

# **THE REFORM OF TREASURE TROVE ARRANGEMENTS IN SCOTLAND**

## **RESPONSE BY THE HISTORIC ENVIRONMENT ADVISORY COUNCIL FOR SCOTLAND**

### **Introduction**

The Historic Environment Advisory Council for Scotland (HEACS) is the recently-constituted Advisory Council on the Historic Environment to the Scottish Executive and has been in existence since June 1 2003.

HEACS would wish preface its remarks with commendations for both the clarity of the report and the succinct nature of the Scottish Executive response. It is of considerable help to bodies being consulted when thought is given to the presentation of documents for public consideration. HEACS notes that the Scottish Executive accepts the majority of the 29 recommendations in the Normand review and recognises the improvements which will flow from effective implementation of the proposals.

### **Comments on Specific Questions**

HEACS would offer the following comments on the specific items where the Scottish Executive has asked for views and decisions are yet to be finalised.

#### **(1) The need for a new statutory basis for Treasure Trove**

- (1.1) Given the arrangements proposed, including the issuance of new guidance and the appointment of regional museum development officers, the need for a new statutory basis for Treasure Trove does not appear to be clamant at this stage. HEACS suggests that the new arrangements should be put into place and carefully monitored over the next five-year period to establish the effectiveness of the new procedures.
- (1.2) HEACS notes the ever-present problem of finding parliamentary time for legislation and would not wish desired improvements to be delayed or sidelined until legislation is prepared and then implemented.
- (1.3) However, HEACS notes the success of statutory legislation in neighbouring countries and is concerned at the growing number of areas of government operations where legislation is considered as a possibility but avoided mainly because of the congestion in parliamentary time and procedures. It seems reasonable to HEACS that it is appropriate now, in 2004, to pencil in parliamentary time in 2009/ 2010 to consider legislation. If the new procedures are shown to be less than effective, then action can be taken to bring in the necessary legislative procedures. If the new systems are shown to be effective then the pencilled slot may be made available for other matters.

## **(2) An opportunity for finders to challenge the valuation**

- (2.1) HEACS would support the view that finders should be allowed to challenge the valuation put upon Treasure Trove items, recognising that valuation in this area cannot be an entirely objective procedure. It should however be made clear in any official guidance which is issued that valuation is reached by the relevant panel only following the consideration of the views of two experts, working independently, and whose valuations are accompanied by a statement outlining the bases for their conclusions.
- (2.2) It should also be made clear that a challenge has to be based upon more than the view of the finder that he or she would wish to receive more than the sum adjudicated by the panel. It should be a requirement that any appellant must submit a statement outlining the basis for his/her conclusion, based upon the evidence of another expert. The list of experts whose services are available should be made accessible to appellants in order that they may exercise choice. The cost of obtaining that valuation should be met by the appellant. Should an appeal be sustained, the cost of the appellant's valuation should be reimbursed.
- (2.3) HEACS would also suggest that more emphasis should be put on official recognition of finders. It should be emphasised in any general guidance that, by definition, Treasure Trove/Bona Vacantia items taken into state care will never be sold and that the valuation award, if any, comes from the public purse. It should be made clear that Treasure Trove or Bona Vacantia items do not belong to the finder and that, in agreeing a payment based upon valuation, the state, as represented by the panel, is acting in good faith rather than in recognition of any rights possessed by the finder. Essentially, more stress should be put upon the desirable practice of foregoing the monetary value of an item and conveying the message that a monetary reward is the lowest form of recognition. The practice of foregoing a valuation sum will only develop widely where there is a very substantial form of formal/public recognition of finders.

## **(3) The merger of the Treasure Trove Advisory Panel with the Finds Disposal Panel and the size of the new panel, if the merger takes place.**

- (3.1) HEACS is of the view that the TTAP and the FDP should be merged, particularly in view of the fact that all finds would then be dealt with by a single body. HEACS recognises that the Normand report did not address Historic Scotland's current role in relation to the FDP but is equally aware that the report did not address fully the different roles and responsibilities of TTAP and FDP. HEACS would suggest that the remit and roles of the merged body are both redefined and modernised. Historic Scotland's role in relation to grant-giving should be taken on board and Historic Scotland should be a constituent member of the merged body.
- (3.2) HEACS is of the view that a merged panel should consist of ten members, with seven members of the main constituent bodies appointed on a representative basis. The body should include a representative with specific responsibility for the interests of finders. The merged body should include an independent Chair and two lay members. HEACS would express the view that more regular meetings of the panel are required to improve the implementation of effective working practices.

#### **(4) Time Targets for the Treasure Trove Process**

- (4.1) HEACS is not convinced that the time taken by the Treasure Trove process is as much of a problem as is depicted in the report. HEACS is aware that detailed and careful professional checking is required before reaching conclusions and finders are themselves aware that professional assessment does take time. HEACS is of the view that it is the lack/absence of regular feedback to finders which is at the root of the perceived difficulty. More regular meetings of the panel would certainly help to deal with matters more speedily but HEACS considers that feedback to finders is the more crucial issue. HEACS believes that it is possible to adopt the general stance that the TT process will be completed within a twelve month period, with the assurance to finders that they will receive a quarterly report on progress. The completion of the process earlier than twelve months in some cases will be taken as a positive outcome without leading to a general expectation that the time scale for the process will be truncated.

#### **General Comments**

HEACS would also wish to offer the following additional comments-

#### **(5) Resources**

- (5.1) HEACS is aware that existing systems have been hampered by the lack of investment of financial and personnel resources. The proposed improvements can only work where reasonable investment takes place and HEACS would encourage the Scottish Executive to match its ready acceptance of most of the recommendations with the necessary input of resources.

#### **(6) Allocation**

- (6.1) HEACS would accept the primacy of the NMS in the allocation of finds of national or international importance but would urge consideration of the legitimate interest of local museums in displaying material found within their localities, not simply for the visitor/tourist attraction aspect in the different areas of Scotland but also for the local encouragement of a genuine respect for, and community ownership of, articles of significance.

#### **(7) Protection of the Historic Environment**

- (7.1) HEACS shares the concern expressed about the problems of understanding the Historic Environment which are posed by irresponsible treasure-seeking, whether that activity is conducted by low- or high-tech means. In the absence of protective legislation, HEACS would suggest that the new guidance which is to be issued should include reference to the crucial importance of context, should stress that finds in isolation raise questions that cause problems for future analysis where the context may have been destroyed, and should emphasise that the professional communities do not wish to dissuade genuine investigations but do wish to ensure that such investigations are fully and properly documented in the wider interests of relevant knowledge.

**(8) Remuneration of Chair of the Panel**

- (8.1) HEACS notes that the Executive is not persuaded that the Chair of the Panel should be remunerated. HEACS considers that, given the expectation of an effective and improved working system, and the resultant demands on the Chair, there is every justification for the Chair being paid for his/her services and would counsel further careful consideration of the matter.

**Historic Environment Advisory Council for Scotland  
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