



Department for
Digital, Culture
Media & Sport

Dealing in unlawfully exported cultural property

**Guidance on the Cultural Property (Armed
Conflicts) Act 2017**

November 2017
Department for Digital, Culture, Media and Sport

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Background

1. This document provides some guidance on the offence of dealing in unlawfully exported cultural property which was introduced by the Cultural Property (Armed Conflicts) Act 2017 (“the 2017 Act”).
2. The 2017 Act introduced the legal provisions required 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 of 1954 and 1999. The United Kingdom formally ratified the Convention and acceded to the Protocols on 12th September 2017 and they enter into force for the United Kingdom on 12th December 2017. The 2017 Act comes into force on the same day.
3. The 1954 Hague Convention was adopted following the massive destruction of cultural property that took place in the Second World War. It provides for a system of protection of cultural property in situations of armed conflict. State parties to the Convention are required to respect both cultural property situated within their own territory and cultural property within the territory of other State parties, by refraining from using it, or its immediate surroundings, 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.
4. The Convention is supplemented by two Protocols: the First Protocol (1954) imposes a number of obligations on Parties in relation to the protection of cultural property in occupied territories; and the Second Protocol (1999) extends and clarifies the obligations under the Convention and the First Protocol.
5. The Convention and Protocols impose obligations on Occupying States and other State parties to take measures to suppress any illicit export of cultural property from occupied territories and to 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 during an armed conflict, and paragraph 2 requires a Party to take into its custody any cultural property imported into its territory from any occupied territory. 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 when these acts are committed intentionally.
6. There is existing United Kingdom legislation in this field, including the Return of Cultural Objects Regulations 1994 (as amended), the Dealing in Cultural Objects (Offences) Act 2003, the Iraq (United Nations Sanctions) Order 2003 and the Export Control (Syria Sanctions) (Amendment) Order 2014. This legislation is already covered by guidance and due diligence procedures with which dealers should be complying.

7. However, existing legislation was 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.
8. Part 4 of the 2017 Act therefore ensures that the United Kingdom is able to comply with its obligations under the Convention and Protocols as outlined above.
9. Section 17 introduced a new offence of dealing in unlawfully exported cultural property.
10. The full texts of the Convention, First Protocol and Second Protocol can be found on the UNESCO website¹. They are also appended as schedules to the 2017 Act, the full text of which can be found on the UK legislation website, together with the Explanatory Notes².
11. This document provides some guidance to assist dealers and others in the art market to understand the new offence and comply with the provisions of the 2017 Act. A checklist is included at Annex A.
- 12. This document is for guidance only. In cases of doubt, you are advised to seek legal advice.**

¹ http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

² <http://www.legislation.gov.uk/ukpga/2017/6/contents/enacted>

1. The new offence

1. With effect from 12th December 2017 it is an offence for a person to deal in unlawfully exported cultural property within the meaning of the 2017 Act (see page 6 below), knowing or having reason to suspect that it has been unlawfully exported.
2. The offence is only committed where the cultural property concerned is imported into the United Kingdom on or after 12th December 2017. No offence is committed in relation to cultural property which is not imported into the United Kingdom, or which was imported into the United Kingdom before this date.
3. Section 17 of the 2017 Act defines “dealing” for the purpose of the offence as being if (and only if) the person:
 - (a) acquires or disposes of the unlawfully exported cultural property in the United Kingdom or imports it into, or exports it from, the United Kingdom,
 - (b) agrees with another to do an act mentioned in paragraph (a), or
 - (c) makes arrangements under which another does such an act or under which another agrees with a third person to do such an act.
4. “Acquires” is defined as meaning where a person buys, hires, borrows or accepts, and “disposes of” is defined as meaning where a person sells, lets on hire, lends or gives.
5. Paragraphs (b) and (c) above provide for activities where a person may not have directly dealt with the unlawfully exported cultural property themselves. An example under paragraph (c) would be where a dealer makes arrangements for a statue to be sold at auction, knowing that it is unlawfully exported cultural property. The dealer will be guilty of an offence, even if he or she does not actually “acquire” or “dispose” of the statue at any point themselves.
6. It is important to note that 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 to provide a valuation, only for them then to discover that it has been unlawfully exported from occupied territory. In such a scenario, the dealer could not be said to have “acquired” the object, and therefore no dealing has taken place. The dealer 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 it, and do so knowing or having reason to suspect that it has been unlawfully exported.
7. The offence is triable either in the crown court or the magistrates’ court and the maximum penalties in the different parts of the United Kingdom are set out in subsections (6) to (9) of section 17 of the 2017 Act.

2. What cultural property is covered?

1. Section 2 of the 2017 Act defines “cultural property” as having the meaning given in Article 1 of the Convention, which is as follows:

For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.

2. It is important to note that, in order to qualify as ‘cultural property’ under the Convention, the property must be of “great importance to the cultural heritage of every people”. As such, the definition will only apply to a small but very special category of cultural objects. These objects may be from among the types of cultural property listed in sub-paragraph (a) though the examples given in the definition are not exhaustive.

3. What is unlawfully exported cultural property?

1. Section 16 of the 2017 Act defines what is meant by “unlawfully exported cultural property” for the purposes of this legislation. There are, in effect, three conditions which must be satisfied:
 - i) the cultural property in question must have been exported from occupied territory as defined in international law (see page 8 below),
 - ii) its export must have been unlawful under either the laws of the territory in question or under any rule of international law, and
 - iii) either the state from which it was exported or the occupying state must have been a State party to the First or Second Protocol at the time of export.
2. In practice, therefore, the cultural property concerned must have been unlawfully exported after 7 August 1956 (when the First Protocol came into force) and the territory from which it was unlawfully exported must have been occupied at the time of export.
3. UNESCO’s website lists State parties and their dates of ratification of and/or accession to the Convention and Protocols.³
4. UNESCO also provides a database of national cultural heritage laws, including laws relating to the export of cultural property⁴.

³ http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁴ <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/unesco-database-of-national-cultural-heritage-laws/>

4. What is occupied territory?

1. Section 16(5) of the 2017 Act provides that the test for “occupied territory” is drawn from Article 42 of the Regulations respecting the Laws and Customs of War on Land annexed to the Convention respecting the Laws and Customs of War on Land (Hague IV), 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 the territory where such authority has been established and can be exercised.*⁵

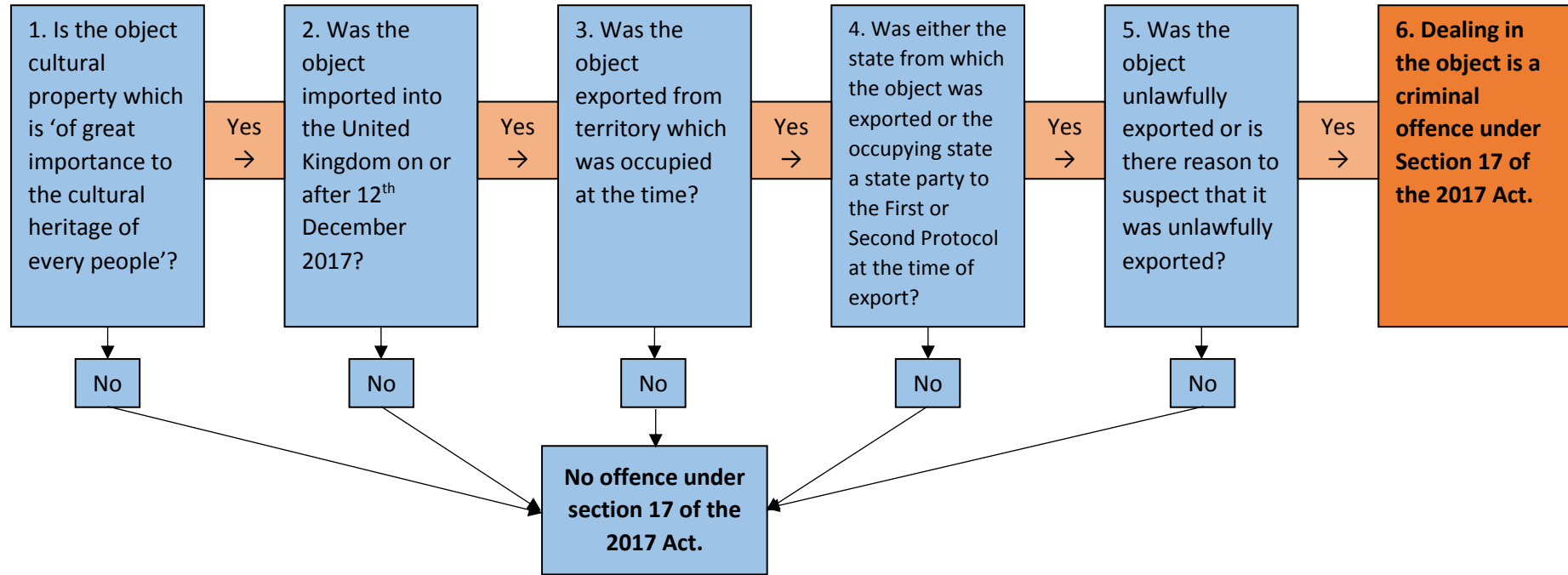
2. Dealers may wish to seek legal advice on the application of this definition in particular cases. However, in practice, it is likely to apply to few territories since 1956, and the amount of cultural property unlawfully exported from such territory is likely to be small.
3. Section 16(6) of the 2017 Act provides that, if, during proceedings, the Secretary of State issues a certificate stating whether, at a particular time, a territory is or was occupied by a Party to the First or Second Protocol or by 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 submitted to prove the status of a particular territory at a particular time.

⁵ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/195-200052?OpenDocument>

5. What constitutes 'reason to suspect'?

1. An offence is committed when a person deals in unlawfully exported cultural property knowing or having reason to suspect that it has been unlawfully exported.
2. This means that, in the absence of actual knowledge of unlawful export, there must be some evidence or information relating to the cultural property concerned, or the absence of such information, which gives the dealer reason to suspect that it has been unlawfully exported. By following normal due diligence procedures, dealers should be able to identify whether such evidence or information exists and act accordingly. An example might be where an object, originating from outside the UK, has no verifiable provenance, and the seller is unwilling to answer questions. A failure to recognise a reason to suspect as a result of incompetence, inexperience or wilful blindness is not a defence.
3. For a prosecution to succeed, it would be necessary to prove, beyond reasonable doubt, that the knowledge available to the dealer at the time would have caused a 'reasonable person' to suspect that the cultural property had been unlawfully exported. While each case must be considered on its own merits, it is not the intention of the 2017 Act that a dealer who has carried out proper due diligence and formed a reasoned judgement should face prosecution.
4. Re-constructing an unbroken history of the movement and ownership of cultural property can be difficult: export licences and other relevant documentation may have been lost over time, or never existed in the first place. The absence of a particular document may not, in itself, provide a reason to suspect that the object concerned has been unlawfully exported. However, the date of export, the practice of the state concerned at the time, and other evidence of ownership and movement of the object may also be relevant factors, and each case must be considered on its own merits.
5. Sometimes claims are made about the provenance of an object shortly before a sale or auction; and some states regularly ask for positive evidence of lawful export of objects offered for sale or auction which they believe are from their territory.
6. If new, credible evidence is presented about the provenance of an object shortly before a sale or auction, we would expect the dealer to pause and consider whether they need to undertake further due diligence, in line with existing practice. If, however, a claim is made with no credible evidence to back it up, then it may be legitimate for a dealer to disregard it and proceed with the sale, providing they have carried out such due diligence as is appropriate and reasonable in the circumstances, having regard to the relevant trade standards at the time, and were satisfied with the results. Such claims, without credible evidence to support them, are unlikely, on their own, to be considered sufficient to provide a 'reason to suspect' that an object has been unlawfully exported. However, the source of the information will be relevant to such a determination, as will the standard of the due diligence conducted prior and subsequent to that point.

Annex A: Checklist for dealers



- Notes:
1. The full definition of cultural property is set out in Article 1 of the Convention.
 2. The 2017 Act comes into force on 12th December 2017. Cultural property imported into the UK before this date is not covered by Section 17 of the 2017 Act.
 3. The definition of occupied territory is set out in the Regulations respecting the Laws and Customs of War on Land annexed to the Convention respecting the Laws and Customs of War on Land of 1907.
 4. The First Protocol came into force on 7 August 1956. State parties to the Convention and Protocols, together with their dates of ratification and/or accession, are listed on the UNESCO website.
 5. Due diligence in accordance with trade standards will be required.
 6. “Dealing” is defined in Section 17(3) of the 2017 Act.