

# A pragmatic approach to the problem of portable antiquities: the experience of England and Wales

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*Thousands of artefacts are found every year by the public the world over, and many are sold or destroyed. How are we to ensure that these discoveries can take their place in archaeological research (Editorial, December 2004)? For some, legislation, state control and strong penalties are the best or only option. Here, the co-ordinator of the English Portable Antiquities Scheme makes the case for a voluntary code, led by co-operation, education and reward.*

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All countries have found the need to devise a system of protection for objects of archaeological, historical or cultural importance found in their territory by members of the public by chance – what we will call here ‘portable antiquities’. These approaches vary widely and in many states, the UK included, different territories contain separate legal regimes. In many countries of Europe the state requires that all objects of archaeological importance be reported and frequently the state claims ownership of them; there are mechanisms for paying rewards to the finders of varying generosity and there is usually protection for archaeological sites and controls over the use of metal detectors (Bland 1998). All countries experience problems with the illicit recovery of archaeological finds from sites and their sale on the market.

The purpose of this paper is to explain the approach that has been adopted to these issues in England and Wales, particularly the Treasure Act 1996, the Portable Antiquities Scheme and recent measures to stem the illicit trade in archaeological objects originating from the UK. It is a pragmatic approach and one that has its critics, but it is also, I would argue, beginning to bear some quite remarkable results.

## Treasure trove

Until 1997, effectively the only legal protection afforded antiquities found in England and Wales was provided by the common law of treasure trove. Only objects of gold or silver that had been deliberately hidden, with the intention of recovery, qualified as treasure trove and became the property of the Crown (Hill 1936). The main difficulties stemmed from the fact that it was never intended as an antiquities law. It was extremely restricted in scope; it was riddled with anomalies and was legally unenforceable. In the nineteenth century,

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antiquarians realised that the old law of treasure trove had a significance over and above that of simply adding to the royal revenues and so in 1886 the Government announced that finds claimed as treasure trove would be offered to museums, and finders (but not landowners) would be paid a reward. This practice of paying rewards for finds claimed by museums is, I believe, a crucial factor in encouraging the reporting of finds.

So, although archaeologists had succeeded in providing an incentive for finders to report their finds, many problems still remained with the law, especially its very restricted scope. In 1944, one of the aims of the newly established Council for British Archaeology (CBA) was to reform the law of treasure trove, but no progress was made mainly because of the difficulty of achieving a consensus among archaeologists as to what needed to be done and also of persuading the Government to take action.

## Metal detecting

The whole issue was transformed by the widespread use of metal detectors. These machines became widely available in the 1970s and at their peak, in around 1980, it is thought there were as many as 180 000 metal detector users in this country (the figure now is thought to be nearer 10 000). One obvious consequence of this was an enormous increase in the amount of objects being found, the great majority of which fell outside the law of treasure trove.

In its early days metal detecting was a very anarchic activity: many detector users felt that they had the right to take their machines anywhere they chose, whether on private or public land, and to keep whatever they found. Many archaeological sites suffered damage from such rogue detector users. It was only in the 1980s that detector users (or 'detectorists') started to organise themselves into clubs and adopt a more responsible attitude.

Archaeologists responded by seeking to ban or restrict the use of metal detectors and this is the approach that has been followed in many European countries. In Britain, however, the Government was not persuaded to go down this route, although archaeologists did win one significant success when the 1979 Ancient Monuments Act included a provision making it a criminal offence to use a metal detector on a scheduled monument without the permission of the state. At about the same time the CBA launched a campaign, the so-called STOP campaign, to draw attention to the damage done by uncontrolled detecting, the net effect of which seems to have been to ensure that most detector users remained very distrustful of archaeologists. Equally, attempts by the CBA to sponsor a Bill to reform the treasure trove law in 1979 and again in 1982 failed because the Government was unwilling to support it (Bland 1996).

In the battle of public opinion, so essential if politicians are to be persuaded to take action, there is no doubt that detector users had more success than archaeologists and nowhere was this more apparent than when the then Prime Minister, Harold Wilson, became honorary patron of the National Council for Metal Detecting. However, there were exceptions to the general atmosphere of mistrust that prevailed between archaeologists and detector users in the 1970s, most notably in Norfolk where the late Tony Gregory systematically encouraged detector users in the county to report their finds (Green & Gregory 1978). This initiative has proved so successful that now some 15 000 objects a year are being recorded from this

county, taking up the time of four members of staff (a similar initiative was established in Suffolk). This provided the model for the Portable Antiquities Scheme.

In 1994, the Council for British Archaeology carried out a survey which estimated that several hundred thousand archaeological objects are being found each year, maybe around 400 000, although that was based on an estimated number of metal detector users (30 000), which we now know to be about three times too high (Dobinson & Denison 1995). Only a very small percentage of detector finds were being reported to archaeologists or museums. If one reason was the deep distrust that existed between detector users and archaeologists, a second was that it had never been part of the core responsibilities of any museum or archaeological body to do this work so that the effort devoted to it has always been very patchy and dependent on committed individuals.

## **Treasure Act**

In March 1994, Lord Perth introduced the Treasure Bill into Parliament and the Government was eventually persuaded to support it. Not surprisingly many metal detector users opposed the Act vigorously, and in consequence the Government initiated a dialogue with the National Council for Metal Detecting and some changes were made to it. Giving legal protection to additional categories of objects is tantamount to their nationalisation by the state and was seen in some quarters as an attack on private property rights. But the Bill was supported by the two main landowners' organisations because it made landowners eligible for rewards for the first time. It is also the case that the Act is still much more restricted in scope than most countries' portable antiquities laws.

At the opposite end of the spectrum, some archaeologists condemned the Bill as an unhappy compromise which was far too limited in its scope, arguing that its enactment will make it harder to secure what they believe is really needed, which is full-scale portable antiquities legislation. It is undoubtedly true that the Act was a compromise and it is always easy to criticise compromises, but more comprehensive legislation would have required substantial new resources and would not have obtained Government support. Furthermore, legislation extending state ownership to all archaeological finds would have run into very severe opposition not just from an estimated 10 000 metal detectorists, but also from those who object to any extension of state ownership.

Archaeologists' criticisms were to some extent answered by the publication by the Government of a discussion document on portable antiquities in March 1996 (DNH 1996). This paper set out proposals for a voluntary scheme for the reporting of finds that fall outside the scope of the Treasure Act and sought views. There was a consensus among both archaeologists and detector users that a voluntary scheme, along the lines of the Norfolk approach, offered the best way forward. The Act was successfully reintroduced in 1996 and came into force in 1997, supported by a Code of Practice which set out how it should work (DNH 1997).

## **Scotland and Northern Ireland**

Both Scotland and Northern Ireland have separate legal frameworks governing portable antiquities and in both countries there is, in effect, a legal requirement to report all finds

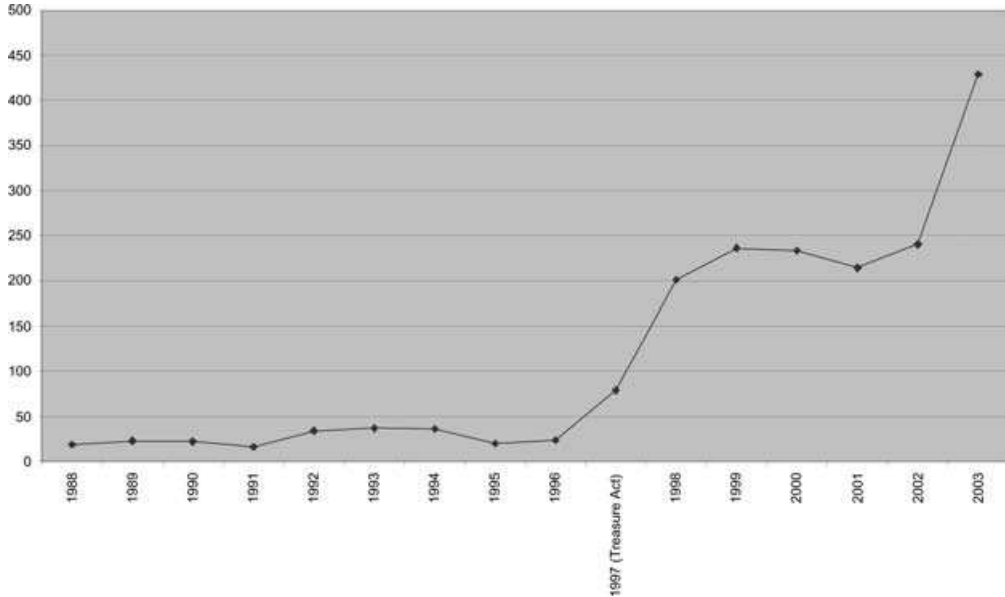


Figure 1. Treasure cases, 1988-2003.

(Saville 2000). Archaeologists in both Scotland and Northern Ireland believe that these arrangements are workable in their countries, because of the much smaller numbers of objects being found. In Scotland, a recent review of the treasure trove system has recommended, amongst other things, that a network of Finds Liaison Officers (FLOs) would help to increase the reporting of finds (Normand 2003; Scottish Executive 2003).

## Impact of the Treasure Act

Before the Act came into force some detector users claimed that it would deter finders from reporting their finds while others said that there would be so many finds that the system would be swamped. In fact neither happened. The total number of cases of treasure reported in 1998, the first full year of the Act, was 201 and remained at that level for the next three years. In 2002 it increased to 240, then to 429 in 2003 and in 2004 it was over 500 (see Figure 1 and *Treasure Act Annual Reports*). This has far exceeded the prediction that there might be between 100 and 200 cases a year and is 20 times as many as the 25 finds a year that were being declared treasure trove. The great majority of the finds came from England (1542), the remainder coming from Wales (82) and Northern Ireland (8) (DCMS 2004b).

The new arrangements include measures to reassure finders that the rewards that they receive for finds which are claimed by museums are based on a fair market value, as determined by an independent committee. These rewards are shared between the finder and the landowner. It is crucial that finders should receive an adequate incentive to report their finds. It is also the case that not all finds being reported as treasure are being acquired by museums: over half are recorded and then returned to the finders.

The Treasure Act introduced a new criminal offence for failure to report treasure which has undoubtedly played a part in ensuring that finds are reported. Although no prosecutions have been made so far, the threat of prosecution has proved effective in a number of cases. It is a priority to ensure that the antiquities and coin trade is now aware of the penalties for selling undeclared treasure.

However, the stick on its own is not enough to ensure that treasure finds are reported. A carrot is also necessary. The Finds Liaison Officers of the Portable Antiquities Scheme play a vital role in ensuring that the Treasure Act works successfully. Having a network of archaeologists whose role is to take a proactive approach with finders is very important in ensuring that finds get reported, even with treasure finds where there is a legal requirement to do so. The difference a finds liaison officer can make can demonstrated very clearly by the fact that the 21 new Finds Liaison Officers (FLOs) were appointed during 2003 have on average achieved a five-fold increase in the reporting of Treasure in their areas. In some areas the increases have been more dramatic: for example, in Lancashire there has been a fifteen-fold increase since the FLO was appointed in December 2003, in Sussex a thirteen-fold increase since the establishment of the FLO post last August and in the Isle of Wight a ten-fold increase since September when a FLO was appointed for the island.

## **Illicit activity**

Nevertheless, there remains a significant problem as regards the looting of sites for antiquities. The CBA's 1995 survey found that over a five-year period there was evidence that 188 scheduled ancient monuments had been attacked and that 37 out of 50 professional archaeological units reported raids on their excavation sites during the same period (Dobinson & Denison 1995). Some well-known sites seem to act as a honey pot for illicit detectorists: one such, the Roman site at Corbridge in Northumberland, had suffered 23 raids over four years. Responsible metal-detecting organisations, such as the National Council for Metal Detecting, condemn such activities.

Providing physical protection to the potentially enormous number of sites that could be attacked is always going to be very difficult, given that in most areas the police give such crime low priority, and when prosecutions are brought they are often unsuccessful because courts tend not to regard such offences as serious. But another way of tackling the problem is to make it harder for the thieves to sell their finds. At present, it is still 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, and many of these dealers are not members of one of the professional associations which have their own codes of practice. It is a matter of concern that many items of potential treasure are still being openly offered for sale, and the Portable Antiquities office is currently in discussion with eBay about a mechanism for taking such items down from its website.

It was hoped that the Dealing in Cultural Objects (Offences) Act, which came into force on 30 December 2003, would help to suppress the market in finds illegally recovered from the UK. This Act creates a new offence of dealing in 'tainted' cultural objects (defined as those have been removed from sites, contrary to local law) with a maximum penalty of seven years' imprisonment (DCMS 2004a). This should mean that those dealers who have

previously not asked any questions will have to be very much more careful when buying objects. At present it is too early to judge the effectiveness of the Act.

There is still definitely a need to make the law enforcement agencies, the police, the Crown Prosecution Service and the Government, more aware of the problems caused by the illegal recovery of artefacts from the UK and their sale on the market and the Portable Antiquities Scheme is developing a proposal to produce a report quantifying the extent of illegal activity, along the lines of the *Stealing History* report (Brodie *et al.* 2000).

## The Portable Antiquities Scheme and research

As a result of the responses to the Portable Antiquities discussion document, the Government funded a programme of pilot schemes, with the Museums, Libraries and Archives Council, to promote the voluntary recording of all archaeological finds in six regions of England from September 1997. These were joined by a further six posts, funded by the Heritage Lottery Fund, in 1999. Four years later, a further grant from the HLF allowed the Scheme to be rolled out across the whole of England and Wales. There is now a network of 36 Finds Liaison Officers, based in museums and local authority archaeological services around the country, five Finds Advisers, who train the Finds Liaison Officers and monitor the data, and a central unit of five (see *Portable Antiquities Annual Reports*).

The aims of the pilot schemes are to advance our knowledge of the history and archaeology of England and Wales by initiating a system for recording of archaeological finds and to encourage and promote better recording practice by finders.

There is undoubtedly a huge resource, hitherto largely untapped, represented by finds made by the public. Some of these objects are of considerable interest in their own right; many more are of little individual interest. But by stressing the importance of recording finds in their context, we are unlocking a huge potential new source of information about the historic landscape. We are building up a database that will be a lasting legacy of the Scheme and records of 120 000 objects and 42 000 images are now available on the Portable Antiquities Scheme website ([www.finds.org.uk](http://www.finds.org.uk)). The data is also to be made available to the relevant Sites and Monuments Record (SMR), the primary source of information about the historic environment, as it is important to ensure that this information can add to our knowledge of the archaeological context. The website has the potential to be developed much further as an educational resource by including more interpretative and background information and an educational section of the website, featuring an interactive Anglo-Saxon village, is to be launched in early 2005.

Arresting the loss of information caused by the failure to record these finds was the starting point for the Portable Antiquities Scheme. But since the pilot schemes started, it has become clear that the work of the liaison officers has had other benefits which are perhaps of even greater long-term significance. This includes educating finders about good practice and creating opportunities for them to become involved in archaeology. This is encouraging a new and more responsible attitude on the part of finders which must in itself be one of the best ways to guarantee that the habit of recording finds will continue in the long term. An independent evaluation found 73 per cent of the 400 people who responded to the survey agreed that the Scheme was successful in changing attitudes so that

there is a common understanding of the need to report finds (Hawkshead Archaeology and Conservation 2004).

Another consequence of the Scheme is the way it has brought together different groups, individuals and organisations that may not previously have had much contact with each other. An obvious example is metal detector users and archaeologists: for example, several detector users have gone on to study archaeology at A-level or university as a result of contact with archaeologists. But equally important, in many areas, the liaison officers have acted as a catalyst to bring together organisations that may not have had much contact with each other, such as the local museum with the SMR, or the archaeological unit.

Last year the Finds Liaison Officers were able to record some 47 000 objects from over 2000 finders. The results of the Scheme have been set out in a series of Annual Reports, together with a leaflet, which is intended to explain the scheme to finders. It is important to note that the liaison officers record objects made by any member of the public, not just metal detector users. Sixty-five per cent of the finds recorded were discovered with metal detectors; a further 9 per cent were non-metallic finds recovered by detector users; 20 per cent were found by fieldwalkers and the remainder were chance finds. The Finds Liaison Officers are also concerned to record all archaeological objects, not just those made of metal, and 33 per cent of the objects recorded last year were made of pottery, while 10 per cent were lithics (Museums, Libraries and Archives Council 2004).

The current Lottery funding for the Portable Antiquities Scheme ends in April 2006. In its Spending Review announcement in December 2004, the Government agreed to continue to fund the project in full beyond 2006. This is a breakthrough as it means that the Scheme is now a permanent part of the archaeological landscape.

## **Conclusions**

To conclude, the approach that has been adopted to the difficult question of how best to protect portable antiquities found in England and Wales has been dictated by pragmatic considerations. If effective controls on the use of metal detectors had been introduced at the beginning of the seventies, then a legal requirement to report all portable antiquities might have been workable. As it was, controls were not introduced and instead metal detecting was allowed to develop into a widespread, and legal, activity. Under such circumstances, a mandatory requirement to report all finds would be unworkable. This might be regrettable, but it is the case. Certainly there would be very little political support for any move to ban metal detecting.

Some archaeologists fear that the portable antiquities initiative is effectively legitimising metal detecting. This is to misunderstand its purpose: the philosophy of the Scheme is that it is not about encouraging metal detecting, but it recognises that it exists and is legal, provided the detector user has the landowner's permission and avoids scheduled sites. We believe it better to engage with detector users, encourage them to behave responsibly and report their finds than to ignore them, as was often the attitude in the past. They will go on detecting regardless and we will all be the losers if we fail to record their finds.

Another factor is that most – although not all – detector finds are recovered from cultivated land, from the disturbed layer of the ploughsoil (last year 91 per cent of the

objects recorded came from cultivated land). English Heritage's recent Monuments at Risk survey has quantified the causes of destruction of archaeological sites in England over the last 50 years (Darvill & Fulton 1998) and in 2003 English Heritage gave this recognition through its 'Ripping up History' initiative, described as 'a campaign to save thousands of fragile archaeological remains throughout the country put at risk by intensive agriculture'. The principal cause of the piecemeal destruction of sites is agricultural activity. Once metal objects get into the disturbed layer of the ploughsoil not only have they lost their immediate archaeological context, but they are also extremely vulnerable to further damage, either from repeated ploughing, or else from degradation caused by the chemicals farmers put on fields. Archaeologists are increasingly prepared to admit that the recovery of objects in such circumstances – provided they are properly recorded – is a good thing.

For these reasons a pragmatic approach to these issues seems to offer most chances of success, while at the same time ensuring that those legal sanctions that do exist are enforced. I believe that the English approach will stand or fall by the results that have been obtained. To what extent our experience is relevant to other countries in Europe is another matter, but I sense that there is a growing feeling amongst archaeologists elsewhere in Europe that a pragmatic approach is most likely to bear fruit.

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