

# ONE COUNTRY'S RESPONSE TO THE PROBLEM OF LOOTING: THE TREASURE ACT AND PORTABLE ANTIQUITIES SCHEME IN ENGLAND AND WALES

La respuesta de un país al problema del expolio: la Treasure Act y el Portable  
Antiquities Scheme en Inglaterra y País de Gales

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**ABSTRACT** Every country struggles to find ways of controlling the activities of amateurs who search for archaeological objects. England and Wales have developed a unique system of protection in the Treasure Act of 1996 and the Portable Antiquities Scheme. The Act gives legal protection to a small group of finds that qualify as Treasure — precious-metal objects and hoards of coins — and these are offered to museums, while ensuring finders and landowners receive the full market value. The number of finds qualifying as Treasure has increased from about 25 a year before 1997 to over a thousand in 2014. The Portable Antiquities Scheme consists of a national network of 45 archaeologists who encourage searchers — mainly metal detector users — voluntarily to report their finds, and the information is recorded on an online database (<https://finds.org.uk>) which now includes details of over a million archaeological objects. The paper looks at how the Treasure Act and Portable Antiquities Scheme work, some of its problems, and explains how it is completely changing our understanding of the archaeology of England and Wales.

**Key words:** Portable antiquities, Treasure, Archaeological finds.

**RESUMEN** Cada país lucha para encontrar maneras de controlar las actividades de amateurs que buscan objetos arqueológicos. Inglaterra y País de Gales han desarrollado un sistema único de protección a través de la Treasure Act de 1996 y del Portable Antiquities Scheme. La Ley ofrece protección legal a pequeños grupos de hallazgos calificados como Tesoro —objetos [realizados] con metales preciosos o conjuntos monetarios— y que son ofrecidos a museos garantizando a halladores y propietarios la recepción del valor completo de mercado. El número de hallazgos calificados como Tesoro se ha incrementado desde 25 por año con anterioridad a 1997 hasta más de un millar en 2014. El Portable Antiquities Scheme consiste en una red nacional de 45 arqueólogos que animan a buscadores —fundamentalmente usuarios de detectores de metales— informar voluntariamente de sus hallazgos, y esta información es registrada en una

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base de datos online (<https://finds.org.uk>) que en la actualidad contiene detalles de más de un millón de objetos arqueológicos. El artículo enfoca el funcionamiento de la Treasure Act y del Portable Antiquities Scheme, algunos de sus problemas, y explica cómo está cambiando por completo nuestra comprensión de la arqueología en Inglaterra y País de Gales.

**Palabras clave:** Antigüedades muebles, Tesoro, Hallazgos arqueológicos.

## INTRODUCTION

This article describes the solution adopted in England and Wales to the universal problem of how to deal with objects of archaeological, historical or cultural importance found by members of the public. All countries have legal frameworks and other systems intended to protect such objects found by members of the public in their territory either by chance or as a result of deliberate searching. While these approaches vary widely, in most countries there is a legal requirement to report all objects of archaeological importance and normally the state claims ownership of them; there are mechanisms for paying rewards to the finders (although these usually fall short of the full market value) and there is usually protection for archaeological sites and controls over the use of metal detectors. England and Wales have adopted a different approach to this problem, in the Treasure Act and Portable Antiquities Scheme.

## BACKGROUND: TREASURE TROVE

Until 1996 England and Wales very unusually had no legislation governing portable antiquities. The old feudal right to Treasure Trove (under which the king claimed all finds of gold or silver that had been deliberately buried in the ground) had been adapted as an antiquities law in 1886 when the Government started paying finders rewards for finds of Treasure Trove that museums wished to acquire, but this was just an administrative act and no law setting out a sensible definition of Treasure Trove was ever passed; instead the definition was based on case law going back to the 17th century and beyond. So only finds made of gold and silver that had been deliberately buried qualified as Treasure Trove. In practice most Treasure Trove cases were coin hoards, but not all hoards were covered, as small groups that could have been lost did not qualify, nor did hoards of bronze or base metal coins.

Archaeologists pressed for reform throughout the 20th century but, fatally, could never agree on what form that reform should take. The availability of cheap metal detectors in the 1970s suddenly lent a new urgency to the need to reform the law, as the number of objects being found suddenly rocketed, but, with a few exceptions, museums and archaeologists failed to respond adequately. A part of the archaeological establishment responded by trying to introduce controls on metal detecting—the STOP (‘Stop Taking our Past’) campaign—but this failed to gain political support and simply led to a climate of distrust between archaeologists and detector users. In 1979 legislation was introduced banning metal detecting on Scheduled Monuments (of which there are some 20,000) but, this apart, it is completely legal to use a metal detector with the permission of the

owner of the land in England and Wales. This is in contrast to most European countries where a licence is needed to search for archaeological objects. In a few parts of England far-seeing archaeologists, notably in the East Anglian counties of Norfolk and Suffolk, pioneered a system of liaison with detector users<sup>1</sup>.

## TREASURE ACT

Thanks to the efforts of Lord Perth and others, the UK Parliament finally passed the Treasure Act in 1996 (it came into effect the following year) and this provided a significant, but incremental change (Bland, 1996; Bland, 2008). The Act came into effect in 1997 and applies only to objects found since September 1997. It has effect in England, Wales and Northern Ireland but not Scotland which has a completely separate legal framework governing finds: in Scotland there is, in effect, a legal requirement to report all finds.

Under the Treasure Act the following finds are Treasure, provided they were found after 24 September 1997:

- (a) objects other than coins at least 300 years old with a minimum precious metal content of 10%;
- (b) all groups of coins from the same find at least 300 years old (if the coins have a precious metal content of less than 10% then the hoard must consist of at least 10 coins) and
- (c) objects found in association with Treasure.  
Objects belonging to their original owner or his heirs are excluded, as are unworked natural objects (such as fossils) and wreck.

The Act also contained a provision that allows for regular reviews, following which the definition can be extended. The first review in 2003 led to adding hoards of prehistoric base-metal objects to the categories of Treasure. A second review is now overdue.

## REWARDS AND VALUATIONS

Any object that a museum wishes to acquire is valued by a committee of independent experts, the Treasure Valuation Committee, and their remit is to determine the full market value of the object in question; the chairman is currently Lord Renfrew, an eminent archaeologist and member of the House of Lords. The reward is normally divided equally between the finder and landowner. The Committee is advised by a panel of valuers drawn from the trade and interested parties can commission their own valuations which the committee will consider. The reward can be reduced or not paid at all if there is evidence of wrongdoing on the part of the finder or the landowner. Once a valuation has been agreed museums have up to four months to raise money. Archaeologists are not eligible

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1. See Dobinson & Denison 1995 for the background on metal detecting in England and Wales and a survey of the situation in 1995 before the Treasure Act.

for rewards. Not all finds reported as Treasure are acquired by museums and indeed about 60 per cent of all cases are now disclaimed and returned to the finder who is free to dispose of them as he wishes.

### Impact of the Treasure Act

The impact of the Act has been dramatic: before 1997, an average of 26 finds a year were Treasure Trove and offered to museums to acquire; in 2013 994 cases were reported as Treasure, 95% of these found by amateur metal detector users. Since most of the finds that were Treasure Trove before 1997 were coin hoards, it might have been thought that the Act would only have a limited impact on the number of hoards being reported, but in fact the average number of coin hoards since 1997 is 67 a year (half of these are Roman hoards), more than twice the 26 a year logged in the ten years before the change in the law. Since that figure of 26 a year included hoards of bronze coins and small groups of coins that were not Treasure Trove, this increase must reflect a greater willingness by metal detector users to report their finds (fig. 1).

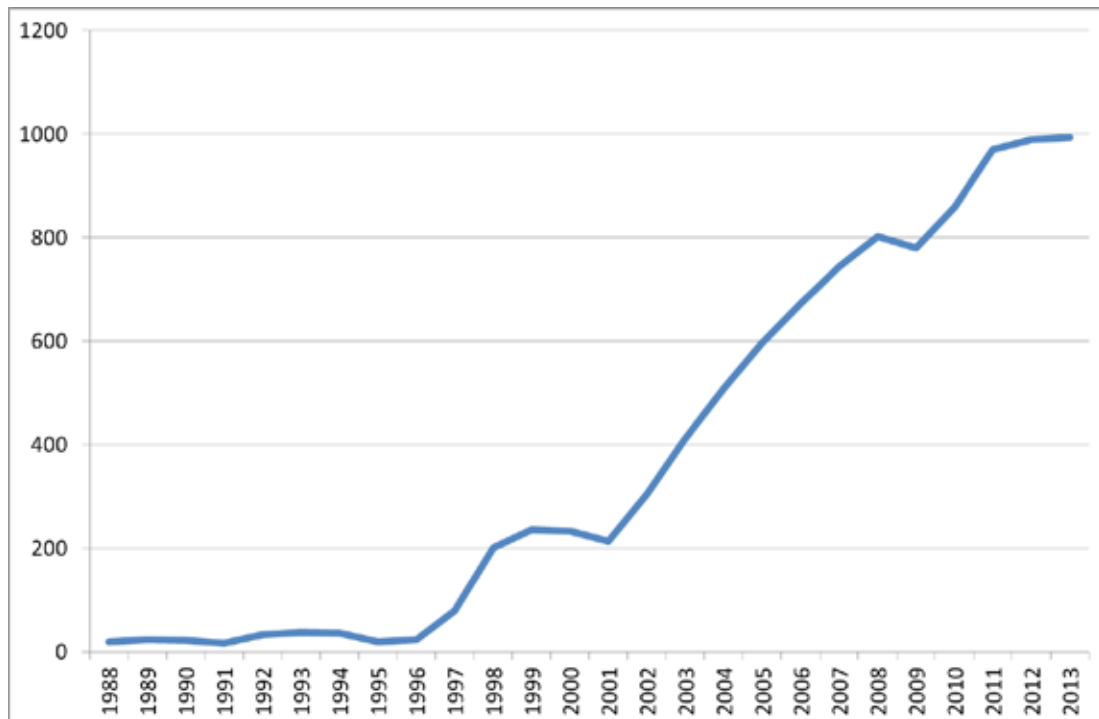


Fig. 1.—Finds reported as Treasure Trove (1988-97) and Treasure (since 1997).

## PORTABLE ANTIQUITIES SCHEME

Of course Treasure finds are only part of the picture: the great majority of archaeological objects found do not qualify as Treasure, but the information they provide can be just as important for our understanding of the past. The Portable Antiquities Scheme (PAS) was established in parallel with the Treasure Act to encourage amateur finders to report—voluntarily—all the coins and other archaeological objects that they find. This works through a network of locally-based 38 Finds Liaison Officers, who between them cover the whole of England and Wales. They have to cope with all types of archaeological finds and so are supported by five specialists, National Finds Advisers. All the finds are recorded onto an online database (<http://finds.org.uk>) which is now the largest resource of its kind in the world, with details of some 965,000 objects reported by over 14,000 metal detector users and others. These finds are returned to their finder safter recording.

The author recently completed a corpus of all finds of Roman gold coins in Britain in collaboration with Xavier Lorient, who had already done the same for Gaul (Callu & Lorient, 1990; Bland & Lorient, 2010). This showed that new finds from Britain since the start of metal detecting in the 1970s increased nearly threefold (from 2.4 new finds a year to 6 a year), while the numbers of new finds from France and Germany in the same period remained flat (fig. 2). The corpus includes finds recorded from sources such as

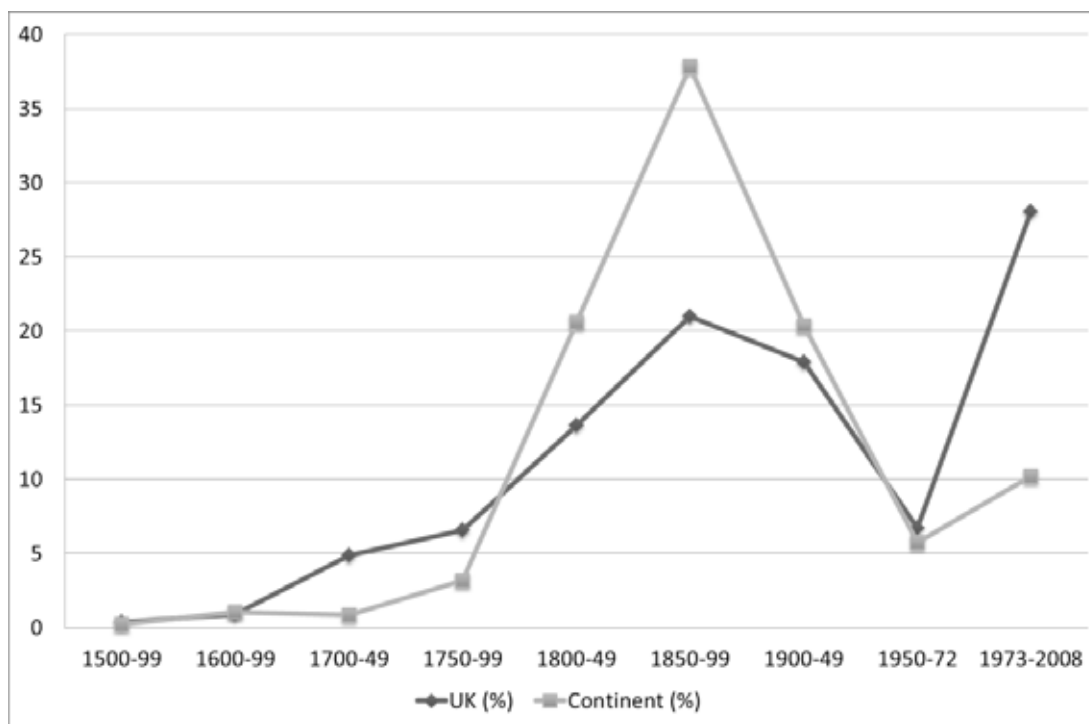


Fig. 2.—Single finds of gold coins recorded from the UK, compared with the Continent, since 1500: percentage of total number of finds (Bland & Lorient, 2010).

sales catalogues, online sources and metal detecting magazines, and showed that PAS is recording 70% of all current finds.

It is a priority to record find spots as accurately as possible, so that 90% of all finds are recorded to an area 100 m square. When finds are recorded in this way, and the data is integrated with other archaeological finds together with the local archaeological records, the information has huge potential for revealing new sites. Brindle (2014) has shown that in 10 years the data recorded by PAS had increased the number of Roman sites from two counties (Warwickshire and Worcestershire) by 30%. Most archaeology in this Britain takes place in advance of building development and as sites brought to light by detector finds are mostly rural, most of them are unlikely to have been discovered through the normal archaeological process 90% of all finds recorded by PAS come from cultivated land where the archaeological contexts have already been disturbed by the plough: when metal detecting is carried out properly on such land, with all finds being carefully recorded, it can be seen as a form of archaeological rescue.

Perhaps the biggest problem for PAS is its own success: we perpetually struggle to record all the finds that we could. Although 80,927 finds were added to the database in 2013 (see fig. 3), we will never have enough staff to record all the finds we would like to, and so in March 2010 a new facility was added to the database to allow amateurs to record their own finds, under supervision and so far 167 individuals have recorded 13,934

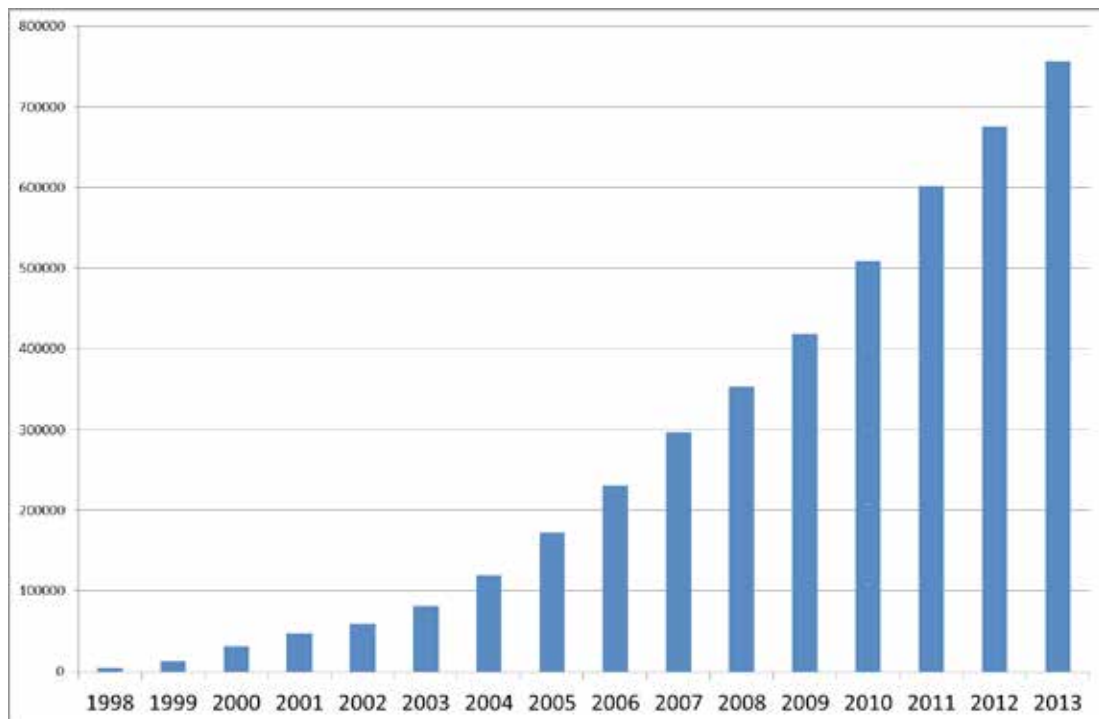


Fig. 3.—Numbers of finds recorded on <http://finds.org.uk>.

finds. Persuading the individuals who make finds to take responsibility for ensuring that they are recorded must underlie our future direction, as the flow of new discoveries shows no signs of diminishing.

## ILLEGAL METAL DETECTING

It has sometimes been said as a criticism of PAS that it has not stopped illegal metal detecting in England and Wales, but this is for the simple fact that it was not intended to. This is an enduring problem and we are working closely with English Heritage's Heritage Crime Initiative, which is run by a police inspector on secondment. This has been having considerable success in targeting illegal detector users, known as 'nighthawks'. However, it is important to put nighthawking in perspective: a survey commissioned by English Heritage from Oxford Archaeology in 2008 (Oxford Archaeology, 2009) found that on two measures (the numbers of scheduled sites attacked by illegal detector users and the number of archaeological units that reported nighthawking incidences on their excavations), the number of cases has declined since 1995 when a previous survey was carried out (Dobinson & Denison, 1995)<sup>2</sup>.

Another way of tackling the problem is to make it harder for the thieves to sell their finds (Bland 2009). At present, it is too easy for the 'nighthawks' to sell their finds to dealers who are happy to purchase such objects without checking that the vendors are acting legally, with the agreement of the landowners. Many items of potential Treasure are openly offered for sale, especially on the eBay web site. In October 2006 the PAS signed a memorandum of understanding with eBay where by eBay will take such items down from its web site when notified by PAS and the police. PAS has been monitoring eBay as time allows since then. eBay published comprehensive guidance on buying and selling antiquities on its website for the first time (<http://pages.ebay.co.uk/buy/guides/antiquities/>), while PAS also developed its own guidance ([www.finds.org.uk/treasure/advice.php](http://www.finds.org.uk/treasure/advice.php)). PAS has followed up several hundred cases of potential Treasure offered for sale on eBay. Although there have not yet been any criminal prosecutions as a result of this monitoring of eBay, there have been a number of cases where vendors have voluntarily agreed to report the finds they were selling as Treasure. However, monitoring eBay on a daily basis, which is what is needed, is a time-consuming process. More resources are needed in order to pursue this work; these should logically come from eBay which profits from the sale of antiquities on its website.

It might have thought that the Government's accession to the 1970 UNESCO Convention in 2002 and the Dealing in Cultural Objects (Offences) Act, which came into force on 30 December 2003, should help to suppress the market in finds illegally recovered from

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2. In Dobinson & Denison 1995 188 Scheduled Monuments were reported as having been had been nighthawked over the previous five years; in 2008 the figure was 78; in 1995 37 out of 50 (74%) archaeological units reported incidences of nighthawking over the previous five years; in 2008 the figure was 15 out of 54 (27%).

the UK but no prosecutions have been brought under this Act, nor have any been brought under the Treasure Act.

## PROPOSED AMENDMENTS TO THE TREASURE ACT

In 2009 Parliament passed a number of significant amendments to the Treasure Act in the Coroners and Justice Act:

1. Establishing the post of Coroner for Treasure, who would deal with all Treasure cases from across England and Wales (at present many coroners give Treasure cases low priority and delays of a year or more in their holding an inquest on a find are not uncommon).
2. Extending the obligation to report Treasure: currently there is only an obligation for 'finders' of Treasure to report such finds. This amendment would require that anyone who 'acquires property in an object' that he 'believes or has reasonable grounds for believing' ... 'is treasure' report it. This would help frustrate the illicit trade in Treasure finds.
3. In conjunction with this there would be a 'reverse presumption' that an object was found on/after 24 September 1997 unless there is evidence otherwise: currently some finders state that an object was found before the Act, and therefore it is declared not Treasure Trove (under the old common law). This amendment would tighten up this loop-hole in the legislation. Coroners declare objects Treasure (or not) on the balance of probability.
4. Extending the time limit for prosecutions for non-reporting: this would increase the *statute of limitation* (currently 6 months) up to 3 years, so that police have more time to pursue a prosecution of failure to report Treasure. Prosecution cases have failed because time has run out - even before a Coroner has declared a find Treasure.
5. Allowing the Secretary of State to designate officers to whom Treasure can be reported: the Act states that Treasure should be reported to the Coroner in the district in which it was found, but it is normal practice (since it is convenient for finders) for finders to report (and handover) Treasure to their local Finds Liaison Officer (at their local metal-detecting club), and this amendment would normalise that practice.
6. Obligation to hand over treasure: currently finders only have a legal obligation to report Treasure, not hand it over. This amendment will ensure that the obligations of finders (who are intransigent) are clear.

All of the amendments would help the Act work better and the second and third ones would make it much harder for dealers to sell unreported Treasure finds. The current Government has not yet decided whether to implement these amendments (there is a cost, albeit a low one, to establishing the post of Coroner for Treasure). In addition a second review of the Act should have taken place in 2007. On its agenda will be the possibility of extending the Act and single finds of Roman and Anglo-Saxon gold coins, as well as



Roman base-metal hoards have been discussed as possible candidates for adding to the definition of Treasure. It remains to be seen whether the Act will be extended in this way.

## CONCLUSION

Although the Act could be improved and the Portable Antiquities Scheme could benefit from more funding, they have had a major impact. The finds recorded by the Scheme are available at <http://finds.org.uk> for all to see. This is a major tool for research: over 416 research projects that use the data are listed at: <http://finds.org.uk/research>, and PAS staff have generated 11 PhDs that use the data (Walton 2012; Robbins 2012; Brindle 2014) and two major research-council funded projects. The Treasure Act and PAS may be a particularly English response to the situation that exists in this country, but they are undoubtedly transforming our understanding of the past of England and Wales.

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