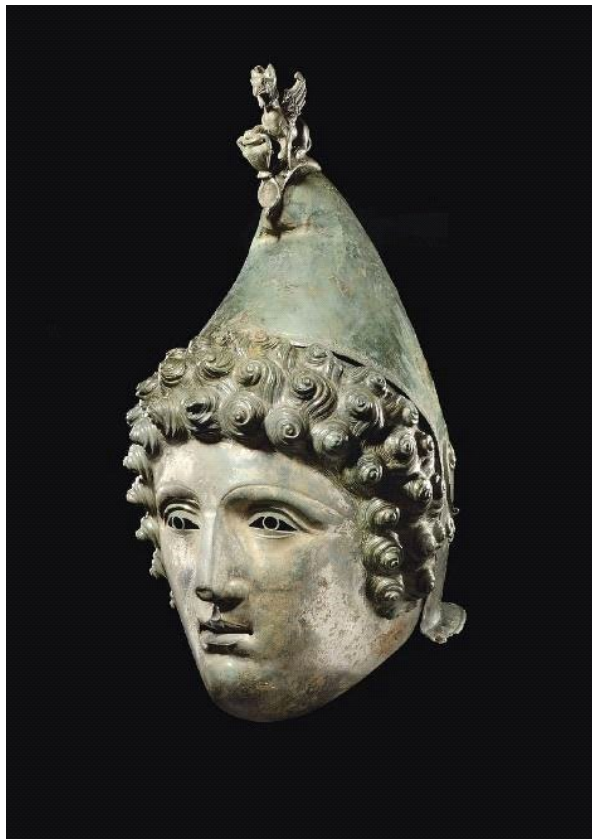


Heyworth Heritage

Research to inform a revised definition of Treasure



Commissioned by DCMS



Department for
Digital, Culture
Media & Sport

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Cover image: [Crosby Garrett helmet, found in Cumbria in 2010](#)

Heyworth Heritage

www.heyworthheritage.com

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Executive Summary

In 2019 the Government undertook a public consultation on proposed changes to The Treasure Act 1996. One of the issues identified in the consultation was the need to expand the definition of Treasure to capture particularly significant finds, such as the Crosby Garrett helmet - found in Cumbria in 2010. As the helmet did not meet the criteria for Treasure defined in the Act's Code of Practice it was sold at commercial auction and the local museum was outbid.

Following the consultation, the Government commissioned further research on options for a significance-based definition of Treasure which would potentially ensure that all particularly significant finds could be preserved in public collections. The tender for the research project was won by Heyworth Heritage and the work was undertaken from late January to March 2021.

The research project encompassed a number of elements, supported by a Steering Group established by DMCS with representatives from England, Wales and Northern Ireland. The key initial elements of the project were:

- a literature search for publications relating to the use of 'significance' to define cultural heritage (section 3a), particularly portable antiquities, looking across the UK and Ireland and more widely in Europe (section 3b)
- an analysis of the responses to the Government's public consultation relating to the definition of Treasure (section 3c)

The results of these two elements were used to draw up a short list of three options for a significance-based definition of Treasure, linked with existing heritage systems relating to Scheduled Monuments, the definition of Treasure in Scotland, and the Waverley criteria for controlling the export of cultural objects (section 4).

A number of options were also identified for how a significance-based definition could be introduced into the Treasure Act, either alongside or in place of the existing definition with reporting of archaeological finds either voluntary or mandatory.

These various options were then explored with a wide range of key stakeholders representing relevant interest groups across the UK through a series of semi-structured interviews (section 5a). Interviewees included representatives of archaeologists, metal detectorists, finders, Finds Liaison Officers from the Portable Antiquities Scheme, museum professionals, national heritage bodies, coroners, and valuers.

The options were also used in a detailed analysis of the online database of the Portable Antiquities Scheme relating to finds recorded from 2010-2019 from the areas of Hereford & Shropshire, Lincolnshire, Hampshire and Wales (section 5b). The aim of this analysis was to assess the impact of the different approaches to a significance-based definition of Treasure on the number of Treasure cases likely to be reported each year.

The pros and cons identified for each approach were identified after the interviews and database analysis and were then brought together in an over-arching analysis of the results of the research (section 6).

Overall, stakeholders views were in favour of the simplest possible change to the process which would result in the maximum public benefit for the heritage, realistically scaled to the

available resources and retaining the trust of users in an established and transparent system.

The analysis also incorporates details of additional opportunities identified, implications for implementation, and suggested further lines for research.

A full bibliography of published sources consulted is also provided (section 7).

1 Introduction

- 1.1 The [Treasure Act 1996](#) and its associated Codes of Practice aims to ensure that important archaeological items are preserved in public collections.
- 1.2 In 2019, the Department for Digital, Culture, Media & Sport (DCMS) undertook a [public consultation](#) on proposals which would update the Treasure Act 1996 Codes of Practice, revise the Act's definition of treasure and commence relevant provisions in the Coroners and Justice Act 2009.
- 1.3 This consultation ran from 12:15am on 1 February 2019 to 11:45pm on 30 April 2019 and 1,461 valid responses were received.
- 1.4 Through the consultation, the Government proposed to improve the treasure process so that it is more efficient, that it is focused on the aim of preserving significant finds for public collections, and that it is more rational and easier to understand.
- 1.5 The definition of Treasure was a key part of the consultation, particularly following the controversy around the discovery of the Crosby Garrett helmet in Cumbria by a metal detector user in 2010. The copper alloy Roman cavalry helmet was described by the British Museum as "an outstandingly important find", but it fell outside the definition of Treasure and was sold at commercial auction to a private buyer for £2.3million. Other finds in more recent years had also highlighted this issue, such as the unique 4th century statue of a dog found in Gloucestershire in 2017. Although it was of outstanding archaeological importance, the dog did not fall under the definition of treasure in the 1996 Act because it was made of lead. It was sold in July 2019 for £137,500.
- 1.6 The DCMS consultation proposed that the definition of Treasure would be amended to include all items valued above £10,000, in addition to the current definition of Treasure.
- 1.7 However, in the [Government response to the consultation](#), published in December 2020, the Government reported that "It became clear from the responses that although there was support for a definition which was not solely based on the physical material of the find, defining treasure by value would not be a practical or effective way to determine importance."
- 1.8 The Government stated that, "We have decided therefore to look further at the introduction of a definition that can best identify significant artefacts that warrant entry into public collections. This would introduce a new element into the 1996 Act, as it would be based not on the intrinsic age and material of a find, but on its archaeological and historic importance. This would be a change from the historic

basis of the 1996 Act, although it would be in line with other UK heritage protection legislation.”

- 1.9 “We will embark on research to determine options for a definition that takes significance into account, looking at the impact and efficacy of these options, and the practicalities of implementing them.”
- 1.10 A research project was put out for tender (see brief in Appendix 1) and in January 2020 Heyworth Heritage was selected to undertake the research on behalf of DCMS with the aim of providing a report on options for a significance-based definition of Treasure by the end of March 2021.

2 Project Methodology

- 2.1 In the DCMS tender brief (see Appendix 1), it was specified that the research project should seek to explore appropriate definitions that would enable the Treasure Act 1996 to best meet its aims and examine the impact and implications of a number of identified options.
- 2.2 The brief specified that the research should address the following questions:
 - What are the options for a significance based definition of treasure, including whether this could be based on existing comparable systems (both domestic and international)
 - What would the impact be of applying these definitions to ancient artefacts found by the public in terms of:
 - Effectively protecting important cultural property for the benefit of the public
 - The number of treasure cases reported each year
 - How implementable and usable the definition would be for finders, Finds Liaison Officers, coroners, and museum curators.
- 2.3 The approach for the research project to address these questions was initially through desk-based research to identify three options for significance-based definitions. These options were then explored in more detail, including pros and cons of each definition, through semi-structured interviews with a range of key stakeholders.
- 2.4 Detailed analysis of the Portable Antiquities Scheme database was undertaken to identify for each possible new definition, how many finds would be reported as treasure and whether significant archaeological finds would be protected for the public. The examination included consideration of:
 - How would regional significance be captured in the definition, and would there be different levels of significance
 - How the number of treasure finds would change
 - The impact of geographical variations in finds numbers on local museums
 - Whether the definition was easy to understand by stakeholders, including metal detectorists
 - How each of the options could be used and implemented in practice by Finds Liaison Officers and coroners
 - How would any new definition interact with current definitions, for example, does it sit alongside and complement them or replace them entirely?

- 2.5 The project was supported by a Steering Group consisting of representatives from DCMS, the Treasure Valuation Committee, the British Museum, National Museum Wales and the National Museums Northern Ireland. The Steering Group met twice during the course of the project and provided feedback on a draft of the final report.

3 Context for defining ‘significance’ in relation to Treasure

3a The concept of significance in cultural heritage

- 3.1 The concept of significance entered the lexicon of policy for managing and protecting heritage in the UK around the turn of the millennium (Clark 2014). Historically, it had been used as a term in early historic preservation legislation in North America and pre-eminently, from an international perspective, it first appears in the ICOMOS 1964 Venice Charter which refers to the cultural significance acquired by historic monuments and ‘works of the past’. The Australian ICOMOS *Burra Charter for Places of Cultural Significance* adopted this as a core concept in 1979 and developed what has become a familiar spectrum of heritage values: “*Cultural significance means aesthetic, historic, scientific, social or spiritual value for past, present or future generations*” ([Australia ICOMOS 2013](#), Article 1). The concept embraces diversity, relativism and contingency: that values have different meanings for different social groups and for individuals and in different contexts over time, in other words, that the significances of a heritage place or object are culturally and environmentally determined and dynamic.
- 3.2 The Australia ICOMOS Burra Charter has been a key influence in the international adoption of significance-based approaches in heritage management, for example, in the UK in the development of *Conservation Principles* for England and Wales (Historic England 2008 and Cadw 2011, Drury 2009). This cultural relativity is also reflected in the revised criteria for defining ‘Outstanding Universal Value’ (OUV) under UNESCO’s World Heritage Convention (1972; UNESCO *Operational Guidelines*, 2019) where it is defined as “*cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity*”. The current criteria for OUV, developed over several decades, have been evolved to apply globally in all cultures to tangible and intangible heritage that represents, or is associated with, human creativity, design and technology, built and planned environments, cultural landscapes, spiritual and traditional practices.
- 3.3 A relativist understanding of heritage values was first theorised by the Austrian art historian, Alois Riegl (1903), and today’s thinking has been shaped by an extensive body of academic scholarship through the post-War era (see recent summaries in Cameron 2020, 845-47 and Ireland, Brown and Schofield 2020, 826-833). Particularly influential in advancing 21st-century thinking on heritage values are the international scholarship brought together for the Getty Conservation Institute’s cultural values project (Avrami, Mason, and de la Torre 2000; De la Torre 2013, Avrami et al 2019) and Laurajane Smith’s theorising of heritage as cultural ‘work’ or a process of creating values, rather than heritage as defined material culture (Smith 2006; Smith and Campbell 2017).
- 3.4 Significance or value-based heritage management as an approach has been embraced internationally but has also been challenged and critically examined (Mason 2004; Fredheim and Khalaf 2016). In the last 15 years, academic critique has

addressed the growing tensions between institutionally-constructed definitions of significance for cultural heritage – generally associated with built and material culture, assessed by formal criteria and governed by expert or exclusive knowledge – and the meanings and constructions that people make with their heritage. Most recently, critical examination of (in)significance is a focus for fresh ideas about what matters and for whom in new perspectives on heritage, and for questioning why the construct of significance has “remained so pervasive as a concept and method?” (Ireland, Brown and Schofield 2020; Cameron 2020).

- 3.5 The ‘significance’ of heritage is generally understood as a culturally-constructed concept which is specific to a context, whether that is a site/place/country, an environment, a community or social group. It is usefully defined in Historic England’s *Conservation Principles* (HE 2008) as the “sum of the cultural (and natural) values attached to a place” and can apply equally to a heritage object. Assessment of significance has been adopted in collections management across the fields of archives, galleries, libraries and museums internationally, for example, see *Significance 2* (CCA 2009) and in the UK, *Reviewing Significance 3* (Reed 2018). ‘Significance’ in this context refers to the values and meanings that collections and individual items have for people and communities. These may be tangible or intangible values, contingent on circumstances, differently attributed by different people and change over time. The breadth and inclusive nature of the concept is both its strength but also a challenge in terms of legal definition. The review of significance-based definitions for protecting cultural heritage which follows below illustrates the absence of ‘significance’ as a term from most legal definitions of heritage. Instead we see usage of other terms to attribute relative importance or valorisation in legal definitions while ‘significance’ tends to be employed in policy contexts.

3b Significance-based definitions for protecting cultural and heritage assets in UK and Europe

- 3.6 For this project, significance-based definitions and criteria have been drawn from relevant institutional, policy and statutory frameworks for valorising and protecting cultural heritage and specifically for cultural property. The search used the UNESCO Database of National Cultural Heritage Laws and the European University Institute index for International Art and Heritage Law to identify relevant legislation and find related government websites for specific countries. Online searches for relevant academic literature used keyword searches in ARTbibliographies (PROQUEST), JSTOR, SCOPUS and Web of Science. The 2016 volume of [Open Archaeology](#) (2) and the website of the [European Public Finds Recording Network](#) provide useful recent overviews of contemporary practice in recording and managing portable antiquities across eight European countries and Great Britain. A bibliography of material referred to and cited in the text is appended and forms only part of an extensive literature.
- 3.7 This review brings together current, significance-based definitions for the protection of cultural and heritage assets in the British Isles and in a number of comparable international systems for protecting moveable heritage. The latter includes the Netherlands and France, as specified for the project brief, together with UK neighbouring countries of Republic of Ireland, Belgium, Denmark and Norway. These represent a range of different approaches and include legislation for protecting archaeological finds that have been reviewed and amended in the last 10 years.

- 3.8 A number of the English-speaking countries utilise the term 'significance', while other European countries use different terminologies, and this is noted accordingly in the discussion which follows. Alignment between the terminology used in a new definition of Treasure and other established legal or formal definitions may be one of the factors for consideration and was considered particularly for the consultation on options.
- 3.9 Extracts from legislation, conventions and policies cited below are collected in Appendix 3a Spreadsheet 1 which provides reference to matters of detail and for links to websites and online resources.

Heritage assets: Buildings, sites and monuments

Statutory definitions and criteria

- 3.10 In the legislations for England, Scotland and Wales (1990, 1997 and 2016 Acts), definitions for statutorily protected listed buildings use the criteria of special architectural and historic interest and for ancient monuments, historic, architectural, traditional, artistic or archaeological interest. Detailed guidance on selection criteria is published by Historic England and Historic Environment Scotland for a wide range of different types of building and monument.
- 3.11 The same definitions are used for listed buildings and historic monuments in Northern Ireland (Section 80 of the Planning Act (NI) 2011 and the Northern Ireland Order 1997); similarly criteria for scheduling and listing are published by the NI Department of Communities. They include non-statutory criteria for scheduling and for special architectural and historic interest.

Definitions in policy and guidance

- 3.12 The National Planning Policy Framework for England (NPPFE) employs a broader definition of heritage significance, emphasising the value of setting or context as a component of significance:

The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. (NPPFE 2018, 71)

- 3.13 The Historic Environment Policy for Scotland (HEPS) employs a version of the current *Burra Charter* definition of cultural significance which has a broader application:

means aesthetic, historic, scientific or social value for past, present or future generations. Cultural significance can be embodied in a place itself, its fabric, setting, use, associations, meanings, records, related places and related objects'
(HEPS, 2019, 5; *Australia ICOMOS Burra Charter* 2013)

- 3.14 Planning policy in Wales makes general mention of the significance of historic assets, referring to TAN 24 (2017) which uses the definitions set out in *Conservation Principles for the sustainable management of the historic environment in Wales* (2011). These mirror the definitions of significance and values attached to heritage places first employed in the English Heritage, now Historic England's, *Conservation*

Principles, Policies and Guidance for the sustainable management of the historic environment of 2008:

Significance [of a place]: The sum of the cultural and natural heritage values of a place, often set out in a statement of significance.

Value: An aspect of worth or importance, here attached by people to qualities of places

Value, aesthetic: Value deriving from the ways in which people draw sensory and intellectual stimulation from a place

Value, communal: Value deriving from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory. Communal value are closely bound up with historical (particularly associative) and aesthetic values, but tend to have additional and specific aspects

Value, evidential: Value deriving from the potential of a place to yield evidence about past human activity

Value, historical: Value deriving from the ways in which past people, events and aspects of life can be connected through a place to the present. It tends to be illustrative or associative. (*Conservation Principles 2008*)

- 3.15 The divergence in terminology between statutory designation criteria and the more inclusive significance-based definitions used for cultural heritage in England, Scotland and Wales (as employed in the NPPFE and HEPS, for example) has been viewed as problematic. However, legislative reform to harmonise the language of statute and policy has not yet been a priority, and in the interim workable solutions are being found.
- 3.16 For the purposes of considering a new definition for treasure, the current UK statutory definition used for an ancient monument (“of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it”) is arguably the most comprehensive. National planning and heritage policy in UK administrations employ heritage significance, as discussed above, as the basis for decision-making and heritage management. The four-fold framework of values, derived from the Burra Charter, which is already in place - i.e. historical; aesthetic/artistic; evidential/archaeological/scientific; and social/communal values - also offers an established structure for assessing significance.

Moveable cultural property or portable antiquities: UK and Europe

Statutory definitions and criteria

- 3.17 Turning to the provisions for protecting moveable cultural property in the UK, and beyond in Europe, the picture is a heterogeneous one (see Deckers, Lewis and Thomas 2016). Research shows a mix of common law for Treasure Trove, either codified (as in Scotland) or formalised in relatively recent legislation (as for England, Wales and Northern Ireland, Isle of Man, Denmark). In Europe, including the Republic of Ireland, the legislation which was already in place for managing archaeological heritage, including archaeological objects, has commonly been amended to provide increased protection for moveable cultural heritage principally in

order to regulate metal detecting. In most of the countries examined there is a mandatory requirement to report all archaeological finds of significance or defined categories of finds (e.g. Belgium, Denmark, France, Ireland, Netherlands, Northern Ireland, Norway), irrespective of treasure trove law where it exists.

- 3.18 Definitions or descriptors to indicate significance and delineate classes of finds are equally diverse in character in the legislation, as indicated in Appendix 3a. These range from simple, all encompassing descriptions (‘archaeological object’ means any chattel including ancient human and animal remains, whether in a manufactured or partly manufactured or unmanufactured state which by reason of the archaeological interest attaching thereto, or of its association with any ... historical event or person’) to complex and closely defined categories which delineate classes of metal and other materials, assemblages and archaeological periods.
- 3.19 For definitions of finds that are subject to ‘treasure trove’ and its equivalent in other countries (items lost in the past where ownership can no longer be established), absolute monetary value is not a criterion used in any of the countries researched. Relative value is used in a general sense, e.g. an object that “has a value substantially greater than its intrinsic (including artistic) value” (Northern Ireland, Republic of Ireland and Isle of Man).
- 3.20 Criteria for the age of the find are seldom defined by specific date in the countries examined in detail here. Norway is an exception, where moveable cultural heritage older than 1537 AD is automatically protected and belongs to the state (Sayej 2019). In Slovakia, exceptionally, “an archaeological find is defined as a moveable object that is a proof of life and activities of humans from the most ancient times up to 1918...an archaeological find may be furthermore considered a weapon, ammunition, or part of a uniform...which has been found in the ground...from before 1946” (Michalik 2019, 65). However, a moving threshold is set by some countries of “more than 100 years” (Denmark, Norway for Sami sites) or “more than 300 years old” (England, Wales and Northern Ireland).
- 3.21 The most closely defined criteria currently in use for treasure are those for UK countries (including the Isle of Man and Scotland which also employ the most inclusive definitions) and for Norway. Examples of broad descriptors for protected categories include: objects of ‘archaeological significance’ (Belgium); “Significance is determined by the potential of any portable antiquity to contribute to the cultural record of Scotland” and “national importance” (Scotland). The Manx Treasure Act follows the Waverley definitions in defining objects as “(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”. In all cases, judgement on what is assigned significance and taken into national or regional collections is made by a designated authority: specialist unit, national museum or trust, or regional heritage service.

Comparative definitions in legislation across the UK

Treasure Act 1996 (England, Wales and Northern Ireland)

- 3.22 The Treasure Act, the subject for this piece of research, was passed in 1996 and amended in 2002 to extend the definition of treasure. It provides a detailed definition of the meaning of Treasure which is supported by a [Code of Practice](#) for England and Wales (last revised in 2008) and for [Northern Ireland](#). The Act replaced the common

law of treasure trove in England, Wales and Northern Ireland which had been, until 1996, the only legal protection for archaeological finds and portable antiquities (outside the implicit protection afforded by statutory protection for sites and monuments). This much-needed reform removed the need to establish that objects had been hidden with the intention of recovery, defined the precious metal content for 'treasure' and extended the definition to objects associated with treasure finds and to other categories of finds. Its primary intention is as a mechanism to allow acquisition of such objects for public benefit in museum collections. The Code of Practice for England and Wales supports the Act with detailed definitions for the finds that come within its jurisdiction in addition to guidance on reporting, acquisition, valuation and rewards.

- 3.23 The Treasure Act defines categories of objects that are treasure in terms of their material composition, date, deposition as a hoard and association with objects that can be defined as treasure, but it does not apply any definition of relative cultural value or importance. Many finds of precious metals, hoards, prehistoric metal groups and associated objects are *de facto* exceptional items and of high cultural significance as well as monetary value but the Act does not define them in these terms.

Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995

- 3.24 'Archaeological objects' are defined for the purposes of the 1995 NI Order as "any object, being a chattel (whether in a manufactured or unmanufactured state), which is, or appears to be, of archaeological or historical interest and which has, by reason of such interest, a value substantially greater than its intrinsic value or the value of the materials of which it is composed". Reporting of all chance finds of archaeological objects, including potential treasure items, is required in Northern Ireland and searching for finds is subject to licensing. The Treasure Act 1996 also applies in Northern Ireland, covering the same categories of finds as for England and Wales.

Scotland: Treasure Trove Code 2016

- 3.25 The Scots common law on portable antiquities found in Scotland, also known as the Treasure Trove system, safeguards portable antiquities of archaeological, historical and cultural significance found in Scotland, and enables their allocation to Scottish museums. Its [Code for Practice for Treasure Trove](#) presents detailed criteria for national importance and for applying other considerations to assessment of finds. 'Significance' is the overarching criterion used to determine whether a chance find or assemblage should be claimed or disclaimed for a museum and an ex gratia reward to the finder:

"Significance is determined by the potential of any portable antiquity to contribute to the cultural record of Scotland. Objects and assemblages are claimed for their archaeological or historical importance rather than financial value and objects do not have to be over 300 years old to be considered significant or claimed as treasure trove." (Appendix D, TTCCode 2016)

- 3.26 Finds, and assemblages from organised archaeological fieldwork (dealt with by a separate reporting and assessment process), are assessed for their significance in accordance with guidance on criteria for national importance.
- 3.27 Material may be defined as being of national importance if any or all of these criteria is or are fulfilled:

- it is a rare or unique type in a Scottish context or part of an assemblage containing such material; or
 - it is of particularly high quality within its type; or
 - it provides information of major significance (e.g. concerning the methods used in its manufacture or the nature of its subsequent use) not normally found on objects of its type; or
 - the contextual information concerning the object or assemblage is of an exceptional nature.
- 3.28 All material assessed as being of national importance will be considered significant. (Appendix D, TTCODE 2016).
- 3.29 In addition to these criteria are other considerations, based on professional judgement (by the Treasure Trove Unit), which will be significant:
- Where material can be considered by its type (whether common or not) to provide a new source of archaeological or historical information.
 - Where the context of discovery or findspot can be said to provide new information.
 - Where a group of finds can be demonstrated to form a coherent archaeological assemblage, whether or not they are found within an archaeological context or linked through excavation.
 - Where the significance of an object lies in its association with other artefacts (including those discovered previously) or by association with a site or monument.
- 3.30 The system differs from the rest of the UK in using significance as its core concept, being based on the archaeological or historical importance of finds rather than material composition (and inherent monetary value), and objects are not subject to a limit on their date. (i.e over 300 or 200 years old). This is arguably the most developed framework of criteria for assessing national importance and significance currently in the UK. Reporting to the TTU is required for all significant finds.

Isle of Man: Manx Museum and National Trust Act 1959 and Treasure Act 2017

- 3.31 The earlier legislation protecting archaeological finds in the Isle of Man is the 1959 Act which defines 'archaeological object' as "any chattel including ancient human and animal remains, whether in a manufactured or partly manufactured or unmanufactured state which by reason of the archaeological interest attaching thereto, or of its association with any Manx historical event or person, has a value substantially greater than its intrinsic (including artistic) value". Reporting of all archaeological objects to the Manx Museum is required, including potential treasure items. Its recent Treasure Act (2017) defines treasure in line with the definition for categories in the Treasure Act 1996 for England, Wales and Northern Ireland but additionally includes categories of cultural value (evidently based on the Waverley Criteria for export items:

"any object which, when found, in the opinion of the Trust, is —

- (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.”

3.32 The Isle of Man therefore includes categories of significance and cultural importance, rather like Scotland though less specifically defined, in its definition of treasure.

Republic of Ireland

3.33 Finally, the Republic of Ireland is included here given its contiguous border with Northern Ireland. Its National Monuments Act (1930 and subsequent amendments of 1987 and 1994) provide close regulation to protect archaeological objects. This includes the requirement to report all archaeological objects, which are the property of the state, and requires licensing to search for such objects with a metal detector. Archaeological objects are defined as “any chattel whether in a manufactured or partly manufactured or an unmanufactured state 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 than its intrinsic (including artistic) value, and the said expression includes ancient human, animal or plant remains”.

Concluding summary

- 3.34 Key features and definitions from the countries reviewed for the project are summarised in the table below. Two aspects may be highlighted. Firstly, England and Wales are the only countries where mandatory reporting applies only to treasure finds. Reporting of other archaeological finds to the PAS remains voluntary, albeit encouraged under the Code of Practice and through PAS engagement initiatives. It is worth noting that the extent to which the mandatory reporting regimes in other devolved administrations and countries are effective was questioned by a number of participants in interviews.
- 3.35 Secondly, as noted above, the 1996 Treasure Act defines categories of treasure in terms of their material composition, date, deposition as a hoard and association with objects that can be defined as treasure, but it does not apply any definition of relative cultural value or importance. This contrasts with the practice in Scotland and the Isle of Man, and in Ireland, where broader cultural values are employed in assessment of significant items that may be claimed for public benefit and to enter museum collections.

Table 1. Summary of provisions for protecting and reporting of treasure and archaeological finds in the UK and Europe

Country	Treasure law or other law protecting archaeological finds	Treasure definition / categories of find that are protected by law	Use of metal-detector must be licensed or other limitations	Law requires reporting of archaeological finds
England	Treasure Act 1996	Designated categories of precious metal, hoards and associated finds	Controlled on protected sites	No, only Treasure
Isle of Man	MMNT Act TA2017	<p>Designated categories and finds (similar to TA1996) and items:</p> <p>(i) so closely connected with Manx history and national life that its loss would be a misfortune;</p> <p>(ii) of outstanding aesthetic importance; or</p> <p>(iii) of outstanding significance for the study of any branch of Manx art, learning or history.</p> <p>Archaeological objects</p> <p>any chattel including ancient human and animal remains, whether in a manufactured or partly manufactured or unmanufactured state which by reason of the archaeological interest attaching thereto, or of its association with any Manx historical event or person, has a value substantially greater than its intrinsic (including artistic) value, and notwithstanding the provisions of section 30 of this Act the said expression includes all treasure trove;</p>	Controlled on protected sites	Yes
Northern Ireland	HM&AO(NI) Order 1995 TA 1996	<p>Archaeological objects</p> <p>any object, being a chattel (whether in a manufactured or unmanufactured state), which is, or appears to be, of archaeological or historical interest and which has, by reason of such interest, a value substantially greater than its intrinsic value or the value of the materials of which it is composed</p> <p> </p> <p>Designated categories (as defined under the 1996 Treasure Act);</p>	Licensing for 'searching generally for archaeological objects'	Yes

Country	Treasure law or other law protecting archaeological finds	Treasure definition / categories of find that are protected by law	Use of metal-detector must be licensed or other limitations	Law requires reporting of archaeological finds
Scotland	Treasure Code (based common law of bona vacantia) 2016	Material designated as of national importance (broad criteria applied and subject to the professional judgement of the TTU)	Controlled on protected sites	Yes All portable antiquities of archaeological, historical or cultural significance are subject to claim by the Crown through the Treasure Trove system.
Wales	Treasure Act 1996	Designated categories (as defined under the 1996 Treasure Act)	Controlled on protected sites	No, only Treasure
EUROPE				
Belgium (Flanders)	Heritage Decree 2015	Finds of archaeological significance	Controlled on protected sites; licensing required and permitted to a limited 30cm depth	Yes
Denmark	Museum Act 2006	Objects of the past, including coins ...shall be treasure trove (danefæ) if made of valuable material or being of a special cultural heritage value	Controlled on protected sites	Yes
France	1803 Civil Code	Objects which may be of interest to prehistory, history, art or archaeology,	Licensing required for searching for archaeological objects	Yes
Netherlands	Heritage Act 2016	Archaeological find: a remain, object, or other trace of human presence in the past originating from an archaeological monument;	Controlled on protected sites. Licensing required and limited to top 30cm of ground	Yes

Country	Treasure law or other law protecting archaeological finds	Treasure definition / categories of find that are protected by law	Use of metal-detector must be licensed or other limitations	Law requires reporting of archaeological finds
Norway	Cultural Heritage Act 1978	Broadly designated 'objects from antiquity' all sites and finds before 1537, coins before 1650, Sami sites older than 100 years	Controlled on all protected (i.e. all pre-1537) sites	Yes
Republic of Ireland	NM Act 1994	Archaeological objects 'any chattel whether in a manufactured or partly manufactured or an unmanufactured state 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 than its intrinsic (including artistic) value, and the said expression includes ancient human, animal or plant remains;	Controlled on protected sites. Licensing required for searching for archaeological objects	Yes

3c Consultation responses and their implications for a significance-based definition of treasure

Introduction

3.36 The public consultation on the review of the Treasure Act 1996 and its associated Codes of Practice posed 32 questions and received a total of 1,461 valid responses. The consultation set out the Government's intentions to create a better process for ensuring objects of cultural significance, which are found by the public, can be preserved in museums for the benefit of everyone.

Methodology

3.37 A redacted and anonymised version of the responses to questions 17-23 was made available to Heyworth Heritage. Responses to each question had previously been statistically analysed by DCMS and are summarised below (DCMS 2020). The DCMS analysis attempted to quantitatively analyse what were fundamentally qualitative responses. A similar exercise was undertaken by Heyworth Heritage and found statistically insignificant variations.

3.38 The DCMS statistics are summarised below. In order to explore these data further, Heyworth Heritage undertook a qualitative analysis of responses, which is presented later in this document.

Summary of responses and their implications for a significance-based definition of treasure

3.39 Seven questions in the consultation sought the public's views on proposed changes to the Act. These included:

- A proposal to change to static cut-off date for treasure. 369 (64.6%) responses agreed that changing the definition of treasure in the 1996 Act to specify a static date would be beneficial, while 113 (19.8%) did not agree. 34 (6%) responses agreed with a static date, but considered it should be subject to regular review or suggested an alternative date. 23 (4%) responses considered there should be exceptions to the date for certain artefacts.
- A proposed to set the date as AD1714. 320 (57.1%) responses agreed that 1714 was an appropriate date to include in any static time limit. 217 (39.1%) responses considered this was not an appropriate date, with 64 (11.5%) suggesting 1700 as an alternative and 50 (9%) responses putting forward other alternative dates including 1650, 1830 and 1945. 31 (5.6%) responses agreed that 1714 was an appropriate date, but also suggested that other dates would also be appropriate, including 1561, 1725 or a date agreed by archaeologists.
- A proposal to introduce a value-based definition of treasure, proposed at a minimum of £10,000. The Government responded: *It has become clear, from the responses received, that, although a further revised definition of treasure is both required and desirable to ensure that the 1996 Act meets its aim of preserving important and significant finds, a new definition based on the value of an object would be impractical.*
- A proposal to introduce a significance-based definition of treasure. 156 (32.5%) responses to this question made suggestions for working within the current definitions. These included more recognition for donors (where a finder or landowner and/or occupier waives their reward, or donates non-treasure finds to a museum), increased encouragement of loans to museums, and that finders should voluntarily notify relevant museums of non-treasure finds if they chose to sell them. The highest ranking suggestion was 87 (19.4%) responses supporting better education and outreach for metal-detectorists. 153 (33.6%) responses suggested that a definition based on significance should be introduced. Respondents suggested that the Waverley criteria used for export deferrals of cultural objects, could be used or a rating system could be introduced. 86 (19%) responses supported the introduction of a definition based on value, although this included 49 (10%) who considered that the definition should remain the same. 100 (13.6%) responses suggested changes which would require primary legislation, which is outside the scope of this consultation.
- A proposal for single finds of gold coins to be treasure. 190 (35.9%) responses agreed with the proposed designation of single gold coins as treasure. 138 (26.1%) responses did not agree with the proposal. 62 (11.7%) responses expressed concern about the resource implications of introducing this definition. 31 (5.9%) responses considered that reporting of gold coins to the Portable Antiquities Scheme should be made mandatory. 53 (10%) responses disagreed with the scope of the definition, and considered that it should be significance-based or that the proposed dates were not wide enough. 35 (6.6%) expressed the view that single gold coins were not archaeologically significant and should not be defined as treasure. 11 (2.1%) responses voiced concerns that this definition would prevent finders retaining single gold coins in their own personal collections.
- A proposal for the date of single gold coins as treasure to be AD43 to 1344. 178 (36.8%) responses agreed with this proposal, including 12 (2.5%) who felt that exceptions should be made for "exceptional coins which fell outside these dates".

135 (28%) responses disagreed with the dates, and 69 (14.3%) of these offered alternative proposals. These alternative suggestions included the early Commonwealth period (1650s) and the statutory treasure date (currently 300 years). 54 (11.2%) responses suggested that Iron Age coins should be included in the definition.

- A proposal for base metal assemblages of the Roman period to be treasure. 184 (43.8%) responses considered that this proposal would be beneficial to upholding the aim of the 1996 Act. 134 (31.9%) responses expressed concern about the scope of the definition, including the suggestion that all hoards should be reported as treasure, regardless of their content, or that early medieval hoards should also be defined as treasure. 64 (15.2%) responses expressed concern about resourcing this proposal. 42 (10%) disagreed with the proposal and 23 (5.5%) considered that it would lead to a reduction in the reporting of finds. 16 (3.8%) responses suggested further consideration of the proposal, 12 (2.9%) felt hoards should be kept together, while 11 (2.6%) thought the proposal would complicate the treasure process.

3.40 To all seven questions, the Government responded that it will be looking further at the issue as part of its work on the definition of treasure by significance. A significance-based definition, if worded carefully, could potentially negate the need to introduce any of the other proposed changes outlined in Questions 17-23.

3.41 For this to be possible, a significance-based definition of treasure would need to:

- be worded such that it is irrespective of material.
- be worded such that it is irrespective of the age of the artefact, or perhaps so that it has a low threshold.
- Allow an FLO, Curator, or third party to initiate the process of assessment based on a set of high-level criteria, such as those used by the Waverley Criteria.
- Allow an independent panel to assess a found object on its historical, aesthetic, or cultural value.

Advantages

3.42 A significance-based definition of treasure would have the following advantages over introducing the other amendments proposed in the consultation.

- It prevents the Act becoming even more complicated by the addition of several new categories.
- It is more straightforward, provided there is clear guidance, for the finder and the Finds Liaison Officer.
- It would ensure that only highly significant archaeological finds are within scope.
- It aligns the Act more closely with the majority of other heritage protection policy in the UK which is based on significance.
- It aligns the Act more closely with other heritage protection legislation in the UK which are not limited by any one specific period.

Disadvantages

3.43 Disadvantages to this system are:

- It could be regarded as too subjective or requiring expert specialist knowledge.
- It could be regarded by detectorists as a way of introducing mandatory reporting or facilitating a cherry-picking approach.

- It could cause some finders to not report significant finds, or to say they were found prior to the introduction of the new definition.
- It could result in over-reporting of finds where finders are uncertain about how to interpret significance and overwhelm the PAS reporting system.
- It could be regarded as unrealistic to expect finders to be able to judge what is significant under the TA and report it (see Campbell 2019 on experience in Scotland)

Four options for a significance-based definition

3.44 There are, essentially, four options for a significance-based definition, as illuminated through the analysis of responses to the consultation.

- *Preserve the existing definition.* A significance-based definition is not added to the Act. Instead, one or more of the other proposals are introduced.
- *Add a significance-based definition onto the existing Treasure Act.* As is already the case, reporting of archaeological finds would remain non-compulsory, while reporting of potential treasure would continue to be compulsory. Finders would need to be aware that any find of potential national significance would need to be reported. The Finds Liaison Officer would advise in the first instance, as they do with other items of potential treasure. This would be likely to add only a moderate number of finds to the annual number of cases.
- *Overwrite the Act with a simple significance-based definition and keep the reporting of non-treasure finds non-mandatory.* Current definitions of treasure would be replaced by a definition based on significance. This would reduce the annual number of treasure cases (perhaps dramatically so) by filtering out precious metal objects of low archaeological significance. Reporting of non-treasure finds would remain non-compulsory. As is already the case, finders would need to be aware that anything of potential national significance would need to be reported. The Finds Liaison Officer would advise in the first instance.
- *Overwrite the Act with a simple significance-based definition and make the reporting of all archaeological finds mandatory.* Current definitions of treasure would be replaced by a definition based on significance. Mandatory reporting is introduced.

3.45 Option One would make the Act more complicated to interpret and apply, and it is also likely that it would require subsequent modification.

3.46 Option Four would likely create widespread ill-feeling among the metal detecting community and runs the risk of undoing the good relationships built by the Portable Antiquities Scheme over the last twenty years. Option Four would present significant challenges to the operation of the Portable Antiquities Scheme, especially as it already has to sample the material being offered for recording. Implementing this option would require very significant additional resources because of the greatly increased volume of material presented for recording and may therefore be considered unrealistic. Option Four would also have significant implications for the commercial archaeology sector unless there was some way of ensuring that finds made by professional archaeologists are exempt from the Act.

3.47 Option Two or Three appear to be likely to be the most positively received by the majority of stakeholders. Option Three is more radical, with major resource implications, but would perhaps better fulfil the desire to see the Treasure process streamlined and made more effective.

Qualitative analysis of responses

3.48 **Question 17** sought the public's views on whether they felt that changing to a static date for Treasure is a good idea.

3.49 Responses could be grouped into three main areas:

1. 'No' – changing to a static date is not a good idea.
2. 'Yes' – a static date is a good idea.
3. 'Neither' – that neither a rolling nor a static date is appropriate.

'No' – changing to a static date is not a good idea.

3.50 The most common reason cited by those advocating the current rolling date is that a static date has potential to exclude significant finds that are less than 300 years old. Several respondents also pointed out that there is no relationship between age and importance.

3.51 A few respondents suggested that a significance-based test should be introduced into the Treasure Act to allow for more recent finds to be acquired.

'Yes' – a static date is a good idea.

3.52 The most common reasons cited by those advocating the introduction of a static date are that it would be clearer for finders, and that it would reduce the need to record mass-manufactured items that are of low historical or archaeological interest. Several respondents suggested that the static date should be subject to periodic review. One respondent suggested that there should be a different cut-off date for artefacts and coins. Several respondents suggested that a mechanism would need to be implemented to allow significant finds to be acquired that are more recent than the cut-off date.

'Neither' a rolling nor a static date is appropriate.

3.53 Two respondents made comments that importance is not reducible either to a rolling period (300 years) or a static date. Instead, it would be better to define 'treasure' using qualitative criteria such as 'objects of archaeological, cultural or historic importance'.

3.54 Respondents also cited other heritage protection legislation for which there is no chronological limit, or a lower limit. For example, there is no chronological limit in the definition of wreck under the Merchant Shipping Act 1995, and the Government's commitment to implementing the principles of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage (UCH) applies to material over 100 years - a much more recent chronological limit to those proposed. Likewise, the relevant Northern Ireland (and Republic of Ireland) legislation - Historic Monuments and Archaeological Objects Order (Northern Ireland) 1995 - sections 34 and especially 40, 41 - does not confine objects of interest to any specific period.

Responses to Question 18

3.55 This question asked whether 1714 is an appropriate cut-off date. Responses were varied and few gave a strong argument for their suggested date, though most

respondents argued for dates within the bracket 1700-1850. Some suggested that 1714 is good because it marks the start of the Georgian era, while others suggested that 1830 would be better as it marks the end of the Georgian era. Several said that 1700 would be easier to remember. One respondent argued that the 19th century is important for understanding the British Empire, and therefore the date should be more recent. Others argued for a date in the 1600s, 1500s, and with one respondent suggesting 1BC; reasons for these suggestions were not given. A notable number of respondents made the comment that any static cut off date would be arbitrary.

Responses to Question 19

3.56 Question 19 sought the public's views on whether they felt that the introduction of a value-based definition of treasure (£10,000) was a good idea.

3.57 The commonly cited challenges to a value-based definition were:

- It is hard to determine value until an object is sold,
- It is subjective,
- Market values change over time,
- It conflicts with the Museum Association's Code of Ethics
- It conflicts with other professional archaeological codes of ethics and codes of conduct,
- How would finders know how much something is worth?
- How would Finds Liaison Officers know how much something is worth?
- Monetary value does not equate to archaeological value,
- There are many important objects worth less than £10,000,
- FLOs are not trained in valuations,
- The threshold would need to be linked to RPI,
- It is problematic to implement,
- It potentially incentivises detecting,
- It could lead to more finds not being reported or sold on the black market,
- How do you police it?
- It adds further work to FLOs who are already at capacity,
- Prices could be manipulated.

3.58 One respondent noted that it would be the only modern example in the UK of an enforceable heritage designation being applied on the basis of monetary- rather than heritage- value. As such it is entirely antithetical to the values of national (and international) professional heritage conservation. Several respondents suggested that a significance-based definition would be more appropriate (see responses to Question 20).

3.59 In contrast, those who saw a value-based definition as a positive thing did so mainly because of the belief it could help museums to acquire significant items. A few noted

that it is difficult to suggest alternative methods. One respondent suggested that the threshold should be £5000.

Responses to Question 20

- 3.60 Question 20 sought the public's views on whether they felt there was a more appropriate way to ensure that important finds which do not currently fall within the definition of treasure could be retained.
- 3.61 Responses could be grouped into four main areas:
1. Those in favour of compulsory recording with the option of compulsory acquisition (24 responses).
 2. Those in favour of keeping the present system but with an extension of the definition of Treasure to include objects of significance (136 responses).
 3. Those in favour of keeping the present system with no significance-based modification (123 responses).
 4. Those in favour of a system which allows for the compulsory purchase of significant objects at the point of sale, rather than the point of discovery (10 responses).

Compulsory recording with the option of compulsory acquisition

- 3.62 Respondents in this category all felt that the best way to ensure that archaeologically significant finds could be preserved in museums would be to make it a legal requirement to report the discovery of any archaeological object. Respondents cited current practice in Scotland, Isle of Man, and Northern Ireland, as examples to be considered.
- 3.63 Respondents acknowledged that this would require the introduction of a new heritage protection act. Several respondents suggested that a set of criteria similar to the Waverley Criteria could be used to determine significance. One respondent suggested that PAS officers should decide on a case-by-case basis. No suggestions of how one might measure significance were made.

Keeping the present system but with an extension of the definition of Treasure to include objects of significance.

- 3.64 Respondents to this category formed the largest group. Respondents largely saw the benefits of the current pragmatic system but noted that museums were frequently unable to acquire significant finds that do not meet the current stipulations of the Treasure Act 1996. In their view, an extension of the current definition of Treasure would be the most logical solution.

Defining significance

- 3.65 Four respondents suggested how significance might be defined:
- Significance is the sum of an object's heritage values and is based on a subjective evaluation undertaken by professionals with appropriate heritage expertise.
 - Rare objects considered of national importance, outstanding aesthetic importance, or significance for art, learning or history.

- Any artefact or coin of national importance
 - Objects of exceptional educational or cultural value
- 3.66 In common to all four definitions is the requirement for a person or persons to assess the object against a set of high-level criteria rather than against tangible aspects such as materiality, date, or context. One respondent described this as 'a process of defining "intellectual" treasure'.

Process

- 3.67 Several respondents recognised that for the most part it would fall to FLOs and curators to initiate the process once a find had been reported that was suspected to have significance, much like it currently does for items of potential treasure. One respondent suggested that the process could also be initiated when a third party reports a significant find being offered for sale.
- 3.68 A variety of suggestions were offered regarding who should assess significance once the find had been brought to the attention of the Treasure Secretariat. The most commonly recurring suggestion was that significance would be assessed by an extraordinary independent panel of experts. Other suggestions included:
- Regional hubs representing and coordinating museums/archaeologists etc and which would form an expert and authoritative body.
 - A public consultation on each case.
 - A panel of detectorists.
 - Representatives from the National Council for Metal Detecting.
 - Giving the local museum the power to decide.
 - Giving the Coroner discretionary power to decide.
- 3.69 A common response within this group was the need for the adoption of criteria for the assessment of significance. Many respondents suggested that a modified version of the Waverley Criteria – which is currently used for the export control of cultural objects – could be adopted.

Keeping the present system with no significance-based modification

- 3.70 The second largest group were those who saw no need to include a significance-based definition. Several respondents said that the present system works well and that an extension would be confusing and potentially damaging to relationships with metal detectorists. Others suggested that a significance-based definition would be too subjective. Several respondents expressed concern that a significance-based definition would result in mandatory reporting. One respondent suggested that the nationalisation of antiquities conflicts with the ideals of democracy. One respondent suggested that the PAS database could have a 'tick-box' function which would alert both the finder and the local museum and encourage them to discuss a potential sale or donation.

Compulsory purchase of significant objects at the point of sale

- 3.71 Ten respondents suggested that museums should be given the right to purchase significant objects at the point of sale rather than the point of discovery. Respondents

in this category acknowledge that the antiquities trade needs to be addressed, not least because this is where many unreported significant finds first emerge.

Suggested responses to the problem were fairly similar to one another:

- Introduce a legal requirement to allow museums to acquire all archaeological finds before they are made available on the open market.
- Give auction houses the power to retain items with high value for assessment by the treasure committee.
- Issue a statement of significance which blocks private sales and allows a museum to acquire.
- Allow museums to bid for items at auction and give them 6-12 months to raise funds.

Responses to Question 21

3.72 Question 21 sought the public's views on whether they felt that single finds of Roman gold coins should be treasure.

3.73 Those who were positive about the proposal agreed that gold coins are rare finds and thus worthy of protection. While respondents in this group were positive about museums being given the chance to acquire finds, many questioned why gold coins of other periods were excluded from the proposal. There was a desire among many respondents for gold coins of the late Iron Age, Early Medieval, and medieval periods to also be within scope.

3.74 Those who were negative about the proposal tended to be strongly against it. Many thought that the proposals were a form of 'cherry picking' and would have the effect of causing distrust among detectorists. Several thought that the proposed extension of the act would lead to widespread non-reporting of finds. Others questioned why gold coins were being proposed, but not silver coins, seeing this as further evidence of a cherry-picking approach to the acquisition of finds. The main concerns expressed by this group were:

- That finds will go unreported,
- That the proposal further complicates what is already a complicated Act,
- That it would be difficult to police (people might say the coin was found before the Act)
- That the proposal is inconsistent ('cherry picking'),
- That the proposal is not based on evidence that gold coins are in fact rare,
- That it represents a back-door approach to mandatory reporting,
- That it would put further strain on the Treasure system, and the FLOs who work with it.

Responses to Question 22

3.75 There were difficulties in analysing responses to this question. In many cases where a person entered 'no' to Question 22, that person had also argued in Question 21 that single finds of gold coins should not be brought into scope. It was therefore difficult to know whether the negative response was aimed at the date range in

Question 22, or simply to the fact that the range is wrong because the proposal is wrong. Similarly, several respondents who answered negatively to Question 21 then answered positively to Question 22.

- 3.76 Nonetheless, many respondents questioned why late Iron Age coins were out of scope in the proposal. While some respondents recognised that the volume of late Iron Age coins would add significant pressure to the system, it was generally felt that there was little logic in the exclusion of coins of this period. Several respondents suggested that only rare gold coins should be within scope.
- 3.77 Several respondents argued that any date range is arbitrary, and that regardless of what date range the Act covers, provision needs to be made for exceptional quality coins which were minted outside these dates. A few respondents argued that the most pragmatic solution to this would be the introduction of a significance-based definition of treasure which would allow museums to acquire such objects.

Responses to Question 23

3.78 Question 23 sought the public's views on what the impact would be if the definition of treasure were widened to include base metal assemblages of Roman date. It was difficult to divide these into generally positive or generally negative responses since many respondents acknowledged both the advantages and disadvantages of the proposal in their reply.

3.79 Recurring positive comments were:

- It would only lead to a minor increase in the total number of finds, so it should have little impact on resources.
- It would ensure that archaeologically highly sensitive finds are captured for public benefit.
- It could have the impact of reducing unprofessional excavation of assemblages.

3.80 Recurring negative comments were:

- It would be far simpler to process these through PAS (as already happens), rather than through the Treasure Act.
- It further complicates an already complex definition.
- It would significantly increase workloads for FLOs and the Treasure team.
- It could discourage reporting.
- It potentially could be seen as a further step towards mandatory reporting.
- It is vague and open to interpretation.
- How would you define 'intentionally buried together'?
- The 'intentionally buried together' aspect is one that seems to look back to the old law of Treasure Trove.
- FLOs and the Treasure team are already at capacity.
- It seems to make little sense to apply this only to the Roman period.

- It should be extended to the Anglo-Saxon period, and possibly even up to AD1700.
- It has potential to create a lot of work for commercial units excavating Roman cemeteries.
- It has even more potential to create work if it is extended to Anglo-Saxon cemeteries and so on.
- Some finders might be tempted to split the assemblage in order to keep it or sell it.
- How would a finder be expected to know what a 'group of articles' is?
- How would you identify groups that are dispersed in the plough zone?
- It is potentially difficult to implement, especially where a dispersed find is found by several people.
- How do you define the Roman period? What dates should be used?
- What about finds of this date from Northern Ireland, which was not part of the Roman Empire?

3.81 In general, it appears that respondents identified more challenges to Question 23 than there were opportunities. A small number of respondents suggested that a significance-based definition of treasure would be more effective in preserving base metal assemblages for public benefit.

4. Framing options for defining significance in relation to Treasure

4.1 Thinking how to frame the interview phase of this research, we drew substantially on the preceding analysis of existing systems for assigning value to cultural heritage and on the qualitative analysis of the 2019 public consultation. The volume of detailed responses to this provided a rich body of data for defining the advantages and disadvantages, from the perspective of stakeholders, of options for amending the current system and broad parameters for how a significance-based definition of treasure could be framed (above section 3c).

4.2 Three options were agreed with the Steering Group to form the basis of semi-structured interviews with representatives of selected stakeholder groups. The options spanned a range from an amendment to revise the Act to a radical shift to mandatory reporting. The rationale for the options, and definitions, was explained to interview participants. These were:

Option One: to revise the definition of Treasure to add a significance-based definition onto the existing Treasure Act

- 4.2.1 As is already the case, reporting of archaeological finds would remain non-compulsory, while reporting of potential treasure would continue to be compulsory. Finders would need to be aware that any find of potential national significance would need to be reported. The Finds Liaison Officer would advise in the first instance, as they do with other items of potential treasure. This would be likely to add only a moderate number of finds to the annual number of cases as a “high bar” would be set for new items to be captured by this approach.

Option Two: to overwrite the current Treasure Act with a simple significance-based definition and keep the reporting of non-Treasure finds non-mandatory

- 4.2.2 Current definitions of Treasure would be replaced by a definition based on significance with a lower “bar”. This would reduce the annual number of Treasure cases (perhaps dramatically so) by filtering out precious metal objects of low archaeological significance. Reporting of non-treasure finds would remain non-compulsory. As is already the case, finders would need to be aware that anything of potential national significance would need to be reported. The Finds Liaison Officer would advise in the first instance.

Option Three: to overwrite the Treasure Act with a simple significance-based definition and make the reporting of all archaeological finds mandatory

- 4.2.3 Current definitions of Treasure would be replaced by a definition based on significance. Mandatory reporting is introduced for all finds.
- 4.3 Three alternative, possible significance-based definitions that could be applied to treasure were also devised. These are all based on definitions or criteria already in use in the UK for the protection of cultural heritage, on the basis that all are tried and tested and employ terminology that is supported by well-established policy guidance and precedent. These are:

Definition One: ‘Of public interest by reason of the [outstanding] historic, architectural, traditional, artistic or archaeological interest attaching to it’

- 4.3.1 This definition would be in line with the current statutory definition for ancient monuments. It could be supported by further detailed guidance, as currently provided for scheduling of ancient monuments (e.g. on Period, Rarity, Documentation, Group value, Survival/condition, etc).

Definition Two: ‘Outstanding historical, archaeological or cultural significance’: Significance is determined by the potential of any portable antiquity to contribute to the national cultural record

- 4.3.2 This would be a high level definition as provided for in the 1996 Treasure Act and, for example, as used in Scotland's Treasure Trove Code. It could be supported by further detailed guidance, as is already provided for heritage significance in current heritage and government policy (i.e. historical, evidential, aesthetic, communal value).

Definition Three: The Waverley Criteria for controlling the export of cultural objects used to measure whether an object should be considered a national treasure on the basis that the object’s departure from the UK would be a misfortune.

- 4.3.3 The criteria are:

Is it closely connected with our history and national life? Is it of outstanding aesthetic importance? Is it of outstanding significance for the study of some particular branch of art, learning or history?

- 4.4 The Waverley Criteria definitions could be adapted to be more closely relevant to archaeological finds and antiquities and supported by more detailed guidance, as currently provided for cultural objects.
- 4.5 These options and the definitions for consultation were intended to be independent of each other, although, in the interviews, participants tended to try to connect them (e.g. “option 1 would work well with definition 3”). Interestingly, the notion of a ‘high’ or ‘low bar’ was very differently interpreted by participants. Familiarity, or lack of it, with legislative and policy contexts from which the definitions were drawn predisposed some participants to regard these more or less preferentially. Broadly, however, the framework provided a sound basis for drawing out thinking about the application of a significance-based approach to the heritage values of portable antiquities and implementation of this in a range of scenarios.

5 Consideration of the options for defining significance for Treasure with stakeholders

5a Interviews

- 5.1 Interviews were conducted between 4-15 March 2021 with a range of stakeholders in relevant national and local organisations, and institutional roles, including representatives from Northern Ireland, Scotland and Wales. Interviewees are referred to anonymously in the discussion below (e.g. as Int3 or Int5-6 for group interviews). Recordings of the interviews were transcribed and key extracts are presented in the spreadsheet analysis included in the supplementary material (Appendix 3a Spreadsheet 2). Interviewees were invited to reflect on the current working of the Act, and to comment on the pros and cons of the options and definitions outlined in section 4.

Overview of themes from interview findings

- 5.2 Agreement on need for change: All participants share agreement that change is needed to the current definition of treasure to ensure that exceptional finds not currently covered by the Treasure Act are reported, and that there is an opportunity for appropriate public museums to acquire them. The criteria set out in the Act are seen as placing emphasis on the intrinsic and monetary value of ‘treasure’ rather than the public interest in archaeological finds and their shared cultural significance. There is also a concern that the current process captures too many items that are *not* of interest for public collections, consuming excessive resources and time.
- 5.3 Maintaining trust in the established system of reporting and valuation, through the PAS and TVC, is rated highly by participants, as are the relative robustness and simplicity of the current criteria for defining treasure. It is viewed as a reasonably straightforward system to navigate, which finders can have confidence in as fair and transparent. While supportive of change, interviewees see risks in losing the benefits of a familiar, tried-and-tested system which works reasonably well for the most part,

and also in destabilising the equilibrium of positive relationships that have been gradually built up with many detectorists. Voluntary reporting and recording of archaeological finds is a distinctive feature of heritage protection in England and Wales, unlike much of the rest of Europe and the UK (see above sections 3.17-3.21). The idea of introducing mandatory reporting here is viewed by many participants as likely to be counter-productive to the purpose of the Treasure Act and also counter to the prevailing direction of broadening public engagement and active citizenship.

- 5.4 Adding a new definition: A majority of participants favour the first option of adding a significance-based definition, carefully worded, to those already in the existing Act. Several participants who support this option did so even though it would not be their professional preference, but seeing it as the most likely to be operationally feasible. There are, however, concerns about where the 'bar' would be set for defining significance and serious questions about how regional and local significance could be properly recognised. Given that the current system is thought to capture the majority of significant finds despite its limitations, this option is seen as a means to strengthen what is working well without overturning what has been established.
- 5.5 The two other options presented - Option Two and Three in section 4.3 above - are seen by many as unworkable or unrealistic, both in terms of the resources likely to be required and the challenges of making potentially difficult judgements about significance for finders, finds officers and coroners. Participants generally anticipate a potentially massive increase in finds reporting under these two options, which they feel would overwhelm capacity in the existing network of FLOs, already viewed by finders as overburdened. At the same time they also anticipate a loss in the willingness and confidence of some (the most prolific in particular) finders to report; a loss of trust in the system; an even slower process; and a perception of a move towards mandatory reporting by stealth.
- 5.6 Assessing significance: An overarching theme, that emerges for all three options considered, is concern about where the 'expert' or definitive judgement on significance would lie (with the FLO? with a hypothetical regional advisory panel? with the acquiring museum?). A related area of concern is around how diversity across regional and national significance, and reflected in museum acquisition policies, could be recognised and accommodated. Currently judgements about what is, and is not, treasure are fairly self-evident to finders or can be confirmed when they are reported to an FLO. This may be less clear-cut with a significance-based definition. A potential conflict of interest arises for FLOs, many of whom are based in local museum services, in attributing significance to objects that could then be acquired by a museum. Museum acquisition policies and local interests vary across regions and countries. Moreover, the range of specialist and regional knowledge required for such judgements may well be beyond the scope of even an experienced FLO.
- 5.7 Defining significance: For the three proposed definitions for finds of significance, no strong consensus emerges from participants' comments in favour of a particular definition. These were based on existing significance-based definitions and criteria used in cultural heritage policy in the UK: the familiarity, or otherwise, of interviewees with the application of these was a factor in perceptions of their relevance. However, participants' general comments are a helpful guide towards framing such a definition: "it has to be simple, clear, concise, and easy to understand". Terms such as 'outstanding' and 'of national importance' are viewed critically by some as potentially

exclusive of all but finds of the very highest importance, of the kind that might go to a national museum collection. While it is recognised such finds must be included in any new definition, it is also felt to be important for there to be flexibility to encompass the significance of variants, rarity, and diversity across regions and countries.

Participants commend the concept of 'public interest' and 'public value - in distinction from monetary value - and of the contribution a find makes to the national and the regional story: the Waverley definition criterion of 'connection with our history and national life' is singled out by several interviewees as particularly meaningful.

- 5.8 Assemblages of finds: Views on revising the definition of treasure to include assemblages of finds are mixed: extending this to significant excavated assemblages or finds from entire sites is viewed as problematic in many respects. Several participants, however, suggest extending the current definition of treasure to all non-precious metal hoards and other hoards of all dates as a practical and meaningful measure for identifying significant groups of finds. Exploration of this aspect lies outside the scope of this research but there is clearly further ground to explore here, where the experience of Scotland's TTU will be relevant. It is possible, however, that archaeological field projects could potentially produce a much higher proportion of finds that might be classed as 'significant' under a new definition than under the classic 'precious-metal and hoards' definition, with a risk of proliferating the need for treasure reporting unnecessarily.
- 5.9 Adding a new significance-based definition, overall, would bring the Treasure Act in line with wider heritage practice, where significance is a well-established concept for recognising heritage value. Participants suggest that the range of artefacts that might fall within a definition of high significance could be framed appropriately with guidance for finders, FLOs and museums, to reduce a risk of excessive number of items being reported unnecessarily. In conjunction with this, some kind of discard process is desirable, recognising the low significance of some treasure finds, to filter out material that currently burdens the system unnecessarily.
- 5.10 Ideally, participants wanted to see the simplest possible change to the process which would result in the maximum public benefit for the heritage, realistically scaled to the available resources and retaining the trust of users in an established and transparent system.
- 5.11 More detailed analysis below follows the sequence of questions in the interviews, as participants explored possible options and definitions. The pros and cons identified by participants are summarised at the end of this section.

Initial observations on the current definition of Treasure and how well it works?

- 5.12 Participants were in overall agreement on the need to amend the Treasure Act: "it catches too many things which are not significant and not enough of those which are" (Int1).
- 5.13 The most frequently cited aspect was loss of highly important archaeological items to museum collections because they fall outside the criteria of the current Act: "the current definition does exclude some things which should be covered under treasure.... the need to capture these significant finds ...is generally supported. All the way down to grassroots, I think" (Int6-17).

5.14 Most participants consider that generally the Act is working well in the public interest to secure important items for museum collections, mentioning this is in large part due to the effectiveness of the Portable Antiquities Scheme (PAS):

“and then there's all the material that's had to be reported as treasure which is less significant than either has been acquired by museums, but importantly is at least registered... has the benefit of ensuring finds are reported.” (Int7-8)

5.15 Frequent reference was made to the clarity of the current criteria for treasure as a strength: “a straightforward, well defined set of criteria”; “almost a flowchart tickbox”; “seen as a pretty fair and transparent system” (Int4, 12, 14-15). A number commented on the risks if “we...overcomplicate the definition of treasure, because it's already reasonably complicated” (Int19).

5.16 Participants noted that it does not work well for non-precious metal and non-metal items (glass, lithics are mentioned); for items of less than high status; for assemblages of material; and for Roman, medieval and post-medieval hoards that fall outside the definitions in the Act.

5.17 Concerns focussed around:

- the need to maintain the trust in the system that has been built up among finders;
- the term ‘treasure’, and the focus on precious metals, which continues to emphasise the monetary value rather than the public heritage value of finds (which can mitigate against trust in, and from, the finder community);
- “how much it brings in... rubbish treasure. fragments of rings, or fragments of brooches or whatever, with precious metal content... the amount of items which are expensive to administer, but also slow the whole system down” (Int16-17);
- a frequently-used phrase - “taking a hammer to crack a nut” - about the potential revision of the Act reflected a sense among some participants (across local and national and finder perspectives) that the scale of the perceived issue should be addressed in a proportionate way that would not jeopardise or compromise the working of the Act and the PAS.

Options for introducing a significance-based definition of Treasure

5.18 Participants were asked to consider three possible options, defined in conjunction with the Steering Group, for introducing a significance-based definition of Treasure. They were asked what they thought would be the pros and cons of such an approach from their perspective, and whether it would be workable.

Option One: to revise the definition of Treasure to add a significance-based definition onto the existing Treasure Act

5.19 The majority of participants were in favour of this option as being the simplest, the most workable and most achievable:

- “the act stays the same with the added significant based definition... to see things preserved for the public in the framework of a fair system, that encourages transparency” (Int4);

- “thinking that actually we just want to tweak this and make it work better, and have some supplementary guidance to make it work” (Int2);
- “I would rather see the insertion of another clause than the dereliction of the really quite specific measures that we currently have just to catch those” (Int14-15)
- “the simplest option, ...easiest to facilitate... makes sure that the significant objects and assemblages are captured, ...acknowledging the importance of significance outside of monetary value.. also provide museums with the chance to acquire a wider range of material...” (Int12).

5.20 Common concerns included:

- uncertainty how this could work practically for finders or operationally for institutional roles (FLOs, Coroners, acquiring museums);
- issues about conflict of interest in attributing significance (where the judgement on this would sit);
- how and where ‘the bar’ would be set for defining items of significance: “national significance, but what about regional? And what about local?” (Int3);
- potential impacts in an increase in treasure reporting, though many commented that the number of finds that would meet a significance-based definition of treasure could be relatively small.

5.21 A significant number of participants selected option 1, even though it was not their preferred way forward, because they viewed it as the simplest and the most likely to be acceptable and operationally feasible:

“not necessarily my favourite, but it is the easiest one... my least favourite of the three options in all honesty” (Int12):

“the purpose of the treasure act, from my perspective, is to put material into public collections, and is a way of ensuring that our portable heritage isn't lost... any change from the current situation is good [but] this is probably the worst of the options” (Int20-21)

5.22 One FLO participant took the view that even this option could be seen as introducing mandatory reporting by the back door, and was very concerned about the potentially damaging effect on relations with metal detectorists and the volume of finds it might bring into reporting. Participants representing detectorists took a more sanguine view:

“It has to be simple, clear, concise, and easy to understand. Where there's ambiguity, people think we'll get away with it or they're not sure or they stop stressing about it, then we end up failing in duty... so they either won't do it because they're not sure, or they will do it, and it'll overburden the system. So the clarity of it is absolutely essential, whichever route we went down...” (Int16-17)

Option Two: to overwrite the current Treasure Act with a simple significance-based definition and keep the reporting of non-Treasure finds non-mandatory

5.23 In discussion of this second option, views were less clear cut in terms of the pros and cons and no clear majority view emerged in favour or against. Some participants

thought that all three options could be workable in principle, while others anticipated that the increased volume of finds likely to be reported in this scenario would both overwhelm the system and place the PAS in an invidious role in the frontline of selecting significant items to go forward through the treasure process. Views in favour were caveated with concerns about practicalities: questions about whether legislative time could be available (on the assumption this would be required for such change); resources could be available in PAS to manage the system and in museums to acquire significant items; whether a meaningful definition of significance could be established and implemented in a way that is workable; whether finders would be confused about what to report or could provide good reason for not reporting.

5.24 Views in favour of this included:

- reporting remains non-mandatory, in the spirit which it has been established with PAS (Int4)
- “the key thing here is that it's a move away from the precious metal and the [monetary] value based definition and would go a long way to reinforcing the... archaeological view” (Int12);
- “a good opportunity to not claim all treasure finds as they are currently defined...at least you have that flexibility to say, the museums don't want to acquire this. So let's just record it and move on” (Int3).
- “great if we could have a far simpler definition of treasure. But... real problems in terms of the definition then of what you say treasure is.. including national and local interest in the particular item” (Int19)
- “the significance definitions have a lot of potential for us for allowing different voices to come in to talk about [cultural and local] value” (Int9-11)

5.25 Concerns against included:

- “risk of actually undermining a system which has by and large worked pretty well... whether it would be adopted and accepted to the same degree, as the current definition, which at least has bedded in, is clear” (Int 9-11)
- “the problem of effectively educating or informing finders so that they have some expectation of what might be and what isn't treasure going forward” (Int9-1)
- “they would require significantly more resources invested in the PAS / treasure system, both British Museum / national museum resource to deal with it...” (Int7-8)
- “that's almost the worst option because it's both complex legally, and it's going to put a lot of pressure on FLOs to make the call of whether something is significant or not” (Int20-21)
- “the whole PAS process is overburdened, it's already incapable of seeing everything that we show them...so we need to make sure that we don't get to the point where people don't do anything or show anything because they're not sure” (Int16-17)
- “the whole of this system is set up really to ensure that materials end up in public collections to be able to be enjoyed by everybody in a museum setting... not sure that redefining by national significance will enable us to do that any better than we do already” (Int1).

Option Three: to overwrite the Treasure Act with a simple significance-based definition and make the reporting of all archaeological finds mandatory

- 5.26 While views were again mixed here, as for the second option, only a minority of participants was clearly in favour of this, all representing local/ regional perspectives. Some participants felt conflicted between this option as an ideal, which other neighbouring countries follow, and the realities of the scale and relationships in question here. Many felt it was “completely unworkable” and “would require some gigantic overhauling of Anglo Saxon law”. (Int1, 2, 4, 16-17).,
- 5.27 The question of trust and of public interest surfaced in this option:
- “the voluntary aspect of it is really important because people see that they are doing society or service by doing this, they want that. I think as soon as you start to make it mandatory, it makes it ‘we don't trust you’.... more people potentially won't report as a result of that and just keep it” (Int1).
- “The mandatory line has ...almost a 19th century kind of feel to it, ...it does seem to fly in the face of that kind of commonly owned heritage trend that we're seeing. So regardless of resource implications, it doesn't feel appropriate for the time” (Int9-11)
- 5.28 Summing up, in a FLO's archaeological perspective: “My professional opinion is that we should move towards [this], almost impossible to legislate for, almost impossible to fund, unlikely to have political will to do it... But it is the one thing that would protect the heritage most” (Int20-21).
- 5.29 Summing up, in a finder's viewpoint: “this is ultimately a sledge hammer to crack a nut. It may be OK in Scotland and Northern Ireland but could backfire in England where there are many more detectorists with many more finds to be recorded. This would put a considerable workload on FLO's and there could be a distinct rise in non-reporting of finds in this instance” (Int22).

Options for defining 'significance' in the Treasure Act

- 5.30 The question of how significance could be defined emerges as a central concern from the first part of the consultation. Three possible options for a definition were selected for consultation at this stage with the advice of the project Steering Group. All three definitions are based on ones that are currently in use in heritage law or heritage policy in the UK.
- 5.31 The majority of participants did not express a strong view in favour of any one definition but discussed how elements of them might be more or less important in arriving at a workable solution, in conjunction with thinking about how high or low the bar might be set for significance. The concept of significance is not a term generally employed in heritage law but is widely used across public policy, as discussed above. Historic England's interview drew attention to recent discussion among the Arms' Length Bodies for cultural and natural heritage on a common understanding of significance and the need for research into the connecting principles for its use across sectors (Int2). This may have relevance for further work in this area.

Definition One: 'Of public interest by reason of the [outstanding] historic, architectural, traditional, artistic or archaeological interest attaching to it'

- 5.32 Participants had roughly equally polarised views for and against this option and were more divided than on the other two, although the majority were undecided on its merits. The fact that this statutory definition for public interest in heritage is connected with ancient monuments and sites, rather than with portable antiquities and artefacts, suggested to some that it would not be relevant and was too generic while others favoured it as established in government policy (Int13, 19). The 'outstanding' descriptor was questioned and judged by some to mean a very high level of significance and led to a view that there was little difference between this and the second option which also employs 'outstanding' as an attribute. Other participants saw this definition as more open and established in law:

"I like the lowest bar: simple, of public interest. I'd be slightly nervous about outstanding, but, you know, public interest can be ...outstanding historic interest locally, archaeological interest locally, that's quite open. So I'd be inclined to have that as the most open definition." (Int20-21).

- 5.33 Scotland's participant noted that "language is going to be important in that significance definition, and making sure you do have that flexibility" which it was felt this option lacked (Int3). Being too tightly focussed on 'national significance' was also highlighted as potentially limiting and difficult in an Act that spans three countries.. The fact that this definition recognised "public interest", however, was seen to be key for decision-making (Int7-8) and "that sense of public benefit...something [that] contributes to a national story, a regional story" (Int9-11) was an important strand, including "and how important it is to look at that regional variance" (Int18).

Definition Two: 'Outstanding historical, archaeological or cultural significance': Significance is determined by the potential of any portable antiquity to contribute to the national cultural record

- 5.34 For this option, participants were fairly evenly split between favouring this option and debating it, but there were no strong feelings against it. The use of significance as a term in this definition was felt to offer scope for interpretation in different contexts, though again participants raised the question of where or how regional interest was articulated here, given use of 'national cultural record' (Int7-8). This was not necessarily seen as problematic, however, in the sense "there is scope ...something that is regionally important, therefore nationally important...gives you more scope to work with regional museums - you can bring in collections development policies relevant to each region, you can work with HERs on their regional research frameworks" (Int12). There was felt to be some value in employing a definition, already tested and familiar to finders, from the system in Scotland (Int7-8).
- 5.35 As discussion deepened with interviewees, focus tended to move towards the operational aspects of applying definitions of this kind, 'who determines the significance of the object itself' and their credentials for doing so, taking regional variation into account. The essential requirement for underpinning guidance and explanation, for example, of "outstanding" and "the most important thing is what comes behind them in terms of guidance, which supports how people approach those sorts of definitions" (Int7-8).

"But probably all of them have some pros and cons, which if you put them together and worked on them, you could probably come up with something

which was clear and simple and concise and people can understand” (Int16-17).

Definition Three: The Waverley Criteria for controlling the export of cultural objects used to measure whether an object should be considered a national treasure on the basis that the object’s departure from the UK would be a misfortune.

- 5.36 As with the second definition, participants were fairly evenly split between favouring this option and debating it, and there was just one strong view against it. Unlike the other definitions, the Waverley criteria were more familiar to many participants, particularly those in the museum sector, and therefore seen as more relevant. The DCMS consultation in 2019 had already drawn these to the attention of consultees. There was a sense of this as a tried and tested system and one that has a form of governance with a panel of expert advisors that is trusted (Int1, 9-11, 12). Some saw this also as a rather high-level, high bar definition (‘outstanding aesthetic importance, outstanding significance for study of some particular branch of art, learning or history’) or “too arty and vague” (Int13); but others liked the breadth of the criteria, and the first in particular, the ‘connection with our history and national life’ and potential for the scope to include regional interest in that (Int7-8, 9-11):

“there's one line in the Waverley criteria. Is it closely connected with our history and national life? I think it's brilliant. That, the guys on the floor, will understand that, is it closely related to our history?” (Int16-17)

- 5.37 There was agreement on the need for modification of the criteria for archaeological and regional interests and a suggestion that this model, with expert national and regional advisory panel(s), might work well in conjunction with option one of the scenarios discussed earlier. The operational implications of this were not explored further.

Assemblages and associated groups of finds

- 5.38 Participants were asked for views on whether the definition of Treasure should continue to be applied to single finds and associated groups of finds (e.g. a hoard) or whether the definition should be expanded to include assemblages of finds from a single context or even an archaeological site.
- 5.39 The participant from the Scottish Treasure Trove Unit (Int3) shared experience of their Code’s practice for reporting assemblages from organized archaeological fieldwork. Very few participants were familiar with this streamlined process which works effectively in Scotland, albeit at a different scale to England (c80 archaeological interventions annually compared with c5000).
- 5.40 Participants’ concerns were principally about unnecessary proliferation of bureaucracy for archaeological contracting organisations and groups if this were introduced, particularly in relation to an extended significance-based definition being applied to finds from a whole site.
- 5.41 Normally there is a prior agreement with a museum for deposit of the finds and archive from professionally organised or led projects, which removes the need for a treasure process to ensure such finds go to public collections. Exceptions are cases where significant objects have been retained by landowners/ developers for sale or personal collections. Historic England noted that it has recently taken advice from a

QC on this issue and will be providing guidance on a model contractual agreement to cover this.

- 5.42 Exempting professionally organised archaeological projects from reporting at all under the Act was also suggested. This connects with issues of professional standards and potentially of licensing, raised in discussion with Historic England, that would require more in depth exploration than was possible for this project.
- 5.43 Beyond the question of finds from archaeological interventions, there was a positive reception to the idea of extending the treasure definition to include:
- Non-precious metal and other hoards of all dates
 - Grave and other assemblages that currently fall outside the scope of 'associated objects' with defined treasure
 - "assemblages of finds from a single context, under a significance-based definition" (Int 12); "early prehistoric assemblages", "episodes of structured deposition" (Int14-15); "potentially Palaeolithic sites of national importance defined by lithic scatters or votive and temple sites where you've got artifact deposition characterizing the site" (Int9-11).
- 5.44 Potentially problematic aspects are identified around the idea of extending the definition of an assemblage to include all finds from an area: an unscheduled archaeological site such as a Roman town or Viking trading/ market site for example (Int5-6). Such sites can produce extremely large volumes of material - ceramic and glass as well as metal - and are often repeatedly visited by detectorists, and for organised archaeological fieldwalking, over several seasons. The implications of reporting these as treasure - and for museums the costs of acquiring them to reward finders (Int22) - are considerable: "not site based – too large and unmanageable" (Int13).
- 5.45 Participants indicated there is clearly further ground to explore here, where the experience of Scotland's TTU, and views of participants can be consulted in a depth.

Overall consideration of the value of a significance-based definition of Treasure

- 5.46 Having considered the various options for a significance-based definition of Treasure, participants were asked to consider whether this could be a helpful approach, given the aims of the Treasure Act, or whether it would be preferable to stay with the present definition.
- 5.47 Participants agreed overall that adding a "definition which catches those outstanding, for want of a better word, objects is something that is required.... we are losing significant objects to private collections, which cannot be researched or used for any other kind of public benefit, whether it's on display or community engagement" (Int1). Broadly the consensus is that the current definitions are protecting the vast majority of important finds but that some significant objects and groups of objects are evidently falling through the net.

"A definition of Treasure based on significance is wholly appropriate... this focuses much more on what the public value of an item is than its monetary value. And if the Treasure Act is designed to ensure that at least some of these items make it into the public domain, and become part of our National Treasury, if you like, then that should be done on the range of criteria that

could be considered for significance that we might apply to a site or any other heritage asset. So that seems to me to have a sort of moral force, which is far greater than “it is 10% of gold, and therefore, it’s treasure ... seems to me to be a very 21st century approach.” (Int2)

- 5.48 A number of participants suggested that the range of artefacts that might fall within a definition of high significance could be provided for the guidance of finders, FLOs and museums, and could be defined sufficiently carefully to obviate the risk of excessive number of items being reported unnecessarily. The body of material researched for this project, constructed retrospectively from PAS records, suggests that such a categorisation would result in a manageable number of additional treasure cases a year and this manageable scale was key for some: “[we should] stick with what we have if it is not possible to have a high bar, significance-based definition (which could include condition)” (Int13).
- 5.49 In conjunction with extending the definition, participants strongly advocated that alongside “significance to be added to the current definition... as an absolute must within that definition, there has to be a facility to weed out the insignificant, precious metal treasure finds” (Int16-17). From the TVC perspective there is the suggestion of change to “redefine the way that low value common items made of 10%, gold or silver or more, which should not go through the valuation process...some kind of mechanism which can identify what those common objects are... and enables the transaction to take place outside of that valuation process because they are such low value items” (Int1). Alternatively, the introduction of a test for low significance was among suggestions for a way forward with a two stage process which required that “anything that meets the current definition of treasure has to be reported, but then essentially, the FLO or authority to whom its shown, should then apply a significance test on top of that, to ...decide also, whether it is significant and should go through the bureaucracy of treasure” (Int7-8).
- 5.50 Ideally, participants wanted to see the simplest possible change to the process which would result in the maximum public benefit for the heritage, realistically scaled to the available resources and retaining the trust of users in an established and transparent system. A key element in this will be the development - importantly in conjunction with finders - of meaningful criteria for significance which would satisfy the “reasonable fitness test”, as one participant put it, of being a find of such importance, for the story it tells in its context, that it should be acquired in the public interest.

“Given this opportunity, we should be going into this thinking, how do we make metal detecting essentially have the biggest contribution it can make to archaeology, and that is about seeing recording and reporting and acquisition of objects as one and the same thing. First of all, let’s get the information about these objects that are archaeologically interesting and important. And then let’s ensure that the most important for telling those broader stories are in museum collections.” (Int7-8)

Other observations

- 5.51 Finally, interviewees had an opportunity to comment on relevant aspects of the current working of the Treasure Act or any other the implications of revising the definition of Treasure to include a concept of significance. This was the opportunity for mentioning aspects that are tangential rather than directly relevant to this

research into a significance-based definition but the comments are gathered in the spreadsheet analysis (Appendix 3a Spreadsheet 2 Q10) for further reference.

5.52 They included:

- Issues of **museum acquisition policy / specialist capacity** in relation to any changes
- Importance of **trust at all levels in the process** and among stakeholders
- Potential **financial impacts** of:
 - extending criteria for nationally important finds for Historic England's funding of field investigation of treasure find sites
 - extending criteria on museums' capacity to acquire Treasure if this results in potential for more material to be claimed
- Assessing the **current scale of non-reporting of finds including treasure** which participants suggest is at a worryingly high level in some parts of the country. This view is supported by recently published research into unreported 'dark' finds (Brodie 2020, 91 et seq).

"vast, unreported treasure that goes straight into sale rooms, we see through sale catalogues, export license applications... that might be as much as 50 or 60%. And it's usually the best items, several 100 items a year in just Norfolk" (Int5-6);

"There are a lot more metal detectors operating in Yorkshire than record with me.....we probably don't see half of what's found in terms of treasure" (Int12);

"So when I look at the situation in Wales, where it may not be, you know, massively different I think we're seeing a reasonable proportion, even if it's 40 or 50%, that that's still worth having" (Int9-11).

"And we see a very small wedge of things [in Shropshire]... from a treasure point of view, we probably see 80% of all treasure finds [but] probably at least 20%, 25%, which never see an office. But I think we probably hear of or see the majority of nationally important material" (Int20-21).

- Suggestions of ways to **address challenging issues of scale and inefficiency**: in the valuation process, in considering changes to the date range applied to Treasure, acquisition policy
- Regulation of the **commercial market in auction houses** for unreported treasure items
- Potential for tailoring **significance and codes of practice** at a regional or national level (as suggested in Wales)

Summary of pros and cons of a significance-based definition of treasure as identified by interview participants

5.53 Pros

- Ensuring the most exceptional archaeological, historical and cultural finds which currently fall outside the existing treasure 'net' could be covered by a new criterion to ensure they are reported and may be acquired for public collections
- Emphasising a move away from a monetary / precious metal-based definition of treasure towards one that recognises the public interest and wider cultural value of found objects for telling the history of people and places and the national story
- Adding a significance-based definition, clearly worded and with supporting guidance, to the existing criteria is viewed as the most straightforward option to ensure that significant items and assemblages are reported without overloading the current system - a reasonable adjustment to a system that is functioning well as was intended 25 years ago, but is not working for 21st-century ideas of public value
- Using a significance-based definition brings the protection of found cultural heritage material in line with the way other heritage assets and museum collections frame their assessment of cultural importance
- The current definition of Treasure, after over 25 years in practice, is seen as relatively clear-cut: it is readily understandable and easy to interpret, particularly for finders. Introducing any new category of treasure should aim to build on this cautiously with a programme of outreach and information
- There is the opportunity for efficiencies (in Options 2 and 3) to exclude large numbers of items, covered by the current treasure definitions, because they are common or in poor condition and not of sufficient interest for acquisition by public collections. Finders would be free to dispose of or sell such finds and a burden of unnecessary process removed.

5.54 Cons

- Risk of undermining a system that is working reasonably well by introducing too sweeping a change in one go, 'using a hammer to crack a nut'
- Currently judgements about what is, and is not, treasure are fairly self-evident to finders or can be confirmed when reported to an FLO. Defining 'significance' for finders may be challenging - information and guidance will certainly be needed. Risks are attached to making the definition more complex and difficult to interpret for everyone from detectorists to archaeologists, FLOs and coroners.

- Setting the definition ‘bar’ too high in terms of finds of *outstanding* or of *national importance* could potentially exclude some significant finds that are exceptional in their regional and even local context. Museum acquisition policies are tailored to their collections and local/regional interests so a system that can flex to accommodate important cultural diversity is important.
- Adding a significance-based definition would not in itself reduce the ‘over-reporting’ of treasure (i.e. of items that meet the current criteria that museums do not wish to acquire) without change to the existing definitions and/ or a process of discard/ disclaim at the reporting stage
- Potential loss of trust among finders: even Option 1 could be viewed as ‘mandatory reporting by the back door’ unless this is communicated carefully; and finders might still avoid or neglect reporting unless the new definition, and its intention, is clearly understood
- Potential loss of confidence in the PAS reporting system to cope with the anticipated large increase in numbers of finds under Options 2 and 3 without a large increase in its capacity

5b PAS database analysis

Introduction

5.55 The DCMS tender document (see Appendix 1) asked for a ‘deep dive’ into the PAS database to examine how each draft definition would impact the aim of the Act, which is to preserve significant finds for public collections (DCMS 2020, 5). The analysis also explored how the draft definitions might improve the treasure process so that it is more efficient, more focused on the aim of preserving significant finds for public collections, and more rational and easier to understand (DCMS 2020, 2).

5.56 The three draft significance-based definitions of treasure used in the database analysis are as follows (Table 2):

Table 2. Three draft significance-based definitions of treasure

Significance definition	Sensitivity	Draft wording
High-level style	High	‘Outstanding historical, archaeological or cultural significance is determined by the potential of any portable antiquity to contribute to the national cultural record’
Waverley style	Standard	<ul style="list-style-type: none"> • Is it closely connected with our history and national life? • Is it of outstanding aesthetic importance? • Is it of outstanding significance for the study of some particular branch of art, learning or history?
Statutory style	Standard	‘Of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it’. Encompassing Period, Rarity, Documentation/finds, Group value, Survival/condition, Fragility/vulnerability, Diversity, Potential.

Methodology

- 5.57 A methodology was constructed which helped to answer the following questions set out in the tender document:
- How would regional significance be captured in the definition, and would there be different levels of significance?
 - How the number of treasure finds would change?
 - The impact of geographical variations in finds numbers on local museums?
 - Whether the definition was easy to understand by stakeholders, including metal detectorists?
 - How each of the options could be used and implemented in practice by Finds Liaison Officers and coroners?
 - How would any new definition interact with current definitions, for example, does it sit alongside and complement them or replace them entirely?
- 5.58 Four PAS recording regions were selected for detailed study: Wales, Herefordshire and Shropshire, Lincolnshire, and Hampshire. These recording regions were selected to give a geographical spread which also demonstrate diversity in material culture. Data were selected for the period 1.1.2010 to 31.12.2019. The year 2020 was not included owing to the abnormally low levels of recording resulting from the coronavirus pandemic.
- 5.59 The detailed analyses of the four recording regions each involved five stages (figure 1). First, a list of all records from each region flagged as 'treasure' were downloaded from the PAS database. Second, a list of all records flagged as a 'Find of note' were downloaded from the database (see further below). Third, a list was compiled of finds from each region that had been published in the journals *Britannia*, *Medieval Archaeology*, *Post-medieval Archaeology*, and the *British Numismatic Journal* (see further below), as well as in the PAS annual reports for the years 2011-2020. The dataset produced by these three stages aimed to capture those finds that had been predetermined as being in some way significant – either by their intrinsic archaeological value, or by the fact that they fell under the stipulations of the Treasure Act 1996.
- 5.60 The fourth stage involved a rapid trawl of all other finds recorded on the PAS database for each region. This was undertaken to capture any remaining finds of enhanced archaeological significance. Finally, this shortlist was then assessed against all three draft statements of significance to see how the number of finds would vary under each of the three definitions of treasure. More detailed information on the datasets and the challenges they presented are provided below.

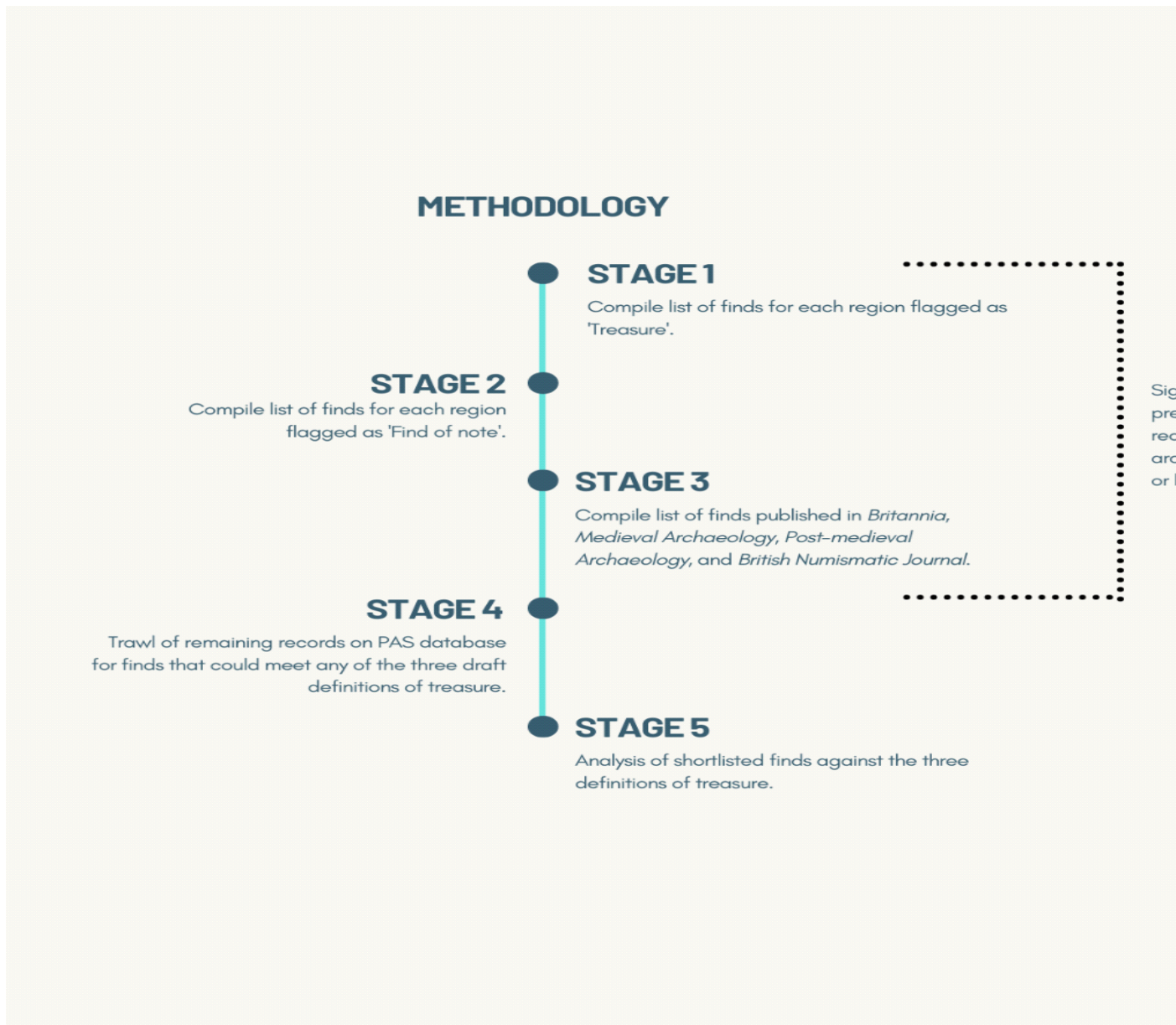


Figure 1. PAS database analysis methodology.

Find of note

5.61 The PAS database is structured so that the recorder can 'check' certain boxes on each record which flags the object as having some sort of significance. One such box is titled 'Find of note'. This is used by the recorder when the object is deemed to be of greater significance than the usual material brought in for recording. A dropdown field then allows the recorder to select further options to explain the reasoning for their decision. These options include: no selection; County / local importance; Regional importance; National importance; potential inclusion in *Britannia*; include in *MedArch*; Publication ready; Include in *PostMedArch*; for inclusion on *British Numismatic Journal* 'Coin Register'. The recorder can only select one of these options.

- 5.62 The 'Find of note' box is not used consistently by recorders. Some use it systematically, while others are more ad-hoc in their approach. Some regions make little use of the function. The nationally significant hoard of gold Iron Age jewellery from Winchester area, Hampshire (PAS-845331), for example, is flagged as treasure, but not a find of note. Similarly, given that the 'find of note' box is subjective, it may at times reflect the research interests or experience of the recorder. Nonetheless, where it is generally used by the recorder it is a useful dataset because it reflects the cognitive processes of determining significance outside of the influence of the present project. Indeed, Finds Liaison Officers (who are the primary recorders) are usually those best placed to know which objects in a particular landscape are important, and which objects might be important to local museums.

Treasure

- 5.63 The 'treasure' box in the PAS database is more consistently used by recorders, though there are instances where a record for an item of treasure has not been flagged as such. Reconciling the number of cases reported in the Treasure Annual Reports against those listed as treasure on the database would be a lengthy task and beyond the scope of the present analysis. Accordingly, and for consistency's sake, only those records flagged as 'treasure' on the database are included in the following analysis.

Significant objects previously published by PAS

- 5.64 A round-up of significant finds and assemblages is published each year in several national journals, as well as in the PAS Annual Report series. Roman finds are published in *Britannia*, while medieval and post-medieval finds are published in *Medieval Archaeology* and *Post-medieval Archaeology* respectively. Significant coin finds and coin hoards are published in the *British Numismatic Journal*. No systematic publication of significant PAS finds occurs for prehistoric material. Around 30 finds are published each year in *Britannia*, while around 50 finds are published in *Medieval Archaeology* owing to the inclusion of Early Medieval and Medieval coins. This compares with around 11 finds published annually in *Post-medieval Archaeology*.
- 5.65 The selection criteria for inclusion in each journal is broadly the same, focussing on significant finds, or research projects that highlight the significance of certain types or groups of finds. PAS finds published in *Britannia* include "*significant individual artefacts recorded by Finds Liaison Officers in the year concerned, selected because of their iconography and/or their contribution to the understanding of object type or distribution, in some cases being items not previously recorded in the repertoire of small finds from the province*" (Worrell and Pearce 2014, 397). PAS finds published in *Medieval Archaeology* used to focus solely on significant finds, though in 2010 the emphasis "*shifted from highlighting a number of important finds from the year to a broader review of both PAS finds and projects which have utilised PAS data*" (Naylor and Geake 2010, 382). Finds published in *Post-medieval Archaeology* were "*selected for discussion because of their rarity or research potential*" (Lewis 2013, 388).
- 5.66 Not all finds that are flagged as a 'find of note' are published in the annual roundups; rather, the most significant are selected by the scheme's Finds Advisors. Accordingly, the finds that appear in the national journals are a useful measure of significance as they represent a second-stage review of significance. In some ways this might mirror the process one might envisage if a significance-based definition of

treasure is introduced; an FLO might trigger the process by flagging a find as being – in their opinion – significant, and this is then reviewed by a Finds Advisor. Of course, the number of finds published in the annual roundups are limited in part by the space allocated by the journal; nonetheless, the database of published finds helps us to understand what is currently perceived by the academic community as being the established minimum level of national significance. It must be stressed, however, that not all the finds published in national journals are necessarily ones that museums would wish to acquire; the potential of a find to contribute to the archaeological record (or to the ‘public interest’) through acquisition is, at times, different (or even at odds) to the potential it has through recording.

Trawl of database

- 5.67 In addition to the detailed survey of treasure, finds of note, and published finds, further rapid assessment was undertaken against all other finds on the database for each region. This stage of analysis was necessarily rapid given the volume of finds (more than 45,000 for Lincolnshire, for example) and undoubtedly resulted in a coarse-grained dataset. Nonetheless, in all areas the rapid survey resulted in low numbers of additional finds, or no finds at all, which helped to affirm the methodology of primarily compiling a list of significant finds using other methods.

Analysis of Export of Objects of Cultural Interest

- 5.68 A major methodological issue with the PAS database analysis was in knowing what level of sensitivity to use when assessing finds using the Waverley and Statutory-style definitions. In order to set an appropriate level of significance for the database analysis, research was first undertaken to see if precedence had already been set under the Waverley criteria for the export of cultural objects.
- 5.69 Respondents to the DCMS treasure consultation frequently cited the Waverley criteria as a possible template for a significance-based definition of treasure that would be effective in preserving significant finds for public collections.
- 5.70 The Waverley criteria is used by the Government to assess whether an object should be considered a ‘national treasure’ on the basis that the object’s departure from the UK would be a misfortune. When an application is made to export an archaeological artefact, an Expert Advisor may object to the granting of an export licence on the basis that the object satisfies one or more of the three Waverley criteria (DCMS 2015a, 5):
- *Is it closely connected with our history and national life?* According to DCMS guidance, this category is ‘now interpreted in a somewhat wider context to include objects which are of major importance for local history, or which have been part of collections which are of great historical significance, or which are associated with significant historical events, people or places’. (DCMS 2015a, 6).
 - *Is it of outstanding aesthetic importance?* DCMS guidance notes that ‘the assessment of outstanding aesthetic importance involves a subjective judgment’, and that ‘it might, for instance, be concluded that an exquisite snuff box met this criterion as well as a painting by Poussin’ (DCMS 2015a, 6).
 - *Is it of outstanding significance for the study of some particular branch of art, learning or history?* DCMS guidance notes that ‘the object might be considered of outstanding significance for scholarship either on its own account or on account of its connection with a person, place, event, archive, collection or assemblage.

Such objects serve as benchmarks for assessing other items since they can throw new light on the study of their type' (DCMS 2015a, 6).

5.71 Further guidance on the use of the Waverley criteria states that 'in addition, [expert advisors] may take account of local interest, but only as part of their consideration as to whether one or more of the Waverley criteria apply' (DCMS 2015a, 7). In essence, it appears that the *guidance is less stringent* than the three criteria would seem to be on face value.

5.72 In order to understand the level of sensitivity that the Waverley criteria has previously applied to archaeological finds, a trawl of the DCMS's annual reports of the *Export of Objects of Cultural Interest* was undertaken. This showed that between 2011 and 2019, four archaeological objects found in England were deferred from export under the Waverley criteria. These are as follows:

- A Celtic chariot lynch pin. An unprovenanced Iron Age lynch pin was submitted for export licence. The panel concluded that the lynch pin satisfied both the second and third Waverley criteria (DCMS 2015, 44). The find was subsequently donated to the British Museum.



Figure 2. Iron Age lynch pin. Deferred from Export under the Waverley Criteria.

- Anglo-Saxon gilt-bronze strip brooch. A well preserved and scarce form of Anglo-Saxon brooch was deferred from export after the panel found that it met the third Waverley criterion on the grounds that its departure from the UK would be a misfortune because it was of outstanding significance for the study of Anglo-Saxon art and material culture (even though it was unprovenanced) (DCMS 2017a, 26). The expert adviser provided a written submission stating that this was the most elaborate example of a rare type of Anglo-Saxon brooch to be discovered. Only fifteen others with similarly sized plates and complex ornament were known, but none matched its artistic skill and creativity (DCMS 2017a, 26). The brooch was subsequently purchased by the Ashmolean Museum.



Figure 3. Anglo-Saxon strip brooch. Deferred from Export under the Waverley Criteria.

- Iron Age bronze mirror_ A copper alloy mirror, believed to have been found in Didcot, Oxfordshire (though essentially unprovenanced), was submitted for export. The panel found that it met the second and third Waverley criteria on the grounds that it was of outstanding aesthetic importance and of outstanding significance for the study of Iron Age Britain, the development of decorative styles in the period, and the evolution of Iron Age mirrors (DCMS 2015b, 62). The mirror was subsequently purchased by the Oxfordshire Museum Services.



Figure 4. Iron Age mirror. Deferred from Export under the Waverley Criteria.

- Roman copper alloy figurine. In 2017, a metal detectorist reported a Roman copper alloy figurine to the Portable Antiquities Scheme. The figurine depicts a man wearing a cloak and was judged by the Reviewing Committee to be of national importance because it was one of the earliest representations of woollen cloth found in Britain. Specifically, it met the third Waverley criterion on the grounds that its departure from the UK would be a misfortune because it was of outstanding significance for the study of provincial Roman costume in the province of Britannia. The export licence was deferred, and the figurine was eventually sold to Colchester Museum (DCMS 2019).



Figure 5. Roman copper alloy figurine. Deferred from Export under the Waverley Criteria.

Implications for a Waverley-style criteria

- 5.73 In terms of a significance-based definition for artefacts, at present only the Waverley criteria has been applied to portable antiquities, and as such, this could be regarded as the benchmark standard. The precedence set by the Waverley criteria clearly shows that high profile finds such as the Crosby Garrett Roman parade helmet would qualify under one or more of the three criteria. However, the precedence also suggests that it could be applied to many of the finds reported to PAS and which have been published in the annual roundups of nationally significant finds in *Britannia*, *Medieval Archaeology*, *Post-Medieval Archaeology*, and the *British Numismatic Journal*. In all these journals, objects are selected for publication because they have potential to enhance understandings of object type or distribution, or because they have a significant 'research potential'. A similar selection process is undertaken for those finds published in the annual reports of the Portable Antiquities Scheme and which seek to highlight the most significant finds of the year. Arguably, the Waverley criteria has already set the benchmark for assessing what artefacts could be deemed to be a 'national treasure'. Following this, it seems important to recommend further work to be undertaken which explores the character of archaeological finds that were submitted for export and which did not meet the Waverley criteria.
- 5.74 Examples of portable antiquities reported to PAS and which could fall under a Waverley-style definition are shown below. These examples of finds were selected because of their similarities to those published in the annual reports of the *Export of Objects of Cultural Interest*.



Figure 6. Iron Age pin in 'plastic' style from Hampshire (PAS ref. HAMP-A63ECB), published in the PAS annual report 2019. Included in the list of potential artefacts under the Waverley/statutory-style definition. Compare with the Celtic chariot pin above.



Figure 7. Lozengiform Saxon brooch from Lincolnshire (PAS ref. NLM-FB5746), published in Medieval Archaeology 2020. Included in the list of potential artefacts under the Waverley/statutory-style definition. Unlike the brooch acquired by the Ashmolean under the current Waverley criteria, this brooch has not been cleaned or restored.



Figure 8. Iron Age copper alloy mirror from Dorset (PAS ref. DOR-F12EF3). Found in 2010 and would be included in the list of potential artefacts under the Waverley/statutory-style definition.

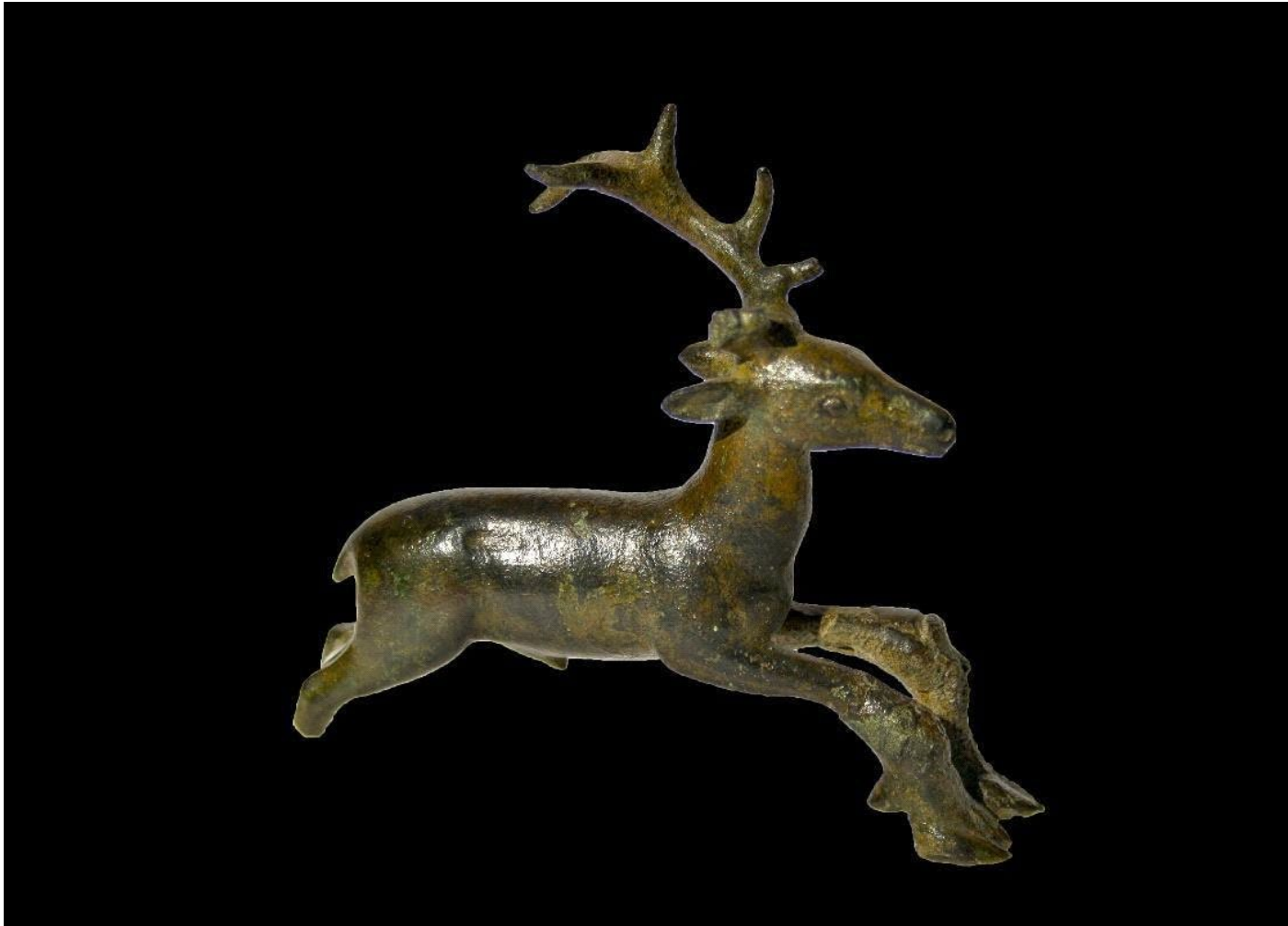


Figure 9. Roman copper alloy stag from Lincolnshire (LIN-E63C92), published in *Britannia* 2013. Included in the list of potential artefacts under the Waverley/Statutory-style definition.

Case studies

Herefordshire and Shropshire

- 5.75 The counties of Herefordshire and Shropshire are covered by the same FLO and are therefore assessed here as a single recording region. Between January 1st 2010 and December 31st 2019, a total of 13,399 records for the region were entered onto the PAS database. Of these, 325 were flagged as being a 'Find of note', and 256 records were flagged as being an item of treasure.
- 5.76 For this recording region, ten finds were published in *Britannia*, two in the *British Numismatic Journal*, ten in *Medieval Archaeology*, and three in *Post-Medieval Archaeology*. Nine artefacts were published in the *PAS Annual Reports*.
- 5.77 One artefact - a Bronze Age gold *bullae* was deemed to meet a high-level definition of treasure. The Early Medieval hoard from Leominster (HESH-F05D3E) might also have met the higher definition had the context and assemblage not been disturbed through illicit activity.

Table 3. PAS database analysis for Herefordshire and Shropshire

	Description	Records	Notes
A	Total records entered onto PAS database	13,399	
B	Total cases of Treasure recorded under 1996 Act	256	
C	Total cases of Treasure recorded under 1996 Act which would likely meet a Waverley/Statutory-style definition	41 (including 24 hoards)	215 treasure cases excluded
D	Total cases of non-treasure which would likely meet a Waverley/Statutory-style definition	30	
E	Total cases in a Waverley/Statutory-style definition which overwrites the 1996 Act, including selected hoards	71	E = C + D
F	Total number of hoards recorded under 1996 Act	79	160 treasure cases excluded
G	Total cases in a Waverley/Statutory-style definition which overwrites the 1996 Act, including all hoards	126	G = C - 24 + F + D
H	Total cases in a Waverley/Statutory-style definition which is added to the existing 1996 Act	286	H = B + D

5.78 According to PAS annual reports, between 2010 and 2017, museums in Herefordshire and Shropshire acquired 53 items of treasure (TAR 2017b, 18, Table E). This is above the number of finds that might be captured in a Waverley/Statutory-style definition. Accordingly, a significance-based definition (if overwriting the current Act and if kept at the level of significance used in this assessment) would reduce the opportunity for museums to acquire objects.

Lincolnshire

5.79 Between January 1st 2010 and December 31st 2019, a total of 45,558 records were entered onto the PAS database. Of these, 532 were flagged as being a 'Find of note', and 704 records were flagged as being an item of treasure. The 'find of note' box was less frequently used by recorders, mainly owing to the volume of finds being recorded in the county. Twenty-one finds were published in *Britannia*, 41 in the *British Numismatic Journal*, 36 in *Medieval Archaeology*, and one in *Post-medieval Archaeology*. Eighteen finds were published in the *PAS Annual Reports*.

5.80 One artefact - a Roman gold finger ring was deemed to meet a high-level definition of treasure. Two other silver finger rings depicting Vulcan are also known from the area and may have formed part of the same deposit.

Table 4. PAS database analysis for Lincolnshire

	Description	Records	Notes
A	Total records entered onto PAS database	45,558	
B	Total cases of Treasure recorded under 1996 Act	704	
C	Total cases of Treasure recorded under 1996 Act which would likely meet a Waverley/Statutory-style definition	73 (including 21 hoards)	631 treasure cases excluded

	Description	Records	Notes
D	Total cases of non-treasure which would likely meet a Waverley/Statutory-style definition	153	
E	Total cases in a Waverley/Statutory-style definition which overwrites the 1996 Act, including selected hoards	226	E = C + D
F	Total number of hoards recorded under 1996 Act	61	591 treasure cases excluded
G	Total cases in a Waverley/Statutory-style definition which overwrites the 1996 Act, including all hoards	266	G = C - 21 + F + D
H	Total cases in a Waverley/Statutory-style definition which is added to the existing 1996 Act	857	H = B + D

5.81 According to PAS annual reports, between 2010 and 2017, Lincolnshire County Council acquired 135 items of treasure (TAR 2017b, 18, Table E). This is below the number of finds that might be captured in a Waverley/Statutory-style definition; however, some of the cases that were acquired by a museum were not selected under the draft definition, and therefore a significance-based definition (if overwriting the current Act and if kept at the level of significance used in this assessment) would have reduced the museums opportunity to acquire objects.

Hampshire

5.82 Between January 1st 2010 and December 31st 2019, a total of 24,028 records for Herefordshire were entered onto the PAS database. Of these, 598 were flagged as being a 'Find of note', and 522 records were flagged as being an item of treasure. Ten finds were published in *Britannia*, 37 in the *British Numismatic Journal*, twenty in *Medieval Archaeology*, and three in *Post-Medieval Archaeology*. Twenty-five artefacts were published in the *PAS Annual Reports*.

Table 5. PAS database analysis for Hampshire

	Description	Records	Notes
A	Total records entered onto PAS database	24,028	
B	Total cases of Treasure recorded under 1996 Act	522	
C	Total cases of Treasure recorded under 1996 Act which would likely meet a Waverley/Statutory-style definition	78 (including 23 hoards)	467 treasure cases excluded
D	Total cases of non-treasure which would likely meet a Waverley/Statutory-style definition	92	
E	Total cases in a Waverley/Statutory-style definition, including selected hoards	170	E = C + D

	Description	Records	Notes
F	Total number of hoards recorded under 1996 Act	80	387 treasure cases excluded
G	Total cases in a Waverley/Statutory-style definition, including all hoards	227	$G = C - 23 + F + D$
H	Total cases in a Waverley/Statutory-style definition which is added to the existing 1996 Act	614	$H = B + D$

5.83 According to PAS annual reports, between 2010 and 2017, Hampshire Museums Service acquired 55 items of treasure (TAR 2017, 18, Table E). This is below the number of finds that might be captured in a Waverley/Statutory-style definition; however, some of the cases that were acquired by a museum were not selected under the draft definition, and therefore a significance-based definition (if overwriting the current Act and if kept at the level of significance used in this assessment) would reduce the museums opportunity to acquire objects.

Wales

5.84 Between January 1st 2010 and December 31st 2019, a total of 4,710 records for Wales were entered onto the PAS database. Of these, 215 were flagged as being a 'Find of note', and 195 records were flagged as being an item of treasure. Six finds were published in *Britannia*, three in the *British Numismatic Journal*, 19 in *Medieval Archaeology*, and one in *Post-Medieval Archaeology*.

5.85 The only find that was deemed to meet the Waverley-style or the High-level definitions of treasure was the Bronze Age hoard from Burton, Wrexham (PAS-5B1745). The hoard, dating circa 1300-1150 BC, comprised gold adornments along with bronze tools and a pot. The find spot was archaeologically investigated shortly after discovery.

Table 6. PAS database analysis for Wales

	Description	Records	Notes
A	Total records entered onto PAS database	4,710	
B	Total cases of Treasure recorded under 1996 Act	306	
C	Total cases of Treasure recorded under 1996 Act which would likely meet a Waverley/Statutory-style definition	83 (including 60 hoards)	223 treasure cases excluded
D	Total cases of non-treasure which would likely meet a Waverley/Statutory-style definition	37	
E	Total cases in a Waverley/Statutory-style definition, including selected hoards	120	$E = C + D$
F	Total number of hoards recorded under 1996 Act	100	183 treasure cases excluded

	Description	Records	Notes
G	Total cases in a Waverley/Statutory-style definition, including all hoards	160	G = C - 60 + F + D
H	Total cases in a Waverley/Statutory-style definition which is added to the existing 1996 Act	343	H = B + D

5.86 According to PAS annual reports, between 2010 and 2017, museums in Wales acquired 189 items of treasure (TAR 2017b, 18, Table E). This is above the number of finds that might be captured in a Waverley/Statutory-style definition. Accordingly, a significance-based definition (if overwriting the current Act and if kept at the level of significance used in this assessment) would reduce the opportunity for museums in Wales to acquire objects.

Key findings

- 5.87 The 'deep-dive' into the PAS database showed that the Waverley-style and Statutory-style definitions operated at the same level of sensitivity and essentially captured the same finds. Although they are worded differently, in practice they both protect antiquities of national importance, while at the same time allow for the consideration of the way in which the find makes an outstanding contribution at a regional level (i.e., rarity within its setting; archaeological context; contribution to understanding of place and people). Accordingly, these definitions are hereafter referred to as the 'Waverley/Statutory style definition'.
- 5.88 An attempt was made to move the bar lower than the types of finds already captured through the Export Control process; however, this began to capture large volumes of antiquities for which the selection process became increasingly subjective, and for which the reasoning became increasingly difficult to justify.
- 5.89 The 'deep-dive' into the PAS database also showed that the high-bar definition made a statistically significant difference to the number of finds captured. The wording of the high-bar definition was perceived to include only those finds or assemblages which make an outstanding contribution to the national cultural heritage. For the database analysis, it took the concept of contributing to the national cultural record, used in the Scottish Treasure Trove code, but applied this to exceptionally significant finds at the highest national level.
- 5.90 Analysis of the PAS database for the period 1.1.2020 to 31.12.2019 demonstrated that the different significance-based definitions resulted in similar patterns across all four case study regions.
- 5.91 The analysis suggested that a Waverley/Statutory-style definition, which overwrites the 1996 Act, would result in substantially fewer cases than currently recorded under the Treasure Act 1996. If all hoards were included into this scenario, the volume of cases would still be around half to one third of the present situation.
- 5.92 The analysis also suggested that a scenario in which a Waverley/Statutory-style definition is added onto the Treasure Act 1996 would result in a modest rise in cases in all regions.
- 5.93 Finally, the analysis suggested that the application of a high-level significance based definition of treasure would reduce the rate of cases to just a handful of cases in all areas over a ten year period. In all instances where an item of outstanding public

interest was noted on the database, the current Act had already ensured that a museum had the opportunity to acquire it. In other words, no non-treasure items of high-level significance were found within the four regions.

5.94 These trends are, of course, dependent on the same perception of significance being applied as was undertaken during the analysis (see section on ‘challenges’ below). Indeed, it could be argued that the sensitivity used during the trawl was too high, and that objects such as complete finger rings and all inscribed seal matrices should have been included. Nonetheless, if a lower sensitivity was used, it is expected that the relative proportions of columns two, three and four in figure 10 would remain similar. A more detailed reflection on the methodology and its implications is given in a section further below.

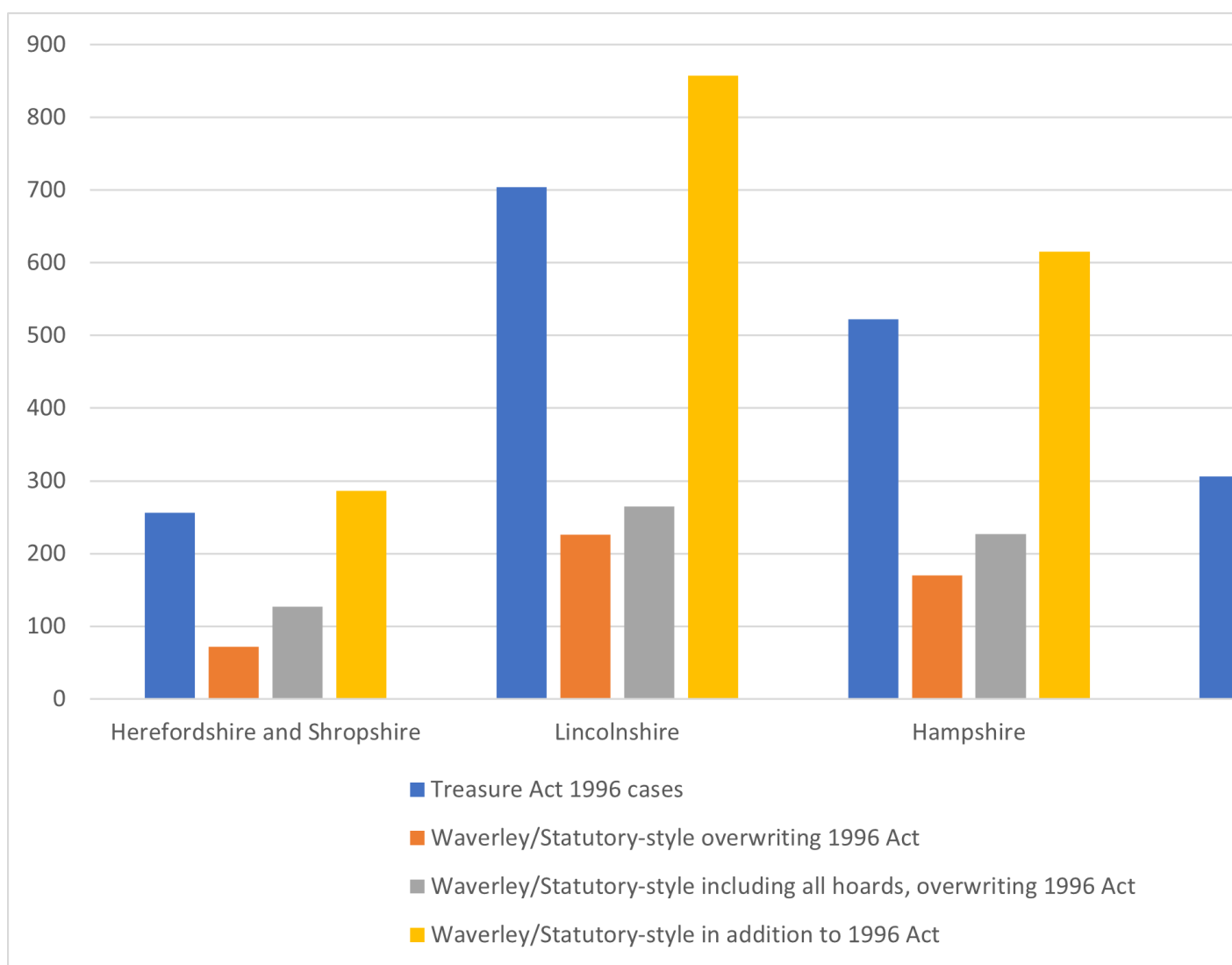


Figure 10. Variations in cases according to current and draft definitions. Data covers the period 1.1.2010-31.12.2019.

Detailed analysis

Current volumes of treasure and finds of note

5.95 Table 7 demonstrates that between 1 and 4 % of the total recorded finds in each of the four regions recorded between 2010 and 2019 were classed as either a case of treasure (under the current stipulations) or a 'find of note'. Table 7 also demonstrates between 0.2 to 0.6% of finds in each region were published in a national journal or annual report.

Table 7. Number of finds per region according to current and draft definitions of treasure. Data covers the period 1.1.2010-31.12.2019. Figures in brackets show the proportion of the total dataset for the region.

PAS Recording region	Total records	Flagged as treasure (Treasure Act 1996)	Flagged as find of note	Published
Herefordshire and Shropshire	13,399	256 (1.9%)	325 (2.4%)	34 (0.2%)
Lincolnshire	45,558	704 (1.5%)	532(1.2%)	117 (0.2%)
Hampshire	24,028	522 (2.1%)	598 (2.5%)	95 (0.4%)
Wales	4,710	306 (6.4%)	215 (4.6%)	29 (0.6%)

Waverley-style/Statutory-style definition which overwrites the current Act

5.96 Assuming that a Waverley-style definition *overwrites* the existing Act, the implementation would reduce the number of treasure cases in all regions by around two-thirds to three-quarters in all regions. Many artefacts of perceived lower-significance and which are currently recorded under the Treasure Act 1996 would be filtered out by a significance-based definition, and a smaller number that do not currently qualify as treasure would be added in. Included in the definition would be items such as seal matrices and posy rings which are fine examples of their type or which have significant inscriptions; similarly, excluded from the definition would be aesthetically pleasing objects such as posy rings and seal matrices but which otherwise do not advance our understanding of type, dating, distribution, or form of inscription. Likewise, small hoards of arguably low-significance would also be excluded, such as possible dispersed hoards of four or five medieval pennies, in addition to hoards which do not extend regional understandings. The line between these categories was frequently subjective.

5.97 Archaeologically, it certainly can be argued that *all* hoards are of regional archaeological significance owing to their potential to contribute to our understanding of composition, context, landscape setting, and behaviour. Accordingly, the statistics

in Table 8 also shows the total number of Waverley/Statutory-style cases should all hoards from each region be included. The addition of hoards makes only a modest increase in the number of cases and still keeps the number well below current rates of reporting under the 1996 Act.

Table 8. Number of records per region according to different definitions. Data covers the period 1.1.2010-31.12.2019.

PAS recording region	Total records	Flagged as treasure (Treasure Act 1996)	Waverley-style/ Statutory-style definition (overwriting the Act, including selected hoards)	Waverley-style/ Statutory-style definition (overwriting the Act, including all hoards)	Waverley-style/ Statutory-style definition (in addition to the Act)	High - level definition
Herefordshire and Shropshire	13,399	256 (1.9%)	71 (0.5%)	126 (0.9%)	286 (2.1%)	1 (0.007%)
Lincolnshire	45,558	704 (1.5%)	226 (0.5%)	266 (0.6%)	857 (1.9%)	1 (0.002%)
Hampshire	24,028	522 (2.1%)	170 (0.7%)	227 (0.9%)	614 (2.5%)	1 (0.004%)
Wales	4,710	306 (6.4%)	120 (2.5%)	160 (3.4%)	343 (7.2%)	1 (0.02%)

Waverley-style/Statutory-style definition which is added to the current Act

5.98 Assuming that a Waverley-style definition is *added* to the existing Act, this would result in an increase in cases in all areas. For each region, the statistic was achieved by adding the total number of cases recorded under the Treasure Act 1996 to the total number of non-treasure records that were deemed to be of significance during the database trawl.

High-level definition

5.99 Implementation of the high-level definition would result in only a handful of cases in each region over any ten-year period, if any at all. For the four study regions, a high-level definition was deemed to capture only four finds. In each instance, these finds would have been captured by the current definition of Treasure.

5.100 From Hampshire, this would include a hoard of gold jewellery items dating from the Iron Age, found near Winchester (PAS ref. PAS-845331; figure 11). The PAS database record describes the hoard as being 'one of the most important discoveries of Iron Age gold objects made in the last 50 years'. The hoard contains what appear to be two sets of personal jewellery. There are two necklace torcs and two pairs of

brooches. There is also a single pair of bracelets or ingots. The Winchester hoard was discovered in 2000 but was only entered onto the PAS database in 2013 and therefore was part of the data trawl.



Figure 11. Iron Age jewellery hoard from near Winchester, Hampshire (PAS ref. PAS-845331).

5.101 From Lincolnshire, the high-level definition would likely include a Roman gold finger ring depicting Vulcan, found at Nettleton, Lincolnshire (PAS ref. LIN-22EEF2; figure 12).



Figure 12. Roman gold finger-ring from Nettleton, Lincolnshire (PAS ref. LIN-22EEF2).

5.102 From Shropshire, a high-level definition would likely include a Bronze Age gold *bulla* from the Shropshire Marches (PAS ref. HESH-43148A; figure 13). The bula is only

the eighth to have been discovered in Britain and Ireland. The PAS database record describes the bulla as representing ‘the highest skill and expertise seen within decorated metalwork of the period being almost unparalleled within a British context’.



Figure 13. Bronze Age bulla from Shropshire (PAS ref. HESH-43148A).

5.103 From Wales, the Bronze Age hoard from Wrexham would likely fall under a high-level definition. The hoard, dating to the Middle Bronze Age, included adornments and bronze tools with a pot (PAS ref. PAS-5B1745; figure 14). The PAS database record describes the hoard as ‘an exceptional and extremely varied group of gold adornments and bronze tools representing one of the most important gold-bronze associations of the Penard phase of the Middle Bronze Age in Britain’. The hoard was discovered in 2004 but the database record was only entered in 2012 and therefore was part of the trawl.



Figure 14. Bronze Age hoard from Wrexham (PAS ref. PAS-5B1745).

5.104 In order for the high-level definition to be clear to all stakeholders, the wording would have to be explicit about the find making an outstanding contribution to the national cultural heritage. A national panel of experts would likely be needed to ensure consistency and transparency over decision-making.

Implications

5.105 A key question concerns what impact a significance-based definition of treasure would have on the total dataset for England. A detailed analysis of the 561,634 finds from England recorded on the PAS database for the period 1.1.2020 to 31.12.2019

was beyond the scope of the present project. However, it was possible to estimate the finds based on the trends identified in the case study regions.

- 5.106 The English case study regions showed that the proportions of finds that fell under the various definitions remained fairly constant. With regard to a Waverley/Statutory-style definition of treasure, this was demonstrated to include between 0.5% and 0.7% of the total records for any given county. If all hoards were included, this figure rose to between 0.6% and 0.9% of the total county records. Similarly, if these Waverley/Statutory-style finds were added to those finds currently classed as treasure under the 1996 Act, then the figure rose again to between 1.9% and 2.5% of the total county records. With regard to finds that fell under the existing Treasure Act, in Herefordshire and Worcester treasure cases made up 1.9% of the total records from the region, while in Lincolnshire it was 1.5%, and in Hampshire 2.1%.
- 5.107 Turning to the total dataset from England recorded on the PAS database, treasure finds made up 2.2% of the records - marginally higher than all three English case study regions - and closest to the proportion seen in Hampshire (2.1%). Accordingly, the Hampshire percentages for each significance-based definition are used below to best understand the data for England for the period 1.1.2010 to 31.12.2019.

Table 9. Estimation of the number of records per decade for each definition in England. Data derived from the entire PAS dataset for 1.1.2020 to 31.12.2019. Records exclude IARCH, IARCW, CCI data.

	Flagged as treasure	Waverley/ Statutory-style definition which overwrites the 1996 Act, including selected hoards.	Waverley/ Statutory-style definition which overwrites the 1996 Act, including all hoards.	Waverley/ Statutory-style definition in addition to the 1996 Act.	High-level definition
		Based on Hampshire (0.7%)	Based on Hampshire (0.9%)	Based on Hampshire (2.5%)	Based on Hampshire (0.004%)
All PAS - 561,634 records	12,634 (2.2% of total PAS database)	3,931	5,054	14,040	22

- 5.108 For the period 1.1.2010 to 31.12.2019, the analysis above indicates that in England:
- around 4000 cases would have been reported under a Waverley/Statutory-style definition which overwrote the 1996 Act, and which included selected hoards.
 - around 5000 cases would have been reported under a Waverley/Statutory-style definition which overwrote the 1996 Act, and which included all hoards.
 - around 14,000 cases would have been reported under a Waverley/Statutory-style definition which was in addition to the 1996 Act.
 - around 22 cases would have been reported under a high-level definition.

Further challenges

- 5.109 Overall, the methodology employed was successful in its ability to rapidly and coarsely compile a list of archaeologically significant finds which could then be assessed against the three definitions. It was also successful in establishing the relative proportions of finds according to each definition.
- 5.110 Challenges fell into two main areas, however: first, the accuracy with which a list of potentially significant finds could be compiled, and second, the consistency with which these finds could be assessed against the three draft significance-based definitions of treasure.
- 5.111 Regarding the first, the sheer volume of finds on the PAS database meant that the decision-making process for each find was necessarily rapid; this increased the risk of overlooking significant finds which were not immediately apparent or for which there was not an image uploaded to the database. Likewise, owing to time-constraints, the decision-making process was made by one individual rather than a panel of experts and therefore a degree of bias will undoubtedly have been introduced. Additional challenges resulted from the inconsistent use of the treasure and find of note data fields, as was noted earlier.
- 5.112 Second, the assessment of finds against the three draft definitions of significance was found by the researcher to be a necessarily subjective process which the researcher must make clear has resulted in a dataset that could be challenged on a number of grounds. In detail, the key challenges were:
- The assessment process was undertaken at a rapid pace by one individual. Bias will inevitably have been introduced through the researcher's experiences, interests, knowledge, and (un)familiarity of the region's landscapes. During the rapid assessment, it quickly became apparent that for this definition to be workable in practice, it would require the formation of regional panels of experts to assist the decision-making process. The statutory-style definition demands a competent knowledge of the region's landscape in addition to the character and survival of its archaeological material culture and its representation in local museum collections.
 - The assessment process inevitably was unable to consider important assemblages of material which have not been recorded on the PAS database as 'object-type = ASSEMBLAGE'. Accordingly, the trawl will have missed archaeologically important unstratified assemblages such as those resulting from plough-damaged votive deposits, longer-term depositions at the same place, graves, and settlements. The question of how a significance-based definition could approach the problem of dispersed assemblages or grave assemblages is an incredibly important one that requires further consideration.
 - The present lack of guidance and refinement of each of the three definitions meant that the assessment process was at times unavoidably inconsistent. The current draft definitions of significance were difficult to apply consistently to material that spanned the Palaeolithic to the early modern period, especially when each object has its own intrinsic archaeological value, part of which derives from context. The sheer diversity and chronology of material culture presented significant challenges and it is highly likely that a local Finds Liaison Officer would have included more finds than were selected as part of this assessment.

However, the more that the bar was lowered, the more difficult it became to know which objects should be included. Essentially, significance becomes exponentially hazier the lower the bar goes.

- In order for the Waverley-style definition to be clear to all stakeholders, the wording would have to be formed such that it allows for the capture of regionally significant finds and assemblages that advance archaeological understanding, but which do not necessarily have to make an outstanding contribution to the national picture. The difficulty with this definition will likely be surrounding how low the bar is implemented, and consequently, how easy it is for stakeholders to understand. Too high and it runs the risk of excluding important finds; too low and the definition becomes increasingly unclear. This challenge highlights the importance of having a clearly worded definition with accompanying guidance notes.
- Even with a clearly worded low-bar definition, the assessment process will undoubtedly be open to challenge by finders, especially if the approach to determining significance is inconsistent, or if unhelpful precedents are set.
- Finds Advisors and other researchers sometimes only discover crucial information about a particular find long after it has been recorded and given back to the finder. The failure to recognise significance at the time of recording presents a challenge to the effective operation of a significance-based definition of treasure.
- Significance changes over time. Certain types of finds once thought to be rare can quickly become common. A trawl of the database ten years ago would have included different types of objects than were included in the present trawl. Precedents set by a significance-based definition may present challenges should the archaeological significance of an artefact-type change.
- It became clear that there was often little relationship between archaeological significance and the types of treasure finds that museums acquired. Some artefacts which were deemed by the researcher to fall below the low-bar definition were acquired by museums; conversely, some artefacts which were deemed to be highly significant were not. This challenge indicates that the implementation of a low-bar definition could prevent some museums from acquiring certain finds which in their opinion were significant.
- Finally, the above trawl of the database does not give insight into the volume and character of non-treasure finds discovered through commercial or community fieldwork. Professional excavation has a greater chance of discovering in-situ finds as well as important assemblages such as lithic scatters, votive deposits, and graves. Further work is required to understand the impact of a significance-based definition of treasure on the commercial sector, in addition to how it relates to assemblages.

5.113 The challenges mentioned above are mainly confined to the artefacts deemed to fall under the 'low-bar' presented by the Waverley/statutory-style definition of treasure. It is perhaps important to note that the researcher is a former FLO with over 16 years' experience, and yet the process of assessing significance was found to be challenging and more time consuming than assessing against the static criteria currently employed by the Treasure Act 1996. Conversely, a significance-based definition that was set as a very high bar - and which was only intended to capture a handful of exceptional finds each year - would be easier to implement based on the experiences gained from the present trawl.

Summary of pros and cons identified by the PAS database analysis

5.114 Pros

- A significance based definition would ensure the most exceptional archaeological, historical and cultural finds which currently fall outside the existing treasure 'net' could be acquired for public collections.
- Adding a significance-based definition, clearly worded and with supporting guidance, to the existing criteria would ensure that significant items and assemblages are reported without overloading the current system - a reasonable adjustment to a system that is functioning well as was intended 25 years ago, but is not working for 21st-century ideas of public value.
- Overwriting the existing Act with a significance-based definition would provide opportunity for efficiencies. Large numbers of items, covered by the current treasure definitions, would potentially be excluded because they are common or in poor condition and not of sufficient interest for acquisition by public collections.
- A *high-bar* significance-based definition of treasure is readily understandable and easy to implement.

5.115 Cons

- Adding a *low-bar* definition of significance to the current Act has the potential to be confusing for finders and FLOs, and could increase the resources needed to administer the process through regional panels of experts.
- Setting the definition 'bar' too high in terms of finds of *outstanding* or of *national importance* could potentially exclude some significant finds in their regional and even local context. A high bar could also prevent museums from acquiring objects that are of lower significance and which are not well represented in local collections.
- The PAS database analysis does not give insight into the potential impacts on the commercial and community archaeology sectors.

6 Discussion and Conclusions

The case for including a significance-based definition in the Treasure Act 1996

- 6.1 As the background research for this project shows, the concept of 'significance' is employed widely in heritage and planning policy, although it is not a term found or

defined in UK legislation. Cultural significance is capable of wide interpretation and application and, as a value-based concept, is dynamic and subject to reinterpretation as context changes. Its formal use in public policy necessarily requires that supporting guidance and explanation is in place. Established significance-based concepts, such as the 'public interest' or 'special interest' attached to scheduled ancient monuments and listed buildings, for example, are supported by detailed guidance on the criteria to be applied to assess special heritage interest. More widely, assessment of 'significance' is established practice for managing heritage assets, and increasingly in museum collections management and internationally for all aspects of natural and cultural heritage. There is already much good practice and precedent for extending its use into this area.

- 6.2 Turning to portable antiquities specifically, the most closely defined criteria currently in use for 'treasure' are those for UK countries: Scotland and the Isle of Man have the broadest and most inclusive definitions. The Scottish Treasure Trove Code exemplifies this with its carefully worded explanation of how significance is determined in relation to the potential contribution that a find will make 'to the cultural record of Scotland'. The reporting of finds of archaeological, historical or cultural interest is mandatory in Scotland, Northern Ireland and Ireland, and in the neighbouring European countries examined for this research. It is usual in these administrations that the assessment of a find's significance, and whether it should be acquired for national or regional collections, is made by a designated authority (a specialist unit, national museum or trust, or regional heritage service) and this is irrespective of its intrinsic or market value, and in most cases of date. Only in England and Wales is mandatory reporting limited to finds of precious metal and the specific categories of finds and date currently defined under the 1996 Act. In extending the definition, the same kind of designated advisory role on assessing significance as provided in other administrations would be required at a national or regional level.

The views of stakeholders and findings from the PAS database analysis

- 6.3 In interview discussion of the pros and cons of how the Act might be revised and how a definition of significance might be framed, three principal areas of concern surfaced around:
- how significance will be defined in such a way as to be understood clearly by finders to sustain trust and confidence in the current system of reporting;
 - how the criteria for defining significance can be defined to encompass cultural distinctiveness across countries and regions without overwhelming the PAS;
 - where the assessment of significance will fit into the current system for declaring and valuing treasure to avoid conflict of interest and support a timely process.
- 6.4 The case for revising the Treasure Act 1996 to include finds of exceptional archaeological, historical and cultural significance was broadly accepted and welcomed by participants in the interviews (above section 5.2). This would bring England and Wales in line with protection for portable antiquities in other UK and European countries and in line with current practice for assessing cultural significance in heritage and museum collection management. The primary reason mentioned by interviewees, however, was quite simply that important finds of high archaeological and cultural value in which there is exceptional public interest are being lost to the country's museum collections and the national record. The criteria set out in the 1996 Act are seen as placing emphasis on the intrinsic and monetary

value of 'treasure' rather than the public interest in archaeological finds and their shared cultural significance.

- 6.5 A majority of interviewees favoured the first option of adding a significance-based definition, carefully worded, to those already in the existing Act, viewing it as the most likely to be operationally feasible. In the public consultation this was also favoured by the largest group. Given that the current system is thought to capture the majority of significant finds despite its limitations, this first option is seen as a means to strengthen what is working well without overturning what has been established. The PAS database analysis suggests that a scenario in which a Waverley/Statutory-style definition is added onto the Treasure Act 1996 would result in a modest rise in cases in all regions. The addition of a high-level, significance-based definition would be likely to add only two or three cases annually. Projections for PAS data for England suggest this might include as few as 22 finds per decade (0.004% of the total finds recorded in England per decade).
- 6.6 The two other options presented are seen by many stakeholders as unworkable or unrealistic, both in terms of the resources likely to be required and the challenges of making potentially difficult judgements about significance for finders, finds officers and coroners. The PAS database analysis allows these options to be viewed differently. It suggests that Option 2, introducing a Waverley/Statutory-style definition of significance to overwrite the 1996 Act, could result in substantially fewer cases than currently recorded under the Treasure Act 1996. If all hoards were included in this scenario, the volume of cases would still be in the range of a half to one third of what is currently reported as treasure. Option 2 is therefore less challenging and potentially attractive in terms of resources although it does still raise other issues. Option 3 remains a huge challenge in terms of resources required for the PAS to respond to mandatory reporting of all finds and assessment of their significance.
- 6.7 An overarching theme that emerges for all three options considered was around where the 'bar' would be set for defining significance and serious questions about how regional and local significance could be properly recognised. The 'deep-dive' into the PAS database showed that the Waverley-style/Statutory-style definitions for nationally significant artefacts operated at the same level of sensitivity and essentially captured the same finds. Although they are worded differently, in practice they both protect antiquities of national importance, while at the same time allow for the consideration of the way in which the find makes an outstanding contribution at a regional level (i.e. rarity within its setting; archaeological context; contribution to understanding of place and people).
- 6.8 While the PAS analysis demonstrates, therefore, that it is possible to apply reasonably consistent criteria for identifying exceptional significance, maintaining consistency in practice and advice to finders across England, Wales and Northern Ireland is clearly an issue. There was concern among all stakeholder groups about where the 'expert' or definitive decision on assessing significance would lie: with the FLO? with a hypothetical regional / national advisory panel? with the acquiring museum?
- 6.9 No strong consensus emerged from participants' comments in favour of a particular worded definition for significance drawn from existing heritage policy but that it "has to be simple, clear, concise, and easy to understand". While finds of exceptional cultural value must be included in any new definition, it was also felt to be important for its wording to reflect flexibility to encompass the exceptional significance of

variants, rarity, and diversity across regions and countries. Participants commended terminology such as the concept of ‘public interest’ and ‘public value’, as distinct from monetary value. The outstanding contribution a find makes to understanding ‘our history and national life’ was singled out by several interviewees as particularly meaningful.

- 6.10 Several interviewees suggested that the range of artefacts that might fall within a definition of significance could be framed straightforwardly with appropriate guidance for finders, FLOs and museums, in a way that could reduce a risk of excessive numbers of items being reported unnecessarily. The analysis of the PAS database, for example, illustrates a number of important finds, and it could be fairly straightforward to develop this into an illustrative guide showing finders the range of potentially significant finds. In conjunction with this, some kind of discard process was viewed as desirable, recognising the low significance of some treasure finds, to filter out material that currently burdens the system unnecessarily. Option 2 (overwriting the current definitions with a single significance-base definition) could also effectively achieve this, reducing the level of items that need to be reported as treasure by half or more (see section 6.5 above).
- 6.11 Overall, stakeholders views were in favour of the simplest possible change to the process which would result in the maximum public benefit for the heritage, realistically scaled to the available resources and retaining the trust of users in an established and transparent system.

Advantages

6.12 A significance-based definition of treasure would have the following advantages

- It avoids increasing the complexity of the Act, already amended once, by successive addition of new categories of treasure.
- It is more straightforward, provided there is clear guidance for the finder, Finds Liaison Officers and coroners.
- If adopted to overwrite the current definitions, it would ensure that only highly significant archaeological finds are within scope.
- It aligns the Act more closely with the majority of other heritage protection law and policy in the UK, which is based on significance rather than material composition.
- It aligns the Act more closely with other heritage protection legislation in the UK which are not limited by any one specific period.

Disadvantages

6.13 Disadvantages to this approach are:

- It could be regarded as too subjective or requiring expert specialist knowledge.
- It could be regarded by detectorists as a way of introducing mandatory reporting or facilitating a cherry-picking approach.
- It could cause some finders to not report significant finds, or to say they were found prior to the introduction of the new definition.
- It could result in over-reporting of finds where finders are uncertain about how to interpret significance and overwhelm the PAS reporting system.

- It could be regarded as unrealistic to expect finders to be able to judge what is significant under the Treasure Act and report it.
- It could result in regionally significant finds being overlooked or excluded.
- It could have an unintended negative impact on the smooth operation of the commercial and community archaeology sectors

In summary

6.14 The challenges are:

- Framing a significance-based definition for treasure that is clear and understandable for finders and which would not result in increased reporting at a scale that will overwhelm the finds recording and treasure reporting systems
- Setting the definition 'bar' too high in terms of finds of outstanding or of national importance could potentially exclude some significant finds that are exceptional in their regional and even local context. Museum acquisition policies are tailored to their collections and local/regional interests so a system that can flex to accommodate important cultural diversity is important.
- Currently judgements about what is, and is not, treasure are fairly self-evident to finders or can be confirmed by a FLO but may be less clear-cut with a significance-based definition. The challenge is to provide the right level of accessible guidance.
- In England and Wales, many metal detectorists visit other parts of the country to carry out their hobby. Accordingly, finds are often recorded by the FLO located nearest to the finder's house, rather than by the FLO for the county in which the find was discovered. This could present a significant challenge for FLOs if they are required to assess the regional significance of a find discovered in a part of the country they are not familiar with.
- A potential conflict of interest was identified for FLOs based in museums, where they may be the point for an initial assessment of significance. The challenge of where the assessment of significance sits in the system was a concern for many stakeholders in the interviews.
- Museum acquisition policies and local interests vary across regions and countries. The range of specialist and regional knowledge required for judgements on significance may well be beyond the scope of even an experienced FLO.
- Adding a significance-based definition to the existing Treasure Act (Option 1) will not in itself reduce the 'over-reporting' of treasure (i.e. of items that meet the current criteria but that are not of special archaeological interest). It will not create the opportunity for efficiencies offered by Option 2, for example, to exclude large numbers of items, covered by the current treasure definitions, because they are unexceptional or in poor condition. The challenge would be to identify alternative ways to introduce a discard or early disclaim process.

- Ensuring that any new approach is workable for the commercial and community archaeology sectors, as well as for detectorists and other finders.

Additional opportunities

6.15 In addition to the evident opportunities which a revised definition of treasure offers in terms of safeguarding exceptionally significant finds by bringing them into the public realm of museum collections, there are openings here for long term strategic collaborations and partnerships:

- To develop a significance-based definition for treasure in conjunction with other heritage bodies concerned to develop a common understanding of principles in the use of 'significance' across the cultural and natural heritage sector.
- To continue the process of changing the culture of 'finding' from one focussed on monetary or personal gain towards one of contributing to shared knowledge and publicly-enjoyed, accessible heritage in which detectorists have a central part to play.
- Auction houses are one of the commercial platforms through which we know significant non-treasure finds are currently being sold on the open market. Could a voluntary scheme for a 'certificate of treasure reporting' be introduced to help regulate the sale of archaeological finds with market value and incentivise reporting? Does the process in place for regulating export of objects of cultural interest provide a model that could be adapted?
- Further explore potential for reducing unnecessary reporting by the commercial and community archaeology sector for excavated assemblages which are already the subject of an agreement with a museum (e.g. exempting registered archaeological organisations from reporting finds from organised excavations; exempting fieldwork on Scheduled Ancient Monuments which is closely controlled by SMC). Such field projects could potentially produce a much higher proportion of finds that might be classed as significant under a new definition than the classic 'precious-metal and hoards' definition, and proliferate an unnecessary reporting process.

Implications for implementation

6.16 Practical considerations including resourcing:

6.17 The observations which follow are largely drawn from the experience and professional views of stakeholders who took part in interviews.

- Communicating and handling the messaging about the forthcoming change for finders and detectorists' groups will be important to manage expectations positively and avoid a reaction of 'over-reporting' due to uncertainty. The 'mandatory reporting by the back door' narrative - which is clearly *not* what is envisaged or viewed as desirable by stakeholders taking part in this research - is one that may need to be countered.

- Providing guidance and information on the change, and on the way in which exceptional significance will be assessed, will be important for all stakeholders. It would include signposting accessible resources for finders and also training for FLOs and for Coroners. Presuming this falls to the PAS then it will have resource implications for the Scheme's work.
- Appointing, and providing a secretariat for, an independent panel of assessors of significance, assuming this level of independent scrutiny is agreed to be necessary. The panel or panels would have an equivalent role to that of the Treasure Valuation Committee but for assessing the exceptional cultural significance of a find rather than its monetary value, operating rather like the Waverley Committee. National panels for England, Wales and Northern Ireland could be considered and regional panels of expertise were also suggested in England.
- The independent panel's assessment of significance would inform the Coroner's decision and an appeal process might also be considered. The additional level of assessment for significance will add to what can already be a lengthy pipeline. The interrelationship with the TVC's business could be scrutinised to see where efficiencies of process might lie.
- Local and regional museums may not have financial resources to acquire additional items of significance reported from their catchment area, nor the specialist archaeological expertise to assess items for acquisition. Additional funding and expertise on which they could draw for acquisition of exceptionally significant treasure finds could be a consideration (e.g. as operated in Wales with support from NLHF).
- Historic England provides funding towards urgent archaeological field work to respond to nationally important finds of treasure *in situ*. The addition of finds of exceptional significance, and *de facto* of national importance, might increase the calls on their resources, and those of equivalent national agencies for other administrations.
- Excavated assemblages and/finds from field investigation of scheduled ancient monuments (which are by definition of national importance) will be likely to meet the threshold of exceptional significance. A Class Consent under the 1979 SMAA Act, or a licensing system could be considered to exempt these from the treasure process since they will already be subject to a deposit agreement with a museum.

6.18 Institutional/operational roles and resourcing

- The introduction of a significance-based definition of treasure will clearly have implications for the day to day operation of the PAS and FLOs who are typically the initial point of advice for finders. This would require FLOs to assess finds against a qualitative set of criteria, as well as the current definitions of treasure if it were introduced alongside the current Act. While the PAS database analysis suggests that a Waverley/Statutory style definition would result in only a modest rise in finds, the process of assessing these finds against a significance-based definition would likely take considerably more time than under the current Act.

For example, this initial assessment would likely require the FLO to set out the reasons for the find being deemed as 'significant', and in order for this to be fair and reasoned it would undoubtedly require research. The addition of these administrative tasks will impact on the FLOs other day to day duties, especially in high-volume reporting areas, and increase the need for resourcing.

The resource demands for PAS would be unlikely to increase at the same scale if a significance-based definition were adopted to overwrite the current treasure criteria (Option 2). Analysis shows the overall level of treasure reporting would be likely to halve at least in that scenario. By contrast, Option 3, which in addition envisaged mandatory reporting of all finds, would demand a scale of increased resourcing (not to mention primary legislation) that it is difficult to calculate but certainly several times what is available for the PAS's current capacity.

- While expert assessment could be undertaken directly by an independent national or regional panel of experts, it might be desirable that the FLO's initial assessment is first reviewed by the PAS's team of Finds Advisors. This would prevent unnecessary cases being sent to the independent panels, and would help to create space between the finder and the FLO in the decision-making process. Should this be the case it would have resource implications for the Scheme's Finds Advisors.
- Careful consideration should be given to the process of reporting potential to the Coroner under a significance-based definition of treasure. Who, for example, would be responsible for reporting the find to the Coroner, and in what timescale? If it were to be consistent with the current Act, this would mean the find being reported to the Coroner within 14 days from the day it was discovered, or within 14 days from the time the find was realised to be potential treasure. Regarding finds under a significance-based definition, would this be 14 days from the day the finder found it, 14 days from the FLOs initial assessment, 14 days from the Finds Advisor's assessment, or 14 days from the recommendations of the Regional Panel?
- At present, finds of potential treasure discovered through commercial and community archaeology fieldwork are also usually submitted and processed via the local FLO. The workloads of FLOs would potentially increase significantly if they had to deal with finds from these sources too.

Further lines for research and next steps

6.19 Some suggestions include:

- Develop a series of workable significance-based definitions with stakeholders and pilot with several user groups. This could also be an opportunity to understand better what new guidance might be needed and how best to distribute or disseminate it.
- Some implications for a new reporting process are identified above. The PAS might model, or commission work on designing, the assessment 'process flow' for finds of exceptional significance to anticipate its fuller implications in practice.

- Revision to the Code of Practice: participants suggest that regional or country-specific versions of the Code could be produced to reflect the distinctiveness and character of archaeological material in a region/country and provide an overview of significance in that context.
- In collaboration with Historic England and ClfA, and other key partners such as the Society for Museum Archaeology, consider the potential for assemblage reporting and exemption from reporting finds for defined classes of archaeological field work. Scotland's Treasure Trove Unit has useful experience to share on their process for this.
- If the way forward is to *add* a significance-based definition of treasure, then streamlining of the treasure reporting and valuation process is highly desirable for low-value treasure items (so that the TVC's time is better used) and for items that meet the current treasure criteria but which are unexceptional / not of a quality suitable for museum acquisition. Again the PAS might model a framework for this or commission an options appraisal.
- Finally, the scale of non-reporting of treasure and of archaeological finds (above 5a, section 5.52) is noted by a number of participants in this research. It is perceived as a serious concern in some parts of England and is increasingly the subject of systematic scrutiny (Brodie 2020). While this research is not designed to address that specific issue, it suggests that the success of extending the definition of treasure might be difficult to gauge if in some areas there is already significant non-reporting of finds. Recent research suggests it introduces unaccountable regional biases into patterns of reporting and claiming treasure. A piece of work specifically designed to assess the scale of non-reporting, its impact on reporting of treasure and on the research value of the PAS offers a pathway towards better understanding of this fundamental issue.

In conclusion

- 6.20 It is clear from the interviews undertaken as part of this research project that there is widespread interest in and acceptance of the need for a simple mechanism to ensure that portable antiquities of particular interest to the nation are brought within the Treasure system so that they can be acquired by an appropriate public museum. This will deliver a significant additional public benefit and will build on the achievements of the 1996 Treasure Act over the last 25 years. A number of approaches have been explored within this project to achieve this objective and there are no major barriers to the Government now moving forward with an ambitious agenda to enhance the working of the Treasure Act and make it fit for the 21st century.

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