

# **A comparison between the Treasury Act 1996 code of practice (second revision) In England and Wales and the treasure trove in Scotland, code of practice, first written 2014 and revised in 2016.**

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## Introduction

This essay is to compare aspects of heritage legislation and practice law between Wales and another part of the UK, which in this case is Scotland, as the legislative act that covers Wales is relevant also to England.

The two legislative acts will cover the definition of, and the systems in place to deal with the discovery of treasure and portable antiquities found on land, as maritime law and the various acts that cover it will not be mentioned here. Though maybe alluded to whereas ~~and~~ if it is relevant.

Both primary and secondary sources will be used when it comes to legislation and will be implemented more specifically regard to case studies and specific sites of relevancy.

## The Legislation

The first piece of legislation to be introduced is 'the 1996 Treasure Act' in the form of its second revision. This guides how to deal with portable antiquities that are treasure under the act. the legislation operates ostensibly under the guidance 'English Heritage' and 'CADW' within England and Wales respectively.

Treasure under the 1996 treasure act, if it is not coinage, is 10 percent of the weight of the metal of the object. However, this normally only applies to metals that are considered precious such as gold and silver.

A similar rule applies to coins as well, however, they must also be at least 300 years old at the time of discovery. If this is not the case, then unless they are found as a part of other antiquities that are considered treasure they would not fall under this legislation.

Both organizations operate as aspects of the governments which minister to their nations and enforce the act. Under the act, a person that finds treasure must be reported to the local liaison officer, which would then require that officer to contact the local museum or other professional to assess what has been found to see whether or not it could be considered a treasure.

When it comes to those found a treasure, it entirely depends on circumstances of it being found, For instance, it could be the person who found the treasure who receives the reward, however only if they have permission from the occupier or the landowner who owns the property where the treasure was found. If the person who found the treasure or the landowner does not notify the previously mentioned

authority, a fine and/or prison sentence may be handed down in a criminal court. (The Treasure Act 1996)

The Treasure Trove procedures and what it sets down in its Guidelines which in turn is overseen by the 'Queen's and Lord Treasurer's Remembrancer' (QLTR) and is there to control aspects of Scottish 'Common Law' such as 'bona vacantia' or in English 'Ownerless goods'.

The reason for this piece of legislation has its origins in the 1800s with the increased popularity of the National museums which would contain 'national antiquities'. This is important because these large institutions were affluent enough to claim control artifacts claimed as treasure trove. The development of the Treasury policy, as well as the 'national allocation of treasure trove', was developed to protect historical, archaeological and culturally significant treasures from predation.

'Ownerless goods' can be found under Scottish common law. The Crown has ownership of the treasure. Treasure, in this case, means any portable antiquity or coinage made of precious metals such as gold or silver.

Determination of the value of the item and whether or not what has been found can be defined as a 'treasure trove' has to be done by an expert third party for valuation.

The person that finds treasure or 'treasure trove' as it is referred to in the legislation any claim to anything he or she finds however after practice the QLTR, in order to encourage people who find a treasure trove, will usually arrange for that person to be paid an *ex-gratia payment* (Translation: out of kindness) up to full market value. If a find is allocated to a museum, then the monetary value of the finds in order to pay the finder of the treasure. This is a way of encouraging people to report antiquities, as opposed to merely punishing those who do not follow treasury law. (Treasure Trove in Scotland a code of practice, 2016)

If there is any failure to not report finds to the appropriate authority, then that person who found the treasure trove may be prosecuted with theft and sentenced to prison.

### Maritime law

Maritime law when it comes to small fines and treasure with regard to the various acts that cover the entirety of Great Britain and Ireland seem to come into quite a bit of conflict or at least a kind of grey area as the laws and legislation on the mainland can apply within waters within a certain distance of the mainland however not all laws apply within a certain distance of the mainland where it becomes international waters. And even then the merchant shipping act 1995 can be seen in some cases to supersede mainland law such is the definition of a 'wreck' Which may hold items of significance that may be considered a treasure, and so can be argued either way depending on the precedence set forth. (Maritime and Coastguard Agency 2012, 2018)

This is relevant in order to understand the reaches of common law and other Act enforced by the governments of Great Britain and Ireland.

## Responsibilities

Responsibility for the classification and allocation of treasure no matter where in Britain is important. As this is the case both the 1996 treasure act and the scots Scottish treasure trove guidelines explain the chain of responsibility.

In the case of England and Wales, the British Government and the Welsh Assembly allocate power to a minister who oversees the budgets of national heritage, which in this case is CADW in Wales and English Heritage. These organizations oversee county councils who usually maintain an expert to authenticate antiquities that may be found.

When it comes to Scottish common law, things become less straight forward.

Firstly, the Scottish Ministers are responsible for the making of policy and the appointment of the Scottish Archaeological Finds Allocation Panel SAFAP.

Next is the 'Scottish Government Culture & Historic Environment Division, which is responsible for funding and the implementation of policy as laid down by the ministry. QLTR or the Queen's & Lord Treasurer's Remembrancer investigates decision-making and overall administration with regards to common law.

The National Museums Scotland provides facilities and assistance in storage.

The SAFAP or the Scottish Archaeological Finds Allocation Panel as previously mentioned are responsible for providing expert guidance and below that is the Treasure Trove Unit as this unit on the rungs of responsibility reports to the other aforementioned organizations.

The reason that this system implementation is not as straight forward is that there is no clear chain of command and overlap between responsibility. An example of this can be seen in the fact that the Scottish Government Culture & Historic Environment Division, QLTR, SAFAP, and NMS all have direct authority over the Treasure Trove Unit, but at the same time often link to it indirectly making the system more complicated than it needs to be.

## Pros and Cons

For the most part, both pieces of legislation follow similar lines of processes. Both the 1996 act and scots treasure trove provide a guideline in how to deal with portable antiquities when they are found and the people that find them.

When it comes to defining what treasure is the Scottish legislation is rather vague when compared with the Welsh/English act. Whether or not this a major problem must be judged on a case by case basis. In Scotland, the judgment on what is and what is not treasure depends on the expert brought in, however in England and Wales the definition of what treasure is set down. The main criticism of the English/Welsh definition is that it may be a little too broad.

When comparing the systems of responsibilities put into place, the English/Welsh system seems much more straightforward than the Scottish, as the Scottish system is far more complex with more administrative and expert bodies. This may make communication between offices more complicated, but there are much better oversight and quality controls.

One thing that can be considered an oversight in the case of both pieces of legislation, is that they seem to not refer to other metals that are considered valuable such as copper, bronze or platinum. There also seems little mention of gemstones. This neglect appears to be a weakness in both instances.

The lack of any mention of other Metals or items of worth may have its origins in older common law which covered England, Scotland and Wales which was more concerned with what was and was not, the rights of the Monarch, nobility and the commons. In this case, gold and silver were under the 'ownerless goods' law by default the due of the Monarch and anything else could be kept by the landowner or whoever found the object(s). The importance put on gold and silver seems to have persisted the Scottish common law and the 1996 treasure Act.

### Case Studies

Welsh Case study, more specifically on the Welsh border, looks at the case of two Welsh metal detectorists who were found guilty of stealing the contents of a highly valuable archaeological discovery in 2019.

The discovery, in this case, was a chariot burial which included an Anglo-Saxon hoard which was found in Herefordshire which was given an estimated worth of more than £3 million by today's estimates. A couple of examples that were found in the hoard were rare "double emperor" coins which were given an estimate of £75,000 each.

As the two detectorists didn't declare the valuable coins but ~~as they~~ kept them for themselves in order to sell, ~~they did~~ they were arrested.

As these two had already sold some of the illegally obtained antiquities to a coin trader as well as an antique seller. These two were also convicted as they were seen as accessories to the crime, as they were deemed complicit.

The Chariot burial and the finds were ruled as a treasure in the trial, as the precious metal content and purity that fell within the parameters set down within the legislation of the 1996 Treasure Act.

### Cases study analysis

In this case, it was quite straight forward as far as the legislation is considered. The criminals obtained the antiquities, which the legislation considered treasure, did not report them and tried to sell them. This event resulted in the conviction of the detectorists and the people who were complicit in the crime. Overall the legislation and implementation of it worked effectively as far as the punishment is considered.

### Scottish Case study

In the Scottish case, a man discovered what was described as 'Viking jewelry', that was given an estimated value of £2 million, which was discovered on church land in the Dumfries and Galloway region in September 2014.

According to the news story, the treasure hunter, who was also from Ayrshire, managed to locate in excess of 100 antiquities, of which some of them were solid gold.

It was reported that the treasure hunter was going to share the value of any finds with the church. This, however, did not happen.

The Queen's and Lord Treasurer's Remembrancer was alerted to the finds and decided to display the antiquities at the National Museums Scotland, ~~and then provided~~ and then gave the treasure hunter £1.98 million as according to Scottish law he was allowed to keep the full value of the treasure. The National Museums Scotland raised the money from the Crown Estate for the treasure which was given the moniker 'the Galloway Hoard'.

The conflict here is that the treasure hunter keeps the full reward resulting in a legal conflict with the trustees of the church as this was considered a breach of promise on the part of the treasure hunter, because of this there was a transition from Common law and into Civil Law. As of writing, legal processing is still ~~in action~~ ongoing.

### Case study analysis

In this case, the circumstances each step was followed in accordance with the guidelines which are set down by the Scottish government in order to preserve their material cultural heritage. Since the 'treasure hunter' gained permission from the landowner first and when the trove was found the proper authority was contacted.

All of this followed the guidelines set down by the QLTR, although things get problematic is when the reward is handed out. The 'treasure hunter' as the one who found the treasure and contacted the authority received the reward and broke the agreement this person had with the church. The problem here is that because the hunter had permission to search the site at the time of discovery. This means that the hunter could not be punished under common law as the church could not retract their permission to dig retrospectively, therefore the hunter could only be challenged under Civil Law for breach of promise.

## Conclusion

When comparing the Treasure Trove procedures set down by the 'Queen's and Lord Treasurer's Remembrancer' (QLTR) under Scottish 'Common Law' and the '1996 Treasure Act' there are three main points to make.

The first is that for the most part, they are relatively similar in the composition. Next, the chain of responsibility under the 'Treasure Trove' legislation is much more complex than the English/Welsh treasure Act and although this may provide more oversight within the system, this also makes it more restrictive and slower.

Secondly, when defining when it comes to defining what treasure is, the 1996 Act is far more specific in defining what it is in the guidance provided whereas the Scottish legislation only says that an expert will rule over whether or not what has been found as treasure. While it is good practice to write down the definition, so that people understand the ruling, a professional will have the final say on what is and is not treasure.

Finally, in the case of both pieces of legislation, there is room for improvement in how they specify what treasure is, as they still have too much emphasis on gold and silver and the Monetary value of these two metals inadvertently ignoring other precious materials that may be apart of a treasure hoard.

## Bibliography

BBC News, 2019, *Detectorists jailed for £3m Viking hoard theft*, BBC, viewed 12 March 2020, <<https://www.bbc.co.uk/news/uk-england-hereford-worcester-50516329>>.

Dawson, N.M 2007, 'National Antiquities', *The Journal of Legal History*, Vol 28, no 1 pp 57-92.

Department for culture, media and sport. 1996. The Treasure Act 1996 Code of Practice (2nd Revision) [Accessed 25 Feb. 2020].  
<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/77532/TreasureAct1996CodeofPractice2ndRevision.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/77532/TreasureAct1996CodeofPractice2ndRevision.pdf)>.

Flatman, J. 2011, *Becoming an Archaeologist*, Cambridge: Cambridge University Press.

Hunter, J. Ralston, I. 1993. *Archaeological Resource Management in the UK An Introduction*, Gloucestershire: Alan Sutton Publishing Ltd.

Hussain, D for the Mail online 2019, *Metal detectorist who unearthed £2m haul of Viking jewellery finds himself in an unholy row with the Church of Scotland who are suing him for half the spoils*, DailyMail, viewed 11 March 2020, <<https://www.dailymail.co.uk/news/article-7466879/Metal-detectorist-unearthed-2m-haul-Viking-jewellery-sued-Church-Scotland-half.html>>.

Queen's and lord treasurer's remembrancer 2016. TREASURE TROVE IN SCOTLAND A CODE OF PRACTICE. [online] queen's and lord treasurer's remembrancer. Available at:  
<https://treasuretrovescotlandorg.files.wordpress.com/2017/01/tt-code-jan-2016.pdf> [Accessed 25 Feb. 2020].

Maritime and Coastguard Agency 2012, 2018, *Wreck and Salvage Law*, Gov.uk, viewed 12 March 2020, <<https://www.gov.uk/guidance/wreck-and-salvage-law>>.

Saville, A 2015 'Treasure Trove in Scotland', *Antiquity*, Vol. 76, no. 293, pp. 796-802.