



The Crosby Garrett Helmet and why it cannot be treasure.

The discovery and subsequent sale of the Crosby Garrett helmet certainly caused a stir in both metal detecting and archaeological circles, not merely for its rarity and beauty, but also for the fact that it ended up being purchased at auction by a private anonymous buyer.

Without exception, everyone I have spoken to believes that the helmet, being of national importance, belongs in a museum and not hidden away in some private collection and both the internet forums and emails have been full of comments on the subject. There have also been questions asked from both the metal detecting fraternity and bloggers as to why the minister did not make the helmet treasure on the grounds of it being of “outstanding national importance”.

This is not the first time that I have heard such comments; the unique Coenwulf gold penny produced a similar reaction when it was found.

So let us have a look at what has caused many people to misunderstand the way the Treasure Act and code of practice work.

Section 2 of the Treasure Act is the offending section here and has obviously been misinterpreted or not fully understood, so to set the record straight I will explain what the section means and how this section works in practice.

If you look at section 2 below, you will see that section 2- (1) seems to indicate that the Secretary of State has the power to designate any object or class of object as Treasure. However a closer scrutiny of the wording will reveal that the important words in section 2-(1) are “by order”. It should also be read in conjunction with the rest of section 2 which goes on to explain, albeit in a rather convoluted way how the secretary of State would implement such an order.

So I will try to explain the section in simpler terms.

There are two main reasons why both the helmet and the Coenwulf penny could not have been designated as treasure.

Firstly; it is a statutory requirement that the Treasure Act and code of practice are reviewed “when appropriate” five years after the publication of the revised Code of Practice, it is during this review, which is conducted with interested parties, that any changes to the act or code of practice are proposed; as is the case with the present review which is currently under way. At the end of the review the Secretary of State has the power to lay before parliament a draft outlining any changes to either the act or the code of practice which may be made by a “designation order”. This must be approved by resolution in both Houses.

We have an example of this happening with the “designation order 2002” whereby prehistoric base metal assemblages were added to the definition of treasure. But there is no fast track method or magic wand that the Secretary of State can use to circumvent this procedure and furthermore there is no statutory instrument for designating individual objects or coins as treasure.

Secondly, and perhaps more importantly, any order to designate any class of objects that would include the Crosby Garrett helmet or the Coenwulf gold penny could not be retrospective and any order would only include subsequent finds of this type made after the order was implemented.

The upshot of all this is that the helmet was not treasure and could not have been made treasure retrospectively once it had been discovered, no matter how valuable or important to the nation.

There is however one further point I would like to make; the current review of the treasure act and code of practice has a proposal that all Roman base metal assemblages, of which there has only been half a dozen discovered since the introduction of the act, be designated as treasure, a subject I recently covered in the National Council for Metal Detecting newsletter “*Digging Deep*”, and if the review had taken place when it was originally intended, with the proposal accepted, then by virtue of the fact that the helmet was reportedly discovered with another bronze object, it would have been treasure.

2. — (1) The Secretary of State may by order, for the purposes of section 1 (1) (b), designate any class of object which he considers to be of outstanding historical, archaeological or cultural importance.

(2) The Secretary of State may by order, for the purposes of section 1(2), designate any class of object which (apart from the order) would be treasure.

(3) An order under this section shall be made by statutory instrument.

(4) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Trevor Austin
December 2010