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Treasure Bill 2016 & Code of Practice

Consultation Response Document

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Treasure Bill 2016 & Code of Practice Consultation Response

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Treasury

Summary of responses to consultation to be made available to the public "Treasure Bill 2015"

Part 1: Introduction

Background

The existing legislation governing Treasure Trove is the Treasure Trove Act 1596

TREASURE TROVE ACT 1586

[Short title given by Pre-Revestment Written Laws (Ascertainment) Act 1978 sch.]

[Ss 1 and 2 confirmed by Pre-Revestment Written Laws (Ascertainment) Act 1978 Sch.]

- 1 Treasure Trove the Lord's
By the Advise and Consent of the two Deemsters, as well upon Examination of the said Thomas Edwardson, as also upon good and deliberate Consideration, do say upon their Oathes in these Words; John Lucas and Thomas Samsbury, Deemsters of this Isle, with the Advise and Consent of xxiiij Keyes for tis present Cause assembled, to enact, and give for Law, that any Treasure whatsoever being found and secretly hidden under Ground, either within the House or without in the Fields, or in the Thatch of the House, or within any other covert Place, to the end to defraud the right Heyres, or for any other fraudulent Intent or Purpose, shall be the Lord's, as a Prerogative due unto his Lordship by the Lawes of this Isle.
- 2 Treasure hid for safety not go to Lord
Nevertheless be it provided, that any Man, for the Safeguard of his Goods from the Enemy, or for Fear of any other Mischance, may, without Danger of this Law, lay up his Treasure in any such Place, making either his Child, or any other Friend, privy to the same; and that any such Child or Friend may lawfully receive such Treasure soe hidden, and deliver it to the right Owner, without any Impeachment to the Lord his Prerogative, provided that the Party thus claiming be able to provided that Party thus claiming be able to prove it by the Deposition of one sufficient witness at the least, though he be Brother, Sister, or any other Kinsman or Friend, not detected of any notorious Crimes. And whereas Thomas Edwardson hath confessed before Mr Capitaine, and others of my Lord his Concell, that he found the Sum of xxiiijl. and upwards in the Thatch of the house, and is not able to prove it is his proper Goodes by any sufficient Witness according to the Law in this Case provided, we find the said Sum to the Lord's by his Prerogative.

The absence of more modern legislation led to advice being received from the Attorney General's Chambers that, in the case of the Glenfaba Hoard of Viking Silver, in determining the reward, regard should be given to the Code of Practice made under the Treasure Act 1996 (of Parliament) as representing best practice, in the absence of any conflict between Manx law and the procedures in that Code.

Council of Ministers directed the Treasury and Manx National Heritage to bring forward new legislation to govern the payment of ex-gratia payments in respect of Treasure Trove.

Officers from the Treasury and Manx National Heritage produced a draft policy for the proposed new legislation and an initial consultation was carried out to gain the views of various bodies and the general public.

Views expressed during this consultation resulted in the drafting of the Treasure Bill 2015 (the Treasure Bill, the Bill) and associated Code of Practice (the Code) to be introduced once the Treasure Bill is enacted. This work was carried out by officers from the Attorney General's Chambers, Treasury and Manx National Heritage.

Part 2: The Consultation Exercise

The second period of consultation began on 16 October 2015, with responses requested by 27 November 2015, allowing a total of 6 weeks for public consultation, in line with the Isle of Man Government Code of Practice on Consultation (June 2008; "the Code").

Direct Consultees

There were 86 direct consultees:

- Tynwald Members
- HM Attorney General
- Local Authorities
- Chief Officers of Government Departments
- High Bailiff
- Chamber of Commerce
- Law Society
- Manx Detectorists Society
- Manx National Farmers Union
- Society for the Preservation of the Manx Countryside
- Trustees of Manx National Heritage
- Isle of Man Natural History and Antiquarian Society
- Local Heritage Trusts
- Culture Vannin
- Manx Lottery Trust
- Portable Antiquities Scheme, British Museum

Public Consultation

The consultation was published on the Isle of Man Government's consultation website on 16 October 2015 for a period of 6 weeks.

Part 3: Responses

An analysis of all the responses received has been undertaken in line with the Consultation Criterion 4 of the Code of Practice on Consultation "Give feedback regarding the responses received and how the consultation process influenced the policy. Responses should be carefully and open-mindedly analysed". Whilst all responses have been carefully analysed, not all their contents will be included within this report.

A total of 17 responses were received within the consultation period, with a further 2 accepted after the closing date.

The consultation posed 4 direct questions, each asking for further information if the respondent replied "no".

Question	Yes	No	No comment
Do you agree with the wider and revised definition of Treasure?	5	2	12
Do you agree with the procedure for reward payment/abatement?	5	2	12
Do you agree with the provisions for acquisition of Treasure?	7	0	12
Does the Code of Practice provide enough details on areas not fully covered by the Bill?	4	3	12

Nine of the responses were broadly supportive, 1 respondent identified typographical changes only, 1 expressed concern that Government's limited resources were to be used in an area with existing and longstanding legislation, with 2 others pleased to see changes being made to the existing legislation.

One respondent expressed disappointment in the lack of publicity surrounding the consultation.

Concern was also expressed regarding the resourcing and financing of the effects of the Bill, such as the provision of professional advice to finders, keeping penalties up to date and enforcing them, publicising the legislation on and off-Island, maintenance of records and supporting evidence of new finds generated by any increase in reported finds, and the payment of any rewards. The respondent suggested Treasury should ring-fence a reserve for this function.

Q1: Do you agree with the wider and revised definition of Treasure?

There were 2 negative responses to this question, with both respondents providing reasons and possible solutions.

Section (s.)	Issue raised	Any amendment made
s.3(1), Interpretation	Typographical error	Wording amended
s.3(1), Interpretation Definition of "coin"	The use of the word "token" could confuse. "Item" may be better.	Replace the word "token" with "item" – so it reads- includes any metal item which was...
s.4(1)(a), Meaning of Treasure	The use of the phrase "when found" is duplicated.	Duplication removed
s.4(1)(a)(ii)	The phrase "and have that percentage of precious metal" could be improved.	Replace to read "of which at least 10% by weight is precious metal"
s.4(1)(b) & (c)	The term "prehistoric" is used and then later defined as "dating from the Iron Age or any earlier period" which is an ambiguous phrase depending on the location within the British Isles.	Insert the word "Manx" before Iron Age in s.4(6) – so reads – "prehistoric date" means dating from the Manx Iron Age or..."
s.4(1)(b)	The emphasis on metal type might also exclude, for example, bronze items or collections that didn't have any precious metal content. Under this act, it would appear that, say, a collection of Viking bronze torcs, or the metal items from a Viking burial (if it had no coins or precious metals) would fall outwith this legislation – potentially on date and on metal content. We would suggest that a definite age limit for base metals in the same way as for precious metals would avoid any ambiguity.	<p>Insert new paragraph sub-section (1) to read:</p> <p>any object which, when found, in the opinion of the Trust, is –</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>Also, the definition of "prehistoric date" in s.4(6) has been amended to read "dating from the Manx Iron Age or any earlier period."</p>

Q2: Do you agree with the procedure for reward payment/abatement?

There were 2 negative responses to this question, with both respondents providing reasons and possible solutions.

Section (s.)	Issue raised	Any amendment made
s.11(b)(iii), Notification requirements in relation to inquiry	It would be helpful if some specific reference was made to the term "landowner".	s.11(5)(d) combined with s.11(1)(b) adequately cover both occupier and owner as "interested person". The details of which are to be obtained by the coroner and then those people are to be notified of the inquiry No amendment made.
s.12	There is some inconsistency in the phraseology regarding museums other than those operated by the MMNT.	No amendment made to Bill, Code of Practice to be amended.
s.14(2)	The language is draconian and the wording too open. The Code of Practice states that the valuation should be sought from the appropriately qualified independent body (the UK Treasure Valuation Committee). To hobby metal detectorists who make the vast majority of treasure finds this is the major point of the whole bill. That the valuation is done by the TVC or whichever body is used by the British museum at the time of the valuation. We are sure that the code of conduct will be followed but the wording in the bill is open to ambiguity.	The term "appropriately qualified independent body" is used as a future-proof phrase in the event that the Treasure Valuation Committee changes name. It is envisaged that the body advising on valuations of England and Wales treasure (and with whom there is an agreement to value Manx cases) will be used – this body is currently the Treasure Valuation Committee based at the British Museum. No amendment
s.14(2)	Should there be mention of the Treasure Valuation Committee in the section regarding market value?	As 14(2) above
s.14(2)	The "stepping-aside" by out-sourcing all valuations to the UK Treasure Valuation Committee (TVC) as previously practiced, and included in the 2010 draft, has been dropped and replaced by 'independent valuers'. This removes a valuable conflict of interest protection (especially with the move to try & make all arms of government one	As 14(2) above

Section (s.)	Issue raised	Any amendment made
	legal entity) and leaves scope for the perception that valuers might be chosen with an end in view. If the UK TVC (or its successor) was embodied, then there is no room for doubt or a string of valuers / valuations (as occurred with the Glenfaba hoard).	
s.14(4)	The draft appears to be favouring the tenant over the landowner.	s.14(2) requires Treasury to determine to whom and in what proportion a reward is to be paid. S.14(4) (the finder..." and "any person who had an interest in the land" adequately covers both finder and land owner. No amendment made.
s.14(4)	The 2010 Treasure Bill draft gave primacy to the Land Owner, this has been removed from the 2015 draft. Throughout the 2015 draft there does seem to be an undue emphasis on the Occupier of the land on which it was found – it should be the Land Owner – tenants should not have any call on the contents of the land unless the Land Owner has specifically delegated those rights in a lease.	As 14(4) above No amendment made.
s.14(5)	The finder should have more certainty of reward for those parts of a find left in place for removal by the experts. This should also relate to some part of anything found in a wider archaeological dig prompted by their find.	s.14(5)(a) "interested person" means a person who is likely to be concerned with the inquiry "as the finder of the object or otherwise involved in finding it" and "as having any other substantial interest in the matter". This adequately covers the finders' interests in finds left in place for removal by experts. In addition, the draft Code of Practice states that "if a finder does not remove the whole of a find from the ground but reports it, thus affording the opportunity for the archaeological excavation or investigation of the remainder of the find, the original finder will normally be eligible for a reward for the whole find and not just that part which he himself had

Section (s.)	Issue raised	Any amendment made
		removed from the ground, although Treasury will need to examine the individual circumstances of each case." No amendment made.
s.14(5)	May lead a finder to believe that they will receive nothing. It would make sense to us that the acquiring museum was liable to pay the reward or raise the funds to pay for it.	As above

Q3: Do you agree with the provisions for acquisition of Treasure?

There were seven positive responses, no negative responses and no direct comments made regarding this question.

Q4: Does the Code of Practice provide enough details on areas not fully covered by the Bill?

There were three negative responses to this question, with respondents providing information on the subjects and material they would like to see contained within the Code of Practice.

Issues regarding the Code of Practice that have not already been covered above are shown in the table below and over the page.

The final Code of Practice will be prepared once the Treasure Bill is enacted, this is expected to be early in the New Year 2017. The Code will be required to reflect any changes to the Bill that are made in the Branches of Tynwald and detailed consideration will be given to the responses received in preparing the final draft of the Code.

Code of Practice General Responses:

Subject	Comment
Treasure Receipt Form	Two identical sides of the same form produced in Code of Practice.
Index	It would be helpful to include 'accredited museums' in the index.
Scheduled monuments	A list of scheduled monuments and areas of trust land where metal detecting is not allowed would be a useful addition.
Awareness	The draft Code of Practice, containing procedural guidance relating to Treasure and conservation guidance for wider classes of artefacts, is welcome, and will no doubt be made known to members of the local metal detecting society. Even just for Treasure, it needs to be made known to everybody – farmers, builders, in fact all Manx residents (starting with schoolchildren?); and also visitors who may be looking for, or accidentally

Subject	Comment
	find, artefacts. However, there is a golden opportunity to go further whilst enacting the new Treasure Act (and at the same time in Section 18 of this draft Act amending the Manx Museum and National Trust Act 1959).
Awareness	Not all detectorists will be members of a detecting society. Landowners need to be encouraged to draw attention to the code when giving permission – in fact written confirmation of knowledge of, and agreement to follow, the code could be sought by any Landowner as part of giving consent.
Extending CoP to "other" archaeological finds	There is already a fundamental, and very welcome, difference between the Island and the UK. In both jurisdictions, reporting of treasure is mandatory, but the Island is ahead of the UK concerning mandatory reporting of other archaeological finds. In the UK, reporting is voluntary under the Portable Antiquities Scheme, but on the Island reporting is compulsory under the MMNTA 1959. Building on this, a significant step forward for the Island would instead of a "Code of Practice for Treasure" to have a Manx "Code of Practice for archaeological Finds" with a section or appendix covering Treasure Trove procedures, and then attach that code to both the 2015 Treasure and the 1959 MMNT Acts. This shouldn't be a major drafting undertaking (the draft Code of Practice for the Treasure Act already covers, for example, glass & leather!) and could provide an educational foundation, and raise the profile, care and reporting of all archaeological finds.
Extending CoP to "other" archaeological finds	The Code of Practice contains valuable information on many classes of archaeological finds, not just Treasure. A similar, or possibly unified, Code of Practice could also be attached to the Manx Museum & National Trust Act 1959 to enhance the protection of all archaeological finds.

Code of Practice Specific Responses:

Section (s.)	Comment
p.1 & p.7	Should refer to paragraph 10 rather than paragraph 9.
p.6	A useful additional example would be a copper-alloy objects with silver rivets (such as a strap-end or buckle plate).
p.7	Suggest it is worth addressing whether items that were single coins that have been modified (into jewellery) are Treasure. They are in England and Wales, depending on the degree of modification (i.e. not just piercings, normally).
p.10	Why is it only the finder's judgement which determines deliberate hiding with the intention of recovery of items of gold or silver less than 300 years old? Surely this should be independently assessed in some way. Or perhaps line 11 should read '...old will not be assessed for potential as treasure unless the finder or other interested part has reason to believe....'.
p.11	Might be useful to say that a 'closed group' would have normally have been buried together. See Treasure Act Code of Practice England and Wales, p. 14.

Section (s.)	Comment
p.15	This only refers to coins as currently stands, but in England and Wales this has also been applied to prehistoric base-metal assemblages.
p.21	Are archaeological excavations licensed on the IoM? Might you take a view on rallies, specifically whether or not the organiser of the rally shares an obligation to report Treasure?
p.24	It may be worth adopting something like the Code of Practice on Responsible Metal-Detecting in England and Wales
p.25	This gives an impression that all beaches are owned by the Government with some leased to local authorities. That may be the case outside Douglas, but Douglas foreshore down to the low water mark of ordinary spring tides is owned by the Council.
p.28	As intent is hard to prove, it may be worth removing the words "deliberate" and "reckless". It would be good to be very clear that rewards will be abated if people don't get archaeological help for complex finds without good reason.
p.30	It should be a requirement for the finder to make a note of the findspot, and provide that to the authorities.
p.33	There is some confusion between the role of coroner and that of bailiff.
p.33	The reference to a 'local reporting centre' should be replaced by 'MMNT'.
p.34	(d): delete 'if known', as if permission was sought this should be known.
p.37	Should the legal obligation to report only rest with the finder alone, as some dealers are known to handle unreported Treasure?
P.38	There doesn't seem much need for a coroner to give out a findspot greater than parish, and it will not normally be necessary to publicise the name of the landowner.
p.38	We would like to see this worded a bit stronger, stating that the coroner or other authority should not reveal the exact find location to protect the integrity of the site.
p.47	Suggest including a clause about the limits of the MMNT work at this stage, explaining that non-destructive procedures are all that will be undertaken. The report for the coroner is normally just descriptive, and will not usually be produced on the back of full scale academic study or scientific investigation.
p.48	Typographical error
p.48	Typographical error
p.54	Interesting MMNT claims finds over local museums (or does this mean museums outside the IoM)?
p.54	It might be worth pointing out that the landowner might assert their claim to a reward, so in that case a museum will have to pay (something) for the

Section (s.)	Comment
	find.
p.55	Who will value finds? Note that commissioning valuations for finds can be expensive, so is there a way of reducing the financial burden? See Scotland and Denmark as examples of a less costly process.
p.55	Should there be a reference to using the Treasure Valuation Committee as used by the British Museum to determine the value of treasure? The committee is the leading group of experts and deal with valuations on a monthly basis for all cases of treasure in England. This would give reassurance to all parties that the correct value has been obtained.
p.57	This area could do with some clarification to make it easier for members of the public to understand. I wonder if it should be stated that there are times when a provisional valuation is given, and the finder, landowner and museum can then submit their reasons for having the first valuation looked at again. The first is usually looked at as the starting point before the second and final valuation, taking into account any new valuations and information from those concerned.
p.58	It should be clearer here that the reward will be abated, or there will be no reward in instances of wrong-doing.
p.61	It should be addressed that others, such as relatives of deceased finders and those that come into possession of Treasure can claim a reward.
p.67	Maybe replace 'finders' with 'interested parties', to capture wrongdoing of dealers, landowners and others.
p.67	(viii) suggest deleting 'deliberately or reckless' (see p.28 above).
p.69	If the changes are made to p.61 above (to include others than just finders) you might need to change 'occupier or the landowner' to 'other interested party/ies'.
p.70	This states in the first line that 'Rewards will not be payable when the find is made by an archaeologist ...' yet goes on to identify that this does not affect any interest that an occupier or landowner may have in any reward. Reading the first sentence as it is currently written gives the impression that no rewards will be paid (when it is only the archaeologist that is affected and not all rewards).
p.70	It would be beneficial if finds from excavations come into museums at no cost, so it would be worth thinking about how to ease that process. Maybe it could be stated here that it is presumed landowners will not claim rewards following archaeological excavation, unless it is a follow up excavation to a find discovered by the public.

Thank you to all respondents to the consultation. Your assistance is appreciated.