



# Cultural Property (Armed Conflicts) Act 2017

## 2017 CHAPTER 6

### PART 4

#### PROPERTY EXPORTED FROM OCCUPIED TERRITORY

##### *Definitions*

#### **16 “Unlawfully exported cultural property” etc**

- (1) For the purposes of this Part property is “unlawfully exported cultural property” if—
  - (a) it has been unlawfully exported from a territory which at the time was occupied by a state that was a party to the First or Second Protocol, or
  - (b) it has been unlawfully exported from a territory which at the time—
    - (i) was territory of a state that was a party to the First or Second Protocol, and
    - (ii) was occupied by another state.
- (2) It does not matter whether the property was exported before or after this section comes into force.
- (3) For the purposes of this Part exportation of property is “unlawful” if—
  - (a) it is in contravention of the laws of the territory from which the property is exported, or
  - (b) it is in contravention of any rule of international law.
- (4) A reference in subsection (1) to a state that was a party to the First or Second Protocol is to a state that was a party to the First or Second Protocol at the time of the export.
- (5) In determining for the purposes of this Part whether territory is occupied regard must be had to 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 on 18 October 1907.

- (6) If in any proceedings an issue arises as to whether cultural property is unlawfully exported cultural property, a certificate by the Secretary of State is conclusive evidence as to whether, at a particular time, territory was occupied by a party to the First or Second Protocol or by any other state.

*Dealing in unlawfully exported cultural property*

**17 Offence of dealing in unlawfully exported cultural property**

- (1) It is an offence for a person to deal in unlawfully exported cultural property, knowing or having reason to suspect that it has been unlawfully exported.
- (2) Subsection (1) does not apply to property imported into the United Kingdom before this section comes into force.
- (3) A person deals in unlawfully exported cultural property if (and only if) the person—
  - (a) acquires or disposes of it 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” means buys, hires, borrows or accepts.
- (5) “Disposes of” means sells, lets on hire, lends or gives.
- (6) A person guilty of an offence under this section in England and Wales is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).
- (7) A person guilty of an offence under this section in Scotland is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).
- (8) A person guilty of an offence under this section in Northern Ireland is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- (9) In relation to an offence committed before section 282 of the Criminal Justice Act 2003 comes into force the reference in subsection (6)(b) to 12 months has effect as a reference to 6 months.

## **18 Forfeiture in connection with dealing offence**

- (1) The court by or before which a person is convicted of an offence under section 17 may order the forfeiture of the property in respect of which the offence was committed.
- (2) The court may also make such provision as appears to it to be necessary for giving effect to the forfeiture.
- (3) That provision may include, in particular, provision relating to the retention or disposal of the property.
- (4) Provision made under this section may be varied at any time by the court that made it.

### *Forfeiture otherwise than in connection with offence*

## **19 Property liable to forfeiture**

Unlawfully exported cultural property is liable to forfeiture if it is imported into the United Kingdom after this section comes into force.

## **20 Forfeiture order**

- (1) The appropriate court may, on an application by the Secretary of State, order the forfeiture of any property that is liable to forfeiture under section 19.
- (2) In this section “the appropriate court” means—
  - (a) in relation to England and Wales and Northern Ireland, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

## **21 Compensation**

- (1) A court may provide for a forfeiture order under section 20 to be conditional on the payment of a specified amount of compensation to a person who has acquired an interest in the property since it was unlawfully exported from occupied territory.
- (2) The court may provide for a forfeiture order to be conditional on the payment of compensation to a person who has acquired an interest only if satisfied that the person acquired the interest in good faith and without knowledge of the fact that the property had been unlawfully exported from occupied territory.
- (3) Nothing in this section obliges anyone to pay compensation but a conditional order—
  - (a) does not take effect until the compensation is paid (whether by the Secretary of State or otherwise), and
  - (b) lapses if the compensation is not paid within the period of four months beginning with the day on which the order is made.

## **22 Interim orders**

- (1) The appropriate court may, on an application by the Secretary of State, make any order it thinks appropriate for the safekeeping of property that is or may be the subject of an application for a forfeiture order under section 20.
- (2) An order under this section may for example—

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*Status: This is the original version (as it was originally enacted).*

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- (a) prohibit a person from dealing in the property;
  - (b) require it to be kept at a particular location;
  - (c) stipulate conditions under which it must be kept;
  - (d) require or authorise a person to take steps for its conservation.
- (3) If the property is not yet the subject of an application for a forfeiture order the court may make an order under this section only if it is satisfied that there is an arguable case that the property is liable to forfeiture.
- (4) An order made in the circumstances mentioned in subsection (3) lapses if no application for the forfeiture of the property is made within the period of four months beginning with the day on which the order is made.
- (5) An order under this section may be amended or discharged by the court that made it.
- (6) In this section “the appropriate court” has the meaning given in section 20(2).

*Seizure and retention of property liable to forfeiture*

## **23 Search and seizure warrants**

- (1) A justice may issue a warrant under this section in respect of any premises if satisfied that there are reasonable grounds for suspecting that property liable to forfeiture under section 19 is likely to be found.
- (2) A warrant under this section authorises a constable—
- (a) to enter and search the premises specified in the warrant, and
  - (b) to seize any property found there which the constable has grounds for believing is liable to forfeiture under section 19.
- (3) A person exercising a power conferred by a warrant under this section may, if necessary, use reasonable force in the exercise of the power.
- (4) Property seized under this section must be retained by a constable pending—
- (a) forfeiture of the property under section 20, or
  - (b) return or disposal of the property under section 27.
- (5) A person who has custody of property following its seizure under this section must give notice of its seizure to any person who, to his or her knowledge, owned the property at the time it was seized.
- (6) But notice need not be given if the property was seized in the presence of—
- (a) the owner, or
  - (b) an employee or agent of the owner.
- (7) A reference in this section to the owner of property means, if there is more than one owner, any of them.
- (8) In this section—
- “justice” means—
- (a) in England and Wales, a justice of the peace,
  - (b) in Scotland, a sheriff or summary sheriff, and
  - (c) in Northern Ireland, a lay magistrate;

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 23 of that Act).

- (9) In Schedule 1 to the Criminal Justice and Police Act 2001 (powers which relate to the seizure of property in bulk), in Part 1, at the end insert—

*“Cultural Property (Armed Conflicts) Act 2017*

73Q        The power of seizure conferred by section 23 of the Cultural Property (Armed Conflicts) Act 2017 (seizure of property liable to forfeiture under section 19 of that Act).”

## **24      Retention of property in custody of constable**

- (1) This section applies to property that—
- (a) has been seized for a purpose connected with the investigation or prosecution of a suspected offence under section 17, and
  - (b) is in the custody of a constable.
- (2) If the property ceases to be needed for that purpose a constable may apply to a justice for an order that the property must be retained by a constable pending—
- (a) forfeiture of the property under section 20, or
  - (b) return or disposal of the property under section 27.
- (3) The justice may make the order if satisfied that there are reasonable grounds for suspecting that the property may be liable to forfeiture under section 19 (and in accordance with section 20).
- (4) A constable who has custody of the property following the making of an order for its retention must give notice of the order to any person who, to his or her knowledge, owned the property at the time the order was made.
- (5) It is lawful for property to which this section applies to be retained by a constable—
- (a) pending the making or determination of an application under subsection (2), or
  - (b) in accordance with an order under subsection (3).
- (6) The following do not apply to property retained in reliance on subsection (5)—
- (a) the Police (Property) Act 1897 (property seized in the investigation of an offence);
  - (b) section 31 of the Police (Northern Ireland) Act 1998 (which makes similar provision in Northern Ireland).
- (7) In this section “justice” means—
- (a) in England and Wales, a justice of the peace,
  - (b) in Scotland, a sheriff or summary sheriff, and
  - (c) in Northern Ireland, a lay magistrate.

## **25      Notices of seizure or retention**

- (1) A notice under section 23(5) or 24(4)—
- (a) must be in writing, and
  - (b) must set out the grounds for the seizure of the property or its retention.

- (2) A notice under section 23(5) or 24(4) must be given to a person by—
- (a) delivering it personally,
  - (b) addressing it to the person and leaving it at the appropriate address,
  - (c) addressing it to the person and sending it by post to that address, or
  - (d) in the case of a person who has no address within the United Kingdom, or whose address is unknown, publishing it in the London, Edinburgh or Belfast Gazette.
- (3) “The appropriate address”, in relation to a person, means—
- (a) in the case of a body corporate, its registered or principal office;
  - (b) in any other case, the person’s usual or last known place of residence or business.

## **26 Property in custody of others**

- (1) This section applies to property that—
- (a) has been seized for a purpose connected with the investigation or prosecution of a suspected offence under section 17, and
  - (b) is in the custody of a person who is not a constable.
- (2) The person must transfer the property to a constable as soon as is reasonably practicable after it ceases to be needed for the purpose mentioned in subsection (1)(a) (and a constable may then make an application under section 24(2)).
- (3) It is lawful for property to which this section applies to be retained by the person pending compliance with subsection (2).

## **27 Return of property to owner if not forfeited**

- (1) This section applies to property that has been seized under section 23, or retained in pursuance of an order under section 24, if—
- (a) an application for the forfeiture of the property under section 20 is refused and no appeal against the refusal (or any subsequent appeal) is pending,
  - (b) proceedings on an application for the forfeiture of the property under section 20 are discontinued,
  - (c) a forfeiture order made in respect of the property under section 20 has lapsed, or
  - (d) no application for its forfeiture has been made under section 20 within the period of four months beginning with the day on which the property was seized under section 23 or the order was made under section 24.
- (2) The property must be returned to its owner as soon as is reasonably practicable.
- (3) If it is not reasonably practicable to return the property within the period of 12 months beginning with the day on which the duty to return it arises, the property may be disposed of in such manner as the person who for the time being has custody of the property thinks appropriate.
- (4) For the purposes of subsection (1)(a) an appeal is pending if—
- (a) an appeal has been brought but has not been determined or withdrawn,

- (b) an application for permission to appeal has been made but has not been determined or withdrawn, or
  - (c) no such application has been made but the period for bringing an appeal is still running (disregarding the possibility of an appeal out of time).
- (5) References in this section to the owner of property mean, if there is more than one owner, any of them.