

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT TREASURE (DESIGNATION)
(AMENDMENT) ORDER 2023

DRAFT TREASURE ACT 1996: CODE OF PRACTICE
(3RD REVISION)

Monday 13 March 2023

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The Committee consisted of the following Members:

Chair: † HANNAH BARDELL

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

† Baynes, Simon (*Clwyd South*) (Con)

† Duffield, Rosie (*Canterbury*) (Lab)

Foy, Mary Kelly (*City of Durham*) (Lab)

Hall, Luke (*Thornbury and Yate*) (Con)

† Howell, John (*Henley*) (Con)

† Hughes, Eddie (*Walsall North*) (Con)

† Lewis, Clive (*Norwich South*) (Lab)

† Lopez, Julia (*Minister of State, Department for
Culture, Media and Sport*)

† Lopresti, Jack (*Filton and Bradley Stoke*) (Con)

† Mills, Nigel (*Amber Valley*) (Con)

Neill, Sir Robert (*Bromley and Chislehurst*) (Con)

Qaisar, Ms Anum (*Airdrie and Shotts*) (SNP)

† Robinson, Mary (*Cheadle*) (Con)

† Smith, Jeff (*Manchester, Withington*) (Lab)

† Wakeford, Christian (*Bury South*) (Lab)

† Wood, Mike (*Dudley South*) (Con)

Rebecca Lees, Aaron Kulakiewicz, *Committee Clerks*

† **attended the Committee**

The following also attended (Standing Order No. 118(2)):

Loughton, Tim (*East Worthing and Shoreham*) (Con)

Second Delegated Legislation Committee

Monday 13 March 2023

[HANNAH BARDELL *in the Chair*]

Draft Treasure (Designation) (Amendment) Order 2023

6 pm

The Minister of State, Department for Culture, Media and Sport (Julia Lopez): I beg to move,

That the Committee has considered the draft Treasure (Designation) (Amendment) Order 2023.

The Chair: With this it will be convenient to consider the draft Treasure Act 1996: Code of Practice (3rd Revision).

Julia Lopez: I am pleased to be speaking to this order, which was laid before the House in draft on 20 February, and the code, which was laid in draft on 23 February. I suspect that this may be the most interesting statutory instrument that I have ever laid and ever will. The order and revised code are intended to support the aim of the Treasure Act 1996 to preserve important and significant finds for the benefit of our nation. The order designates a new class of treasure based on the significance of a find, and exempts finds that currently also fall under the legal processes of the Church of England. The code has been revised to make it easier to understand and use, and includes guidance on the new class of treasure and exemption.

The Treasure Act replaced the common law of treasure trove in England, Wales and Northern Ireland. The current definition of treasure broadly captures only those objects that are made of silver or gold and more than 300 years old when found, as well as hoards of prehistoric base metal objects. Coroners then decide whether an object meets the definition of treasure, and the finder of an item of potential treasure has to report it within 14 days. If the object is found to be treasure, it belongs to the Crown unless an heir of the original owner demonstrates their claim to it.

John Howell (Henley) (Con): My hon. Friend said that the measures apply to the finding of metal objects. For most of our history and pre-history we have been a stone-bearing culture. Can we not include significant stone objects?

Julia Lopez: I thank my hon. Friend. That is something that we have considered as part of this process. We have looked carefully at the question of capacity and scope, and while we believe that this is the most appropriate and proportionate next step in treasure regulations, the Department will continue to consider the issue.

Treasure is made available to museums to acquire for public benefit. If a museum acquires a find, it funds a discretionary reward for the finder and landowner. The amount and division of the reward are decided by the Secretary of State, advised by the Treasure Valuation Committee. That process is expertly delivered by our partners in the British Museum, Amgueddfa Cymru—

the National Museum Wales—and National Museums Northern Ireland. In England and Wales, the portable antiquities scheme, which records archaeological objects found by members of the public, plays a key role in facilitating the reporting of finds and their acquisition by museums.

The Act has been very successful. More than 17,500 finds have been reported since 1996, over 95% of which were made by metal detectorists. An estimated 6,000 have been acquired by over 200 museums across England, Wales and Northern Ireland. Those include outstanding finds such as the Corrard torc in Northern Ireland and the Staffordshire hoard in England. When a museum acquires a find, it means that it is available for the public to see and admire, but beyond that it educates people about their own heritage. By giving museums the first chance to acquire archaeological discoveries, the Treasure Act has a fundamentally important role in preserving our past.

However, there have been times when the Act has not been able to help museums to secure important finds. Discoveries that do not meet the current definition of treasure, such as individual base metal objects, may be sold by the finder at auction. Museums are now competing with private buyers or dealers, with a high risk of being outbid. Even if they are successful they will have to pay additional costs such as premiums. For example, the Crosby Garrett helmet, a unique base-metal Roman find that did not meet the definition of treasure, as subsequently sold on the open market. Despite the great efforts of museums to raise funds, they were ultimately outbid.

Another object at risk of being lost to the public is the bronze birrus Britannicus, a Roman figure that provides a singular insight into Romano-British life and one of the highlights of Chelmsford Museum's collection. The museum was able to acquire it only when it was sold overseas and the export deferral system stopped it. However, we should not need to rely on that system to protect important discoveries, particularly as it comes into play only if an overseas buyer happens to purchase the object. The change we are debating will ensure that that does not happen and that museums will get the first right to acquire the most significant finds.

The order designates a new class of treasure based on significance. For the first time, the most important base metal finds, gold and silver finds that are between 200 and 300 years old and single gold coins, all of which are currently outside the definition of treasure, can now be considered to be treasure. Such finds will be caught by the definition only if they meet the specific criteria in the order that are aimed at identifying objects of outstanding historic, cultural and archaeological importance.

John Howell: My hon. Friend has described a set of rules for treasure that are based on financial value. The cultural value of these assets is more important, so why can we not have a definition based on cultural rather than financial value?

Julia Lopez: I appreciate my hon. Friend's intervention. This policy area is led by my departmental colleague Lord Parkinson. I understand that the point my hon. Friend made has been considered, but it was balanced

against the implementation challenges and the system's capacity to deal with such questions. I should be happy to facilitate further discussion on the matter if that would be helpful to my hon. Friend.

The criteria have been carefully designed to ensure that the new class is limited to finds of exceptional national, regional or local significance. We consider that to be a high bar. The order owes its origins to a wide range of sources. We took into account the responses to the 2019 consultation on the Treasure Act, many of which recommended a significance-based definition. The Heyworth Heritage research report, which was commissioned by my Department, provided detailed, pragmatic advice on the implications of the new class. We also worked with sector experts such as the treasure registry at the British Museum and colleagues at Museum Wales and National Museums NI, whose practical experience of treasure was invaluable.

We are introducing another change in the order. The Treasure Act removed the common-law requirement that for a find to be considered treasure, there had to be some evidence that it had been hidden with an intention by the owner to return to recover it. That brought into the process objects associated with human burials, including those on consecrated land, which also fall under the Church of England's statutory process for managing moveable objects. This overlapping jurisdiction complicates both the Church of England's legal process and treasure legal processes.

The order therefore seeks to remove the confusion around Church of England finds by exempting them from the treasure process, as the Government undertook to do during the passage of the Act. We have worked with the Church of England to define the scope of the exemption, which we hope will avoid conflicts arising between the treasure process and the ecclesiastical legal system for managing moveable objects.

Alongside the order, we are also debating the associated statutory code of practice, which provides essential guidance and principles for the administration and operation of the treasure process. The current code is out of date, does not reflect current administrative practices and, naturally, does not include information on the proposed changes to be introduced by the order.

Revisions to the code introduce changes to the process to ensure that it is more efficient and transparent for all parties involved. The changes are the result of an extensive public consultation, to which there were more than 1,400 responses, representing the full range of interested parties including museums, metal detectorists, archaeologists and landowners. They provided evidence and feedback on the process that have enabled us to make the changes.

We have introduced specific deadlines for all parties in the treasure process to improve timeliness, and we have included more information on the individual administration processes in England, Wales and Northern Ireland and clearer information on rewards. The language of the code has been updated to make it easier for all users to understand their responsibilities under the Treasure Act.

The changes aim to make the treasure process more efficient, but that is obviously not an end in itself. Beyond that, the intention is that a clear and understandable process will encourage museums to decide to acquire treasure, satisfy finders that decisions on their finds will

be made within a reasonable time, and ensure that the public will benefit from increased access to significant finds. I commend the changes to the House and would like to open these matters to debate.

6.9 pm

Jeff Smith (Manchester, Withington) (Lab): It is a pleasure to see you in the Chair, Ms Bardell, and to speak on behalf of the Opposition. I thank the Minister and officials from the Department for Digital, Culture, Media and Sport for the conversations that we had ahead of today's Committee.

As the Minister set out, the draft Treasure (Designation) (Amendment) Order 2023 amends the Treasure (Designation) Order 2002 so as to extend the eligibility criteria for classing a found object as treasure. Base metal objects that are at least 200 years old and provide exceptional national or regional historical, archaeological or cultural insights will now be included among the objects covered by the definition.

The draft third revision of the Treasure Act 1996 code of practice updates the administrative framework for the treasure process, clarifies the role of the portable antiquities scheme, provides clear deadlines to improve the process, and reflects the different systems in England, Wales and Northern Ireland. We understand the rationale for the changes, which should ensure that more significant finds from our shared past end up in public museums, to inspire, educate and delight future generations, rather than in private collections. The changes have been broadly welcomed by archaeologists, museum curators, finder communities and landowners, and we will not oppose them.

Interest in metal detecting has grown substantially since the last revision to the treasure code of practice in 2008. There are now thought to be around 20,000 detectorists in England and Wales. The detecting community makes an important contribution to our national museum collection, with over 96% of all archaeological finds reported by the public coming from detectorists. Thanks in large part to detectorists, cases of treasure have increased by over 50%, from 778 in 1996 to 1,071 in 2022. With more finds come more opportunities to display artefacts in our public museums for everyone to appreciate and enjoy.

Under the previous definition, significant finds such as the Crosby Garrett helmet, the Ryedale hoard and the Staffordshire Moorlands pan would not have been protected in law. Museums were able to acquire some of these significant items off their own bat, but the Crosby Garrett helmet is one of many valuable finds that ended up in private hands; it is still held privately and rarely exhibited. We support measures to ensure that more of our shared past can be displayed for public benefit.

We acknowledge that the bar will be set very high when judgment is made about an object's "significance"; it is envisaged that no more than 100 finds a year might meet the new criteria. Does the Minister plan to keep the threshold under review, in case fewer important objects meet it than was intended? The Government's changes extend only to metal objects. As we heard from the hon. Member for Henley, a number of archaeologists would like significant items made from other materials, such as worked stone and organics, to be protected under the Treasure Act. The Government have taken

[Jeff Smith]

the decision to proceed cautiously, and are effectively trialling the changes with metallic items, so as to properly understand the implications. That is understandable, but when might the Government see fit to consider further amendments that include non-metal historical objects? Does the Minister have plans to ensure that local museums can benefit from significant finds discovered close by? What is the Government's view on the concerns expressed that the change may lead to the under-reporting of treasure finds?

The Government have acknowledged that widening the definition of treasure and changes to the code of practice will result in more objects needing to be assessed to determine their

"outstanding historical, archaeological or cultural"

significance. That will put a greater resource burden on our national museums—the British Museum, Amgueddfa Cymru, and National Museums NI—which will administer the process. Ministers have committed to increased funding to allow for that, which is welcome. Will that be kept under review until the impact of the changes on our museums is understood more fully?

Overall, Labour feels that the changes to the code of practice are sensible. We hope that they will lead to many more treasures being displayed in museums for the benefit of local communities across the country.

6.13 pm

Tim Loughton (East Worthing and Shoreham) (Con): I ought to declare an interest as chair of the all-party parliamentary groups on archaeology, and on the British Museum, and as a fellow of the Society of Antiquaries. I have a real interest in the issue. I am delighted that the Minister said that this was probably the most exciting statutory instrument that she would deal with.

The Chair: May I remind the hon. Gentleman to refer to the Minister through the Chair? Otherwise I am not deciding on any legislation.

Tim Loughton: That was a terrible faux pas of mine. I apologise, Ms Bardell. I am delighted that the Minister is so excited by the order.

Some 26 years ago, when I first came into the House, one of my first SI Committees was on some of the first regulations to the Treasure Act 1996. I remember having a lengthy debate with the then Minister, who I think was a Member for Sheffield Central, about whether medieval Sheffield slag would be included in the qualifications. That is exactly what these regulations will now do, so the measure is long overdue. We have waited several years to get these changes to the Treasure Act, which I welcome and will certainly support.

The British Museum—I declare an interest—manages the portable antiquities scheme, it provides the secretariat for the Treasure Valuation Committee, and the treasure registry is based there, so it is absolutely central. I should also say that Mike Heyworth—the Minister referred to his report—provides the secretariat to the all-party parliamentary archaeology group.

The portable antiquities scheme has been a huge success by any measure. To date, it has recorded more than 1.6 million finds on its online databases. Its finds liaison officers are based around the country and have

played a part in reigniting the general public's interest in archaeology, along with the popular television programme, "Detectorists".

John Howell: I declare that I, too, am a fellow of the Society of Antiquaries of London and a long-established archaeologist. My hon. Friend mentions the success of the portable antiquities scheme. Does he not think that that means that the term "treasure" is outdated and that we should take the definitions of the scheme?

Tim Loughton: This Committee is in danger of having an awful lot of talent on it who know a bit about the subject; I will come on to exactly that point.

In my county of Sussex, the portable antiquities scheme has so far registered almost 40,000 finds, and there have been 486 pieces of treasure across East and West Sussex since the Treasure Act. On average, as the Minister mentioned, between 20% and 30% of those declarations end up in museums, so there has been a substantial increase in the amount of antiquities of interest available for public viewing, interpretation and explanation, which must be a good thing.

This is a good measure, as far as it goes, because the Treasure Act, which enables museums to acquire items more than 300 years old, as we have heard, based on the content of gold and silver, will now be extended to base metal items. That would have included the Crosby Garrett helmet; the Ryedale Yorkshire hoard, which recently came up for auction and ended up in a museum; and the Staffordshire Moorlands pan. However, that is based on their cultural and archaeological significance as an aspect of their

"national or regional history, archaeology or culture"

by virtue of their rarity, where they were found, or their connection to a person or event.

It is envisaged that, with the extension of the definitions, only something like 100 additional finds a year will meet the criteria, so it does not place a hugely onerous additional burden on the Treasure Valuation Committee, the museums and the FLOs. To pick up the point made by my hon. Friend the Member for Henley, I ask why it has stopped at metal items, because the whole principle behind the changes is to recognise that items are of cultural interest regardless of the material from which they are made. They may sound more like treasure because they are made of gold, silver or other precious metals, but for an archaeologist or somebody studying history, that is frankly immaterial to their potential cultural significance and uniqueness.

So, may I ask again why the Minister has not extended the definitions to non-metal items? There is a precedent, because the definitions have been extended on the Isle of Man, whose treasure law otherwise mirrors the Treasure Act 1996, so that they can take in non-metallic items. This is a serious question. I do not believe that it is one of capacity, based on the estimates of the increased workload from the extension of the criteria. Could the extension at least be piloted now in certain parts of the country, say, where there is sufficient capacity to take on additional items that just happen not to be metallic?

The Chartered Institute for Archaeologists has raised this point and it specifically referred to palaeolithic hand axes or other organic materials, such as worked wood. Such wood is certainly rare, in terms of its capacity for

preservation, when it is dug out of the ground, and culturally and archaeologically it may be hugely more significant than a gold coin found in situ.

I will take the second point that my hon. Friend the Member for Henley made, too, about whether we should still use the terminology of “treasure” when it really promotes the wrong image. The legislation is moving in the right direction to recognise the cultural and archaeological significance of finds, rather than what they are made of. Should we not refer instead to significant antiquities in terms of their cultural significance rather than in terms of their financial value? I think the Government have perhaps missed a trick here, because they are embedding the impression that treasure is only something that is bright, shiny and made of metal, when not all treasure is.

There is a third consideration, which I would be grateful if the Minister could respond to. The rolling date for treasure, which is still to be used, is considered by many to add unnecessary bureaucracy to the system; people constantly have to change the date where the 200-year criteria now apply. There is a body of support for having this date as a fixed date in the legislation. Perhaps she will say why that is not the case in the regulations.

Also, in the guidance that accompanies these regulations, there are lots of useful additions. The guidance gives greater clarity on what items are treasure, and why; it better explains the role of the portable antiquities scheme and how it works alongside local coroners; it clarifies the legal obligations of those who find treasure, setting out what their responsibilities are; it gives clearer timelines for the processing of treasure; and it explains better that treasure is owned by the Crown and that rewards are made at the discretion of the Secretary of State for Digital, Culture, Sport and Media.

That is all welcome, but further work is required—again, perhaps the Minister can give some clue as to whether this work will be undertaken—to examine the impact that the exponential growth in metal detecting over the past 20 years has had on the portable antiquities scheme.

In terms of value for money, the portable antiquities scheme is one of the most efficient investments by the taxpayer. For a relatively small amount of money—in excess of £1 million—we achieve greater awareness of our past and of the importance of antiquities, and better governance of metal detectorists in bringing their finds to public display through the finds liaison officers and ultimately, in some cases, museum, and that is hugely welcome. However, I do not think that the guidance has moved on quite as much as it needs to. By and large, metal detectorists are a responsible bunch, but there are nighthawkers who can cause serious damage to scheduled sites. Will there be additional work on further guidance, given the number of people who are now involved in metal detecting and associated leisure activities?

I will raise a final point, regarding the exemptions for the Church of England, which the Minister did not really touch on those. The explanatory notes to the regulations state that the proposal to remove from the definition of treasure finds that fall under the legal processes of the Church of England was included in the 2019 public consultations. The result was that 30.9% of those who expressed a view were supportive of the proposal and 30.1% expressed disagreement, which is

an even narrower margin than in the Brexit referendum. Views were clearly split. Can the Minister flesh out the reasons the Church of England continues to benefit from the exemptions? What are the upsides or downsides of that?

Overall, though I hope I have been constructively critical, I certainly welcome these long-overdue new regulations. They put the Treasure Act 1996 on a much sturdier footing, but have gone halfway to conceding the principle that treasure is not just shiny, precious metal. How much longer will we have to wait until the Government go the whole way so that we can embrace, appreciate and safeguard items of archaeological or cultural significance that happen not to be made of a valuable commodity? Although I support the measures, I would appreciate some additional clarification from the Minister.

6.26 pm

Julia Lopez: I thank hon. Members for the opportunity to debate the order and the code. This is a fascinating area of cultural protection legislation. I am sincerely grateful to the hon. Member for Manchester, Withington for agreeing that the changes will improve how we take care of our heritage in England, Wales and Northern Ireland and ensure that the most important finds can be saved for all our benefit.

My hon. Friend the Member for East Worthing and Shoreham (Tim Loughton) recognised that the changes are long overdue. I am glad to deliver them. I welcome his detailed and considered input; he has studied archaeology in his academic career and also for his contributions as a Member of this House. He highlighted the public appetite to uncover more of our own history. Active metal detectorists are now very much in the ascendency. Ahead of this debate, one such metal detectorist, who is a close friend, sent me some pictures to set out how some of the finds that are now posted on Facebook are not currently in scope. We are losing those precious objects for the nation, so I know that the changes are welcomed by a large number in that community.

Extensive research commissioned and published by my Department demonstrates that introducing the high bar for significance may lead to around 100 to 140 new discoveries being made available to museums each year, as other hon. Members have said. In answer to hon. Members, we will keep this under review. All types of objects have the potential to be archaeologically or historically significant. At the moment, the new definition will apply only to artefacts that are at least partly metal. We are taking that approach so that we can measure the impact and effectiveness of the change. That is already a major shift in the emphasis of the Act. Research, funding and long-term preparation of stakeholders are required for further expansion. I assure hon. Members that we want to explore options for broadening the definition to include other types of objects that are culturally significant, such as stone, sculpture and ceramics.

As I have discussed with officials, treasure cases are taking up to six years to determine value, so we are mindful of not wanting to put additional pressure on the system.

As I mentioned, this is not a policy area on which I lead, but I am happy to put concerned Members in touch with the lead Minister, Lord Parkinson. I will

[*Julia Lopez*]

also relay personally some of the concerns expressed in Committee about the next steps. I am sure that he will be happy to look at that and at the question of the rolling date, which was raised in the debate.

Finders will be under a duty to report finds when they have reason to believe that finds may be treasure, because of their expertise or because they receive advice—for example, from fellow detectorists, a dealer, a finds liaison officer or a curator—that a find may be sufficiently significant to be considered treasure. We recognise that the change will lead to more objects going through the treasure process. Those that deliver it, as the hon. Member for Manchester, Withington said, will need extra support to do so. We will provide that extra support.

We have increased financial support for the treasure registry at the British Museum and the portable antiquities scheme, which in England and Wales acts as a gateway to the treasure process. We have also invested in a new digital treasure system, which we hope will make it easier to record and track treasure cases, but that is in the early stages of being developed. I hope that people will find it to be an exciting innovation in the area, modernising the whole treasure process to improve transparency and efficiency.

I will also work with our delivery partners, including the treasure registry, to provide training and guidance to support those who are integral to implementing the change, including finders, coroners, finds liaison officers and curators. We hope that that will help everyone to understand their legal and administrative responsibilities.

We have introduced the change only for objects that are partly or wholly metal. As I said, we recognise that that leaves out ceramics and stone, which is something that we will monitor closely as we look at how the changes take effect. We want to work closely with experts to explore options on expanding the definition.

We believe that the change is needed now to ensure that we can look after, for future generations, the objects that tell our shared national and local history. I look forward to seeing the first object to be declared under this new class going on display in our tremendous museums. I also look forward to more people engaging with and learning about their heritage. On the Church of England point, I believe that was taken so that there was not double legislation for particular objects. Again, however, I am happy to put my hon. Friend the Member for East Worthing and Shoreham in touch with Lord Parkinson to discuss the matter further. I look forward to new knowledge coming to light and changing our understanding of our glorious past.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Treasure (Designation) (Amendment) Order 2023.

DRAFT TREASURE ACT 1996: CODE OF PRACTICE (3RD REVISION)

Resolved,

That the Committee has considered the draft Treasure Act 1996: Code of Practice (3rd Revision).—(*Julia Lopez.*)

6.31 pm

Committee rose.