Ireland, as well as the person who found the treasure and the person whose land upon which it was found.¹⁶

Finder's Reward

The position of the individual who finds a treasure in relation to receiving a reward is typically favorable. The main aspect in whether the finder will receive a reward for finding the treasure or the actual object back depends upon whether the Crown keeps or disclaims the object. If the treasure vests in the Crown and is to be transferred to a museum a reward is often payable. The amount payable depends on the evaluation of a number of criteria listed below. If the Secretary of State disclaims the treasure, ownership of the object reverts back to either the finder or landowner, depending upon the particular circumstances of the case.

If the treasure is vested in the Crown and is to be transferred to a museum the Secretary of State can decide whether a reward should be paid prior to the transfer of the treasure. If the Secretary of State determines that an award should be paid he/she must determine:

¹¹ *Supra* note 5 at 18.

¹² TA at §8(1)(2). For a flow chart detailing the steps to be taken upon finding a treasure, please see appendix i.

¹³ *Id.* §8(3).

¹⁴ Catharine MacMillan, TREASURE TROVE, vol. 146, no. 6760 NLJ at 1346.

¹⁵ Coroners Act 1988, ch. 13, §30.

¹⁶ TA at §9.

- the treasure's market value
- the amount of the reward, which is not to be greater than the treasure's market value
- to whom the reward is to be paid, such as the finder of the treasure, the occupier of the land at the time of the find, or any person who had an interest in the land at that time or since then
- if the reward is to be payable to more than one person, how much each is to receive¹⁷

The treasure's market value is established through a Treasure Valuation Committee, which is composed of independent experts. Any interested party may submit a valuation of his/her own for consideration before the Committee makes its recommendation. The Committee not only recommends the value of the reward to be given but also advises the Secretary of State where there may be grounds to divide the reward between the finder and the landowner and whether there should be a reduced amount or no reward paid.¹⁸ Typically, the finder will be granted the full amount of the reward when he/she has obtained valid permission from the landowner to search and remove artifacts and abided by the law in respect of reporting and removing the find.¹⁹ Archeologists and individuals on archeological expeditions are not paid rewards for any objects which they may discover.²⁰

There is an appeals process to the Secretary of State if the finder or landowner is dissatisfied with the valuation of the object. If the Secretary of State decides upon a reward, it is typically paid within one year after the find is given to the coroner,²¹ however, payment of the reward is not enforceable against the Secretary of State or Museum.

If no museum wishes to acquire the find, the Secretary of State can disclaim the object. Upon receiving the disclaimer, the coroner will no longer need to carry out an inquest and is required to notify the finder and the landowner that the object will be returned to the finder after 28 days unless any objection is lodged, in which case the object will be kept by the coroner until the dispute is settled in court.²²

¹⁷ *Id* at §10.

¹⁸ *Supra* note 5 at 62.

¹⁹ *Id.* at 68.

²⁰ *Id.* at 76.

²¹ *Supra* note 11.

²² *Supra* note 5 at 47.

Operation of the Act

A number of deficiencies in the Act have been noted in the consultation, such as the lack of duty for individuals, other than the finder, to report treasures they possess which fall within the Act.²³ While the number of treasures reported has vastly increased since the implementation of the Act, a large number of significant archeological finds continue to go unreported due to the fact that they do not fall within the definition of treasure in the Act. In reaction to this, the government has established a pilot voluntary scheme encouraging all individuals who make archeological finds to report and record them. There has been considerable progress made with the voluntary scheme, and in 2001, 37, 518 archeological finds were recorded which did not fall under the provisions of the Treasure Act.²⁴

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²³ *Supra* note 7.

²⁴ Department for Culture, Media and Sport, Portable Antiquities Annual Report 2000-2001.