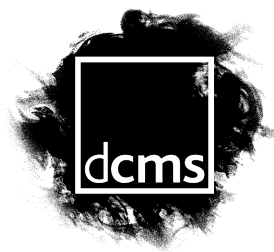


**REPORT ON THE OPERATION OF  
THE TREASURE ACT 1996:  
REVIEW AND RECOMMENDATIONS**



DEPARTMENT FOR CULTURE, MEDIA AND SPORT  
2-4 Cockspur Street, London SW1Y 5DH

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*Note*

1. The review of the Treasure Act 1996 and Code of Practice has been carried out under s. 11 of the Treasure Act and paragraph 84 of the Code of Practice (Northern Ireland Code, para. 76) by a consultant, Elaine M. Paintin, on behalf of the Department for Culture, Media and Sport.

**A. SUMMARY OF RECOMMENDATIONS AND FINDINGS***Definition of Treasure (paras 60-73)*

2. Extending the definition of treasure to cover all objects of archaeological significance is not recommended.

3. Excluding from the definition objects that are not treasure but would have been treasure trove is not recommended.

4. Excluding from the definition of treasure fragments of objects is not recommended.

5. It is recommended that the Secretary of State designate the following categories of material as treasure:

(i) One of at least two base metal objects of prehistoric date, from the same find.

(ii) Any object of prehistoric date any part of which is precious metal.

6. It is recommended that objects subject to the faculty jurisdiction of the Church of England or to section 2(1)(b) of the Care of Cathedrals Measure 1990 be excluded from the definition of treasure.

7. It is recommended that consideration be given to providing further guidance in the Code of Practice on the meaning of 'part of the same find' and 'associated objects' which should include the advice to finders to seek expert opinion and, if in doubt about the status of objects, to report them. (Code para. 12 (NI, para. 13))

8. Further legal guidance may be needed on the relationship between the wreck and treasure regimes with regard to finds from the foreshore.

9. It is recommended that any changes to the definition should be phased in as resources allow, and that, in any case, they do not take effect for at least six months from the date of the order being made; and that the changes in definition should be reviewed within five years of their coming into effect as part of a general review of arrangements for treasure.

*Searching and Reporting (paras 82-100)*

10. It is recommended that the Treasure Act Code of Practice include further advice on best practice for searchers, in particular for those who use metal detectors. It should include the elements outlined in para 84 below. (Code paras 25-35 (NI, paras 24-31))

11. No change is recommended to the duty of the finder to report treasure within the prescribed period of fourteen days.

12. It is recommended that the Treasure Act be amended to include a duty to report treasure on the part of any person who knowingly comes into the possession of unreported treasure. However, an alternative route might be provided by the new offence recommended by the Advisory Panel on Illicit Trade. In addition, it is recommended that the Code should warn that an offence might be committed under the Theft Act by anyone, whether the finder or not, who possesses unreported treasure but fails to report it.

13. It is recommended that the Treasure Act be amended to place a duty on anyone who reports treasure to deposit it as directed by the coroner. Additionally, existing safeguards as to the duty of the finder as bailee of the suspected treasure should be explained in the Code and coroners may need to be advised of possible alternative routes to the enforcement of deposit, e.g. by witness summons or the common law power to take possession of suspected treasure trove.

14. It is recommended that the Code remind finders that the status of foreshore land is the same as that of other land: it has an owner from whom efforts should be made to obtain permission to search. It would be helpful if the Crown Estate and other owners of the foreshore were to clarify their position with regard to searching on tidal land. Information about listings of foreshore owners, when available, could usefully be included in the Code in future.

15. It is not recommended that archaeologists be exempted from the duty of finders under the Act to report suspected treasure (Code para. 23 (NI, para. 22)). The Code should make plain that the term 'archaeologist' in para. 76 (NI, para. 68) encompasses anyone engaged on an archaeological investigation, including students, amateurs and volunteers. No reward would be payable to such persons, and it is urged that the word 'normally' should be omitted from para. 76 (NI, para. 68) of the Code and the words 'except at the discretion of the Secretary of State' inserted after 'archaeologist'.

16. In any future revision of PPG16/PPG Wales it is recommended that arrangements for treasure finds should be included.

17. It is recommended that the Treasure Receipt Form should always be used by those receiving treasure, and that in any matter relating to indemnity and responsibility for finds reported as treasure, receiving authorities have regard to para. 59 (NI, para. 49) of the Code. In some cases of disclaimed or non-treasure objects they may also wish to look to their own arrangements, agreed with their governing authorities, for dealing with loss or damage.

18. Museums should be urged to complete reports on treasure according to the original report to the coroner, and to submit them within three months or within a period of time that will allow the target times set down in the Code at para. 82 (NI, para. 74) to be met. Local reporting centres need to be reminded that they should always first consult the national museum if they propose to provide the report to the coroner (Code para. 41).

19. The reporting of treasure to SMRs, which should be done by local reporting centres, needs to be improved, speeded up and made consistent; para. 39 of the Code will accordingly need to be revised to make the position clearer. This would be greatly facilitated if local authorities were in future to be given a statutory duty to maintain SMRs. SMRs should be asked to take great care in releasing detailed locational information about treasure find-spots.

20. It is strongly urged that the pilot Portable Antiquities Scheme be extended to the whole of England and Wales.

21. It is recommended that para. 44 of the Code (NI, para. 36 ) be revised to stress the dangers of cleaning objects prior to reporting and to provide further advice on the care of objects.

*Coroners and the Conduct of Inquests (paras 113-17)*

22. It is recommended that the procedures for dealing with treasure inquests be set down in a new Rule under the Coroners Rules 1984. This would be intended to address all the issues listed in para. 114 below.

23. Alternatively, or in addition, it is recommended that the Treasure Code of Practice and the guidance provided to Coroners by the Home Office<sup>1</sup> be revised to set out clearly the procedures and notifications that coroners are asked to observe, in particular:

- (a) Acknowledge report of treasure; instruct finder where to deposit;
- (b) If treasure disclaimed, notify occupier and landowner that find to be returned to finder within twenty-eight days; if no objection received, inform national museum/local museum and authorise reporting centre in writing to release object to finder;
- (c) Inform BM/NMGW/Environment & Heritage Service, NI (already mandatory) and any franchisee (if known) that inquest to be held;
- (d) Inform finder/occupier/landowner that inquest to be held;
- (e) Ask finder to state under oath, or make statutory declaration, as to who was involved in the find and whom he believes has any interest in it, and whether he had the landowner's/occupier's permission to search; and require such further statements under oath, or statutory declarations, from other persons as appear appropriate in the circumstances;
- (f) Hold inquest after deciding whether to summon parties or use written statements only under Rule 37 procedure; maintain confidentiality in respect of find-spot location and details of finder and landowner/occupier;
- (g) Notify BM/NMGW/Environment & Heritage Service, NI and local museum/reporting centre; also the finder, landowner/occupier and franchisee (if known) of result of inquest;
- (h) Keep record of all finds and results of inquests using standard forms the format of which to be included in the Treasure Code of Practice, and/or revised Home Office guidance for coroners, and, ideally, in the forthcoming edition of *Jervis on Coroners*.

24. It is recommended that, when a legislative opportunity arises, it is made plain that the coroner does not have a duty to inquire into any treasure disclaimed by the Crown or by a franchisee.

25. It is recommended that, when a suitable legislative opportunity occurs, coroners be exempted from liability in regard to the return of disclaimed treasure and objects which are not treasure provided they have had regard to the procedures laid down in the Code of Practice and Home Office guidance, and/or in any new Coroners Rule setting down the treasure procedure. Or, the coroner should be given the discretion to deliver the object to whomever he believes has title to it. Or, the coroner should be given a mechanism for delivering the object into the custody of a local court for decision on the issue of title. The Code (para. 47 (NI, para. 39)) should then be amended accordingly under s. 6(4)(b) of the Treasure Act.

26. It is recommended that the Treasure Act Code of Practice and Home Office guidance make plain that the coroner's duty to inquire commences when treasure or suspected treasure is reported, regardless of who has made the report.

27. To improve communication between the parties it is recommended that coroners be invited to a meeting to be held annually, probably under the aegis of the Coroners Society, to receive the Annual Report on Treasure and discuss treasure issues.

*Disclaimed Finds (paras 124-26)*

28. It is recommended that further steps be taken to examine the feasibility of circulating eligible museums with details of objects not required by the national or local museum and likely to be disclaimed, e.g. by means of a secure website.

29. It is recommended that the scheme being piloted in Norfolk to speed up the disclaimer process be extended, if successful, to the rest of England and Wales as soon as appropriate facilities and trained staff are in place. It is further suggested that para. 82 of the Code (NI, para. 74) be amended to standardise the target times for processing disclaimed treasure to six months for all finds.

30. It is urged that details of disclaimed treasure be passed to the portable antiquities recording scheme and the local SMR.

*Acquisition of Treasure (paras 130-36)*

31. It is strongly urged that the relevant authorities resolve all outstanding issues with regard to museum collecting policies and areas in England and Wales. National leadership, possibly from Resource, may be required to facilitate this. A start could be made by funding the compilation of a database of local authority and museum collecting areas in England and Wales.

32. The DCMS and National Assembly of Wales are urged to look again at how funds for the acquisition of treasure by eligible museums can be increased, in particular by enhancing the level of the V&A Purchase Grant Fund. The HLF should be urged to look sympathetically on multiple bids and lower thresholds for applications. Museums should be encouraged to take advantage of the HLF's fast-tracking and simplified application processes, and the acquisition funds made available by the NHMF.

33. It is suggested that contact details of the principal funding bodies that can be approached to help with treasure purchases be included in the Treasure Code.

***Valuation of Treasure (paras 140-44)***

34. It is recommended that the Treasure Valuation Committee include representatives of the major players in the treasure process (archaeologists, museums, dealers and finders) under an independent Chairman, and that details of their expertise, interests and other positions held should be listed in the Treasure Annual Report and made available on request.

35. It is not recommended that objects be valued prior to inquest.

36. It is not recommended that the TVC adopts a minimum valuation figure.

37. It is proposed that treasure should be valued at the first TVC meeting to be held after a provisional valuation is received, even if this reduces the time allowed for parties to comment, provided all parties agree to this; para. 62 (NI, para. 54) of the Code would need to be revised accordingly.

38. It is recommended that coroners continue to be sent copies of the Treasure Annual Report for information on the valuation of treasure on which they have held inquests.

39. It is recommended that the TVC draw up, and make publicly available, guidelines by which it operates and that these should include:

- (i) The number of independent valuations to be sought and reasons for requesting them;
- (ii) Factors influencing the Committee's judgement when assessing valuation evidence both from their own advisors and others;
- (iii) The date of valuation;
- (iv) How valuation is affected by the subsequent discovery of other parts of the same find;
- (v) The extent to which cleaning and conservation influence valuation;
- (vi) The adoption of safeguards to ensure the reliability of the parties' own valuation evidence;
- (vii) How challenges to TVC valuations are dealt with;
- (viii) How, if at all, valuations should be publicised.

***Rewards (paras 151-54)***

40. It is suggested that alternatives to monetary rewards to finders be investigated so as to give appropriate recognition to those finders who are prepared, voluntarily, to forego cash rewards to allow public collections to acquire treasure without payment.

41. It is recommended that the Code (para. 76 (NI, para. 68)) clarify the position with regard to finds made by archaeologists to make it plain that rewards will not be paid to archaeologists or anyone engaged on an archaeological excavation or investigation. If areas of doubt remain, organisers are advised to require all such persons to sign waivers. This paragraph should also state that the proportion of any reward payable to an eligible landowner/occupier in such cases is fifty per cent.

42. It is recommended that para. 67 of the Code (NI, para. 59) be revised to refer to the finder's 'full share of the reward' in order to make plain that it is the current practice to divide rewards equally between the finder and landowner on a 50:50 basis, unless another form of agreement has been reached between them, or the reward is abated.

43. The DCMS and NAW are strongly urged to encourage the relevant bodies to look into the funding of a sufficient number of archaeological rapid response teams to undertake swiftly the investigation of sites when treasure finds suggest they may be of importance.

*Annual Report (paras 159-62)*

44. It is suggested that the Annual Report would benefit from: a note on the criteria for including objects and circumstances under which they are disclaimed; information from the Treasure Valuation Committee about its members and the process of valuation together with guidelines used; and a feedback section featuring the results of meetings held, views expressed etc in the course of the year.

45. It is suggested that ways be explored to meet the criticism that the Report appears to emphasise and encourage treasure hunting. For example, recognition could be given to those who forego monetary rewards and who have behaved in a particularly responsible manner. Valuations might be printed separately from object descriptions, possibly at the end of the Report and omitting individual figures in favour of ranges of valuations. More information might be included on the archaeological context of treasure finds and on associated non-treasure finds of significance made in the course of the year.

46. It is recommended that all funders and funding bodies who have helped museums to acquire treasure, and who have no objection to public recognition, be acknowledged in the Report. Acquiring museums should ensure that they have provided the DCMS with details of benefactors before the Report is compiled.

47. It is recommended that the Report be put on-line allowing the database to be updated easily, and that copies of the printed document be distributed widely to key players.

*Administration (paras 167-73)*

48. It is urged that the target times set down in the Code be adhered to and museums asked to complete their reports on all but the most complex cases within three months.

49. It is recommended that the DCMS consider providing further funding for a part-time (twenty per cent) post of Advisor on Treasure (at Grade B), requiring professional archaeological experience; and a part-time (fifty per cent) post (at Grade D) to assist the treasure valuation case worker; both to be located at the DCMS.

50. The British Museum is strongly urged to establish a central Treasure Registry at the Museum staffed by a registrar who would be the point of contact with key players. The registrar would liaise with the National Museums & Galleries of Wales, the Ulster Museum and the DCMS. The principal responsibilities of the registrar

would be: to establish and maintain a computerised tracking system for all treasure cases and keep all parties informed of progress, probably, in part, by means of a secure website; to provide a single point of information on the treasure process, making maximum use of the internet; and to maintain statistics, edit the Annual Report, monitor performance and provide feedback.

51. It is urged that paperwork be standardised as far as possible. In particular, a revised Treasure Receipt Form should always be used, subject to the satisfactory resolution of the issue of liability. Coroners should be requested to use standard forms to acknowledge finds and to record the results of inquests. A number of minor changes to the paperwork generated by the treasure process are proposed; they can be found in the revised Treasure Flow Chart (at Appendix II).

52. The Code of Practice and related documents will require revision to reflect any changes agreed; they should aim to be more 'user-friendly'. It is suggested that the Codes for England and Wales and for Northern Ireland should adopt the same paragraph numbering, as far as possible, to reduce confusion.

53. It is recommended that the operation of the Treasure Act and Code of Practice be reviewed again after the revised Code has been in operation for five years.

## B. INTRODUCTION

54. The Treasure Act Review: Consultation Paper<sup>2</sup> was sent out in December 2000 to approximately 2,000 organisations and individuals including those who participated in the original consultation on the Code of Practice and others who had become involved in the treasure process more recently. In line with the terms of reference, the three-year review concentrated on the two central issues of the definition of treasure adopted by the Act and the system of administration set out in the Treasure Codes of Practice for England and Wales and for Northern Ireland.

55. Responses were received from thirty-four national and local museums, archaeological officers and finds liaison officers; four national archaeological organisations; twelve coroners; nine metal detecting organisations, clubs and journals; two responses were received from valuers; two from funding bodies; two from land-owning organisations; four from other bodies and fourteen from individuals. In addition to these a substantial number of organisations and individuals provided written submissions and attended meetings to discuss issues and exchanges views between September and November last year which contributed significantly and helpfully to the review. Others have been generous with legal and other professional advice.

56. Responses to specific matters are detailed below; overall, the consultation revealed widespread support for the Treasure Act and a broad commitment to making the new regime a success. However, what is equally apparent is that the new system is suffering from severe under-investment as it attempts to cope with a tenfold increase in treasure with little in the way of extra resources. Much credit is due to museums, finds liaison officers, local Treasure Act advisors, coroners and the Treasure Valuation Committee for keeping afloat an overburdened ship.

57. A further and important general consideration to emerge from the review is the long-term future of the treasure approach. A considerable number of respondents viewed the Treasure Act as a short-term expedient which could fail in the longer term to meet the overriding requirement to preserve the nation's portable heritage. A few respondents even believed that the Treasure Act, while extending protection to a greater number and range of important heritage items, had also had the effect of highlighting the essentially illogical focus on precious metal as the apparent determinant of archaeological and historical significance. The Treasure Act should not, of course, be viewed in isolation; the Government has established the Portable Antiquities pilot schemes to complement the Act, by encouraging the voluntary reporting of all archaeological finds.

58. The long-term future of the treasure régime, and the development of further strategies for the preservation of important archaeological objects and sites, are beyond the scope of the present review. But, relevant to both the operation of the status quo and any future advances, is the question of funding. The Government, together with local authorities, will need to decide if it wishes to invest more in the operation of the Treasure Act and in related important initiatives such as the Portable Antiquities Scheme both to allow the smooth, effective and timely administration of the present treasure system and to help museums to acquire and preserve those objects which the Treasure Act was designed to protect.

*Legal note*

59. The Review examines the Treasure Act and Code of Practice in accordance with the Terms of Reference (see Appendix I); it does not purport to look at the Treasure Act in relation to the collateral body of law, for example, the Theft Act 1968, the Ancient Monuments and Archaeological Areas Act 1979 and the Merchant Shipping Act 1995. The Review of the Treasure Act may be timely, nonetheless, in view of recent developments, particularly the UK's ratification this year of the European Convention on the Protection of the Archaeological Heritage 1992 ('the Valletta Convention') and the agreement by the UK Government to sign up to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ('the UNESCO Convention').<sup>3</sup>

### C. DEFINITION OF TREASURE

(Consultation Paper paras 2.1-2.9; 11.1(i)-(v))

60. Under the terms of reference the review of the Treasure Act has focused on the two major issues of definition and system of administration. Section 2 of the Act gives the Secretary of State powers to designate by statutory instrument additional classes of object as treasure and to remove classes of object from the definition of treasure. The Treasure Act widened the scope of treasure while retaining the starting point of precious metal content. This extension of the definition has been broadly welcomed by those working within the treasure system. However, during the three years in which the Act has been in force, experience suggests that a number of issues tend to recur; these are set out in paras 2.1-2.9 of the Consultation document.

61. Most respondents favoured the expanded definition of treasure as set out in the Act and the resulting increase in the number of objects being reported. From those who commented on the definition, there was widespread, though by no means unanimous, support for extending the scope of the Act. The overwhelming majority of respondents who favoured extending the definition of treasure were from the museum and archaeology sectors; a small number of detectorists and detecting organisations recommended limited extension provided resources were in place to deal with the extra strain this would place on the system. A small minority of respondents wished to include all archaeological objects in the definition of treasure, on the Scottish model, but recognised that the Treasure Act was not the means by which this could best be achieved, nor were the resources in place to cope with the massive increase in reported finds that would result. Indeed they warned against the ad hoc extension of the definition of treasure as a substitute for comprehensive portable antiquities legislation.

#### *Base metal objects*

62. In relation to the Act itself, there is a widely held view among professional archaeologists that one obvious shortcoming of the Act is its failure, while encompassing base metal coins (finds of at least ten), to include objects of base metal (that is, any metal other than gold or silver). The omission of prehistoric bronze hoards, discrete entities of considerable archaeological importance, is particularly regretted. The Consultation asked for views on a wider definition of treasure and, in particular, whether deposits of base metal objects should be included; if so, what should be the minimum number of items required to constitute a find and what cut-off date should be adopted.

63. Substantial support was expressed for extending protection to deposits of base metal objects. These respondents were almost equally divided between those who favoured including base metal material of the prehistoric period only and those who preferred to see protection extended also to objects of the Roman period, or to all objects over 300 years old. All these respondents agreed on the importance of including prehistoric non-precious metal objects such as the unique collection of Bronze Age and Iron Age artefacts in the Salisbury hoard and assemblages of bronze tools and other artefacts, such as the hoard of copper-alloy axes found recently at Old Kemeys, Newport. The loss of such objects, along with the information they provide, was seen as extremely serious. The British Museum estimated that extending the definition to include prehistoric base metal assemblages might result in up to fifty additional finds per year being reported as treasure in England and Wales; this would impose a considerable additional burden on staff resources.

64. Some respondents were loath to exclude Roman and medieval material from the definition, pointing to the absence of protection at the moment for Roman bronzes such as those from Icklingham in Suffolk, and for Anglo-Saxon grave goods and other base metal objects of the medieval and post-medieval periods. The inclusion of deposits of Anglo-Saxon objects, though, was of particular concern to others who feared that the sheer quantity of material likely to be reported would swamp the processing system. The medieval strap fittings some wished particularly to capture, others were equally keen to exclude. Another respondent pointed out that prehistoric metal types continue beyond the Roman invasion of AD 43 and it was widely observed that any cut-off point before the 300-year limit applied to other treasure objects would demand very clear guidance for finders, coroners and museums.

65. The minimum number of base metal objects that would be needed to constitute a treasure find was also the subject of debate with replies ranging from the suggested five objects down to as few as two or three, or one object. No respondent wished the minimum number to be higher than five and it was pointed out that excluding single objects might encourage finders to disperse objects one by one through established networks or even report them singly. Lack of resources for processing treasure emerged as the major constraint in respect of extending the definition of treasure to base metal assemblages, especially if those of Roman and medieval date were included. Indeed, unless considerable extra resources were to be made available, any but a very limited extension of the definition would clearly be unmanageable.

#### *Plated and composite objects*

66. Requests have been made from time to time over the three years for clearer guidance on what is treasure in relation to plated and composite objects. Although the Code of Practice explains that in most cases plated objects are excluded from the definition (para. 6 and n. 1 (NI, para. 7)), a number of finders and coroners continue to have difficulty in understanding or interpreting the guidance. It is an area in which there seems to have been much confusion; some respondents thought the existing definitions were already quite clear and that plated objects, e.g. those with a gold cover over a base metal core, were invariably excluded unless the precious metal amounted to at least ten per cent of the total object; others believed such objects could fall within the scope of the existing definition. There was some doubt about the precise meaning and status of 'plated' and 'components' as described in the Code, and debate about whether the metallic content should be a single entity. Some respondents believed it was extraordinary that, under the Act, a gold covered non-metallic object could be treasure, while a gold-covered base metal object would probably not be. Particular concern was expressed about the status of Bronze Age gold-covered penannular rings whose surface is gold over a base metal core. (Examples from Lower Langford, Somerset and Port Eynon, Swansea are described in *The Treasure Annual Report 1998-1999*.)<sup>4</sup> It seemed ironic that, if broken, such objects could more easily be established as treasure (i.e. by association) than if still intact. The status of these rings has been further complicated by the wholly erroneous belief that they may have represented some sort of money.<sup>5</sup> Respondents asked for clearer guidance on the status of these objects.

67. A strong case was made by a number of respondents for extending the definition of treasure to include prehistoric plated objects, such as the rings mentioned above, on grounds of archaeological significance. This could be done by extending the definition to specific classes of object rather than relying on a revision of the guidance provided in the Code of Practice. Categorisation into treasure and non-treasure by use of the ten

per cent precious metal test was thought to be extremely difficult. In some cases corrosion would render such a test impossible or the percentage would only be ascertainable by scientific analysis which could mean drilling into the object, a process likely to endanger small and fragile objects.

#### *Fragments*

68. Of the respondents who commented on the current inclusion of fragmented objects within the definition of treasure, the majority favoured their retention. Those who wished to exclude them, mainly finders, pointed to the time taken up in processing insignificant items of generally low value which they believed would ultimately be disclaimed. A local filtering system, such as the one being piloted in Norfolk, was recommended to deal with fragments, where adequate resources were in place. But a strong archaeological case was made for the importance of many fragments which should not therefore be excluded as a whole category of object. It was believed that a speeded-up disclaimer system should be able to process items more rapidly.

#### *'Associated objects' and objects which are 'part of the same find'*

69. A number of respondents were confused by the terms 'archaeological association', 'part of the same find' and 'associated objects' (explained in Code paras 8, 12-14 (NI, paras 9, 13-15)). A finds liaison officer stated that finders frequently report large numbers of individual coins of various dates found scattered across fields as they do not know whether they might be 'part of the same find' or not. There also seems to be confusion between association within discrete groups of objects or coins and that in whole site assemblages. Greater use of archaeological terms, with proper explanations, was suggested to help convey the meaning intended.

#### *Church of England*

70. The recommendation in the Review that objects found in association with human burial in a consecrated place and objects that fall within the Church of England's own legal systems of control be excluded from the definition of treasure was, on the whole, uncontroversial (Code, para. 16). A few respondents wondered why only Church of England land was recognised rather than all consecrated land and land in the ownership of other Christian denominations and other religions. However, the Government has already recognised the Church of England's unique position in having its own legal regime applying to moveable articles that belong to it, and has given an undertaking that an appropriate order to exclude objects covered by the Church of England's own legal systems will be brought forward.

#### *Treasure Trove*

71. The retention under s. 1(1)(c) of the Act (Code, para. 9 (NI, para. 10)) of objects that would have been treasure trove but are not treasure (e.g. deliberately concealed hoards of nineteenth-century gold coins) was questioned by some on the grounds that the Act thereby perpetuates the anachronistic *animus revertendi* and the test of 'substantial quantity' of precious metal. Any inquest on such material would need to apply the old tests with expert witnesses second-guessing the motives of the original owner of the trove. However, it was also noted that removal of such objects from the definition of treasure could lead to the loss of important items. Three 19th- and 20th-century coin hoards were declared treasure trove shortly before the Act was passed though, as the Code makes plain, such finds are rare and there have been none in the first three years of the Act.<sup>6</sup>

*Finds from the foreshore*

72. Determining the status of objects found on or in the foreshore (the area between mean high water and mean low water) has not always been straightforward, although the Act states that such finds are treasure unless they come from wreck within the meaning of Part IX of the Merchant Shipping Act 1995. One respondent has drawn attention to the possible effect of the judgement in *Waverley Borough Council v. Fletcher* (1995)<sup>7</sup> on the status of objects found in the foreshore. It was possible that such objects could qualify as treasure (or be the property of the landowner if not treasure) even if they appeared to have come from a wreck. However, there would seem to be no clear case at the moment for reconsidering the definition of treasure in relation to wreck as set down in s. 3(7) of the Treasure Act. The following view on the legal position has been offered by Professor Norman Palmer:<sup>8</sup>

(i) An object which fails to qualify as treasure may nevertheless be Crown Property on some other ground. For example, the Crown may have possessory title (irrespective of the identity of the true owner) in any object which is situated on or within land occupied by the Crown. The extent of that property varies according to the exact location of the object. If located under or within the ground it will normally be Crown Property automatically, irrespective of any proof of intention on the part of the Crown in relation to it. If on the other hand the object is found on the land, the Crown's possessory title as occupier of the land will depend on its having manifested an intention to exclude persons from access to objects so situated. The distinction is an uneasy one but the consequences of drawing it could be important: the first possession of (and thus possessory title to) objects on the land may be that of a finder rather than that of the Crown as occupier. On the other hand, the Crown's virtually automatic possessory title to objects in the ground may provide a valuable back-up mechanism to reduce into public ownership objects which are not treasure.

(ii) Where objects are found buried beneath the foreshore and the Crown is the occupier of the foreshore, possessory title may therefore be with the Crown. That may give rise to difficulty where the object is alleged to have come from a wreck. Whereas title to wreck may reside with the Crown under the Merchant Shipping Act 1995, that title may have been distributed to a franchisee. The interrelation of the Crown's possessory title with the right of such a franchisee to wreck is not entirely clear. Presumably, however, the Crown's originally unqualified title to wreck, and its lawful distribution to a franchisee, will prevail over any merely possessory title residing in the Crown as occupier of the foreshore. Where the Crown is not the occupier of the foreshore the relevant possessory title will of course reside with the party who is in occupation. Again, it would seem unlikely that this would prevail over a title derived from the Crown's title to wreck. The question of proof, however, may prove problematic for the franchisee. The law may well assume that full title resides with the occupier of the land until an alternative proprietor is proved.

(See also paras 89, 90 and 105 below.)

*Extending the definition: resources and management*

73. It is clear from the evidence submitted to the Review that any extension of the definition to include new classes of object would place an additional strain on the treasure process. Even a modest change could be unmanageable within the present staffing levels at the national museums and the relevant local museums. However, the continuation and extension of the Portable Antiquities Scheme for voluntary recording would play a very important role in underpinning any extension of the definition (see paras 96 and 111 below). It would be helpful to have a period of notice before any changes in the definition of treasure were to come into effect, and such changes would probably need to be phased in to ensure that adequate resources were in place to cope

with the increase in cases. Changes should be subject to reassessment after five years as part of an overall review of the treasure process.

*Recommendations and findings*

74. Extending the definition of treasure to cover all objects of archaeological significance is not recommended.

75. Excluding from the definition objects that are not treasure but would have been treasure trove is not recommended.

76. Excluding from the definition of treasure fragments of objects is not recommended.

77. It is recommended that the Secretary of State designate the following categories of material as treasure:

(i) One of at least two base metal objects of prehistoric date, from the same find.

(ii) Any object of prehistoric date any part of which is precious metal.

78. It is recommended that objects subject to the faculty jurisdiction of the Church of England or to section 2(1)(b) of the Care of Cathedrals Measure 1990 be excluded from the definition of treasure.

79. It is recommended that consideration be given to providing further guidance in the Code of Practice on the meaning of 'part of the same find' and 'associated objects' which should include the advice to finders to seek expert opinion and, if in doubt about the status of objects, to report them. (Code para. 12 (NI, para. 13))

80. Further legal guidance may be needed on the relationship between the wreck and treasure regimes with regard to finds from the foreshore.

81. It is recommended that any changes to the definition should be phased in as resources allow, and that, in any case, they do not take effect for at least six months from the date of the order being made; and that the changes in definition should be reviewed within five years of their coming into effect as part of a general review of arrangements for treasure (see below, para. 179).

#### D. SEARCHING AND REPORTING

(Consultation Paper paras 3.1; 3.3-3.6; 11.2; 11.4-11.7)

82. The Review highlighted the desirability that detectorists, and others who search for antiquities, adhere to principles of good practice which should be included in the codes of practice adopted by metal detecting clubs and associations. Views were requested on the best ways of promoting these principles especially in relation to safeguarding the interests of landowners and occupiers who were given rights under the Treasure Act.

83. There was general agreement among respondents that detectorists should adhere to codes of practice and it was plain that landowners' organisations, such as the CLA (the Country Land and Business Association) whose members account for sixty per cent of the rural land in England and Wales, and substantial landowners such as the Crown Estate, already recommend that only detectorists who adhere to codes, such as that of the National Council of Metal Detecting, be allowed to search. However, some respondents thought existing codes and the Treasure Code erred in seeming to make a distinction between private land, on which permission to detect should be sought, and 'public' land on which permission might not be necessary. Clearly, all land, including the foreshore, has an owner (and, contrary to popular belief, all common land is private property) but it is recognised that discovering the identity of the landowner may be very difficult. Some respondents also felt that codes of practice ought to advise against interfering with known or newly discovered archaeological sites whether scheduled or not unless already disturbed by cultivation. The best advice, when finders suspect a site may be involved, is that they should report all archaeological objects they have uncovered there, whether thought to be treasure or not, to the local finds liaison officer or local reporting centre for guidance. They are best placed to determine whether a previously intact archaeological site is involved or not. The continuing level of trespass by detectorists was highlighted by other respondents, principally land-owning organisations. The Countryside and Rights of Way Act 2000 with its apparent conveyance of a 'right to roam' was thought likely to exacerbate this problem, and it was suggested that the effect of the Act be kept under review. It was also felt that searchers should be reminded to keep to the Countryside Code as well as an MD code of practice.

84. Rather than recommend to landowners a particular code, it would seem sensible for the Treasure Act Code to include a few essential elements of a model code of practice for detectorists which all detector users and others should observe. Landowners and their representatives could then be encouraged to ensure that searchers on their land adhere to a code which is based on these principles. They could be updated as necessary in subsequent revisions of the Treasure Act Code. These principles could include, for example:

- Make every effort to obtain permission to search from the landowner, regardless of the status, or perceived status, of the land; to avoid subsequent disputes it is advisable to get written permission.
- Do not detect or trespass on scheduled sites or areas designated as of archaeological importance, and take extreme care not to disturb other known sites, especially newly discovered ones; seek advice from the local finds liaison officer, museum or SMR if in doubt.
- Make contact with the local finds liaison officer, archaeologist or museum.

- Ideally, join a recognised detecting club.
- Familiarise yourself with the provisions of the Treasure Act and Code, recording arrangements under the Portable Antiquities Scheme and the export licensing rules.
- Always report promptly, and in any case within fourteen days, any object suspected of being treasure and deposit it as directed by the coroner.

#### *Report and deposit*

85. Section 8 of the Treasure Act requires finders to report objects they believe to be treasure within fourteen days to the coroner of the district in which the find was made. A number of detectorist organisations, in response to the Review, asked for a longer reporting period. On the whole, the duty of the finder under the Act to ensure that treasure has been reported attracted widespread acceptance. While local Treasure Act advisers and finds liaison officers frequently report treasure on a finder's behalf, and most are happy to do this as they feel this ensures that a report has been made, some would prefer finders to make the report themselves. A number of finders agreed. Finders are in the best position to answer any questions the coroner or coroner's officer may ask about the circumstances of the find and who else was involved in the find. It would seem sensible for the Treasure Code to impress on finders that, even though they may arrange for a third party to make the report, the duty to report, and therefore to ensure that this has been carried out, remains with the finder. As reports may be made quite simply by phone, fax or even email, the fourteen-day period set down by the Act does not seem unreasonable.

86. Some finders expressed a preference to report their find in another district, generally the one in which they live, rather than the one in which the find was made. When finds were made a long way away from home, reporting according to the Act (to the coroner of the district in which the find was made) could be time-consuming and inconvenient. However, there were seen to be clear advantages in reporting in the district in which the find was made; the coroner might have useful local knowledge and would be in a better position to identify and inform the landowner than a coroner from another district; the local museum or finds liaison officer would need to deal with the find in any case; and local archaeologists would be the ones most likely to conduct any investigation of the site. In straightforward cases it should be possible for the coroner to hold an inquest using written evidence only, thus avoiding the need for the finder to travel a long distance to attend in person.

87. The Review highlighted the lack of a duty to report on the part of anyone, other than the finder, who possesses unreported treasure. This could be dealt with by amending the Treasure Act to extend the duty to report to anyone who knowingly comes into the possession of unreported treasure. Inquirers could discover from the Treasure Registrar (see para. 169 below) whether the find had been reported or not. An alternative route may be provided by the new criminal offence, of dishonestly importing, dealing in or being in possession of any cultural object, knowing or believing that the object was stolen, or illegally excavated, or removed from any monument or wreck contrary to local law, proposed by the Ministerial Advisory Panel on Illicit Trade.<sup>9</sup> The Code of Practice should in any case point out that an offence may have been committed under the Theft Act 1968 by anyone in possession of treasure who fails to report it.

88. The Review also drew attention to the apparent anomaly that the Treasure Act does not set down a specific duty to deposit treasure as directed by the coroner, although para. 41 of the Code of Practice for England and Wales explains that a coroner to whom treasure has been reported will direct the finder to take it to a local museum or reporting centre. To place the matter beyond doubt, the Act could be amended to place a duty on anyone who reports treasure to deposit it as directed by the coroner although, in practice, the lack of such a duty does not appear to have caused problems. More immediately, existing safeguards could be stressed in the Code. Once the finder has reported treasure he becomes a bailee and has a civil duty to take reasonable steps to find the owner and a duty not to convert the object and not to delegate responsibility for its care to another person. In addition, in any case of reluctance to deposit treasure, the coroner might be able to obtain a witness summons from the court directed to the witness (the finder) to bring the object to court.<sup>10</sup> The coroner may also retain the common law 'power [...] to take possession of objects believed to be treasure trove' after he has received a report of treasure, in order to pursue his enquiries.<sup>11</sup>

#### *Searching on the foreshore*

89. The Review drew attention to the particular problems associated with searching on river banks and beaches. Responses highlighted two principal difficulties: identifying the owner of the land in order to seek permission to search; and determining whether any objects found should be dealt with under the treasure or wreck regimes (see also para. 72 above). As already mentioned, all land belongs to someone. Many of the beaches in England and Wales belong to the Crown Estate, but by no means all; and in many areas beaches are leased to local authorities which may have regulations limiting metal detecting. In some areas, particularly parts of Wales, the situation is extremely confusing with small sections of beaches under different ownership. On the Thames foreshore three types of licence to search between the Thames Barrier and Teddington (certain areas are excluded for security reasons) are granted by the Port of London Authority on behalf of the Crown Estate. All objects found must be reported to the Museum of London, and suspected treasure additionally reported to the coroner. It would be helpful if the Crown Estate and other foreshore owners were to clarify their position with regard to searching on other tidal land. Finders should be aware that the Crown Estate is currently claiming its share of reward for treasure found on its land.

90. Many respondents, in particular finders and coroners, mentioned that they would welcome any information that would help them to discover foreshore owners: finders, in order to seek permission to search; coroners, to carry out their duty under the Treasure Act to take steps to notify landowners of finds made on their land. Clearly, drawing up a comprehensive list of foreshore owners would be a huge task, well beyond the scope of the Treasure Act and Code of Practice. However, any future registration of foreshore under the Land Registration Act, would be of great interest to those involved in the treasure process, and details should be included in any future revision of the Code.

#### *Archaeologists*

91. The Review restated that the duty to report suspected treasure applied to everyone including archaeologists (Code para. 23 (NI, para. 22)) and anyone taking part in an archaeological excavation. The Code envisaged that, in most cases, objects so excavated that clearly qualified as treasure would be speedily disclaimed so as to keep finds from the site together. Reporting continued to be important to ensure that suitable

arrangements for finds had been made and that the landowner, or anyone else with an interest in the site, had been consulted and made plain his or her position with regard to a share of any reward payable. It was appreciated, however, that certain property owners, such as land-owning trusts, may not have the authority to make such advance arrangements and may not be permitted to forego eligibility for a reward, although charitable trusts may be able to do so with the agreement of the Charity Commission.

92. A few respondents questioned whether reporting by archaeologists was necessary at all given that objects would normally be disclaimed and kept together with the other finds from the site. A finds liaison officer claimed that not all archaeologists were aware that they were obliged to report treasure and failure to report caused resentment on the part of other finders. The Act of course makes no exceptions to the duty to report. A few respondents recommended that guidance on the Treasure Act and Code be included in training for archaeologists especially for independent archaeologists and volunteers.

93. It was generally agreed that suitable arrangements for any treasure found should be determined, as part of the overall disposition of site finds, before excavation takes place. Most respondents thought it appropriate for arrangements for treasure to be included in specifications and tenders generated by the PPG16/PPG Wales process (and many county archaeologists have done this), although the process was non-statutory, pre-dated the Treasure Act and was due for revision, provided this in no way breached local planning law and practice. A speedier system of disclaimer was requested although it was pointed out that the process was not well understood by all coroners and archaeologists.

94. The Code (para. 76 (NI, para. 68)) also states that rewards will 'not normally be payable when the find is made by an archaeologist'. Respondents endorsed the practice of not paying rewards to archaeologists and most felt that this should apply to anyone taking part in an excavation, including amateurs and students, as it could be difficult to define 'archaeologist'. Some believed that waivers should be signed by everyone participating in an archaeological investigation; others thought waivers should not be necessary at all provided the Code stated the position on rewards clearly. There was a general view that waiver arrangements should be mandatory for all those participating in government and development-generated excavations. (See also para. 152 below.)

*National Museums, Local Museums, Treasure Act Advisors, Finds Liaison Officers*

95. The Review outlined the procedure generally followed when treasure is reported. It might be reported directly to the coroner by the finder or, on the finder's behalf, by a Treasure Act advisor or finds liaison officer appointed under the Portable Antiquities Scheme. After the treasure is received at a local reporting centre, often as directed by the coroner, a receipt is issued to the finder, the relevant national museum notified and the objects normally transferred to the national museum which will write the report for the coroner, after photography and any analysis required, and will retain the find until valued and its final disposition settled. The local reporting centre may provide the report if authorised by the national museum to do so. In any event, the local centre should produce a brief written description of objects thought to be treasure. This would provide information for the SMR and the local museum's own record and would help eligible museums decide whether or not to acquire the find.

96. The responses to the Consultation underlined the important role played by the finds liaison officers, appointed under the Portable Antiquities Scheme, working with the local Treasure Act advisors. The finds liaison officers were proactive and often in the field, visiting detectorist clubs and rallies, and fostering better relations between detectorists and archaeologists. The PAS has clearly supported the Treasure Act process, as was found by Dr Gill Chitty in her recent evaluation of the scheme,<sup>12</sup> and its extension to the whole of England and Wales was seen as a vital component in the treasure reporting and processing chain.

97. However, difficulties were reported in the handling and processing of treasure. Most finders wanted the official Treasure Receipt form always to be used and objected to museums using their own forms which might contain disclaimers for loss or damage. However, a number of museum officers pointed out that they are obliged to use their in-house forms and their authorities insist that no liability for loss or damage may be accepted for items deposited with them. This is clearly unsatisfactory especially where a coroner has directed a finder to deposit objects at a particular museum. Guidance to coroners given in the Code (para. 59; NI, para. 49) states that an *ex-gratia* payment may be made to the person who would have been entitled to a reward if the suspected treasure is lost or damaged, other than by negligence. Not all parties to the treasure process seem to be aware of this. In the case of proven negligence on the part of the receiving authority, or where the object is disclaimed, or is not treasure, museums ought to be able to rely on their own arrangements for objects lost or damaged while in their care.

98. Many respondents thought the processing of treasure was just too slow; guidelines set down in the Code (para. 82 (NI, para. 74)) were not always being adhered to. Coroners reported that there were sometimes long delays in obtaining reports on objects and that reports did not always clearly match up with the finds as reported. Pressure on staff time in some local museums and in the British Museum, especially, was too great to allow speedy processing of treasure in all cases, in particular where finds comprised large assemblages of objects and extensive research or analysis was required. Communication between the parties also occasionally broke down and there was general acknowledgement that a central point of information or clearing-house would be helpful.

99. Most archaeologists and detectorists were concerned to preserve information but also wanted to safeguard confidentiality (see also paras 114(iv) and 119(f) below). Reporting to Sites and Monuments Records was not consistent, and maintenance of SMRs was not at present a statutory duty on local authorities although an amendment to the recent Culture and Recreation Bill had sought to remedy this. It is essential that local reporting centres do notify SMRs of finds. However, many respondents were concerned that up-to-date records could jeopardise site security by making public the precise location of find-spots. To address the issue of confidentiality, SMRs should be asked to take very great care in releasing detailed locational information about find-spots as experience has shown that doing so can lay the site open to being detected on by others who are unlikely to report their finds.

#### *Care of finds*

100. The Review asked about the cleaning of finds. Local advisors and national museums were unanimous that finds could be damaged and information about context jeopardised by cleaning; even light cleaning could lead to harm as soil adhering to finds

may contain important information. It was urged that para. 44 of the Code (NI, para. 36) be amended to stress this. A number of detectorists pointed out, however, that there were cases when even a preliminary identification was impossible without some form of light cleaning.

*Recommendations and findings*

101. It is recommended that the Treasure Act Code of Practice include further advice on best practice for searchers, in particular for those who use metal detectors. It should include the elements outlined in para. 84 above. (Code paras 25-35 (NI, paras 24-31))

102. No change is recommended to the duty of the finder to report treasure within the prescribed period of fourteen days.

103. It is recommended that the Treasure Act be amended to include a duty to report treasure on the part of any person who knowingly comes into the possession of unreported treasure. However, an alternative route might be provided by the new offence recommended by the Advisory Panel on Illicit Trade. In addition, it is recommended that the Code should warn that an offence might be committed under the Theft Act by anyone, whether the finder or not, who possesses unreported treasure but fails to report it.

104. It is recommended that the Treasure Act be amended to place a duty on anyone who reports treasure to deposit it as directed by the coroner. Additionally, existing safeguards as to the duty of the finder as bailee of the suspected treasure should be explained in the Code and coroners may need to be advised of possible alternative routes to the enforcement of deposit, e.g. by witness summons or the common law power to take possession of suspected treasure trove.

105. It is recommended that the Code remind finders that the status of foreshore land is the same as that of other land: it has an owner from whom efforts should be made to obtain permission to search. It would be helpful if the Crown Estate and other owners of the foreshore were to clarify their position with regard to searching on tidal land. Information about listings of foreshore owners, when available, could usefully be included in the Code in future.

106. It is not recommended that archaeologists be exempted from the duty of finders under the Act to report suspected treasure (Code para. 23 (NI, para. 22)). The Code should make plain that the term 'archaeologist' in para. 76 (NI, para. 68) encompasses anyone engaged on an archaeological investigation, including students, amateurs and volunteers. No reward would be payable to such persons, and it is urged that the word 'normally' should be omitted from para. 76 (NI, para. 68) of the Code and the words 'except at the discretion of the Secretary of State' inserted after 'archaeologist'.

107. In any future revision of PPG16/PPG Wales it is recommended that arrangements for treasure finds should be included.

108. It is recommended that the Treasure Receipt Form should always be used by those receiving treasure, and that in any matter relating to indemnity and responsibility for finds reported as treasure, receiving authorities have regard to

para. 59 (NI, para. 49) of the Code. In some cases of disclaimed or non-treasure objects they may also wish to look to their own arrangements, agreed with their governing authorities, for dealing with loss or damage.

109. Museums should be urged to complete reports on treasure according to the original report to the coroner, and to submit them within three months or within a period of time that will allow the target times set down in the Code at para. 82 (NI, para. 74) to be met. Local reporting centres need to be reminded that they should always first consult the national museum if they propose to provide the report to the coroner (Code para. 41).

110. The reporting of treasure to SMRs, which should be done by local reporting centres, needs to be improved, speeded up and made consistent; para. 39 of the Code will accordingly need to be revised to make the position clearer. This would be greatly facilitated if local authorities were in future to be given a statutory duty to maintain SMRs. SMRs should be asked to take great care in releasing detailed locational information about treasure find-spots.

111. It is strongly urged that the pilot Portable Antiquities Scheme be extended to the whole of England and Wales.

112. It is recommended that para. 44 of the Code (NI, para. 36 ) be revised to stress the dangers of cleaning objects prior to reporting and to provide further advice on the care of objects.

**E. CORONERS AND THE CONDUCT OF INQUESTS**

(Consultation Paper paras 3.2.1-3.2.8; 5.1-5.7; 11.3; 11.9)

113. Responses to the Review revealed no body of opinion favouring the removal of coroners from the treasure system, nor was support given to a possible alternative approach outlined in the Review, i.e. a declaration of treasure made by the Treasury Solicitor on the recommendation of a finds liaison officer. Indeed, respondents underlined the need for a properly constituted Court of Law in which a decision is reached by an independent judicial officer. There was widespread appreciation of the role of the coroner as just such an independent arbiter. However, a number of issues relating to the administration of treasure were raised both by coroners themselves and by others. Principally, these concerned the speed of handling cases; procedures; the conduct of inquests; enforcement of the Act; and communication with and between coroners.

114. The key issues were:

(i) The need for coroners to acknowledge finders' reports of suspected treasure and for consistent and prompt notification of interested parties of the coroner's intention to hold an inquest, and of the result of the inquest.

(ii) The need for standardised record-keeping of reports of treasure and the outcome of inquests, possibly by means of forms supplied in books similar to those currently used by coroners to report the results of road traffic inquests to the Road Research Laboratory. Alternatively, standard forms could be included in the revised Code, Home Office guidance to coroners or the forthcoming (12th) edition of *Jervis on Coroners*.

(iii) Coroners to have the discretion to pass responsibility for treasure inquests to another coroner specialising in treasure.

(iv) The desirability of keeping confidential the precise location of the find-spot and the details of the finder, occupier and landowner.

(v) Agreement on how to deal with subsequent finds from treasure previously reported and other straightforward cases; the coroner to have discretion whether or not to hold a hearing using written evidence only.

(vi) Express permission of the coroner to be given before any invasive or potentially destructive scientific analysis, which involves sampling rather than investigation of the surface of an object, is undertaken.

(vii) Resolution of how the coroner's duty to inquire into any finds reported as treasure is affected by the Crown's power to disclaim treasure or by the decision of a franchisee to disclaim treasure.

(viii) The need for further guidance for coroners on the return of disclaimed treasure or objects that were not treasure especially in relation to any subsequent claims to title or liability for loss or damage (see para. 46 (NI, para. 38) of Code).

(ix) The encouragement of coroners to adhere to the guidelines set down in the Treasure Code for the speed of handling cases.

(x) Clarification of the coroner's role in the enforcement of the Act, possibly by establishing that the coroner's duty to inquire begins once a report of treasure or suspected treasure is made by a finder, museum, or any other person or organisation.

(xi) The desirability of improving communications between coroners and with coroners on treasure issues.

115. In relation to (vii) and (viii) above, a number of coroners were not satisfied with the presumption that their duty to inquire into treasure ceased in cases of disclaimed treasure, though the argument has been put that in cases of disclaimer it would probably not be open to the coroner to find at inquest that an object is treasure. With regard to the return of disclaimed finds, a possible way forward would be to exempt from liability a coroner who had had regard to a statement under oath, or a statutory declaration, made by the finder about the circumstances of the find and whom he believes has any interest in the find. Alternatively, the coroner could specifically be given the discretion to direct the find to be delivered to the person he believes is entitled to it; or, the coroner could be given a mechanism for delivering the object into the custody of the local civil court via a means akin to an interpleader order.

116. In relation to (x) above, there was also uncertainty about the coroner's role, if any, in enforcing the Act when he or she is made aware of suspected treasure that has not been reported. A number of coroners believed they should play a more active role but were uncertain how far their duty to inquire extended. As it would appear that coroners have not always followed up information passed to them, there is a need to put the matter beyond doubt by clarifying whether or not their duty to inquire begins when suspected treasure is reported to them, regardless of who has made the report. It has also been suggested that coroners' officers might play a greater role in following up reports of undeclared treasure. Where appropriate, coroners will want to work with the local police and there is a need to raise awareness of treasure issues among the police as has been done very successfully in Staffordshire.

117. After consultation with coroners and other interested parties, it emerged that there were a number of ways in which the present handling of treasure cases by coroners could be clarified and improved. These include amending the Coroners Act 1988 and clarification and revision of the Code and Home Office guidance to coroners. The most straightforward and effective approach may be to set out in a new Rule, under the Coroners Rules 1984, the full procedure for dealing with treasure. It is accepted, however, that a decision on these issues may have to await the outcome of the Fundamental Review of the Coroner System announced by the Secretary of State for Health at the publication of the Alder Hey report (terms of reference and particulars of Review team membership attached at Appendices III and IV).<sup>13</sup>

### ***Recommendations and findings***

118. It is recommended that the procedures for dealing with treasure inquests be set down in a new Rule under the Coroners Rules 1984. This would be intended to address all the issues listed in para. 114 above.

119. Alternatively, or in addition, it is recommended that the Treasure Code of Practice and the guidance provided to Coroners by the Home Office<sup>14</sup> be revised to set out clearly the procedures and notifications that coroners are asked to observe, in particular:

- (a) Acknowledge report of treasure; instruct finder where to deposit;
- (b) If treasure disclaimed, notify occupier and landowner that find to be returned to finder within twenty-eight days; if no objection received, inform national museum/local museum and authorise reporting centre in writing to release object to finder;
- (c) Inform BM/NMGW/Environment & Heritage Service, NI (already mandatory) and any franchisee (if known) that inquest to be held;
- (d) Inform finder/occupier/landowner that inquest to be held;
- (e) Ask finder to state under oath, or make statutory declaration, as to who was involved in the find and whom he believes has any interest in it, and whether he had the landowner's/occupier's permission to search; and require such further statements under oath, or statutory declarations, from other persons as appear appropriate in the circumstances;
- (f) Hold inquest after deciding whether to summon parties or use written statements only under Rule 37 procedure; maintain confidentiality in respect of find-spot location and details of finder and landowner/occupier;
- (g) Notify BM/NMGW/Environment & Heritage Service, NI and local museum/reporting centre; also the finder, landowner/occupier and franchisee (if known) of result of inquest;
- (h) Keep record of all finds and results of inquests using standard forms the format of which to be included in the Treasure Code of Practice, and/or revised Home Office guidance for coroners, and, ideally, in the forthcoming edition of *Jervis on Coroners*.

120. It is recommended that, when a legislative opportunity arises, it is made plain that the coroner does not have a duty to inquire into any treasure disclaimed by the Crown or by a franchisee.

121. It is recommended that, when a suitable legislative opportunity occurs, coroners be exempted from liability in regard to the return of disclaimed treasure and objects which are not treasure provided they have had regard to the procedures laid down in the Code of Practice and Home Office guidance, and/or in any new Coroners Rule setting down the treasure procedure. Or, the coroner should be given the discretion to deliver the object to whomever he believes has title to it. Or, the coroner should be given a mechanism for delivering the object into the custody of a local court for decision on the issue of title. The Code (para. 47 (NI, para. 39)) should then be amended accordingly under s. 6(4)(b) of the Treasure Act.

122. It is recommended that the Treasure Act Code of Practice and Home Office guidance make plain that the coroner's duty to inquire commences when treasure or suspected treasure is reported, regardless of who has made the report.

123. To improve communication between the parties it is recommended that coroners be invited to a meeting to be held annually, probably under the aegis of the Coroners Society, to receive the Annual Report on Treasure and discuss treasure issues.

## F. DISCLAIMED FINDS

(Consultation Paper paras 4.1-4.4; 11.8(i)-(iv))

124. The system introduced by the Treasure Act to allow the Crown to disclaim potential treasure discovered in the course of excavation, or which no museum wished to acquire, was on the whole appreciated by respondents and had worked reasonably well. The principal difficulties experienced were the undue time taken to disclaim objects in some cases, and the apparent lack of a fool-proof procedure for ascertaining whether any eligible museum wished, or was able, to acquire them. As mentioned above (para. 115), a number of coroners were not satisfied that the disclaimer process introduced by the Treasure Act removed their duty to inquire into treasure. It was also noted that records of disclaimed treasure were sometimes inadequate and images failed to be transferred to the portable antiquities database or SMR.

125. A clarification of museum collecting areas in England and Wales (see below paras 130-31 and 137) would go some way to ensure that treasure does not fall through the net, but there was also widespread support for circulating details of disclaimed treasure to all eligible museums in England outside the immediate collecting area. This approach was not thought to be necessary in Wales where a much smaller network of museums was involved. Extreme care would have to be taken to ensure that this would not add undue delay to the disclaimer process; any period of 'advertising' should probably be limited to a maximum of two weeks. There were mixed views about the use of a secure website; some believed it difficult to ensure security, and the precise location of find-spots might be revealed. Other respondents believed a find-spot need only be identified to county or district level which could offer sufficient protection of the site. Alternative methods of communication were suggested such as emailing museums most likely to be interested, or posting notices in relevant journals. However, it was also pointed out that this advertising of objects could lead to further delay in processing disclaimed treasure.

126. Respondents urged that the target time of three months for single finds and six months for hoards be adhered to. However, experience has shown that three months is not long enough although six months should be adequate in most cases. Many voiced support for the scheme being piloted in Norfolk under which objects likely to be disclaimed are not routinely despatched to the British Museum; a decision is generally reached by forwarding a description and image. Extension of this approach to the rest of the country was favoured though it would of course depend on adequate facilities and appropriate expertise being in place. It was also suggested that the processing of finds made in the course of archaeological investigation could be simplified and speeded up if arrangements could be made in advance of excavation so that finds need not be reported (Code para. 49; NI, para. 41). This, however, would contravene the Act. There were requests for the DCMS to inform the finder, reporting centre and coroner when items were to be disclaimed and for coroners to authorise museums in writing to return objects to finders.

### *Recommendations and findings*

127. It is recommended that further steps be taken to examine the feasibility of circulating eligible museums with details of objects not required by the national or local museum and likely to be disclaimed, e.g. by means of a secure website.

128. It is recommended that the scheme being piloted in Norfolk to speed up the disclaimer process be extended, if successful, to the rest of England and Wales as soon as appropriate facilities and trained staff are in place. It is further suggested that para. 82 of the Code (NI, para. 74) be amended to standardise the target times for processing disclaimed treasure to six months for all finds.

129. It is urged that details of disclaimed treasure be passed to the portable antiquities recording scheme and the local SMR.

## G. ACQUISITION OF TREASURE

(Consultation Paper paras 6.1-6.3; 11.10(i)-(iv))

130. The consultation identified two main difficulties, securing adequate funding for treasure purchase and ensuring that all eligible museums with an interest in acquiring treasure were identified. In most cases it is obvious which local museum has the overriding interest and is in a position to consider acquiring treasure, but a number of respondents were concerned that collecting areas and policies were not always clear and treasure might be disclaimed before other museums had been given the chance to acquire it.

131. The situation in parts of England remains largely as described in a paper written in 1998 for English Heritage and the Museums & Galleries Commission: 'Museums in England do not provide a complete coverage for the whole country. An already patchy coverage has been made more complex by local government reorganisation.'<sup>15</sup> Museum collecting policies and local collecting areas need urgent review. Despite the non-statutory nature of museum provision at present, it ought to be possible to forge on a voluntary basis an adequate framework for collecting archaeological material. These issues need to be resolved with the help of Resource: the Council for Museums, Archives and Libraries, the Museums Association, Area Museums Councils and the Society of Museum Archaeologists. A possible start could be made if funding were to be secured for a project to map archaeological archive provision in England and Wales and compile a database of local authority and museum collecting areas. Such a project has been proposed by the Society of Museum Archaeologists but lack of funds has prevented implementation. It is suggested that local reporting centres for treasure could name collecting areas or prospective acquiring museums on the Treasure Receipt Form.

132. A few respondents appeared to believe that treasure was being bought up by just a handful of prestigious museums. Concerns were also raised about the long-term future of treasure objects after they had passed into the care of museums with their varying collecting and disposal policies. Some detectorists questioned why so many treasure objects ended up in museums at all, although in fact some forty-five per cent of treasure finds are disclaimed, and a number of respondents were unhappy with the time taken by museums to complete the acquisition process. Many factors add to delays in processing but one of the central difficulties is the time taken to raise the necessary funds. Some museums particularly highlighted this and asked for more flexible target times.

133. Funding the *ex-gratia* rewards to finders came across as a very major problem for museums. As more objects come to light under the Treasure Act, museums are struggling to find the money to acquire treasure. It is not always understood that museums have to fund all treasure purchases themselves; there is no government purchase fund. Many museums have little or nothing in the way of an acquisitions budget and, where there are funds, they are often already fully committed. By its nature, treasure appears unexpectedly making it impossible to budget for, and most local museums must look beyond their own resources for help.

134. The V & A Purchase Grant Fund for provincial museums and the National Art-Collections Fund emerged from the review as of great importance to museums, and respondents clearly held them both in high esteem. They were particularly praised for their flexible and speedy handling of applications. Many respondents wished to press

Resource to increase the level of the V&A Fund. It was also acknowledged that the Heritage Lottery Fund (together with the National Heritage Memorial Fund) was a major player in the field of acquisition funding and museums were keen to explore ways in which they could increase their chances of securing Lottery funds. All funding bodies were concerned to ensure that accurate valuations of treasure were obtained.

135. With regard to the HLF, three main points recurred in the consultation: the desirability of a dedicated fund for treasure purchase (supported by twenty-three per cent of respondents from the museum and archaeology sectors), similar to that set aside for SMR enhancement;<sup>16</sup> a simple and less time-consuming application procedure especially in regard to bids for relatively small sums; and the importance of the HLF being prepared to consider a number of simultaneous bids from the same organisation. As one museum put it: '[T]he rules and process of application must be altered if museums are going to benefit. Applications should be simpler and quicker, minimum grants should be lower. Many important objects are being lost to public collections for want of relatively small sums.' The response from the HLF was very positive. It has an indicative allocation of £10m per annum for acquisitions in the period 1999-2002; fast-tracking (a minimum of six weeks) was possible and more than one bid running concurrently would be considered if the museum in question appeared to have the resources to cope; a simplified application process for grants between £5,000 and £50,000 would be extended to the whole of the UK in the course of 2001. Moreover, the National Heritage Memorial Fund (whose purpose is to give grants to protect items of outstanding importance to the nation's heritage) was a 'fund of last resort' and could be seen as something of a 'safety net' as no minimum grant size was set and partnership funding was not mandatory. However, the HLF remained unconvinced of the case for dedicated funds or local specialist advisors.

136. The HLF and other respondents pointed to the substantial increase in treasure made available to museums since 1997; the Treasure Act had therefore assumed a central position in government strategy to protect and preserve the nation's portable heritage. Consequently, it was urged that the DCMS and National Assembly of Wales should take on a greater responsibility for helping to fund treasure purchases either directly or by boosting funds available to funding bodies such as the V&A Purchase Grant Fund. Funding bodies also believed that greater recognition should be given to them in museum labelling and in official publications produced by museums which have been beneficiaries (see also paras 161, 165).

#### *Recommendations and findings*

137. It is strongly urged that the relevant authorities resolve all outstanding issues with regard to museum collecting policies and areas in England and Wales. National leadership, possibly from Resource, may be required to facilitate this. A start could be made by funding the compilation of a database of local authority and museum collecting areas in England and Wales.

138. The DCMS and National Assembly of Wales are urged to look again at how funds for the acquisition of treasure by eligible museums can be increased, in particular by enhancing the level of the V&A Purchase Grant Fund. The HLF should be urged to look sympathetically on multiple bids and lower thresholds for applications. Museums should be encouraged to take advantage of the HLF's fast-tracking and simplified application processes, and the acquisition funds made available by the NHMF.

**139. It is suggested that contact details of the principal funding bodies that can be approached to help with treasure purchases be included in the Treasure Code.**

## H. VALUATION OF TREASURE

(Consultation Paper paras 7.1-7.4; 11.11(i)-(xii))

140. The Consultation revealed that the valuation of treasure arouses strong feelings and divergent views. At one end of the spectrum there are archaeologists who believe the concept of treasure is fatally flawed and that offering the market valuation of treasure merely encourages treasure hunting, to the detriment of archaeology. At the other end, some finders believe that treasure is undervalued in a system they see as skewed to their disadvantage and to the benefit of the state and the major acquiring museums. The definition of market value was called into question by some respondents who believed the process was highly subjective; and a few thought the Committee might be leading the market and creating market prices, rather than reflecting them by seeking comparitors. There was even a call to abandon market value and explore an alternative system based on raw material value plus a premium as is used in some other countries.

141. There was a widely held view that the Treasure Valuation Committee should represent a broader range of interests including the trade and museum sectors and the other main players in the treasure system. It was essential that the Committee was, and was perceived to be, an impartial tribunal. It is hoped that these concerns will be addressed by the new Chairman. There were also requests for more information to be made available about the expertise and interests of members; some thought the Committee should meet more often given the substantial increase in finds under consideration and in order to speed up the valuation process. Independent audit of TVC decisions was proposed and a possible change of name to 'Treasure Reward Committee'.

142. A number of initiatives floated in the Review and Consultation paper and designed to streamline or improve valuation attracted comment. There was general agreement that finds should not be valued before inquest, as their legal status should be established before the valuation process begins; and respondents felt that twenty-eight days should be allowed for the parties to comment on provisional valuations and submit their own valuation evidence (Code para. 62 (NI, para. 54)). However, the Committee's Secretariat pointed out that, in current practice, the parties often receive the valuations only one or two weeks before the Committee is due to meet as this allows cases to be considered at the next meeting rather than be delayed, possibly for some months. It may be more sensible to offer the full twenty-eight days for comment as an option with the warning that this may lead to the case having to be deferred to a later meeting.

143. There was general agreement that the Committee should seek more than one valuation in difficult cases and that the valuation should be of the object 'as first seen' by the original valuer but there was no agreement among respondents on the question of minimum valuations. Some felt strongly that if even a small number of low-value objects were not accurately valued the objectivity of the whole valuation process would be called into question. Others believed that a minimum valuation was a necessary incentive to encourage people to declare finds of low value. Some respondents were concerned about cases in which the Committee appeared to have placed a higher valuation on objects than the Committee's own advisors had suggested.

144. The proposal that the Treasure Valuation Committee should draw up and publicise a set of guidelines by which it operates was widely welcomed as were the suggested

safeguards, set out in the Consultation Paper at para. 7.4.2, to ensure the reliability of the parties' own valuation evidence. Some believed that challenges to valuations should not be heard by the Committee itself; others thought that, far from valuations being publicised more widely, they should not receive any publicity at all. A number of coroners were keen to be informed of valuations of treasure on which they had held inquests; it was thought this might best be done by circulating to coroners copies of the Treasure Annual Report (although see paras 162, 164).

***Recommendations and findings***

145. It is recommended that the Treasure Valuation Committee include representatives of the major players in the treasure process (archaeologists, museums, dealers and finders) under an independent Chairman, and that details of their expertise, interests and other positions held should be listed in the Treasure Annual Report and made available on request.

146. It is not recommended that objects be valued prior to inquest.

147. It is not recommended that the TVC adopt a minimum valuation figure.

148. It is proposed that treasure should be valued at the first TVC meeting to be held after a provisional valuation is received, even if this reduces the time allowed for parties to comment, provided all parties agree to this; para. 62 (NI, para. 54) of the Code would need to be revised accordingly.

149. It is recommended that coroners continue to be sent copies of the Treasure Annual Report for information on the valuation of treasure on which they have held inquests.

150. It is recommended that the TVC draw up, and make publicly available, guidelines by which it operates and that these should include:

- (i) The number of independent valuations to be sought and reasons for requesting them;
- (ii) Factors influencing the Committee's judgement when assessing valuation evidence both from their own advisors and others;
- (iii) The date of valuation;
- (iv) How valuation is affected by the subsequent discovery of other parts of the same find;
- (v) The extent to which cleaning and conservation influence valuation;
- (vi) The adoption of safeguards to ensure the reliability of the parties' own valuation evidence;
- (vii) How challenges to TVC valuations are dealt with;
- (viii) How, if at all, valuations should be publicised.

## I. REWARDS

(Consultation Paper paras 8.1-8.3; 11.12 (i)-(ii))

151. The nature and purpose of rewards were well aired in the consultation process. Some in the archaeological community believed that monetary rewards merely encouraged personal gain at the expense of a responsible attitude to the environment and heritage; they would like to see more emphasis on such non-monetary rewards as recognition. The reward as primary incentive to report was also called into question; it was thought that an equally good case could be made for the improved relationship between finders and archaeologists being the chief stimulus to higher reporting rates in certain areas, though it was accepted that an increase in detecting in more archaeologically rich areas might also be a significant factor.

152. Respondents agreed that rewards should not be paid to archaeologists or anyone working on an archaeological excavation (see also para. 94 above). However, while para. 76 of the Code (NI, para. 68) protected the interests of the landowner/occupier in such cases, it failed to make plain that the proportion of the reward which may be payable to the landowner/occupier is fifty per cent. Paragraph 67 of the Code (NI, para. 59) also needed to be revised to bring it into line with current practice and the intention of s.10(5) of the Treasure Act, which makes owners and occupiers eligible to be considered for a share of the reward. At present, unless there is some other form of agreement between them, or the reward is abated, the reward is divided between finder and landowner on a 50:50 basis.

153. The Review posed the question of what should be the effect on any reward when a finder ceases to search a site in order to allow a professional investigation to take place but others then find objects from the same site before excavation can be carried out. The best solution would appear to be the deployment of a rapid response team to investigate sites immediately. English Heritage has already provided some resources for such a team but the service ideally needs to be extended and its funding put on a permanent footing. It is hoped that the DCMS and NAW will encourage relevant bodies to look into this as a matter of urgency.

### 154. *Ancillary matters: Treasure Valuation Committee*

The Secretary of State may wish to consider aspects of the Treasure Valuation Committee's functions involving determinations of fact based in certain circumstances on human credibility and veracity. These concern the abatement and division of rewards and resolution of disputes about them. Whilst the Committee has no formal powers of adjudication over what is in any event an *ex gratia* process, it is expected to advise the Secretary of State as to the identification of parties who are to receive rewards, and in what amount (Code paras 61, 71 (NI, paras 53, 63)), and this may frequently involve the evaluation of conflicting evidence. Given that the Committee has no powers of compelling such evidence it is felt that consideration might usefully be given to clarifying its powers and responsibilities in this context, and its immunity in respect of any recommendations made. It would also be helpful if coroners were to ascertain at inquest whether finders had permission to search (see para. 119(e) above).

### *Recommendations and findings*

155. It is suggested that alternatives to monetary rewards to finders be investigated so as to give appropriate recognition to those finders who are prepared, voluntarily,

**to forego cash rewards to allow public collections to acquire treasure without payment.**

**156. It is recommended that the Code (para. 76 (NI, para. 68)) clarify the position with regard to finds made by archaeologists to make it plain that rewards will not be paid to archaeologists or anyone engaged on an archaeological excavation or investigation. If areas of doubt remain, organisers are advised to require all such persons to sign waivers. This paragraph should also state that the proportion of any reward payable to an eligible landowner/occupier in such cases is fifty per cent.**

**157. It is recommended that para. 67 of the Code (NI, para. 59) be revised to refer to the finder's 'full share of the reward' in order to make plain that it is the current practice to divide rewards equally between the finder and landowner on a 50:50 basis, unless another form of agreement has been reached between them, or the reward is abated.**

**158. The DCMS and NAW are strongly urged to encourage the relevant bodies to look into the funding of a sufficient number of archaeological rapid response teams to undertake swiftly the investigation of sites when treasure finds suggest they may be of importance.**

## J. ANNUAL REPORT

(Consultation Paper paras 9.1-9.4; 11.13(i))

159. Section 12 of the Act requires that a report on its operation is submitted to Parliament annually. Since the passing of the Act, and subsequent increase in declared finds, the report has not only grown in size and complexity but its presentation and design, with lengthy object descriptions and full colour photographs, has made it a far more appealing and useful document than its predecessor, the Treasure Trove Reviewing Committee's Annual Report. It is also widely disseminated to interested parties.

160. Many respondents agreed with the suggestions made in the Review that the Annual Report should make clearer how objects come to be included, as it appears that the list contains all objects treated as treasure, even if disclaimed and not declared treasure at inquest. There was also widespread agreement that the wording in the case of objects found in the course of excavation be changed to make it plain that treasure is not automatically disclaimed because it is found by archaeologists although this is generally the result of discovery through excavation.

161. Some respondents would welcome a bigger input from the Treasure Valuation Committee and, in particular, more information about its members and an explanation of the valuation process and the guidelines by which the Committee operates. There was also support for an information section outlining progress or changes to the system during the year, reports from meetings held to discuss treasure, and from key players - museum personnel, finds liaison officer, coroners, finders etc. There were requests for information on performance targets and how far these have been met in the course of the year, and more statistical analysis of finds with information on patterns and trends for particular classes of object and critical analysis of patterns of reporting. Funding bodies would like to receive recognition where they have contributed to the purchase of treasure. There was support for an on-line version of the Report and wider dissemination of the printed version.

162. Some respondents, principally those unhappy with the concept of treasure, were uneasy about the emphasis on treasure and the visually appealing presentation of these objects in the Report. For them, this concentration on objects predominantly of precious metal and their monetary value gives a false view of archaeology: the glossier the Report the more likely to encourage treasure hunting for monetary gain. One possible remedy was seen as the closer integration of the treasure regime and Portable Antiquities Scheme possibly by combining their annual reports. Others might be the omission of individual valuations from the Treasure Annual Report (or their separation from object descriptions) and greater recognition for those who have chosen not to receive monetary rewards.

### *Recommendations and findings*

163. It is suggested that the Annual Report would benefit from: a note on the criteria for including objects and circumstances under which they are disclaimed; information from the Treasure Valuation Committee about its members and the process of valuation together with guidelines used; and a feedback section featuring the results of meetings held, views expressed etc in the course of the year.

164. It is suggested that ways be explored to meet the criticism that the Report appears to emphasise and encourage treasure hunting. For example, recognition could be given to those who forego monetary rewards and who have behaved in a particularly responsible manner. Valuations might be printed separately from object descriptions, possibly at the end of the Report and omitting individual figures in favour of ranges of valuation. More information might be included on the archaeological context of treasure finds and on associated non-treasure finds of significance made in the course of the year.

165. It is recommended that all funders and funding bodies who have helped museums to acquire treasure, and who have no objection to public recognition, be acknowledged in the Report. Acquiring museums should ensure that they have provided the DCMS with details of benefactors before the Report is compiled.

166. It is recommended that the Report be put on-line allowing the database to be updated easily, and that copies of the printed document be distributed widely to key players.

**K. ADMINISTRATION**

(Consultation Paper paras 10.1-10.8; 11.13(ii)-(vi))

167. The chief criticism levelled at the administration of the treasure system is the delay in handling a percentage of cases and the chief cause of this appears to be the shortage of resources to deal with the increase in finds since the passing of the Act. The target time of one year for processing treasure (six months for disclaimed treasure) has generally been met but in a significant number of cases has not. Museums should aim to complete their reports to coroners within three months, although it is accepted that large hoards or assemblages, and other finds that present particular difficulties, may require more time. A reduction in the target times would be unrealistic. The cumbersome and fragmented nature of some parts of the system has also attracted criticism along with occasional instances of ignorance of procedures. Some respondents believed that the seemingly bureaucratic nature of the treasure system, and undue delays in processing, might be deterring people from reporting treasure, although there is no clear evidence of this. It was believed that extending the fast-track disclaimer system, being piloted in Norfolk, to the whole country had the potential to speed up the treasure process (see para. 126 above).

168. Many of the delays in processing treasure and other difficulties experienced are attributable to a severe shortage of staff operating the treasure system. In the DCMS and in the British Museum, in particular, staff are finding it extremely hard to cope with the tenfold increase in treasure finds since the Act came into force. At the British Museum a recent analysis revealed that, currently, treasure-related work occupies the equivalent of 7.54 posts, compared with three posts before the Treasure Act: an increase of 4.5 posts. At the DCMS the part-time (twenty per cent) post of Advisor on Treasure (Grade B level - Senior Executive Officer equivalent) needs to be funded when the present post-holder relinquishes the position. This post, which requires professional archaeological expertise, is the focus of treasure policy. In addition, extra cover is required urgently for the present full-time treasure valuation case worker: a part-time (fifty per cent) post is needed at Grade D level (Administrative Officer equivalent). These posts, together with a new position at the British Museum, outlined in para. 169 below, would provide help to all players in the system, would aim to speed up the processing of treasure and improve communication between the parties.

169. There would seem to be a clear case for better central record keeping and a new tracking system to ensure that full information on the progress of each treasure case is kept in a uniform format and is easily retrievable. Communication between the key players also needs to be improved, a point stressed by many respondents. At present the only central body is the DCMS which only sees cases after inquest. The proposal that a new Treasure Registrar post be established at the British Museum to provide this service for finds in England was welcomed by respondents as a vital underpinning of the treasure system; the National Museums & Galleries of Wales wished to provide a parallel and compatible system for Wales; the Ulster Museum already does this for Northern Ireland. (However, in establishing and overseeing a central Treasure registry, the post would have a co-ordinating role for all three areas.) Such an addition to the administrative structure would speed up and streamline the handling process by relieving many of the key players of routine tasks, allowing curators to concentrate on object identification and report writing. The post-holder would develop a computerised treasure tracking system and a central point of contact. He or she would also compile statistics, edit the Annual Report, monitor performance of the system and provide

advice on the application of the Treasure Act. It is very much to be hoped that the British Museum will be able to fund and institute a Treasure Registrar post in the course of the current financial year.

170. Respondents thought there were also clear advantages in making available on-line to authorised users, by means of a secure website, some or all of the information held by the central registry. This could include good digital images of objects. Although many respondents were in favour of this, others pointed out that many finders had no access to the Internet and, in any case, they suspected no website was truly secure. A number of respondents from local museums, while welcoming a Treasure Registrar post, believed it would do more to support staff in the national museums than those in the regions whose workload would scarcely be affected. They would be helped most by the assured long-term funding of the Portable Antiquities Scheme and its extension to the whole of England and Wales.

171. More minor changes could also help to improve the reliability and speed of the treasure process, for example using standardised forms and other paperwork. It would be helpful if coroners were to use agreed forms to acknowledge treasure and to record inquest verdicts. The Treasure Receipt form should always be completed, revised as appropriate by the Treasure Registrar so as to include details of coroners' officers, treasure franchisees and local museums and collecting areas; the form should also be available on-line. The difficulty that some museums are bound by their regulations to disclaim responsibility for objects they receive from members of the public, and thus feel obliged to use in-house receipt forms, needs to be addressed. There needs to be greater clarity on the whole question of liability, including the amount of compensation to be paid in the event of damage or loss, who pays it and how value is assessed; and also more information about the costs of storage and transport. This is a matter of concern also to coroners although liability for objects in their care is dealt with in Home Office guidance.

172. Respondents suggested that a revised Code of Practice could usefully include an expanded resources section e.g. information about county lists of scheduled sites and sources of information on land ownership, a list of funding bodies, useful websites such as those of the DCMS and the Portable Antiquities Scheme and a list of Treasure Act Advisors; existing contact lists would need to be revised. Bullet point summaries and a fuller index could make the Code more 'user-friendly' and it would be helpful if the Northern Ireland Code were to adopt the same paragraph numbering as the Code for England and Wales. To take account of changes agreed the following would require revision:

- Treasure Codes of Practice
- Treasure Flow Chart
- Treasure Receipt Form
- Home Office Guidance for Coroners
- Guidance for Treasure Act Advisors and Finds Liaison Officers
- Treasure Act information leaflets for finders

173. Regular reviews of the treasure process, both of the administration of treasure and of changes to the definition, will be required to assess performance and take account of feedback. A further review will probably be indicated after the revised Code has been in operation for five years.

*Recommendations and findings*

174. It is urged that the target times set down in the Code be adhered to and museums asked to complete their reports on all but the most complex cases within three months.

175. It is recommended that the DCMS consider providing further funding for a part-time (twenty per cent) post of Advisor on Treasure (at Grade B), requiring professional archaeological experience; and a part-time (fifty per cent) post (at Grade D) to assist the treasure valuation case worker; both to be located at the DCMS.

176. The British Museum is strongly urged to establish a central Treasure Registry at the Museum staffed by a registrar who would be the point of contact with key players. The registrar would liaise with the National Museums & Galleries of Wales, the Ulster Museum and the DCMS. The principal responsibilities of the registrar would be: to establish and maintain a computerised tracking system for all treasure cases and keep all parties informed of progress, probably, in part, by means of a secure website; to provide a single point of information on the treasure process, making maximum use of the internet; and to maintain statistics, edit the Annual Report, monitor performance and provide feedback.

177. It is urged that paperwork be standardised as far as possible. In particular, a revised Treasure Receipt Form should always be used, subject to the satisfactory resolution of the issue of liability (see also paras 97 and 108 above). Coroners should be requested to use standard forms to acknowledge finds and to record the results of inquests (see paras 114(ii) and 119(h) above). A number of minor changes to the paperwork generated by the treasure process are proposed; they can be found in the revised Treasure Flow Chart (at Appendix II).

178. The Code of Practice and related documents will require revision to reflect any changes agreed; they should aim to be more 'user-friendly'. It is suggested that the Codes for England and Wales and for Northern Ireland should adopt the same paragraph numbering, as far as possible, to reduce confusion.

179. It is recommended that the operation of the Treasure Act and Code of Practice be reviewed again after the revised Code has been in operation for five years.

## Notes

<sup>1</sup> Home Office Circular No. 44/1997 (12 August 1997).

<sup>2</sup> E.M. Paintin, *Treasure Act 1996: Review and Consultation* (DCMS, 2000).

<sup>3</sup> Hansard, HL, 20 March 2001, col. 1279.

<sup>4</sup> *Treasure Annual Report 1998-1999* (DCMS, 2000), nos 5 and 13.

<sup>5</sup> See: G. Varndell, 'Ringing the changes: when terminology matters', *Antiquity*, 75, no. 289 (Sept. 2001), 515-16.

<sup>6</sup> For example, a hoard of 19th-century gold sovereigns found in a house in Macclesfield, Cheshire, in 1995, was declared treasure trove, shortly before the Treasure Act was passed; two coins were acquired by the British Museum. See: *Treasure Trove Reviewing Committee Annual Report 1996-97* (DCMS, 1998), p. 20.

<sup>7</sup> [1995] 4 All E.R. 756, C.A.

<sup>8</sup> Barrister; Professor of Law, University College London.

<sup>9</sup> *Report of the Ministerial Advisory Panel on Illicit Trade* (DCMS, 2000), paras 2, 67.

<sup>10</sup> Opinion supplied by Paul Matthews, Deputy Coroner for the City of London.

<sup>11</sup> *Jervis on the office and duties of Coroners*, ed. by P. Matthews and J. Foreman, 11th edn (London, 1993), 16-19.

<sup>12</sup> *Portable Antiquities Annual Report 1999-2000* (DCMS, 2001), p. 50.

<sup>13</sup> Hansard, HC, 30 January 2001, col. 177; and see: 'Fundamental Review of the Coroner System: Terms of Reference' (Home Office 080/2001, 23 March 2001), and 'Team appointed to deliver Fundamental Review of the Coroner System' (Home Office 183/2001, 26 July 2001).

<sup>14</sup> Home Office Circular No. 44/1997 (12 August 1997).

<sup>15</sup> V. Bott and G. Wainwright, 'A survey of archaeological archives in England' (English Heritage and Museums & Galleries Commission, 1998), p.7.

<sup>16</sup> See: 'Unlocking England's past [...]', paper prepared for the Heritage Lottery Fund by the Association of Local Government Archaeological Officers, 1999.

## Appendix I: Consultation Terms of Reference

### REVIEW OF TREASURE ACT 1996

#### Terms of reference

1. The review is required under the Codes of Practice on the Treasure Act 1996. Paragraph 84 of the Code for England and Wales states:

The Act requires the Secretary of State to keep this Code under review. A review will be carried out once the Act has been in operation for three years and that review will consider whether any adjustments need to be made to the definition of treasure, according to the powers in section 2, and whether any revisions need to be made to this Code: it will examine, amongst other things, the target times for the handling of cases, the arrangements for the acquisition of finds set down in paragraph 60 and the valuation of treasure. Those bodies who have been consulted on this Code will also have the opportunity to participate in the review.

Paragraph 76 of the Northern Ireland Code of Practice is drafted in similar terms.

2. The review is being carried out by the Department for Culture, Media and Sport in conjunction with the Northern Ireland Environment and Heritage Service which administers treasure in Northern Ireland.

#### Scope of review

3. The Treasure Act received Royal Assent in 1996 and came into force in September 1997, following the approval by Parliament of the Codes of Practice, which were drawn up in consultation with interested parties.

4. The Review will focus on two main issues:

- a. The definition of treasure:

section 2 of the Treasure Act gives the Secretary of State powers to designate by statutory instrument additional classes of object as treasure and to remove classes of object from the definition of treasure.

- b. The system of administration set out in the Codes of Practice:

The Codes of Practice set out the system of administration for treasure, the policy on the payment of rewards, the arrangements for the acquisition of finds and the valuation of treasure by the Treasure Valuation Committee. Any changes to the Codes have to be approved by an affirmative resolution of both Houses of Parliament.

5. The primary purpose of the review is not to re-examine the fundamental policy laid down in the Act, as any changes to this would require primary legislation. However, if, as a result of the consultation process, a consensus emerges that amendment of the Act would be desirable then the review may recommend that consideration be given to that when the opportunity for legislation arises.

## Background

6. The number of cases of treasure has risen from 25 a year before the law changed to 205 in the first year of the Act and 223 in the second year. About 40 per cent of these cases are not required by museums and are disclaimed and returned to the finders. The increase in numbers of finds reported has been very encouraging but it places a corresponding duty on those organisations and individuals responsible for dealing with cases (museums, coroners, DCMS/Environment and Heritage Service) to provide an efficient service.

7. Among the issues that will need to be addressed by the review are:

- a. To what extent are the target times for dealing with cases of treasure laid down in paragraph 82 of the England and Wales Code of Practice and paragraph 74 of the Northern Ireland Code of Practice being met and where are the delays occurring in those cases that have slipped?
- b. Can anything be done to simplify the process that finds have to go through between being reported and returned or a reward being paid?
- c. Are there too many bodies involved in dealing with treasure cases and can anything be done to reduce these?
- d. Should the current definition of treasure be retained, or should any adjustments be made to it, bearing in mind that any extension of the definition will need:
  - i. to be clearly comprehensible to finders and others; and
  - ii. it must be possible to deal with any increase in cases within current resources?
- e. It will also be necessary to look again at the procedures for valuation (in consultation with the Treasure Valuation Committee) and the arrangements for the allocation of finds to museums.

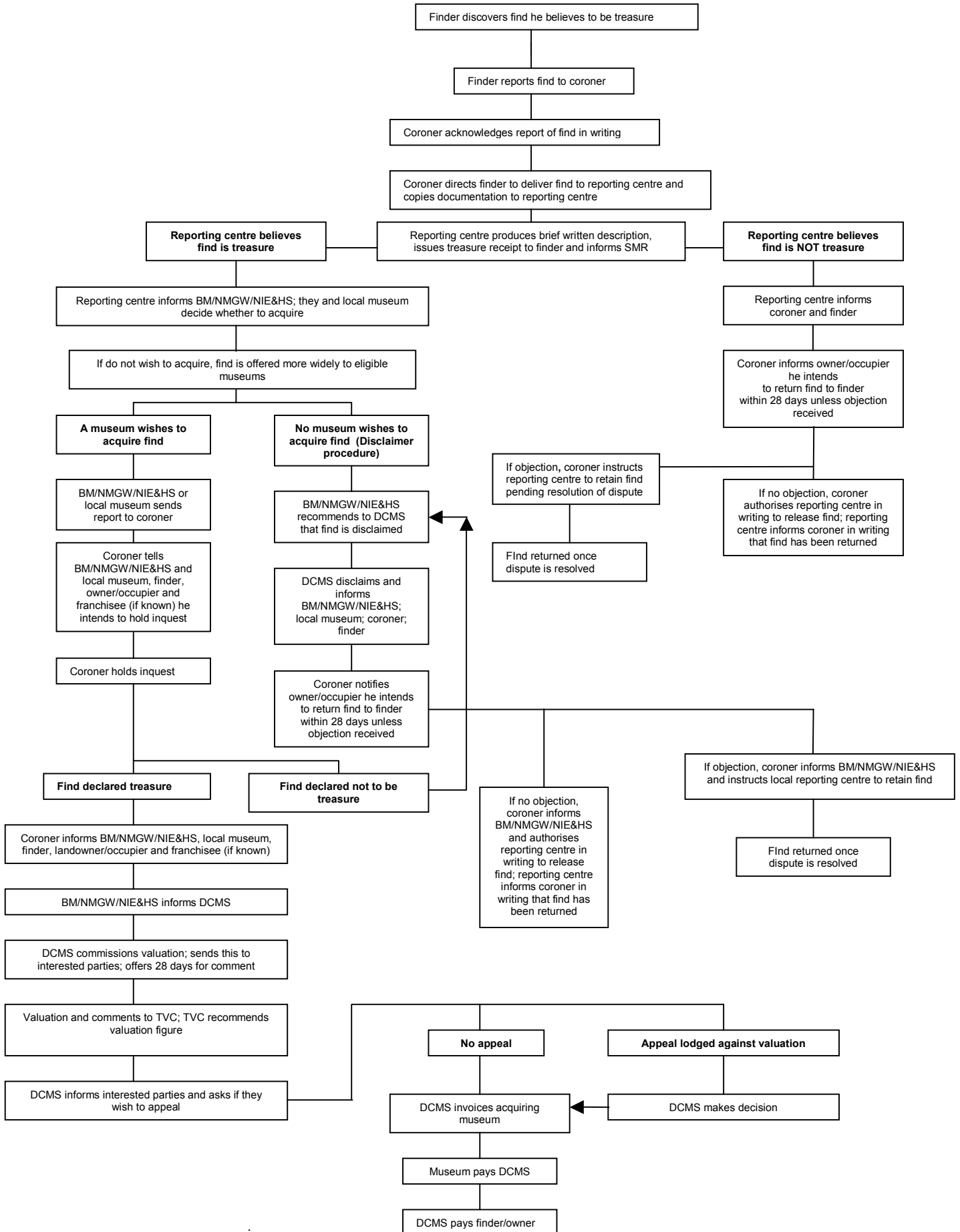
## Timetable

8. A draft consultation paper will be circulated by 15 December 2000 following discussions with key players. After consideration of responses final recommendations will go to the Secretaries of State by 31 March 2001.

DCMS

September 2000

Appendix II: Revised Treasure Flow Chart



**Appendix III: Fundamental Review of the Coroner System: Terms of Reference**

*Extract from Hansard, House of Commons Debates, 23 March 2001, columns 402-03W*

**Coroner System Review**

**Mr. Khabra:** To ask the Secretary of State for the Home Department if he has decided on the terms of reference for the fundamental review of the coroner system. [155718]

**Mr. Boateng:** In consultation with ministerial colleagues, it has been decided that the terms of reference should be as follows.

In respect of England, Wales and Northern Ireland:

1. To consider the most effective arrangements for identifying the deceased and for ascertaining and certifying the medical cause of death for public health and public record purposes, having regard to proposals for a system of medical examiners.
2. To consider the extent to which the public interest may require deaths to be subject to further independent investigation, having regard to existing criminal and other statutory and non-statutory investigative procedures.
3. To consider the qualifications and experience required, and the necessary supporting organisations and structures, for those appointed to undertake the duties for ascertaining, certifying and investigating deaths.
4. To consider arrangements for the provision of post mortem services for the investigation of deaths.
5. To consider the consequences of any changes arising from the above for the registration service and the role of coroners under the Treasure Act 1996, and to consider where departmental responsibilities for the arrangements should be located, having regard both to coherence for bereavement services and effective accountability.

We are now considering who should carry out the review and I hope to make a further announcement shortly.

**Appendix IV: Fundamental Review of the Coroner System: Membership of Team**

*Text of Press Notice issued by the Home Office, 26 July 2001*

183/2001 26 July 2001 020 7273 4545

**TEAM APPOINTED TO DELIVER FUNDAMENTAL REVIEW OF THE CORONER SYSTEM**

Tom Luce, former Head of Social Care Policy at the Department of Health, has been appointed chair of the team who will carry out a fundamental review of the coroner system in England, Wales and Northern Ireland, the Home Office announced today.

Other review team appointees are: Mr Anthony Heaton-Armstrong, a barrister; Professor Sir Colin Berry, Professor of Morbid Anatomy at the University of London; Mrs Elizabeth Hodder, Commissioner for the Equal Opportunities Commission; Mrs Deirdre McAuley, a Citizens Advice Bureaux advisor in Ballymena and chair of the local Peace and Reconciliation Partnership; and Mr Iqbal A.K.M. Sacranie OBE, the former First Secretary of the Muslim Council of Britain.

The team will undertake a root and branch review of the existing coroner system including post mortems and inquests. They will also examine the case for the introduction of medical examiners to supervise the certification of deaths by natural causes.

The review, expected to be completed in 18 months, will keep in touch with the Shipman inquiry under Dame Janet Smith, which is working to a similar timetable.

Announcing the appointments, Home Office Minister, Beverley Hughes said:

"Coroner arrangements and the inquest system have laboured for many years under antiquated legal provisions which were never designed to meet the demands of today's society. Recent public enquiries such as Bristol, Alder Hey, Shipman and Marchioness have exposed the shortcomings with the system.

"Public expectations, both in terms of public service and the product of coroners' inquiries, have run well ahead of what coroners can currently deliver. This fundamental overhaul is essential if we are to modernise the coroner system, in line with our plans to reform the criminal justice system."

**NOTES FOR EDITORS:**

1. Tom Luce is a public policy consultant. He was head of Social Care Policy at the Department of Health 1995-99, the Deputy Director of NHS Finance 1990 and Head of Management Policy and Running Costs Group at HM Treasury 1987-90.
2. The appointees were selected from a number of possible candidates proposed by the Public Appointments Unit of the Cabinet Office.

3. The Government announced earlier this year in its response to the Alder Hey report that the Home Secretary had set in train a review of the coroner system (statement to the House by Alan Milburn, the Secretary of State for Health, on 30 January 2001).

4. The terms of reference for the coroner review were announced in a response to a Parliamentary Question on 23 March 2001. (Home Office press notice 080/2001).5. Coroners are judicial officers appointed, in England and Wales, by local authorities. They are responsible, under the Coroners Act 1988 (in Northern Ireland, the `Coroners Act' 1959) for the investigation of deaths reported to them which appear to be unnatural or due to violence, or sudden and of no known cause. They also determine treasure finds under the Treasure Act 1996. In England and Wales the Home Office is responsible for coroner legislation while the Lord Chancellor is responsible for rules of court and coroner discipline. The costs of the coroner system fall on the local authorities. Different arrangements apply in Northern Ireland.