



EXPLANATORY NOTES

Cultural Property (Armed Conflicts) Act 2017

Chapter 6

£6.00

CULTURAL PROPERTY (ARMED CONFLICTS) ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Cultural Property (Armed Conflicts) Act 2017 (c. 6) which received Royal Assent on 23 February 2017.

- These Explanatory Notes have been prepared by the Department for Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The Act is divided into six Parts and contains four Schedules. These Parts are as follows:

- Part 1: sets out key definitions.
- Part 2: incorporates into domestic law the offence created by Article 15 of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict (“the Convention”), makes provision in relation to ancillary offences and extends criminal liability to commanders and superiors who fail to prevent the commission of an offence in certain circumstances.
- Part 3: prohibits the unauthorised use of the cultural emblem, the symbol created by the Convention to identify cultural property which is protected. The Act makes it an offence to use the emblem otherwise than as authorised by, or under the Act. It identifies authorised uses of the emblem, and gives the appropriate national authority power to designate further authorised uses.
- Part 4: makes provision in relation to cultural property which has been unlawfully exported from an occupied territory. It creates a new offence of dealing in such cultural property, and makes further provision in relation to that offence, providing for the forfeiture of the cultural property concerned. Further, it provides powers of search and seizure if there are reasonable grounds for suspecting that unlawfully exported cultural property may be found at a premises. It provides for the retention of such cultural property so that it may be returned to the competent authorities of the territory previously occupied at the close of hostilities, in fulfilment of the United Kingdom’s obligation under the First Protocol to the Convention.
- Part 5: provides immunity from seizure or forfeiture of cultural property which is entitled to special protection under Article 12 of the Convention because it is being transported to the United Kingdom, or through the United Kingdom to another destination, for safekeeping during a period of armed conflict.
- Part 6: sets out general provisions.

The Act also contains four Schedules. These are:

- Schedule 1: 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.
- Schedule 2: Regulations for the Execution of the Convention
- Schedule 3: First Protocol to the Convention.
- Schedule 4: Second Protocol to the Convention.

Policy background

- 2 The Cultural Property (Armed Conflicts) Act introduces the necessary domestic legislation to enable the United Kingdom to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Convention) and accede to its two Protocols (1954 and 1999).
- 3 The Hague Convention, adopted following the massive destruction of cultural property that took place in the Second World War, provides for a system of general and special protection of cultural

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property in situations of armed conflict. Parties to the Convention are required to respect both cultural property situated within their own territory and cultural property within the territory of other Parties, by refraining from using it, or its immediate surrounding, for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from committing any hostile act against the property. The Convention also restricts use of a distinctive emblem (which can only be used as provided by the Convention in connection with the protection of cultural property). Amongst other matters the Convention also deals with the transport of cultural property under special protection (including immunity from seizure).

- 4 The Convention was followed by two Protocols. The first in 1954 (the 'First Protocol') imposes a number of obligations on Parties in relation to the protection of cultural property in occupied territories. Parties must undertake to prevent the export of cultural property from any territory occupied by it during an armed conflict and to take into its custody any cultural property protected under the Convention and imported into its territory either directly or indirectly from any occupied territory. At the end of the occupation, each Party is obliged to return any cultural property in its territory that was exported from the occupied State and refrain from retaining it as war reparations.
- 5 The United Kingdom originally chose not to ratify the Convention or to accede to the First Protocol, not on the grounds that it opposed measures to protect cultural property in the event of armed conflict, but rather because it considered, together with a number of other countries, that the Convention and First Protocol did not provide an effective regime for the protection of cultural property.
- 6 The Second Protocol, agreed in 1999, extends and clarifies the obligations under the Convention. In particular it identifies five acts, each a serious violation of the Protocol, which are to be considered an offence under the Protocol. It also establishes an enhanced system of protection for specially designated cultural property.
- 7 The Second Protocol removed many of the United Kingdom's concerns and in doing so allowed the Government of the time to announce its intention to ratify the Convention and its two Protocols in May 2004. This resulted in the publication of the draft Cultural Property (Armed Conflicts) Bill in 2008. The Draft Bill was welcomed by the House of Commons Culture, Media and Sport Committee, which found it to be strongly supported on the basis of the evidence it received. In substance the policy behind the Act remained the same since 2008 although minor changes were made to update and improve the drafting.
- 8 As of February 2017, 128 countries are party to the Hague Convention, 105 countries are party to its First Protocol and 71 countries are party to its Second Protocol.

Legal background

- 9 Primary legislation is required in order for the United Kingdom to ratify the Convention and accede to its Protocols. Although the United Kingdom already complies with the Convention during all military operations, and recognises and respects the cultural emblem used to mark protected cultural property, existing United Kingdom laws are not sufficient to meet the obligations set out in the Convention and its Protocols in full. The Convention and Protocols oblige the United Kingdom to create new offences and search and seizure powers, which can only be achieved through primary legislation.
- 10 Article 15(1) of the Second Protocol lists five acts, which constitute offences when committed intentionally and in violation of the Convention. Article 15(2) of the Second Protocol requires parties to establish those acts as criminal offences under their domestic law. The relevant acts are:
 - a. making cultural property under enhanced protection the object of attack;

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- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
 - c. extensive destruction or appropriation of cultural property protected under the Convention and the Second Protocol;
 - d. making cultural property protected under the Convention and the Second Protocol the object of attack; and
 - e. theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property protected under the Convention.
- 11 The behaviour which Article 15(1)(a) and (d) seeks to criminalise (making cultural property the object of attack) is partially covered by existing offences under section 1(1) of the Geneva Conventions Act 1957, section 51 of the International Criminal Court Act 2001, and section 1 of the International Criminal Court (Scotland) Act 2001. However, neither offence is sufficient for the following reasons:
- in neither case is the definition of the property protected sufficient to encompass attacks directed at all forms of cultural property, as defined in Article 1 of the Hague Convention;
 - the offences are more restricted than the offences under Article 15(1) of the Second Protocol.
- 12 There is no equivalent offence to Article 15(1)(b) of the Second Protocol (using cultural property under enhanced protection in support of military action).
- 13 A breach of Article 8(2)(b)(xiii) (destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war) of the Statute of the International Criminal Court is a criminal offence under section 51 of the International Criminal Court Act 2001, and section 1 of the International Criminal Court (Scotland) Act 2001. These offences, though not specifically directed at cultural property, would cover the behaviour criminalised under Article 15(1)(c). However, the jurisdiction we have taken to prosecute this offence is not sufficiently wide to meet our obligations under Article 16 of the Second Protocol.
- 14 There are also a number of existing offences in domestic law which could be used to prosecute the behaviour covered by Article 15(1)(e). However, the UK's jurisdiction to prosecute United Kingdom nationals for the existing domestic offences committed outside the United Kingdom only applies where they are subject to military discipline, or in the service of the Crown and acting (or purporting to act) in the course of their employment. This is not sufficient even to satisfy the more limited jurisdictional requirements for this offence. For example, it would not enable the United Kingdom to prosecute a United Kingdom national, in the context of an armed conflict, which is taking place in a state that is a Party to the Convention, for the intentional vandalism of cultural property done in a personal capacity.
- 15 Article 16 of the Convention describes the distinctive emblem of the Convention. Article 17 sets out conditions for its use, and provides that any other uses shall be forbidden. Under Article 85(3)(f) of Additional Protocol 1 to the Geneva Conventions 1977, perfidious use of the cultural emblem is a grave breach of the Protocol. This is also an offence under the law of England and Wales - see section 1(1) of the Geneva Conventions Act 1957. However forbidden uses of the cultural emblem under Article 17 of the Convention would not in most cases be considered to be "perfidious". Furthermore the Hague Convention has a broader application than Additional Protocol 1 to the Geneva Conventions - i.e. the Hague Convention applies in the event of an armed conflict not of an international character within the territory of one of the High Contracting Parties. Hence legislation is needed to implement the obligation under Article 17 of the Convention to ensure that the emblem is not abused.

- 16 The Convention and Protocols also impose obligations on occupying states and other Parties to take measures to suppress any illicit export of cultural property from occupied territories and return any cultural property protected by the Convention at the end of hostilities. In particular, paragraph 1 of the First Protocol requires a Party to prevent the exportation of cultural property from territory occupied by it, and to take into its custody any cultural property imported into its territory from any occupied territory. It also obliges Parties to undertake to return any such property at the close of hostilities. Article 21(b) of the Second Protocol requires Parties to adopt the legislative, administrative or disciplinary measures necessary to suppress any illicit export, other removal or transfer of ownership from occupied territory in violation of the Convention or the Second Protocol.
- 17 There is existing United Kingdom legislation in this field such as the Return of Cultural Objects Regulations 1994 (as amended), the Dealing in Cultural Objects (Offences) Act 2003 and the Iraq (United Nations Sanctions) Order 2003 and Export Control (Syria Sanctions) (Amendment) Order 2014. However, these are not sufficient to enable the United Kingdom to comply fully with its obligations under the Convention and Protocols, due to differences in application and scope.
- 18 Article 14 of the Convention requires Parties to give immunity from “seizure, placing in prize, or capture” to any cultural property which is protected under Articles 12 (Transport under special protection) or 13 (Transport in urgent cases), and to the means of transport exclusively engaged in transferring protected cultural property. Although some property and transport would already be covered by existing legislation, such as the State Immunity Act 1978 and the Diplomatic Privileges Act 1964, these only apply to state owned property, so legislation is needed to ensure that cultural property and transport is afforded the necessary protection whilst it is in the United Kingdom.

Territorial extent and application

- 19 The Act will extend to England and Wales, Scotland and Northern Ireland.
- 20 The table in Annex A summarises the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Key Definitions

21 This Part provides definitions of terms used within the Act.

Part 2: Serious violation of the Second Protocol

Section 3: Offence of serious violation of Second Protocol

22 *Subsection (1)* creates a new criminal offence, a serious violation of the Second Protocol, which is committed where a person intentionally does an act listed in Article 15(1) of the Second Protocol knowing that the property to which the act relates is cultural property. The five acts listed in Article 15(1) are as follows:

- a. making cultural property under enhanced protection the object of attack;
- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
- c. extensive destruction or appropriation of cultural property protected under the Convention and the Second Protocol;
- d. making cultural property protected under the Convention and the Second Protocol the object of attack; and
- e. theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property protected under the Convention.

23 *Subsection (1)(b)* stipulates that the act concerned must violate the Convention or the Second Protocol (which reflects the wording of Article 15(1)). In order to prosecute an offence based on Article 15(1) of the Second Protocol it is therefore necessary to identify how the act set out at Article 15(1) violates the Convention or Second Protocol. For example, if the military forces of a Party to the Convention were to make cultural property protected by the Convention and Second Protocol the object of an attack (an act specified in Article 15(1)(d)), this would constitute a violation of the obligation in Article 4(1) of the Convention to refrain from any act of hostility against such property. In contrast, the same act would not constitute such a violation if the obligation in Article 4(1) was waived on the basis of military imperative as permitted by Article 4(2)¹. Acts will not be covered if they occur in peacetime – relevant provisions of the Convention and the Second Protocol² apply in the event of war or armed conflict between two or more Parties³ or an occupation of the territory of a Party⁴ as well as in the event of armed conflicts “not of an international character” occurring within the territory of one of the Parties⁵.

¹ Article 4(2) of the Convention is refined by Article 6(a) of the Second Protocol.

² Articles 18 and 19 of the Convention, Article 3 and 22 of the Second Protocol.

³ See Article 18(1) of the Convention.

⁴ See Article 18(2) of the Convention.

⁵ See Article 19 of the Convention and Article 22 of the Second Protocol.

- 24 Articles 15(1)(a) and (b) of the Second Protocol set out offences against cultural property under “enhanced protection”. The Second Protocol sets out a system whereby cultural property in countries which are parties to the Second Protocol can be granted enhanced protection⁶. Such protection is only granted to cultural property which is “of the greatest importance for humanity”⁷. Enhanced protection status is very rare; there are currently only 10 pieces of cultural property that have received enhanced protection worldwide and they are all World Heritage Sites. Article 12 of the Second Protocol obliges the Parties to a conflict to refrain from making cultural property under enhanced protection “the object of attack or from any use of the property or its immediate surroundings in support of military action.” The threshold for receiving enhanced protection is very high and therefore it is unlikely that such offences will in practice be committed.
- 25 Article 15(1)(c) and (d) deal with offences against cultural property which is protected by both the Convention and the Second Protocol. Damage to cultural property in a country which is not a Party to both the Convention and the Second Protocol will not be covered by these offences.
- 26 Article 15(1)(e) covers theft, pillage or misappropriation, or acts of vandalism directed against, cultural property protected under the Convention. This offence is the most likely to be prosecuted of the five Article 15 offences since it will apply to offences against cultural property committed in the many countries which have ratified the Convention regardless of whether they are also Parties to the Second Protocol.
- 27 Action taken by the armed forces of a country which is not a Party to the Convention or the Second Protocol, and is not therefore bound by the obligations set out in the Convention and the Protocol, will not amount to an offence under this section, since the requirement under section 3(1)(b) that there must be a violation of the Convention or the Second Protocol will not be satisfied. Article 16(2)(b) of the Second Protocol makes it clear that members of the armed forces and nationals of a State which is not a Party to that Protocol do not incur individual criminal responsibility by virtue of the Second Protocol unless they are serving in the armed forces of a State which is a Party to the Protocol.
- 28 The remaining subsections of this section make provision about jurisdiction, implementing the requirements of Article 16(1) of the Second Protocol. *Subsection (2)* makes it clear that for each of the offences described in Article 15(1) of the Second Protocol, the act can take place within the United Kingdom or in another country.
- 29 By *subsection (3)* both United Kingdom and non- United Kingdom nationals can be prosecuted for a serious violation of the Second Protocol in relation to the acts set out at Article 15(1)(a)-(c) of the Second Protocol.
- 30 In contrast, *subsection (4)* provides that in relation to the acts set out at Article 15(1)(d)-(e) of the Second Protocol (which are considered less serious) the criminal offence can only be committed outside the United Kingdom by a United Kingdom national or a person subject to United Kingdom service jurisdiction.
- 31 *Subsections (5) and (6)* define the terms “United Kingdom national” and “person subject to

⁶ See Articles 10-14 of the Second Protocol.

⁷ See Article 11 of the Second Protocol.

United Kingdom service jurisdiction” for the purposes of Part 2 of the Act.

Section 4: Ancillary offences

- 32 This section is necessary to implement fully the obligation in Article 16 of the Second Protocol to establish extra-territorial jurisdiction for the offences set out in Article 15. The requirement in Article 15(2) to extend criminal responsibility to persons other than those who directly commit the act described in Article 15(1) means that the obligation to establish extra-territorial jurisdiction applies to ancillary offences as it does to the principal offence. Section 4 therefore sets out provisions about jurisdiction in respect of specified ancillary offences which mirror those for the principal offence set out in section 3.
- 33 *Subsection (1)* provides that an offence which is ancillary to the offence of a serious violation of the Second Protocol (section 3) may be committed in the United Kingdom or elsewhere. This mirrors section 3(2).
- 34 *Subsection (2)* provides that any person may be prosecuted for an ancillary offence in relation to any of the acts listed in Article 15(1)(a)-(c) of the Second Protocol, regardless of their nationality. This mirrors section 3(3).
- 35 *Subsection (3)* provides that a person may only be prosecuted in connection with an ancillary offence concerned with the acts listed in Article 15(1)(d) or (e) of the Second Protocol, if he or she is a United Kingdom national, or is subject to United Kingdom service jurisdiction. This mirrors section 3(4).
- 36 *Subsections (4), (5), and (6)* define what is meant by “an offence that is ancillary to an offence under section 3” for the purposes of this Part, taking account of the differences in criminal law between each jurisdiction of the United Kingdom. These definitions include only those ancillary offences where there is any uncertainty as to their extra-territorial application. Where the existing law is clear as to extra-territorial application, no provision is made. For example, the offences of encouraging or assisting an offence under sections 44 to 46 of the Serious Crime Act 2007 (“the 2007 Act”) are not included in *subsection (4)* because section 52 of the 2007 Act already makes express provision about extra-territorial jurisdiction for those offences.
- 37 *Subsection (7)* ensures that the provision made in relation to ancillary offences applies not only to offences which are ancillary to the principal offence, but also to offences which are ancillary to ancillary offences. This subsection would apply, for example, where a person had destroyed evidence in order to conceal an attempt by a friend to steal cultural property protected under the Convention. The person who destroyed the evidence would be guilty of an offence under section 5 of the Criminal Law Act 1967, an offence which would be ancillary to the ancillary offence committed by the friend of attempting to commit a serious violation of the Second Protocol.

Section 5: Responsibility of commanders and other superiors

- 38 This section provides for an additional form of criminal responsibility, namely that of commanders and superiors for the acts of their subordinates. Such criminal responsibility complies with general principles of international law referred to in Article 15(2) of the Second Protocol and is contained within the Statute of the International Criminal Court, which is regarded as an authoritative statement of the general principles of international law in relation to criminal liability. The wording of the section is based on Article 28 of that Statute and similar provision is made in section 65 of the International Criminal Court Act 2001. As *subsection (6)* makes clear, courts will be obliged to take account of the jurisprudence of the International Criminal Court in interpreting and applying this section.
- 39 *Subsection (1)* makes it clear that liability under this provision is a form of aiding and abetting.

Under section 8 of the Accessories and Abettors Act 1861, which extends to England and Wales and Northern Ireland, a person who has aided or abetted the commission of an offence is liable to be prosecuted, and is subject to the same penalty, as a principal offender. In Scotland broadly equivalent provision is made in relation to statutory offences by section 293 of the Criminal Procedure (Scotland) Act 1995.

- 40 The wording in *subsections (2) and (4)* draws a distinction between the standards expected of military and quasi-military commanders in relation to military forces under their command, and other superiors such as government officials or heads of civilian organisations, as it is recognised that the latter may not have the same degree of control over the actions of their subordinates. A commander will incur liability under this provision where he or she knew, or owing to the circumstances at the time should have known, that his or her forces were committing an offence. On the other hand, a superior other than a commander will only be liable where he or she knew or consciously disregarded information indicating that the subordinate was committing an offence.
- 41 *Subsection (7)* makes it clear that this section does not preclude any criminal liability which arises apart from this section. So if a commander is prosecuted under this section, they could still also be prosecuted as a principal offender.

Section 6: Penalties

- 42 This section provides for the maximum penalty for the offence of serious violation of the Second Protocol, and for offences which are ancillary to such offences.

Section 7: Consent to prosecutions

- 43 This section ensures that prosecutions for the offence of serious violation of the Second Protocol, or for related ancillary offences, may only be brought in England and Wales with the consent of the Attorney General. In Northern Ireland, the consent of the Director for Public Prosecutions for Northern Ireland is required. No equivalent provision is made in relation to Scotland as the position of the Lord Advocate as master of the instance in relation to all prosecutions in Scotland means that such provision is unnecessary.

Part 3: Cultural Emblem

Section 8: The cultural emblem

- 44 This section defines the cultural emblem introduced by the Convention to identify cultural property which is protected under the Convention. Article 17 of the Convention permits use of the cultural emblem to identify cultural property or for personnel engaged in protecting such property.

Section 9: Offence of unauthorised use

- 45 This section creates a new offence of unauthorised use of the cultural emblem. This implements the obligation under Article 17 of the Convention to prevent use of the emblem except as authorised by the Convention. It is also an offence to use another design which is capable of being mistaken for the emblem because it so closely resembles it. The offence is punishable by a fine, and proceedings may only be brought with the consent of the Director of Public Prosecutions in England and Wales, or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland. No consent requirement is made in relation to Scotland as the position of the Lord Advocate as master of the instance in relation to all prosecutions in Scotland means that such provision is unnecessary.

Section 10: Use authorised by appropriate national authority

46 *Subsection (1)* gives to the appropriate national authority the power to give permission for particular uses of the cultural emblem as being “authorised” for the purposes of this part of the Act. “Appropriate national authority” is defined in section 15 of the Act. Permission which has been given may be withdrawn. *Subsection (2)* imposes an additional requirement where the cultural property concerned is immovable cultural property. In this case, a copy of the permission given must be displayed with the emblem.

Section 11: Other authorised use: moveable property

47 This section provides that the cultural emblem can be used to identify moveable cultural property, whilst the cultural emblem triangle can be used to identify cultural property undergoing protected transportation under Article 12 or 13 of the Convention. Article 12 of the Convention provides for the transfer of cultural property to take place under special protection, in accordance with the procedures set out in the Regulations for the execution of the Convention. Article 13 provides for such transfer in cases of urgency where it is not possible to follow those procedures.

48 For example, if an armed conflict were to occur in one part of the United Kingdom, the cultural emblem triangle could be displayed on moveable cultural property during its transportation under special protection to a refuge in an area of the United Kingdom not affected by the conflict. If the armed conflict occurred unexpectedly and protection of the cultural property was determined to be a matter of urgency, the cultural emblem triangle could be displayed on such property during its transportation without the procedures in the Regulations having been followed (provided a request under Article 12 had not previously been refused).

Section 12: Other authorised use: personnel

49 This section authorises the use of the cultural emblem to identify two classes of people. The first class consists of those personnel who have duties of control under the Convention in relation to cultural property, such as the representative for cultural property appointed under Article 2 of the Regulations, or the Commissioner General. The second class consists of personnel who have been designated by the appropriate national authority as being engaged in the protection of cultural property in the appropriate part of the United Kingdom. For example, if a cultural property expert is designated by the Secretary of State for the protection of cultural property in England, they would be authorised to wear an armlet bearing the cultural emblem when transporting cultural property for safekeeping.

Section 13: Defences

50 This section sets out three defences to the offence of unauthorised use of the cultural emblem (section 9). Under *subsection (2)*, it is not an offence to use the cultural emblem for a purpose for which it had previously been lawfully used by the accused before this section came into force.

51 Under *subsection (3)* it is not an offence to use the emblem where it forms part of a trademark registered before the section came into force, and the trademark is being used lawfully in relation to the goods or services for which it was registered. An example of this could be a badge for a sports club.

52 Under *subsections (4) and (5)*, it is not an offence to use a design on goods provided that the design was applied to the goods by their manufacturer or someone trading in those goods before they came into the possession of the accused, and the person applying the design was using it lawfully in relation to the same type of goods before the section came into force. Use of the emblem by the manufacturer or trader would come within the terms of the defences set out in *subsections (2) and (3)* of this section. The defence in *subsections (4) and (5)* is intended to ensure that the purchaser of such goods does not commit an offence. For example, if a retailer

sold T-shirts printed with a design closely resembling the cultural emblem, he or she would not incur criminal liability for continuing to sell similar T-shirts after the Act becomes law. Any consumer who bought the T-shirts would also not incur criminal liability. *Subsection (6)* makes it clear that, where the defendant can provide evidence that a defence exists, the burden to prove the offence still lies with the prosecution.

Section 14: Forfeiture following conviction under section 9

53 This section gives the court which convicts someone of the offence of unauthorised use of the emblem the power to order the forfeiture of the articles in respect of which the offence was committed, and where appropriate, their destruction.

Section 15: “Appropriate national authority”

54 This section defines the term “appropriate national authority” in relation to each part of the United Kingdom. That term is used in sections 10 and 12 of the Act.

Part 4: Property exported from occupied territory

55 Under the First Protocol, the United Kingdom is under an obligation to take cultural property which has been exported from occupied territory and imported into the United Kingdom into its custody, and to return that property to the competent authorities at the close of hostilities. Further, under Article 21 of the Second Protocol, the United Kingdom must take measures to suppress any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or the Second Protocol. This Part of the Act enables the United Kingdom to implement those obligations.

Section 16: “Unlawfully exported cultural property” etc.

56 This section defines what is meant by “unlawfully exported cultural property” for the purposes of this Part of the Act. The cultural property in question must have been exported from occupied territory, and its export must have been unlawful under either the laws of the territory in question, or under rules of international law such as the First Protocol. The unlawful export need not have taken place after this Act comes into force – cultural property unlawfully exported from occupied territory at any time after 1956 (when the First Protocol came into force) will come within the definition. So, for example, outstanding antiquities stolen in an occupied territory and smuggled out of that territory in the 1960s would fall within the definition of “unlawfully exported cultural property”.

57 *Subsection (5)* makes clear that the test for “occupied territory” is drawn from Article 42 of the [Regulations concerning the Laws and Customs of War on Land](#), done at the Hague, 18 October 1907. Under that provision: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to territory where such authority has been established and can be exercised.”

58 *Subsection (6)* provides that, where the Secretary of State issues a certificate stating whether a particular territory is or was occupied by a Party to the First or Second Protocol or any other state, that certificate will be conclusive evidence of that fact. However, this does not mean that a certificate needs to be provided in all cases. Alternative evidence may be provided to prove the status of a particular territory.

Section 17: Offence of dealing in unlawfully exported cultural property

59 *Subsection (1)* makes it an offence to deal in cultural property which has been unlawfully exported from occupied territory, if the perpetrator either knew or had reason to suspect that the cultural property concerned had been unlawfully exported.

60 *Subsection (2)* ensures that an offence is only committed where the property concerned is

imported into the United Kingdom after the commencement of this section. No offence will be committed in relation to cultural property which is not imported into the United Kingdom.

- 61 Subsections (3), (4) and (5) define “dealing” for the purpose of this section, identifying each of the activities which may result in the commission of an offence. Subsection (3)(b) and (c) provide for activities where a person may not have directly dealt with the unlawfully exported cultural property themselves. An example under subsection 3(c) would be where an antiquities dealer Y makes arrangements for a statue (which is cultural property) to be sold at auction, knowing that it is unlawfully exported, Y will be guilty of an offence, even if he or she does not actually “acquire” or “dispose” of the statue at any point themselves.
- 62 Under subsections (6), (7) and (8), the offence is triable either in the crown court or the magistrates’ court. These subsections set out the maximum penalties following conviction in either the crown court or magistrates’ court.
- 63 A dealer does not commit an offence under this section if, for example, they take temporary possession of a cultural object to enable them to carry out due diligence, or provide a valuation, only for them to discover that it has been unlawfully exported from an occupied territory. In such a scenario, the dealer could not be said to have 'acquired' the object, and therefore no dealing has taken place. They would also have lacked the requisite mental element or “mens rea” to commit the offence. In order to commit an offence in this context, a dealer would have to both “acquire” the object i.e. buy, hire, borrow or accept, and do so knowing, or having reason to suspect that it is unlawfully exported.

Section 18: Forfeiture in connection with dealing offence

- 64 This section ensures that, where someone has been convicted of the offence of dealing with unlawfully exported cultural property, the court may order the forfeiture of that property, and may make further provision for its retention or disposal. The forfeiture provision is required in order for the United Kingdom to comply with its obligation to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory (see paragraph 2 of the First Protocol).

Sections 19-27: Forfeiture otherwise than in connection with offence and seizure and retention of property liable to forfeiture.

- 65 These sections make provision for the forfeiture of cultural property otherwise than in connection with an offence. As with the forfeiture provision under section 18, these provisions are required in order for the United Kingdom to comply with its obligation to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory (see paragraph 2 of the First Protocol).
- 66 Unlawfully exported cultural property is liable to forfeiture, provided that it has been imported into the United Kingdom after section 19 comes into force. Forfeiture orders can only be made if an application is made to the Court within four months of the day on which either the property is seized under section 23, or an order made for the retention of the property under section 24 – see section 27(1)(d).
- 67 Section 21 provides that a court may decide to make a forfeiture order under section 20 conditional on compensation being paid. This enables the court to protect the interests of a person who acquires cultural property in good faith not knowing that it was unlawfully exported from occupied territory. The court does not have power to order the payment of compensation itself. Parties to the First Protocol are obliged to prevent export of cultural property from territory that they occupy during armed conflict and to return cultural property which is exported. In order to secure the return of unlawfully exported property, the Party

which was in occupation is obliged to pay an indemnity to the holders in good faith of any cultural property (see paragraph 4 of the First Protocol). Compensation may be paid by the authorities which are seeking the return of the cultural property in question, or by the Secretary of State. If the compensation due has not been paid within four months of the date on which the forfeiture order was made, the order ceases to have any effect.

- 68 Section 22 gives the court power to make an interim order for the safekeeping of property which is or may be the subject of an application for a forfeiture order under section 20. For example, where cultural property is in a fragile condition and requires work to stabilise it, the court would be able to order that it should be transferred to the custody of a museum for the necessary conservation work to be carried out.
- 69 Section 23 ensures that the police may apply to a justice of the peace, in England and Wales⁸, for a warrant authorising a constable to enter the premises identified in the warrant in order to search for cultural property which has been unlawfully exported from an occupied territory and, where such property is discovered as a result of the search, to seize it. The police must be able to demonstrate to the justice of the peace that there are reasonable grounds for believing that such cultural property is situated in the premises in question. The issue of a warrant under this section is, in England and Wales⁹, subject to the safeguards set out in section 15 of the Police and Criminal Evidence Act 1984, and must be executed in accordance with the requirements in section 16 of that Act. *Subsection (3)* provides that someone exercising a power under such a warrant has authority to use reasonable force where this is necessary, for example, to gain access to the premises in question, or to open locked storage space. *Subsection (9)* has the effect that the additional powers of seizure from premises provided under section 50 of the Criminal Justice and Police Act 2001 will be exercisable in relation to the powers of seizure in this section.
- 70 Once cultural property has been seized under this provision, it must be retained by the police until either a forfeiture order is made under section 20 or the property is returned or disposed of in accordance with section 27.
- 71 Section 24 gives a justice of the peace (or their equivalent in Scotland or Northern Ireland) the power to authorise the continued retention of property which was originally seized in connection with the investigation or prosecution of the offence of dealing in unlawfully exported cultural property, on the application of a constable. This may happen, for example, where cultural property was originally seized as evidence in relation to an offence of dealing in unlawfully exported cultural property, but either it is decided that no criminal proceedings should be brought, or any criminal proceedings brought result in the acquittal of the accused, so that the power under which the police originally seized that property no longer applies.
- 72 Under *subsection (2)*, once retention of the property has been authorised, it must be retained by the police until either the property is forfeited under section 20 or the property is returned or disposed of in accordance with section 27. An order for continued retention may only be made if the justice of the peace is satisfied that there are reasonable grounds for suspecting that the property may be liable to forfeiture under section 19 (see *subsection (3)*). Property is liable to

⁸ In Scotland, a sheriff or summary sheriff; in Northern Ireland, a lay magistrate.

⁹ In Scotland, issue and execution of a warrant must be carried out in accordance with the common law. In Northern Ireland, there is equivalent provision in Articles 17 and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (1989 No. 1341).

forfeiture under that section where it is cultural property within the meaning of the Convention, it has been unlawfully exported from occupied territory, and it was imported into the United Kingdom after the commencement of section 19.

- 73 *Subsection (6)* states that the Police (Property) Act 1897, and the related Act under the law of Northern Ireland, which make provision with respect to the disposal of property in the possession of the police, do not apply to property retained under section 24(5).
- 74 Sections 23(5) and 24(4) oblige the person who has custody of property which has been seized or retained to give notice to the owner (unless the property was seized in the presence of the owner or his employee/agent (see section 23(6)). Section 25 further provides that notices must be in writing and set out grounds for seizure/retention. Section 25(2) and (3) explain how notice is to be given.
- 75 Section 26 deals with property seized in connection with investigation or prosecution of the “dealing” offence under section 17 which is not being held by the police. An example of this scenario would be if an object had been sent to a museum for expert advice on its provenance. Once the object is no longer needed for the investigation or prosecution of the section 17 offence, it must be transferred to a constable as soon as is reasonably practicable (see *subsection (2)*). The police can then make an application to retain the property pending forfeiture or return or disposal.
- 76 Section 27 imposes a duty on the person who has custody of cultural property which has been seized to return it to the owner, as soon as reasonably practicable, once forfeiture is no longer being pursued. However if it has not been reasonably practicable to return the cultural property to its owner within a period of twelve months, then the person who has custody may dispose of it as they think appropriate.

Part 5: Property removed for safekeeping

Section 28: Immunity from seizure or forfeiture

- 77 Under Article 14 of the Convention, the United Kingdom is required to grant immunity from seizure to any cultural property which enjoys special protection under Article 12 of the Convention. Article 12 applies to cultural property which is being transported for safekeeping. The means of transport for cultural property which enjoys special protection must also enjoy immunity of seizure. Section 28 of the Act implements the United Kingdom’s obligations under Article 14 of the Convention to ensure that such cultural property may not be seized or forfeited while it is in the United Kingdom.
- 78 As *subsections (3) and (4)* make clear, the immunity applies both to cultural property which is being transported to the United Kingdom, and to cultural property which is in transit through the United Kingdom *en route* to another destination for safekeeping. In the case of cultural property which is being transported to the United Kingdom, for which the United Kingdom has agreed to act as depositary (i.e. accepting the obligations to safeguard the property under Article 18 of the Regulations for the Execution of the Convention), *subsection (5)* provides that the cultural property is protected while it remains in the custody of the Secretary of State, or any other person or institution which has been made responsible for its safekeeping by the Secretary of State. If the cultural property leaves the custody of such an institution, for example if it is stolen, it is no longer protected, and may be seized by the police so that it can be returned to the institution in question.
- 79 *Subsection (7)* ensures that the same protection applies to any vehicle which is being used to transport cultural property protected under Article 12 of the Convention.

80 Subsection (8) sets out the extent of the protection which will be given to objects under this section. It includes immunity against all forms of execution which might be made against an object protected under the section, any order made in civil proceedings and any measure taken in criminal proceedings (or for the purposes of a criminal investigation) which might affect the control or custody of an object.

Part 6: General

Section 29: Liability of company officers for offences by company

81 This section provides that, if an offence under this Act is committed by a company or Scottish partnership with the consent or connivance of an officer of that company or partnership, then the officer will be guilty of an offence as well as the company or partnership. For example, this could cover the director of a company engaged as a private military contractor who agrees to or consciously fails to prevent the looting of protected cultural property by that company.

Section 30: Crown application

82 This section makes clear that all the provisions contained in the Act apply to the Crown. This means for instance that enforcement powers, such as powers of entry, apply to premises used by or on behalf of the Crown (e.g. to government offices), and powers of seizure similarly apply to Crown property. The Act will not, however, apply to the Queen in her private capacity. The section makes clear that the Crown cannot be criminally liable, however this does not affect the criminal liability of persons in Crown service (e.g. civil servants).

Section 31: Extent

83 The Act will extend throughout the United Kingdom. In addition, under *subsection (2)*, by Order in Council, its provisions can be extended to cover the Isle of Man and any British overseas territory.

Commencement

84 The provisions in the Act will be brought into force by regulations made by the Secretary of State under section 32.

Related documents

85 The following documents are relevant to the Act and can be read at the stated locations:

- 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Two Protocols of 1954 and 1999 - A Summary of Responses Received to the Government's Consultation October 2006:

<http://webarchive.nationalarchives.gov.uk/20121204113822/http://www.culture.gov.uk/images/publications/HagueGovernmentsresponsepublicationversionfinal.pdf>

- Draft Cultural Property (Armed Conflicts) Bill (2008):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243113/7298.pdf

- House of Commons Culture, Media and Sport Committee Draft Cultural Property (Armed Conflicts) Bill Ninth Report of Session 2007–08:

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/693/693.pdf>

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- Government Response to the Culture, Media and Sport Committee Reports on the Draft Heritage Protection Bill and Draft Cultural Property (Armed Conflicts) Bill (2008):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243360/7472.pdf

Annex A - Territorial extent and application in the United Kingdom

The Act extends to the whole of the United Kingdom. There are no sections or Schedules in the Act that apply only to England or only to England and Wales, as set out in the table below.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Section 1 - 2	Yes	Yes	Yes	Yes	Yes (S, NI, W)
Section 3 - 7	Yes	Yes	Yes	Yes	Yes (S, NI, W)
Section 8 - 15	Yes	Yes	Yes	Yes	Yes (S, NI, W)
Section 16 - 27	Yes	Yes	Yes	Yes	No
Section 28	Yes	Yes	Yes	Yes	Yes (S, NI, W)
Section 29	Yes	Yes	Yes	Yes	Yes (S, NI, W)
Section 30	Yes	Yes	Yes	Yes	Yes (S, NI, W)
Section 31	Yes	Yes	Yes	Yes	N/A
Section 32	Yes	Yes	Yes	Yes	N/A
Section 33	Yes	Yes	Yes	Yes	N/A
Schedule 1	N/A	N/A	N/A	N/A	N/A
Schedule 2	N/A	N/A	N/A	N/A	N/A
Schedule 3	N/A	N/A	N/A	N/A	N/A
Schedule 4	N/A	N/A	N/A	N/A	N/A

Annex B - Hansard References

86 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	19 May 2016	Vol. [773] Col. [27]
Second Reading	6 June 2016	Vol. [773] Col. [583]
Grand Committee	28 June 2016	Vol. [773] Col. [1475]
Report	6 September 2016	Vol. [774] Col. [945]
Third Reading	13 September 2016	Vol. [774] Col. [1396]
<i>House of Commons</i>		
Introduction	13 September 2016	
Second Reading	31 October 2016	Vol. [616] Col. [697]
Public Bill Committee (First sitting)	15 November 2016	Col. [1]
Public Bill Committee (Second sitting)	15 November 2016	Col. [35]
Report and Third Reading	20 February 2017	Vol. [621] Col. [791]
Royal Assent	23 February 2017	House of Commons Vol. [621] Col. [1151]
		House of Lords Vol. [779] Col. [401]

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Annex C - Progress of Bill Table

87 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 18	Clause 18	Clause 18	Clause 18
Section 19	Clause 19	Clause 19	Clause 19	Clause 19	Clause 19
Section 20	Clause 20	Clause 20	Clause 20	Clause 20	Clause 20
Section 21	Clause 21	Clause 21	Clause 21	Clause 21	Clause 21
Section 22	Clause 22	Clause 22	Clause 22	Clause 22	Clause 22
Section 23	Clause 23	Clause 23	Clause 23	Clause 23	Clause 23
Section 24	Clause 24	Clause 24	Clause 24	Clause 24	Clause 24
Section 25	Clause 25	Clause 25	Clause 25	Clause 25	Clause 25
Section 26	Clause 26	Clause 26	Clause 26	Clause 26	Clause 26
Section 27	Clause 27	Clause 27	Clause 27	Clause 27	Clause 27
Section 28	Clause 28	Clause 28	Clause 28	Clause 28	Clause 28
Section 29	Clause 29	Clause 29	Clause 29	Clause 29	Clause 29
Section 30	Clause 30	Clause 30	Clause 30	Clause 30	Clause 30
Section 31	Clause 31	Clause 31	Clause 31	Clause 31	Clause 31

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 32	Clause 32	Clause 32	Clause 32	Clause 32	Clause 32
Section 33	Clause 33	Clause 33	Clause 33	Clause 33	Clause 33
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3

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