THE MODERN LAW REVIEW
Modern Law Review
DOI: 10.1111/1468-2230.12860

A New Definition of 'Treasure' under the Treasure Act 1996: Watershed Reform or Missed Opportunity?

Chris Bevan*

A new definition of 'treasure' under the Treasure Act 1996 has been introduced by the UK Government providing for a significant change to our understanding of what legally constitutes 'treasure' in England, Wales and Northern Ireland. The Treasure Act 1996, which the new law amends, supports the preservation and protection of important archaeological finds for the benefit of the public, and this new reform represents the most substantial change to the legal framework governing 'treasure' in over a quarter of a century. This article explores this important and long-awaited reform. It examines the new definition by examining its substance and scope and by reflecting on whether this long-overdue change should be regarded as a watershed reform or a missed opportunity. In so doing, it is argued that, while the new law is welcome, it does not go far enough in meeting the criticisms and deficiencies of the old law under the Treasure Act 1996, which continue to echo today, nor does it satisfy the needs of the law of treasure for the 21st century.

INTRODUCTION

On 30 July 2023, a new definition of 'treasure'[1] came into force in England, Wales and Northern Ireland.[2] The Treasure (Designation) (Amendment) Order 2023[3] modified the existing definition under the Treasure Act 1996 which itself has been in force since September 1997. The reform introduced an entirely new, additional class of objects which are deemed legally to constitute 'treasure', namely objects which are at least 200 years old and provide an exceptional insight into an aspect of national or regional history, archaeology or culture by virtue of their rarity, location or region, or connection with a particular historical person or event.[4] This is the first time that the law in England, Wales and Northern Ireland has recognised a 'significance-based' class of treasure, as opposed to a definition based solely on precious material composition and the age of items found. The Government has rather grandiosely proclaimed that,

*Professor in Property Law, Durham Law School, Durham University. Special thanks go to the anonymous reviewers for their constructive and helpful feedback.

1 On which see John Marston and Lynne E. Ross, 'The Treasure Act 1996: Code of Practice and Home Office Circular on treasure inquests' [1998] Conv 252; Judith Bray, 'The law on treasure from a land lawyer's perspective' [2013] Conv 265.
2 Scotland has its own separate treasure regime which is outside the scope of this article.
3 Treasure (Designation) (Amendment) Order 2023/404.
4 See The Treasure (Designation) (Amendment) Order 2023, Art 2(4) amending the Treasure (Designation) Order 2002 to include an additional class of objects within the definition of treasure in the Treasure Act 1996, s 1(1).

under the reform, 'Thousands more treasures [will] be saved for the nation.'[5] This article explores this important change to the law, assessing it against an examination of the existing deficiencies within the treasure regime and examines whether the reform, touted as the biggest shakeup in the area for over 25 years, represents a watershed reform or a missed opportunity to meaningfully respond to wider concerns about how treasure is found, recorded and protected.[6] This article unfolds in three parts. The first part explores the changes made to the definition of treasure and offers a brief background to the new law. The second part assesses the new law and explores the ways in which it can be seen as a significant moment for the law of treasure. Finally, in the third part, the argument is made that the new law should not be regarded as a watershed moment at all but instead a missed opportunity to break from the problematic chains and deficiencies of the past to deliver a much-needed, modern law of treasure fit for the 21st century.

THE NEW DEFINITION OF 'TREASURE' UNDER THE TREASURE ACT 1996

The common law has long recognised that someone finding a lost object in or on land can acquire title to that object which is superior to all others except the true owner.[7] Where, however, an object found is defined as 'treasure' then, under section 4(1) of the Treasure Act 1996, any and all rights of the finder or the landowner are subordinated and title to the object vests in the Crown. Historically, the rationalisation for this can be tracked back to the reign of Henry I[8] and to the doctrine of *bona vacantia* under which property without traceable owners passed to the Crown.[9] Today, however, modern policy arguments for the vesting of treasure in the Monarch centre on protecting and preserving valuable

5 Department for Culture, Media and Sport and Lord Parkinson of Whitley Bay, 'Thousands more treasures to be saved for the nation as rules about discoveries are changed' (Press Release, 18 February 2023) at https://www.gov.uk/government/news/thousands-more-treasures-to-be-saved-for-the-nation-as-rules-about-discoveries-are-changed [https://perma.cc/97RW-7JEX].

6 The new class arrives at a fascinating time globally with the debate raging as to ownership and repatriation of items of cultural significance and value such as the Elgin Marbles and the Koh-I-Noor and the controversy surrounding removal of statues of historical figures including slave traders. There is also a growing public interest in treasure as epitomised by the popularity of TV shows including *The Detectorists* and *Digging for Britain*. In the UK, a range of regulations exist governing the export of cultural property outside the definition of treasure including The Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA), applying 'the Waverley Criteria' to determine if goods can be exported or should be 'saved for the nation': Arts Council England, 'Reviewing Committee' at https://www.artscouncil.org.uk/supporting-arts-museums-and-libraries/supporting-collections-and-cultural-property/reviewing-committee-0 [https://perma.cc/5PX6-LEGY].

7 This was laid down in the famous case of *Armory* v *Delamirie* (1722) 93 ER 664. A complex set of rules has developed to determine who owns items found in and on land, see *Elwes* v *Brigg Gas Co* (1866) 33 Ch D 562; *Parker* v *British Airways Board* [1982] QB 1004.

8 See discussion in George Hill, *Treasure Trove in Law and Practice from the Earliest Time to the Present Day* (Oxford: Clarendon Press, 1936) 187.

9 On the law of *bona vacantia*, see Andrew P. Bell, 'Bona Vacantia' in Norman Palmer and Ewan McKendrick (eds), *Interests in Goods* (London: Lloyds of London Press, 1st ed, 1993) 207.

heritage items and saving them from the ravishes of sale on the open (and sometimes criminal) market. Instead, items of national interest are purchased by museums which exhibit the treasure for the wider public good.

To fully understand the importance of the new law, it is necessary to consider very briefly the existing framework under the Treasure Act 1996 that the new law amends. The Treasure Act 1996 which came into force in 1997 after multiple failed attempts to change the law and several false dawns,[10] replaced the much maligned and bemoaned common law principles of treasure trove[11] with a new statutory framework for determining whether items found on land were deemed 'treasure' and, if so, the consequences of this for their ownership. Under the old trove principles, as distilled by Chitty,[12] for an object to amount to 'treasure' it had to satisfy three requirements that came to be regarded as indiscriminate and unworkable, administratively and practically:[13] first, that the object was made up of a large percentage of precious metal; secondly, that the object had been deliberately concealed by the owner with the intention that the item would be retrieved at a later time; and thirdly, that the owner or heirs to the object were unknown. By contrast to the arbitrariness of treasure trove – exemplified by the three seminal cases of *Attorney General* v *Trustees of the British Museum* (1903);[14] *Attorney General of the Duchy of Lancaster* v *G E Overton (Farms) Ltd* (1982)[15] and the Sutton Hoo ship burial[16] – section 1 of the 1996 Act introduced a definition of treasure that was much broader

10 See Lord Talbot de Malahide's Private Member's Bill of 1858 (which failed due to concerns over infringement of private property rights, 'technical difficulties' and disquiet from the Treasury); and the Antiquities Bill of Lord Abinger in the House of Lords in 1981. In 1987, a review into reporting of archaeological finds was announced by Lord Skelmersdale, and later the same year a bold and wide-ranging Law Commission report was published: Law Commission, *Treasure Trove: Law Reform Issues* (1987). The final push for reform came largely from pressure groups lobbying parliament such as the Surrey Archaeological Society after sites where valuable finds had been discovered were looted by criminals and one site, a Romano-Celtic temple in Surrey, destroyed.

11 Treasure trove literally means 'treasure that is found' and derives from the French 'trésor trouvé.' For a detailed examination of treasure trove beyond the scope of this article, see Bray n 1 above, 267-270; Anthony G. Guest (with the assistance of Paul Matthews), *The Law of Treasure* (Oxford: Archaeopress Archaeology, 2018); and generally Hill, n 8 above.

12 Joseph Chitty, *Prerogatives of the Crown* (London: Joseph Butterworth & Son, 1820).

13 As Emden famously expressed: '[T]he practical difficulties in … administration [of treasure] which may arise are due not so much to the complexity attaching to particular cases as to the haze in which the origin of the law rests, and to the casual manner in which the rules have taken shape': Cecil Emden, 'The Law of Treasure Trove Past and Present' (1926) 42 LQR 368.

14 [1903] 2 Ch 598 – the case highlighted the complexity of the 'concealment' requirement with Farwell J signalling the court would 'presume' objects had been concealed and, thereafter, the burden of proof would shift to the finder to rebut the presumption; for a detailed history which space will not permit here, see Neil M Dawson, '"National Antiquities" and the Law' (2007) 28 J Leg Hist 57.

15 [1982] [1982] Ch 277; [1982] 1 All ER 524 which highlighted the lack of a universally recognised, coherent view of what constituted sufficiently high precious metal content.

16 This decayed Anglo-Saxon ship, discovered in 1939 in Suffolk, described as 'the most impressive medieval grave in Europe' (British Museum, 'The Anglo-Saxon ship burial at Sutton Hoo' at https://www.britishmuseum.org/collection/death-and-memory/anglo-saxon-ship-burial-sutton-hoo [https://perma.cc/V6R5-4ZAF]) was held not to be treasure as it was 'grave goods' ie not hidden with the requisite intention of retrieval – the so-called *animus revocandi*. On Sutton Hoo, see generally Martin Carver, *Sutton Hoo Burial Ground of Kings?* (London: British Museum Press, 2000).

and more comprehensive. Section 1 draws a distinction between coinage and non-coinage. Any object at least 300 years old when found that is not a coin but has a metal content of at least 10 per cent precious metal by weight is treasure.[17] Any object at least 300 years old that, when found, is one of at least two coins in the same find that are at least 300 years old and have at least 10 per cent precious metal content, or, when found, is one of at least 10 coins that is at least 300 years old is also treasure.[18] Additionally, 'treasure' includes any object that is found with other items that are deemed treasure.[19] Objects are part of the 'same find' if they are (i) found together; (ii) if they were left together but were found at different times; or (iii) they were found in different places but they had previously been together but had become separated before being found.[20] The idea is to ensure that the integrity of items of treasure is not undermined and that collections of important artefacts are not fragmented.[21]

The definition of treasure under the 1996 Act was subsequently amended under the section 2(1) power via the Treasure (Designation) Order 2002[22] following a review of the operation of the 1996 legislation in 2001 by the Department of Culture, Media and Sport. While criticisms of the existing definition were wide and deep, the Government only took forward a very limited reform to section 1 of the 1996 Act. The 2002 Order, essentially, enlarged the definition of treasure to include just two new, additional types of finds, namely: (i) objects which are one of at least two base metal objects (other than coins) from the same find which are of prehistoric date; and any non-coin of prehistoric age, any part of which is gold or silver.[23] This meant that, for the first time, bronze objects and objects with gold or silver decorative finishing were designated as treasure. Other significant changes wrought by the 1996 legislation were that it was made plain in legislation for the very first time that items deemed 'treasure' vested in the Crown[24] and that discretionary rewards could be paid to finders and landowners on whose land treasure was found.[25] The Act also introduced a new duty to notify the coroner within 14 days of items that finders had reasonable grounds for believing might be treasure[26] and failure to notify the coroner within this time became a criminal offence.[27]

On one view, the existing law of treasure under the 1996 Act has fared pretty well. In the decade since its implementation, the annual number of objects found to be treasure increased 1,500 per cent from 79 objects in 1997 to 1,267 in 2017. The number of items declared as treasure now regularly reaches above

17 Treasure Act 1996, s 1(1)(a)(i).
18 Treasure Act 1996, s 1(1)(a)(ii); s 1(1)(a)(iii).
19 Treasure Act 1996, s 1(1)(d). It is the responsibility of the coroner to determine whether an item found constitutes part of the 'same find' as another as part of an inquest into the status of objects found. In making this determination, the coroner may take evidence from the finder themselves, from local archaeologists, museum curators or other relevant parties.
20 Treasure Act 1996, s 3(4); and Department for Culture, Media and Sport, *Treasure Act 1996: Code of Practice (3rd Revision)* (2023) at [21]-[27].
21 This was a key concern of Lord Abinger when presenting his 1981 Bill to the House of Lords.
22 SI 2002/2666.
23 Prehistoric is defined as 'dating from the Iron Age or any earlier period:' *ibid*, Art 2.
24 Treasure Act 1996, s 4(1).
25 Treasure Act 1996, s 10.
26 Treasure Act 1996, s 8(1); s 8(2).
27 Treasure Act 1996, s 8(3).

1,000 annually.[28] Yet, despite this, a worryingly large number of discovered items of archaeological importance are thought never to be reported or are sold to private collectors. As a consequence, calls for reform to the 1996 Act's definition of treasure and modernisation of the treasure process more generally have been growing louder, most notably from the active metal detectorist community and the British Museum.[29] This was further stirred by media attention when discoveries such as important Roman objects including the Ryedale Hoard and the Birrus Britannicus figurine fell outside the existing definition. While these objects were nevertheless, and fortuitously, acquired by museums in York and Chelmsford respectively,[30] these cases served to spotlight the deficiencies of the existing framework and the risk of potential loss of culturally important items from the public realm. For this reason, in 2019, the UK Government launched a public consultation[31] exploring reform to the definition of 'treasure' and its accompanying Code of Practice. In 2020, the UK Government released its response to the consultation[32] before, in March 2023, the Treasure (Designation) (Amendment) Order 2023 was laid before Parliament, coming into force on 30 July 2023.[33] So, what is the new definition?

The reforms extend to England, Wales and Northern Ireland and do not apply in relation to objects found before the 2023 Order came into force.[34] The 2023 Order amends the Treasure (Designation) Order 2002 to include an additional class of objects within the definition of treasure in section 1(1) of the Treasure Act 1996 and, additionally, to exclude two classes of objects from that definition. Under the newly expanded definition, any object, any part of which is metal, and is at least 200 years old when found, will be deemed to be treasure if:

(a) it provides an exceptional insight into an aspect of national or regional history, archaeology or culture by virtue of one or more of the following:
  (i) its rarity as an example of its type found in the United Kingdom
  (ii) the location, region or part of the United Kingdom in which it was found, or

28 Department for Digital, Culture, Media and Sport, 'Revising the definition of treasure in the Treasure Act 1996 and revising the related codes of practice: Public consultation' (2019) 14; the figure is over 1,000 per year for the eighth year in a row: Department for Culture, Digital, Media & Sport, 'Official Statistics, Reported Treasure Finds 2020/21 Statistical Release' (3 November 2022).

29 Alan Tamblyn, General Secretary of the National Council for Metal Detecting (NCMD) claims that 'over 96% of all archaeological finds reported by the public are discovered from the metal detecting community' (in response to the 2019 Public Consultation on revising the definition of treasure: *ibid*;). See also comments of Professor Michael Lewis, Head of Portable Antiquities and Treasure at the British Museum in response to 2019 consultation, *ibid*.

30 The Yorkshire Museum acquired the Ryedale Hoard, and the Chelmsford City Museum acquired the Birrus Britannicus figurine.

31 n 28 above.

32 Department for Digital, Culture, Media and Sport, 'Revising the definition of treasure in the Treasure Act 1996 and revising the related Codes of Practice – Government response to public consultation' (2020).

33 Along with a revised *Treasure Act 1996: Code of Practice (3rd Revision)* n 20 above. Under the 1996 Act, s 2(1) the Secretary of State is given the power to designate objects as treasure and it is under this power that the new law has been enacted.

34 The Treasure (Designation) (Amendment) Order 2023/404, Art 1(2); Art 1(3).

(iii) its connection with a particular person or event, or

(b) although it does not, on its own, provide such an insight, it is, when found, part of the same find as one or more other objects, and provides such an insight when taken together with those objects.[35]

In short, the reform inserts a new 'significance-based class of treasure'[36] into the existing definition of treasure. The Revised Code of Practice accompanying the amended Treasure Act 1996 gives further detail on what is understood by terms such as 'rarity', 'location of the find' and 'connection with a particular person or event'.[37] An object may be considered rare, for example, if it expands the known UK *corpus* of examples of a particular object type, form or art-style and provides an exceptional insight into them; if it has a high level of preservation or completeness in comparison to other known examples, or if, as a result of the unusual way the object was used, treated or modified in the past, it provides an exceptional insight into aspects of national or regional history, archaeology or culture.[38] The 'location of the find' criterion will be relevant where an object provides an exceptional insight into the specific history or culture of a place due to the location in which it was discovered.[39] The 'connection with a particular person or event' criterion will be activated where the object is closely associated with a particular historical figure or event of importance and provides a significant insight into the understanding of that person or event. The Code notes the need for 'strong positive evidence of such an association'[40] and that objects with only a tenuous association will not normally be considered treasure.

In addition, two classes of objects are newly and expressly excluded from the definition of treasure: first, any object subject to the faculty jurisdiction of the Church of England and held or controlled by an ecclesiastical corporation, Parochial Church Council or Diocesan Board of Finance; and, secondly, any objects found in or under a cathedral church or within its precinct.[41] These exclusions beg two questions: first, why exclude Church of England finds from the regime at all, and, secondly, why enact this express exclusion now? Interestingly, right from the inception of the Treasure Act 1996, the Government made a 'commitment to the Church'[42] as well as various, associated undertakings that it would bring forward legal provisions to exempt objects found in consecrated places and on church land from the Treasure Act regime. Yet, this excluded category has not been put on a firm statutory footing until now. The existence of a special rule for what we might call 'church finds' is traceable back to the Dark Ages or Early Medieval Period and certainly by 1140AD it had been noted under the *Leges Edwardi Confessoris (Laws of Edward the Confessor)* that '*Thesauri de*

35 *ibid*, Art 2(4).
36 *Treasure Act 1996: Code of Practice (3rd Revision)* n 20 above, 14.
37 *ibid*, 15-16.
38 *ibid*, 15.
39 *ibid*.
40 *ibid*, 15-16.
41 n 35 above, Art 2(5).
42 See Department for Culture, Media and Sport, *Treasure Act 1996: Code of Practice (2nd Revision)* (2002 (updated in 2007)) at [18].

terra regis sunt, nisi in ecclesia uel in cimiterio inueniantur' ('treasures from the earth belong to the King, unless they be found in a church or a cemetery').[43]

Flowing from this, and perhaps the most straightforward and practical justification for the exemption, is that the Church is the established church in England,[44] and has long had its own distinct body of law and legal system, ecclesiastical law, with detailed rules and regulations dealing with 'movable articles' connected to churches, cathedrals and church land including burial grounds – for example, under the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, the Faculty Jurisdiction Rules and Care of Cathedrals Measure 2011 and Care of Cathedral Rules. Until now, the Church finds 'problem' (raised repeatedly by the Church and others) was managed effectively and pragmatically[45] through the above-mentioned government undertakings but, given recent renewed focus on the treasure regime, and with consultation for a new definition of treasure underway, the time was felt right to offer clear resolution to the issue, to 'prevent the confusion caused by having finds subject to two legal processes.'[46]

Concerns at the potential consequences of the church exemption might be assuaged by the introduction of safeguards that have been agreed with the Church of England that all important finds will be reported and recorded publicly.[47] Moreover, and perhaps more importantly, in the event that Church finds that would have been treasure under the definition of treasure are offered by the Church for sale, the Church has agreed that those items will be offered first to a national, regional or local museum. This offer of first refusal will ensure items of interest and value will not be lost to the private market.[48] Interestingly, however, the new church exclusions only apply to finds connected to the Church of England. On one view, this is problematic. Why is the Church of England treated differently (preferentially, some may say) to other faiths? This can chiefly be explained on the basis of the status of the Church of England as the established church in the country and long-standing deference paid to it in law and parliament. Fortunately, finds connected with other churches and faiths do not go unregulated and are instead governed by the treasure regime in the same way as all other non-Church finds. The Revised Code of Practice indicates in a key statement that finds made in connection with non-Church

43 'Leges Edwardi Confessoris' at [14] in Bruce R. O'Brien (ed, tr) *God's Peace and King's Peace: The Laws of Edward the Confessor* (Philadelphia, PA: University of Pennsylvania Press, 1999) 172.

44 By 'established' it is meant that this is the church recognised in law as the 'official church' of the state and nation supported by civil authority.

45 For discussion, see Anthony G. Guest, 'Treasure Found on Consecrated Ground' (2018) 20 *Ecclesiastical Law Journal* 185.

46 n 28 above at [118].

47 Under the Portable Antiquities Scheme (PAS) – which is run by the British Museum (in partnership with Amgueddfa Cymru – Museum Wales) and through a network of national and local partners that record archaeological objects found by members of the public. In addition, the Church also issues regular and detailed guidance on how it handles moveable items, their status and governance: see for example guidance issued by the Cathedral Fabric Commission for England, *Cathedral Inventories* (2021) at https://www.churchofengland.org/sites/default/files/2021-09/CFCE_Cathedral_Inventories_Guidance.pdf [https://perma.cc/C4H6-AADT].

48 *Treasure Act 1996: Code of Practice (3rd Revision)* n 20 above at [44].

of England faiths will 'generally be offered to accredited museums connected with the faith'.[49]

ASSESSING THE NEW DEFINITION OF TREASURE: A WATERSHED MOMENT?

The changes to the definition of 'treasure' introduced by the UK Government represent the most wide-ranging reform to the law of treasure in over 25 years and arguably the single biggest development in the legal conceptualisation of treasure for hundreds of years in jettisoning a definition based solely on material composition and age criteria and by inserting an additional, significance-based test. In this way, this is certainly a major moment for the legal framework on treasure. In assessing the reforms, then, this section considers the advantages of the new law and, in so doing, reflects on how it might be construed as a watershed moment.

Response to the reforms from interested groups and the archaeological and museum sector has been extremely favourable and the reforms have caught media attention.[50] The introduction of a significance-based class of treasure is certainly, on one view, a watershed moment for the law in that it will bring far greater numbers of objects within the protective blanket of the treasure regime and into the public sphere. As Arts and Heritage Minister Lord Parkinson of Whitley Bay has noted of the reform:

> There has been a huge surge in the number of detectorists – thanks in part to a range of TV programmes – and we want to ensure that new treasure discoveries are protected so everyone can enjoy them. Archaeological treasures offer a fascinating window into the history of our nation and the lives of our ancestors. We are changing the law so that more artefacts uncovered by archaeologists and members of the public can go on display in museums rather than ending up in private hands. This will make sure they can be studied, admired and enjoyed by future generations.[51]

Welcomed by the British Museum and National Museum Wales, which play a key role in the administration of the Treasure Act 1996 and treasure process more broadly, even popular TV historians such as Dan Snow have acknowledged the importance of the changes.[52] Crucial to the smooth-running of the

49 *ibid* at [46].

50 See among others, the response of the Museum Association: Geraldine Kendall Adams, 'Treasure Act reform will allow museums to acquire thousands more finds' *Museum Association* 21 February 2023 at https://www.museumsassociation.org/museums-journal/news/2023/02/treasure-act-reform-will-allow-museums-to-acquire-thousands-more-finds/ [https://perma.cc/545K-TVPB]; 'Treasure Act: Government to change legal definition of treasure' *Sky News* 18 February 2023 at https://news.sky.com/video/treasure-act-government-to-change-legal-definition-of-treasure-12813852 [https://perma.cc/6C6L-CXUR]; 'Change to treasure law "will keep more artefacts in UK museums"' *The Guardian* 18 February 2023 at https://www.theguardian.com/uk-news/2023/feb/18/change-to-uk-treasure-law-will-keep-more-artefacts-in-museums [https://perma.cc/55BB-JUPC].

51 n 5 above.

52 Comments reported in DCMS Press Release *ibid*.

treasure process (and the new definition) is buy-in from metal detectorists who are, far and away, those most likely to be the discoverers of objects of treasure. It is therefore noteworthy that the reforms have the full support of the National Council for Metal Detecting (NCMD) whose General Secretary Alan Tamblyn has underscored the Council's full backing of the new significance category 'and the increased protection it gives to our Nation's most important new finds.'[53]

Theoretically, under the new law, never again will totemic examples of precious items such as the Crosby Garrett Helmet, the Ryedale Hoard and Birrus Britannicus figurine fall outside the definition of treasure. Equally, the new definition will embrace objects composed of non-precious metals such as the Bronze Age Rudham Dirk, a ceremonial dagger discovered in Oxborough, Norfolk, and currently exhibited at Norwich Castle Museum which is not presently designated 'treasure' due to its metal composition.

A further and major advantage of the reforms is that it brings our law more closely in-line with many other jurisdictions around the world.[54] In particular, it represents a move away and retreat from an overly narrow focus on a definition based on age and precious metal composition criteria towards an acknowledgment of the public interest in framing the definition of treasure in such a way as to allow new facets of our regional and national story to be investigated and told. Under the pre-existing definition, for objects to be deemed treasure they had to fall within one of the series of complex and fiddly prerequisites and circumscribed categories in section 1 of the Act which often depended on whether the item was a coin; if so, how many coins were found together; and questions of the sufficiency of precious metal composition or 'prehistoric' origin. Although the new law does not replace these existing categories, it nevertheless supplements them with a new, broader, more contextual significance class which should, in many cases, allow for sidestepping of some of the thornier elements of section 1.

While the existing definition of treasure had the benefit of being clear-cut and unambiguous (if convoluted), there is reason to think that the new significance category will, furthermore, allow for more sensitive and responsive assessments of the true value, place and status of objects rather than arbitrary designations.[55] This could, consequently and practically, lead to important efficiencies in the treasure system because, presently, large numbers of objects covered by the definition of treasure are extremely common (ie unremarkable), are of little cultural interest or are in poor condition. In a system in which emphasis is placed on significance rather than percentage of gold or silver composition, such insignificant items could be disposed of or sold quickly without burdening the wider

53 The NCMD has also produced a helpful 'guide' to the changes to the law to assist those finding objects with how the law is changing and how the new definition will work in practice, see 'The changes to treasure law in England, Wales and Northern Ireland' at https://www.ncmd.co.uk/wp-content/uploads/2023/02/Significance.pdf [https://perma.cc/BSP6-TQAH].

54 Including closer to the position in Scotland, Ireland, France, Belgium and the Netherlands whose definitions of treasure already engage aspects of a 'significance' test.

55 It matters, for example, under Treasure Act 1996, s 1, whether a coin found is part of a group of two or more coins or otherwise one of 10 discovered depending on metal composition: see Treasure Act 1996, s 1(1)(a).

treasure scheme. Moreover, the broad and inclusive, significance-based category should prevent the 1996 Act from being bogged down by the incremental introduction of a series of subsequent, circumscribed categories over time which would serve only to complicate and obscure the central purpose of the legislation even further. There is, in addition, an inherent simplicity and comprehensibility to a conceptualisation of treasure based on an object's inherent significance, and the insights it will provide. This is true for both the public discovering objects but also for Finds Liaison Officers (FLOs)[56] and museums working with items of treasure. It might then be argued that the new law is closer to the public perception and understanding of 'treasure' than the pre-existing legal position. This gives the law greater transparency, legal certainty and arguably greater power. At the same time, the definition, even though significance-based, retains a degree of qualification (for example around rarity, location and connection criteria) to ensure that only the most important archaeological finds fall within scope. A more open-textured, unqualified definition could result in a large number of objects of little or limited cultural, historical and archaeological value flooding the treasure system with minimal, meaningful return. Quite apart from this, the new definitional category also means that the Treasure Act becomes more closely aligned with the majority of heritage protection legislation and policy in the country which mostly avoids specific time frame or age-related determinants and instead are already deeply grounded in questions of significance including assessments made by museums when determining items for their collections. It is also better aligned with much of the work of Historic England whose focus, for example, in identifying and designating heritage assets is firmly on the significance, special interest and value of those assets.[57]

The revised Code of Practice accompanying the new law, additionally, makes key amendments to various administrative aspects of the treasure process including helpful 'expected timeframes' for each stage of the treasure journey which presently can take over 12 months from an item being confirmed as treasure to being acquired by a museum.[58] While these changes are outside the scope of this article, there is a clear intention to both expand the definition of treasure and, simultaneously, streamline and accelerate the treasure process which is to be welcomed.

THE NEW DEFINITION OF TREASURE: A MISSED OPPORTUNITY

Despite the advantages and novelty that the new law evidently offers as the foregoing section has outlined, there are, however, significant risks and

56 Finds Liaison Officers (FLOs) are often the first point of contact for the finder of an object that might be treasure. They are based right across the country and their role is to record archaeological finds.

57 See Historic England, 'Identification and Designation of Heritage Assets' at https://historicengland.org.uk/advice/hpg/has/ [https://perma.cc/WP98-849X]; see, for example, the definition of significance in Ministry of Housing, Communities & Local Government, *National Planning Policy Framework* (June 2019) Annex 2: Glossary.

58 *Treasure Act 1996: Code of Practice (3rd Revision)* n 20 above, 24-25.

disadvantages to the new law which should not be overlooked. An argument can be made, therefore, that the reforms should, in fact, be seen as a missed opportunity to deliver a radical vision of a truly modernised and efficient treasure regime. A series of observations and criticisms can be made that illustrate this missed opportunity and these are explored in this section.

First, the reforms, while admitting a new category of treasure, retain all the old classes of treasure under section 1 of the Treasure Act 1996. Thus, the deficiencies of the law under the 1996 Act persist unaddressed. As such, while the definition of treasure enacted under the 1996 Act certainly did respond to two key problems with the approach under inadequate principles of treasure trove (by removing the requirement for deliberate concealment and clarifying the precious metal condition), the definition in section 1 remained notably constrained, narrow, and tightly delineated. The principal deficiency in the definition in section 1, as noted, has long been its sharp focus on two key qualities or prerequisites before an object is designated as 'treasure'; namely, arbitrary, cut-off dates (200 years or 300 years)[59] and fixation on material composition of objects with the requirement for 10 per cent precious metal composition.[60] Even under the extended definition introduced by the 2002 Order, similar limitations exist: with references to the requirement for objects dating to the 'prehistoric age.'[61]

Under the new law, despite its progressive turn towards a significance approach, the same old problems remain baked into the regime, as the old categories of treasure persist. This preoccupation with composition and date in England, Wales and Northern Ireland sits in marked contrast to the practice and legal frameworks in most other countries of the world. Age-related criteria are very rarely found in countries outside our own,[62] with most adopting broader, inclusive, descriptors of 'treasure'. By way of example, in Scotland,[63] an object's 'significance is determined by the potential of any portable antiquity to contribute to the cultural record of Scotland,' and reference is made to 'national importance'. In the Isle of Man, under the Manx Treasure Act 2017, treasure is defined as an object '(i) so closely connected with Manx history and national life that its loss would be a misfortune; (ii) of outstanding aesthetic importance; or (iii) of outstanding significance for the study of any branch of Manx art, learning or history.'[64] In the Republic of Ireland, the legal framework is centred on 'archaeological objects' which are defined in legislation as, 'any chattel … which by reason of the archaeological interest attaching thereto or of its association with any Irish historical event or person has a value substantially greater

59 See Treasure Act 1996, s 1(1)(a); s 1(1)(b).
60 See Treasure Act 1996, s 1(1)(a)(i).
61 See Treasure (Designation) Order 2002 (SI 2002/2666), Art 3.
62 A notable exception here is Norway, on which see Ghattas H. Sayej, 'Norwegian Archaeological Heritage: Legislation Vs. Reality' in Stuart Campbell, Liz White, and Suzie Thomas (eds), *Competing Values in Archaeological Heritage* (New York, NY: Springer, 2019) 25.
63 For more on the approach in Scotland, see *Treasure Trove In Scotland A Code Of Practice* (July 2014 (as revised to 13 January 2016)) at https://treasuretrovescotland.co.uk/sites/default/assets/File/tt-code-jan-2016(1).pdf (last visited 10 October 2023).
64 For more on the position in the Isle of Man, see the Manx Museum and National Trust Act 1959 and Treasure Act 2017; Allison Fox, 'The Lord's prerogative and an act of trust: Portable antiquities in the Isle of Man' [2013] *Internet Archaeology* 33.

than its intrinsic (including artistic) value."[65] Finally, in Belgium, regard is had to the 'archaeological significance' of objects found.[66] Retention of age and metal composition criteria in our law leaves us at odds with modern understandings of treasure and an outlier when compared to near neighbours' approaches to treasure. A number of high-profile, culturally significant objects have already been lost as a result of the narrowness of the definition of treasure in the 1996 Act making retention of the existing categories of treasure troubling. Perhaps the most prominent example is that of the Roman Crosby Garrett Helmet (one of only three Roman soldier helmets ever to have been found in the UK),[67] which was discovered by a metal detectorist in 2010, was sold at auction for £2.3 million to a private bidder and has since been lost to the public. The helmet was not made of precious metal (it had a copper alloy composition), nor was it part of another find that included objects that amounted to treasure, nor was it part of a group of 10 coins. The helmet therefore slipped outside the then existing definition of treasure. By contrast, fragments of a Roman parade helmet discovered in Leicestershire in 2000, painstakingly restored and now known as the Hallaton Helmet,[68] were held to amount to treasure simply as a result of an exceptionally fine sheet of silver that covered the object and minute flecks of gold leaf. On this basis, the helmet met the threshold for 'treasure.' Other finds have also followed a similar path to the Crosby Garrett Helmet including a statue of a dog dating to the fourth century found in 2017 in Gloucestershire. While the statue was said to be of outstanding archaeological importance, it was made of lead and so did not qualify under the legislation as 'treasure.' It was sold in 2019 for £137,500. Other anomalies that existed under the 1996 Act also go unaddressed by the new law and will continue to bite. For example, under section 3(4) of the Treasure Act, objects not composed of precious metal, unless found with other items of treasure, would slip completely outside the definition.[69] This rather convoluted provision leads to unpredictable results that are difficult to explain whereby the legal status of an object is determined by the happenstance of where it had been discarded or where, by some fortuitous coincidence, it becomes located. Treasure status was therefore determined by the essential randomness of where items are laid to rest and how they are discovered.

65 For more, see the National Monuments Act 1930 and subsequent amendments of 1987 and 1994; Tracy Ireland, Steve Brown and John Schofield, 'Situating (in)significance' (2020) 26 *International Journal of Heritage Studies* 826.

66 For more, see Heritage Decree 2015, Pieterjan Deckers and others, 'MEDEA: Crowd-Sourcing the Recording of Metal-Detected Artefacts in Flanders (Belgium)' (2016) 2 *Open Archaeology* 264.

67 The other two Roman helmets are the Newstead helmet, discovered in 1905 (currently in the Museum of Antiquities in Edinburgh) and the Ribchester helmet, discovered in 1796 (currently in the British Museum, London).

68 The Hallaton Helmet is exhibited at Market Harborough Museum.

69 This question of 'association' is governed by the Treasure Act 1996, s 3(4) which notes that an object is regarded as part of the same find if (i) they are found together; (ii) the other object was found earlier in the same place where they had been left together; or (iii) the other object was found earlier in a different place, but they had been left together and had become separated before being found.

Therefore, while introduction of the new 'significance' class of treasure in the new law is doubtless a welcome move, it is regrettable that the reforms do not go further in removing entirely from the 1996 legislation the problematic emphasis placed on age, and metal composition as determinants of treasure or address the 'association' provisions. Put bluntly, the 1996 regime was already out-of-step with the challenges of contemporary archaeology in Britain and the deficiencies of the existing regime remain largely untouched by the new law.

Secondly, the transplanting of criteria such as 'significance', 'rarity' and 'exceptional insight' into the legal definition of treasure, imports a high degree of subjectivity, discretion and conceptual murkiness into what was, prior to these reforms, a mostly mechanistic and thus more objective determination. A crucial piece of the puzzle in the functioning of the treasure process is the Portable Antiquities Scheme (PAS). The PAS was established[70] to support enactment of the 1996 Act with the aim of encouraging and facilitating the recording of archaeological objects discovered by members of the public.[71] Initially rolling out as six pilot schemes across the country in 1997, an FLO was installed in each pilot area. Today, the PAS comprises a network of 40 locally based FLOs (whose role it is to liaise with the public, identify, research and record discoveries on the PAS online database – which is free to access), the PAS Central Unit (based at the British Museum), National Finds Advisers and volunteers.[72] Without in any way wishing to impugn the expertise or commitment of FLOs and others in the treasure process, questions might be asked as to the consistency and availability across the whole country of specialist, local and regional archaeological and, in particular, historical knowledge necessary to navigate the new 'significance' category of treasure. While all concerned are surely deeply committed to their work and highly skilled, with resources so stretched, this is surely a legitimate concern.[73] At the same time, the new law misses the opportunity to appoint a dedicated Coroner for Treasure. Instead, the status quo is retained whereby decisions on the legal status of objects of potential treasure remain with local FLOs and ultimately are reserved to local coroners across the

70 See Department of National Heritage (DHN) *Portable Antiquities: A Discussion Document - Art Antiquity and Law* (1996).

71 For more on the history, role and critique of the PAS engaging Hodder's entanglement theory, see Neil Brodie, 'What is this thing called the PAS? Metal-detecting entanglements in England and Wales' (2020) 30 *Revista d'Arqueologia de Ponent* 85; Katherine Robbins 'Portable Antiquities Scheme: A Guide for Researchers' (2014) at https://finds.org.uk/documents/guideforresearchers.pdf [https://perma.cc/5ZHK-G9J5]; and the PAS website at www.finds.org.uk/about [https://perma.cc/EMV8-5KNF].

72 The PAS online database has to date (as at end of May 2023) recorded 1,646,222 objects, see https://finds.org.uk/database [https://perma.cc/VX8D-S2DC].

73 Related concerns around availability of expertise were echoed in comments contained in a report into reform of the definition of treasure produced by Heyworth Heritage, commissioned by the Department of Culture, Media and Sport in 2021: Gill Chitty, Adam Daubney and Mike Heyworth, 'Research to Inform a Revised Definition of Treasure' (Heyworth Heritage for DCMS, 2021) at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1135947/Heyworth_Report.pdf [https://perma.cc/UJ7U-D8FK] (Heyworth Heritage report).

country who, with respect, may not have the archaeological expertise[74] to adjudicate on matters pertaining to archaeological significance, insight and rarity as the new definition demands. This view is supported by evidence over the last decade which reveals that, in some cases, local coroners have taken as long as two years to reach determinations on the treasure status of objects. This is far too slow. Furthermore, many coroners have been found to be unfamiliar with the regulations of the Treasure Act. One can only expect this situation to worsen under the new law and especially so in the absence of the appointment of a dedicated Coroner for Treasure who could speed up the process and relieve pressure elsewhere in the system.

Thirdly, and on a practical level, the insertion of a significance-based test may also be seen as heavy-handed and overly burdensome for the public, amateur and professional metal detectorists who may interpret the new category as introducing mandatory reporting of finds or, perhaps conversely, as giving detectorists carte blanche to make their own determinations 'in the field' as to whether items might meet the significance threshold. This could damage the trust and confidence that detectorists have in the treasure process more broadly and could potentially lead to a loss of objects being reported if items are wrongly discarded as insignificant. The result could, contrary to the intentions of the reforms, actually be a reduction in reporting and deprivation of items of treasure from the public sphere. To date, under the 1996 Act, determining what is and what is not treasure has been relatively straightforward (if intricate) given the strictness, objectivity and precision of the existing definition. However, by instituting this new, inclusive category, the waters will unavoidably be muddied making judgments on the legal status of finds more contested and complex for all concerned from detectorists and archaeologists to FLOs and coroners. Relatedly, there is a real prospect of conflicts of interest arising under the new regime with, for example, FLOs, a large proportion of whom are employed in museum services, being asked to determine the significance of objects that they will later wish to acquire for their own museums.

Fourthly, one might question if the bar has been set too high by the new law in its requirement that objects provide an 'exceptional insight into an aspect of national or regional history, archaeology or culture.' Surely, there is a possibility that this high threshold will exclude objects that are particularly valuable in their given region or local context but would not otherwise reach the requisite degree of 'insight' or 'exceptionality' (or not readily be recognised as such) and in so doing result in the treasure regime failing to capture a sufficient degree of regional, cultural diversity. In this way, and perversely, the new definition could actually prove to be counter-productive in its efforts to protect and preserve culturally important finds.

Fifthly, on the matter of funding. This newly expanded definition inevitably places additional burdens on an already creaking treasure system, yet no sustainable plan for funding of the treasure system to support the reforms has

74 See for example the discussion in Mike Heyworth, Director, Council for British Archaeology, 'Changes to the Treasure Act and a review of its practice code are long overdue' [2011] *British Archaeology* 1357.

been drawn up. With the surge in popularity of metal detecting, including an explosion in social media and regular reports of so-called 'treasure hunting' rallies,[75] the expansion in the definition will fuel greater interest in what is fast becoming a burgeoning 'detectorist industry.' Daubney and Nicholas have identified the 'paucity of information and data about illicit metal detecting' amid growing reports of 'heritage crimes.'[76] The new law will put enormous resource pressures on the PAS, local FLOs, coroners and ultimately museums. As Bland explains, 'Perhaps the biggest problem for PAS is its own success: it perpetually struggles to record all the finds that it can.'[77] Latest statistics reveal that, in 2022 alone, 31,388 individual artefacts were reported to FLOs as potential treasure (with ultimately 1,071 being designated as treasure).[78] The number of reported finds could increase exponentially under the new definition.[79] Even before the new reforms came into force, FLOs and wider treasure agencies were, 'working at capacity, and therefore unable to record all finds offered for recording.'[80] Without substantial, additional funding from government, the system will be unable to cope. There is therefore an urgent need for a large-scale increase in the capacity of the whole treasure process if it is to manage the transition to the new definition. Almost a quarter of all respondents to the Government's consultation on treasure highlighted the need for long-term funding of the PAS in order to secure the sustainability of the treasure process. Yet this funding has not yet been forthcoming. Furthermore, the absence of any credible plan accompanying the reforms as to how insignificant finds might be speedily and effectively weeded out is concerning. Without this, the key benefits of the new definition will be undermined or go unrealised and the already sluggish and onerous system may become paralysed and overwhelmed.

Sixthly, the reforms do not take account of nor respond to the delicate but vital inter-relationship between metal detectorists and archaeologists. Fascinating research by Campbell,[81] Thomas[82] and others has traced this, at times, awkward and fractious inter-relationship noting the parties' different motivations, perspectives and perceptions of treasure and the treasure process. Each group val-

75 These are events where amateur detectorists descend on sites of potential archaeological significance damaging valuable archaeological activity and assets.

76 Adam Daubney and Louise E. Nicholas, 'Detecting Heritage Crime(s): What We Know about Illicit Metal Detecting in England and Wales' (2019) 26 *International Journal of Cultural Property* 139.

77 Roger Bland, 'The Development and Future of the Treasure Act and Portable Antiquities Scheme' in Suzie Thomas and Peter Stone (eds), *Metal Detecting and Archaeology (Heritage Matters)* (Newcastle: Boydell Press, 2009) 114.

78 Department for Digital, Media, Culture & Sport, *Treasure Act Annual Report 2022* (January 2023) at https://finds.org.uk/documents/treasurereports/2020.pdf [https://perma.cc/PX9Q-N6DX].

79 See comments in the Heyworth Heritage Report, n 73 above.

80 See reports by the British Museum and Portable Antiquities Scheme at https://finds.org.uk/getinvolved/guides/pressures [https://perma.cc/U6XD-HNHC]. Many FLOs are already forced into being highly selective as to what they record.

81 Stuart Campbell, 'Legislation and persuasion; portable antiquities and the limits of the law: some Scottish and British perspectives' in Campbell, White and Thomas, n 62 above, 77.

82 Suzie Thomas, 'How STOP started: Early approaches to the metal detecting community by archaeologists and others' in Gabriel Moshenska and Sarah Dhanjal (eds), *Community Archaeology: Themes, Methods and Practices* (Oxford: Oxbow Books Limited, 2012) 42-57.

ues treasure in subtly yet crucially distinct ways driven by quite different value sets. Detectorists generally prioritise the 'hobbyist' instinct, placing increased emphasis on the market and with a unique attitude to how finds are reported and the significance of items. Archaeologists, in turn, prioritise heritage preservation and the cultural value of items over the market and market-value. Sadly, nowhere in the Treasure Act or in the recent work of the government is this acknowledged, and nor is the need to foster and improve the interaction between the parties for the sake of heritage protection. As Campbell argues, 'effort must focus on an engagement with the finders, providing in turn an ability to understand how these interactions outside archaeological control can create and alter the context of discovery and interpretation.'[83] Alongside discussion of funding, respondents to the Government's consultation on reforming the definition of treasure also made tangible and constructive suggestions for ways in which the treasure process might be improved, such as clarification of landowners' rights and licencing of metal detecting clubs as well as encouragement for greater reporting of finds to PAS and stricter penalties for illegal metal detecting.[84] Again, regrettably, these fruitful suggestions have gone unheeded by government.

By way of a further observation, the failure of the new law to commence the treasure sections of the Coroners and Justice Act 2009 will only serve to further stymie the effectiveness of the new definition and impact on the success of the reformed regime. In its response to the consultation, the UK Government explained that: 'we plan to commence the treasure sections of the Coroners and Justice 2009 Act. However, as this would require new primary legislation to amend the 2009 Act itself, we view this as a long-term aim, one that we will work towards.'[85] This means a crucial cog in the wheel of the treasure process has not been activated. Key provisions of the 2009 Act as they pertain to treasure if commenced would: (i) give coroners greater powers in relation to conducting and refusing inquests into treasure cases;[86] (ii) expand the duty to report objects to the coroner that a finder believes or has reason to believe is treasure so that the duty would cover anyone who has acquired an object that meets the definition of treasure;[87] and (iii) lengthen the time during which a prosecution could be brought under the Treasure Act 1996 for failure to report potential treasure.[88] The measures of the 2009 Act are chiefly about sanctions and deterring criminals from speedily selling objects of treasure without reporting them. If commenced, these provisions could have a meaningful deterrent and practical effect on the black-market in treasure and prevent the loss from museums of valuable artefacts. With many thousands of items of potential treasure being sold on eBay every week, and prosecutions under the Dealing in Cultural Objects (Offences) Act 2003 only in single digits in almost a decade of the Act being in force, it is unfortunate and another missed opportunity that government has pushed commencement of these vital deterrent provisions under the 2009 Act

83 Campbell, n 81 above, 88.
84 n 28 above, 41.
85 n 32 above at [18].
86 Coroners and Justice Act 2009, s 29.
87 Coroners and Justice Act 2009, s 30.
88 Coroners and Justice Act 2009, 30(2).

into the long grass. These provisions would work meaningfully in lockstep with the freshly expanded definition to avoid abuse of the treasure process. So too, would reform of the payment of rewards system under the Treasure Act. The possibility of reward has always been, for some, a central motivation to 'treasure hunt' yet this has the potential to encourage unlawful metal detecting, so-called 'nighthawking' and illegal selling of treasure. Rewards may result in items being uprooted from the specific context and location with little regard for archaeological or heritage preservation and have knock-on resource implications for the PAS and enforcement authorities seeking to limit those whose interest is purely financial over national, cultural gain. While for some, the provision of rewards may actively encourage the reporting of finds, for others, motivated solely by financial advantage, the current reward system may actually disincentivise the community-mindedness and spirit of heritage preservation that ought to be central to and fostered by the treasure process. One option, then, would be to heavily circumscribe rewards or to introduce a cap on the scale of rewards payable so as to discourage bad-faith actors and those looking simply for a quick pay-day while supporting those wishing to play their part in the safeguarding of precious cultural and historical artefacts for the public good.[89]

Finally, and more fundamentally, the UK Government through the reforms has eschewed the chance to make a decisive step back from the language of 'treasure' with its in-built connotations of pirates, buccaneering and gleaming gold. The consultation on the law of treasure offered the ideal opportunity to examine more profoundly how the language used in the Treasure Act 1996 obscures and, in some cases, encourages behaviours that operate counter to the national interest. Radical, perhaps, yes, but there are good reasons in the 21st century to draw back from the imagery and associations of swashbuckling adventurers and treasure-hunters and embrace a more societally-aware, culturally-sensitive and contemporary conception of culturally important artefacts if for no better reason than to break from the outmoded and unsatisfactory notion that the worth of an object is intrinsically linked to its monetary value; an association that the word 'treasure' has promulgated for hundreds of years. This was the apposite moment to simultaneously revisit, reform and recast the antiquated nomenclature of the Act. It was not taken up. If we are serious about preserving our most precious cultural antiquities in the national interest, we should move away from the language of 'treasure' and equally of 'rewards' offered to those finding treasure to disincentivise and deter treasure hunters whose primary motive is profit.

CONCLUSION

> 'Trembling and panting with anxiety … in an instant, a treasure of incalculable value lay gleaming before us. As the rays of the lanterns fell within the pit, there

89 It is, nevertheless, conceded that there would be a risk that capping rewards could, counter-productively, force treasure hunters to sell their finds for a higher price on the black market.

> flashed upwards, from a confused heap of gold and of jewels, a glow and a glare that absolutely dazzled our eyes.' Edgar Allen Poe, *The Gold-Bug* (1843), 13.

Treasure really matters. Often portrayed simplistically as the pursuit of swashbuckling, buccaneer pirates, 'treasure' holds a vital role in shaping and questioning national identities, in challenging difficult historical truths and contributing to the exercise of national, cultural sense-making. In 1981, in this very journal, Palmer, writing of the old law of treasure trove, noted: 'At no time in English history has there existed so intense and acquisitive a popular interest in the recovery of indigenous archaeological treasures. The growth of the metal detector industry in particular, and the corresponding increase in both private and commercial treasure hunting, have brought to light many valuable antiquities. They have also caused problems with which the law is deplorably ill-equipped to cope.'[90]

Over four decades later, the popularity in metal detecting, treasure hunting and antiquities has grown beyond what Palmer envisaged and, yet, despite the new reforms, the law still appears ill-equipped to cope with the problems and issues raised by the burgeoning treasure 'industry.' As this article has explored, the deficiencies of the existing, overly narrow definition of treasure under the Treasure Act 1996 have resulted in the loss from the public realm of important finds in recent years, such as the Crosby Garret Helmet, and this has added great weight to the calls for urgent reform. The new definition of treasure undoubtedly represents a substantial stride forward in shifting the definition of treasure beyond its current constraints in expanding the categories of treasure to include, for the first time, a significance-based class. This is a major turning-point and, in that sense, the new regime is a watershed reform that will make a tangible difference to protection of culturally significant finds. However, as has been argued here, it is also a missed opportunity to bring about more fundamental change to the treasure framework by failing to respond robustly to the existing deficiencies of the 1996 Act; by failing to take seriously the need for sustainable funding in support of the new definition; by failing to appoint a specialist Coroner for Treasure; for not commencing the important provisions of the Coroners and Justice Act 2009; and, finally, by turning away from more radical reform to the essential language of treasure in the 1996 legislation. By not pursuing these critical avenues, the good work of the newly expanded definition could be undermined. For now, many will welcome the change in law, heralding a change which is the biggest shapeup of the treasure system in a quarter of a century if not longer. However, as Marston and Ross wrote of the enactment of the 1996 Act, 'The opportunity to cast off the ancient chains and to promote a coherent and wide-ranging protection was spurned.'[91] It is unfortunate that the options for bolder reforms were not seized then and have still not been seized now.

90 Norman Palmer, 'Treasure Trove and the protection of Modern Antiquities' (1981) 44 MLR 178, 180.

91 John Ross and Lynne Marston, 'Treasure and portable antiquities in the 1990s still chained to the ghosts of the past: the Treasure Act 1996' [1997] Conv 273, 287.