

England and Wales

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A. Protection of cultural property

1. What are the key characteristics of your country's regulations on cultural heritage and national patrimony?

The UK does not have any overarching legislation which deals with cultural heritage and national patrimony. There are, however, specific rules concerning the protection, ownership and dealing in cultural property, such as rules in relation to treasure found in the ground, the conservation of monuments and archaeological sites, exporting cultural property and recovering stolen property.

2. Under your national law, which criteria must be met in order to classify goods as cultural property?

The criteria for classifying goods as cultural property vary according to their context. In the export control context, the Export Control Act 2002 and the Export of Objects of Cultural Interest (Control) Order 2003, capture 'any objects of cultural interest manufactured or produced more than 50 years before the date of exportation', subject to exceptions such as postage stamps and certain personal documents and correspondence belonging to the exporter.

3. What are the legal consequences arising from classifying an asset as cultural property? Does the classification of a private asset as cultural property affect the right of ownership?

Generally, the classification of an asset as cultural property does not affect the right of ownership although it may restrict the owner's rights in relation to the property, for example the right to move the property freely across borders. In the export control context, a determination that an object is of national cultural importance has no bearing on the private ownership of that object, although it may affect the owner's ability to export the object. The export of objects of cultural interest is prohibited except under the authority of a licence granted by the Secretary of State for the Department for Culture, Media and Sport (DCMS). Export controls are also currently imposed by Council Regulation (EC) No 116/2009 which requires a Community licence to export out of the European Union 'cultural goods' as defined in Annex I of that Regulation.

4. Which authorities in your country define cultural property and who advises these authorities?

In the export control context, the Arts Council England is the competent authority to issue export licences. Its Export Licensing Unit (ELU) relies on the expertise of Expert Advisers and the members of the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (Reviewing Committee) to determine whether any item of cultural property is of particular importance to the nation and whether efforts should be made to keep it within the UK.

5. Has your country ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?

The UK ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 2002. The UK government took the view at the time that it had sufficient powers under existing national legislation to implement the requirements of the UNESCO Convention although shortly afterwards it brought in the Dealing in Cultural Objects (Offences) Act 2003 to make it a criminal offence to deal dishonestly in ‘tainted’ (eg, illegally excavated or removed) cultural objects, including importing or exporting them. It is a defence to liability under the Act that the person dealing in such objects is unaware that they are tainted.

6. Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?

The UK has not ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Although the House of Commons Select Committee recommended that the UK become a party to the UNIDROIT Convention in their report titled ‘*Cultural Property: Return and Illicit Trade (1999-2000)*’, the government chose to adopt the 1970 UNESCO Convention shortly afterwards instead.

7. Has your country ratified other international conventions or bilateral agreements relating to the export of cultural objects?

By introducing the Cultural Property (Armed Conflicts) Act 2017 (the ‘Act’), the UK was able to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Act also enabled the UK to accede to the two Protocols of 1954 and 1999. Under the Protocols, the UK undertakes various obligations in relation to preventing the export of cultural property from an occupied territory and, if in occupation of a territory itself, banning any ‘illicit export, other removal or transfer of ownership of cultural property’. The Act also introduced a new offence for dealing in cultural property unlawfully imported to the UK from occupied territory on or after 12 December 2017.

At present, the UK is subject to the requirements of Directive 2014/60/EU which recast Directive 93/7/EEC, (see further in section C.2 below). It remains to be seen whether the UK will enter into any bilateral agreements relating to the export of cultural objects post Brexit.

B. Restrictions on the export of cultural property and artwork

1. What are your country's export restrictions regarding cultural property and artwork?

The UK generally restricts the export of cultural property in one of two ways. First, restrictions may be imposed because the cultural property being exported contains material such as ivory, which can only be commercially traded if it meets certain conditions under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is currently directly applicable in the UK at least until the UK has formalised its exit with the EU. In the meantime, the Ivory Act 2018, which will ban all trade and cross-border movement of ivory with very limited exceptions, was due to be implemented in late 2019 but the subordinate legislation required to bring it into effect has not yet been introduced.

Second, restrictions can be placed on cultural property that is deemed of particular importance to the nation. If an item is found to be of national importance, the export control regime operates by temporarily deferring the granting of an export licence to allow national collections or, in certain circumstances, private collections that meet certain criteria, an opportunity to make a matching offer to purchase the item from the owner at a fair market price. If a matching offer is not made, the item will be granted an export licence. If a matching offer is made but not accepted by the owner, the item is unlikely to be granted an export licence but the owner is not compelled to sell the item.

1.1 Under which conditions is export permission granted?

Different categories of export licence may be available depending on the type of cultural object in question, its age and value, and how long it has been in the UK. Many objects will be exported under an Open General Export Licence (OGEL) if they do not meet the applicable value and age thresholds to require an individual export licence. If an OGEL applies, the exporter does not need to apply for a licence from the ELU but should refer to the fact that an OGEL is being relied on in the export documentation.

If the age and value of an object exceeds the applicable thresholds for an OGEL to be sufficient, the exporter will need to apply for an individual export licence. In such cases, export permission is likely to be granted unless the object is deemed to be of 'national importance' under one or more of what are known as the Waverley criteria:

- is it closely connected with our history and national life;
- is it of outstanding aesthetic importance; or
- is it of outstanding significance for the study of some particular branch of art, learning or history?

If the ELU Expert Adviser objects to the export, the application will be referred to the Reviewing Committee, which then reviews evidence presented by the Expert Adviser and the exporter, determines whether one or more of the Waverley criteria are satisfied and advises the Secretary of State on whether a decision to grant an export licence should be temporarily deferred and, if so, on what terms.

1.2 Which authority grants such export permission and who advises this authority?

The ELU within Arts Council England is responsible for issuing export licences. Expert Advisers, who are usually directors, senior keepers or curators at national institutions, advise the ELU on whether objects are of national importance. The Reviewing Committee is an independent body made up of eight experts in different fields that advise the Secretary of State, who then determines whether the decision to grant an export licence should be temporarily deferred.

1.3 What does the proceeding look like, who are the parties to the proceeding and what is the duration of the proceeding?

If an object is not referred to the Reviewing Committee by an Expert Adviser, in normal circumstances a licence is likely to be granted within five days.

If an object is referred to the Reviewing Committee, the applicant for the export licence is given the opportunity to submit a written statement explaining why the object does not meet the Waverley criteria. The Expert Adviser also submits a statement. A meeting of the Reviewing Committee is convened, at which the applicant and the Expert Adviser are invited to make oral representations and answer questions from the Reviewing Committee. Following the presentation of evidence, the Reviewing Committee determines whether the object meets any of the Waverley criteria and, if so, recommends to the Secretary of State what the fair market price should be and the length of the deferral period in order to allow institutions to make matching offers for the object. If the Reviewing Committee deems that the object does not satisfy any of the Waverley criteria, it will recommend to the Secretary of State that an export licence be granted. The applicant is informed on the same day of the Reviewing Committee's decision.

1.4 Are there any monetary thresholds (*de minimis*)?

There are different applicable monetary thresholds depending on the type of cultural property being exported. Some objects such as archaeological objects which are more than 100 years old, or manuscripts that are more than 50 years old, will require a licence regardless of their value, whereas paintings, for example, do not require a licence unless their value exceeds a certain threshold.

1.5 Does the circumstance of the artist still being alive or the time of creation of the artwork matter?

Objects do not require an individual licence unless they are at least 50 years old. The artist being alive is in itself immaterial to an application. In practice, historic objects and artworks are more likely to be subject to expert scrutiny and potentially meet one of the Waverley criteria than modern ones.

2. Is the State obliged to buy out the artwork for which an export permission was denied?

There is no compulsory purchase system in the UK. The Secretary of State may decide to place a temporary export bar on an artwork but this is not an outright ban and, if a UK public

institution does not make a matching offer at the fair market price within a specified time period, the bar will be lifted and the artwork can be exported.

3. Are there any exceptions to these regulations (eg, temporary export for exhibitions, conservation, or private reasons of the owner)?

Open Individual Export Licences (OIELs) may be available to exporters who regularly send certain classes of cultural goods within the EU for art fairs or temporary exhibition. An OIEL can also be obtained for objects of cultural interest that were imported into the UK within 50 years of the intended export, which in most circumstances are not then subject to expert review.

C. Consequences in case of violation of export restrictions; restitution and repatriation of illegally exported cultural property:

1. What are the legal consequences in case of a breach of export restrictions?

If an exporter has failed to obtain a licence when required, they may be subject to penalties including criminal prosecution under the Customs and Excise Management Act 1979 and the object may be seized at customs.

2. Give a description of the regulations and practices in your country relating to the restitution and repatriation of illegally exported cultural property.

The Return of Cultural Objects Regulations 1994 (amended by the Return of Cultural Objects (Amendment) Regulations 2015) implements Directive 93/7/EEC as recast by Directive 2014/60/EU and compels the Secretary of State to notify another EU Member State if a cultural object is found in the UK which has been unlawfully removed from the territory of that Member State and respond to requests from Member States for the return of cultural objects.

The status of this legislation, which depends on mutual cooperation between EU Member States, is uncertain following the end of the Brexit transition period, post 31 December 2020. The DCMS has, in its explanatory memorandum to the Return of Cultural Objects (Revocation) Regulations 2018, set out Parliament's intention to revoke the domestic regulations implementing Directive 2014/60/EU in order to avoid the UK being subject to a one-sided obligation to return cultural objects to EU Member States without having any reciprocal rights if the UK and the EU do not reach a deal. The DCMS has indicated that its preferred option, however, is to agree a continuation of the current restitution arrangements with the EU after Brexit.

Under the 1970 UNESCO Convention and the 1954 Hague Convention, the UK is obliged to assist foreign governments with the repatriation of cultural property that has arrived illicitly in the UK. The influence of the 1970 UNESCO Convention was clearly demonstrated by the Court of Appeal in the case of *Republic of Iran v Barakat Galleries* [2007] EWCA Civ 1374 in which the Republic of Iran successfully asserted its patrimonial claim to illegally excavated and exported archaeological objects.

Repatriation is not the only remedy available in relation to illegally exported cultural property. The Dealing in Cultural Objects (Offences) Act 2003 (see A.5 above) and Cultural Property (Armed Conflicts) Act 2017 (see A.7) both impose criminal sanctions.

3. Under which conditions does your country assist foreign countries seeking repatriation of cultural property/artwork?

Under the 1970 UNESCO Convention and the Return of Cultural Objects Regulations 1994 (as amended), the UK government will assist foreign governments in recovering cultural property by contacting the current owner or possessor if evidence is produced that the conditions in the relevant convention or legislation are met.

4. Does a buyer enjoy protection against restitution claims for violation of foreign export restrictions?

A buyer does not enjoy statutory protection from restitution claims and should carry out thorough due diligence in relation to any purchase, including by requesting and auditing any import and export paperwork. The buyer is also advised to ensure that any contract for purchase of an object or artwork includes suitable warranties from the seller in relation to the seller's compliance with import and export laws. Although the buyer may need to yield possession of the item if it has been illegally exported, they will at least have a claim in damages against the seller.

5. Which regulations exist for the protection of the purchaser against title claims?

A buyer can only obtain the title that the seller passes to the buyer under a contract of sale. If the seller does not have good title to a work, the buyer will not enjoy good title either and the only recourse for the buyer is to sue the seller for breach of warranty.

Under the Limitation Act 1980, however, a buyer is protected from a claim in conversion if six years have passed since the date of the purchase, at which point any competing title claims can become extinguished.

Exceptions apply to the six-year limitation period and there are various rules about when it begins to run, including in the case of theft. If an item has been stolen, the limitation period will not start running unless the buyer can prove that the item has been purchased in good faith, in which case the six-year limitation period will run from the date of the good faith purchase. A gift will not start the limitation period running; it must be a good faith purchase.

6. Does a lender from abroad enjoy protection against seizure of items on loan to local exhibitors if the good fails to have proper export licence?

Under Part 6 of the Tribunals, Court and Enforcement Act 2007, objects on loan to approved museums in the UK are not protected from seizure by the UK courts if they have been imported in contravention of a ban or restriction on import. This would apply, for example, to objects imported in breach of sanctions orders. Currently, the Iraq (United Nations Sanctions) Order 2003 prohibits the import or export of cultural property illegally removed from Iraq since 6 August 1990 and the Export Control (Syria Sanctions) (Amendment) Order 2014 prohibits the import or export of cultural property illegally removed from Syria since 15 March 2011.

7. What regulations exist concerning the import of cultural property that may have been exported illegally from its country of origin or that is the subject of claims?

The sanctions orders referred to at C.6 above ban the import of cultural property illegally removed from Iraq or Syria after certain dates.

The Return of Cultural Objects Regulations 1994 (as amended) apply in the event that cultural objects illegally removed from EU Member States are located in the UK (see C.2 above).

The UK is also currently obliged to comply with Regulation (EU) 2019/880 which came into force on 27 June 2019 and which, as of 28 December 2020, will ban the import into the EU of certain categories of cultural objects which have been illegally removed from their non-EU country of origin and are deemed of archaeological, historic, literary, artistic or scientific importance. Subject to certain exceptions, cultural objects that have arrived in the EU by legal means and meet certain age and value thresholds will require a licence or importer statement on their introduction. The Regulation also requires the creation of a central electronic database for the licensing and registration of cultural goods which must be implemented by no later than 28 June 2025.

D. Due diligence obligations

1. What general due diligence is required from the seller/buyer of artwork if the artwork is intended to be exported?

If an exporter is planning to export a cultural object that has been in the UK for less than 50 years, the application must be accompanied by provenance details and, where possible, import documentation showing when it arrived in the UK. If such documentation cannot be obtained, the provenance needs to date back to at least 1 January 1993, or in the case of objects from Iraq or Syria, prior to the relevant dates under current sanctions orders (see C.6).

If the cultural object has been in the UK for more than 50 years, provenance information is also highly relevant as it will assist the Expert Adviser and the Reviewing Committee in determining whether the object meets the Waverley criteria.

If there are any problems with an object in relation to its title, provenance, authenticity, previous cross-border movement or other matters, they are likely to come to light during the application process given that the object may be subjected to expert scrutiny and therefore it is in the exporter's interests to have completed due diligence prior to making the application.

2. Are there any anti-money laundering regulations applicable to (individual) sellers, dealers, auction houses, or agents?

The Fifth EU Money Laundering Directive (5MLD) came into force in the UK on 10 January 2020. The effect on art market participants (AMPs) who act as intermediaries or trade in artworks where the transaction is valued at or greater than €10,000 is to bring them within the 'regulated' sector for anti-money laundering purposes pursuant to the Money Laundering and Terrorist Financing (Amendment) Regulations 2019. AMPs include dealers, auction houses and agents.

The 5MLD requires that AMPs carry out ongoing risk-based customer due diligence when they establish a business relationship with a customer, carry out an occasional transaction, or suspect money laundering. The scope of due diligence will depend on the circumstances of each transaction and whether there are any 'red flags' present that might trigger enhanced due diligence but, at its most basic, requires AMPs to obtain identity information and verification from their clients and conduct document or electronic checks to satisfy themselves that they know who they are dealing with. AMPs are further required to register with HM Revenue & Customs (HMRC), put in place anti-money laundering policies and procedures, comply with record keeping and reporting obligations and monitor and train their staff. Failure to comply with the regulations is an offence, which can result in a range of sanctions including fines, suspension from dealing in high value transactions and imprisonment. HMRC is responsible for the regulatory supervision and oversight of AMPs and enforcement of the regulations.