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Cover photo: Broadway Tower, Cotswolds, England. A folly in the county of Worcestershire. The “Saxon” tower was designed by James Wyatt in 1794 to resemble a mock castle, and built for Lady Coventry in 1799. Edited version of photo by Newton2, cropped by Yummifruitbat, 5 April 2007, Creative Commons Attribution 2.5 Generic license. Image has been cropped.

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I. EXECUTIVE SUMMARY

This report considers cultural property laws in England and Wales, focusing on the areas of research and specific questions as set out by the Committee for Cultural Policy.

Cultural property law in England and Wales is a mixture of laws with general applicability (such as laws relating generally to sale of goods, theft, fraud) and laws with specific applicability to cultural property, both moveable and immovable. It has developed in a piecemeal manner, both at a domestic level and through the incorporation of international law, including in particular as a result of European Union (“EU”) legislation. This explains why today it is a complex web of laws, with, for example, no single definition of ‘cultural property’.

The law as it pertains to cultural property in England and Wales has developed in the context of the United Kingdom’s long history of the trade in, import, export and display of cultural property, as well as in the pursuit of archaeological knowledge both domestically and abroad. Much of this goes hand in hand with its colonial history and the expansion of the British Empire. Indeed, the initial collection of the British Museum, established in 1753, consisted of Sir Hans Sloane’s personal collection of curios, which included numerous natural and artificial curiosities purchased from travellers and colonial settlers ranging from North America and the West Indies to South and East Asia. This was the foundation of, and set the tone, for the British Museum’s collection, which grew with a focus on displaying cultural property from around the world. Today, the right of the British Museum to hold and display a proportion of its collection is the subject of ethical and legal challenges, most notably, of course, the Elgin Marbles and, recently, the request for the return to Easter Island of the Moai statue, Hoa Hakananai’a.

The legal system in England and Wales as it applies to archaeology, as well as to the ownership, sale or transfer of cultural objects, has developed to be generally permissive and not prohibitive, namely that there are limited restrictions to private ownership, trade, archaeology and individual rights. The legislative and common law framework is also complemented by voluntary systems, such as the Portable Antiquities Scheme, which encourages members of the public to report objects that they find in efforts to preserve their archaeological value.

As a consequence, the only objects where ownership vests in the state are those deemed to be treasure, and even then the legislation and policies are such that the treasure will either end up in the possession of a museum or the finder / landowner.

There is a thriving private art and antiquities market in the UK for both foreign and domestic cultural property. The UK is the largest art and antiquities market in Europe (accounting for 62% of sales of art and antiques by value in 2016), and the second largest in the world (accounting for 21% of sales of art and antiques by value). Market value is concentrated at the upper end of the market, with works priced at more than $50,000 accounting for 90% of sales by value (but just 11% of sales by volume) in 2016.

There are export controls on objects and art of cultural interest, and notably certain criteria will be applied to determine whether an object is a ‘national treasure’, in which case the granting of an export licence can be deferred while efforts are made to retain that object within the UK. Although there was concern in the 19th century / early 20th century regarding the loss of important works and antiquities to buyers abroad (leading to the establishment of the National Art Collections Fund), there were no legal controls on the export of works of art, books, manuscripts and other antiques until 1939.

The UK’s colonial history has resulted in it historically being at the centre of the black market for cultural goods. In the words of one expert, England remains “a dream location for well constructed [false] provenances” for illicit art and antiques, as a seller can often credibly claim that an object with a missing or incomplete provenance was exported to Britain during the colonial period of the 17th, 18th or 19th century (long before 1970, the customary minimum cut-off date for provenance required in the legitimate market).

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1 https://www.britishmuseum.org/about_us/the_museums_story/general_history/sir_hans_sloane.aspx
2 See further below, sections II.A.1(c); IV.A; IV.C.
3 Although note that museums such as the British Museum are public museums and are ultimately governed by statute.
5 The Waverley Criteria – see further below.
6 Now called the Art Fund, which was established in 1903 to help UK national and regional public collections to acquire objects that they could not afford by themselves.
Peter Reavill, Portable Antiquities Scheme (PAS) Finds Liaison Officer for Herefordshire and Shropshire, with the Shrewsbury Hoard, more than 9000 Roman coins declared Treasure. Author Portable Antiquities Scheme, 7 September 2009, Creative Commons Attribution 2.0 Generic license.
Over the last 20 years in particular, there has been an increased emphasis on Britain’s role in tackling the trade in cultural objects known to have been illegally excavated in or exported from another country by implementing new criminal offences (for example, the Dealing in Cultural Objects (Offences) Act 2003). Such legislation is reflective of an increasing willingness of the UK Government to accede to modern norms of cultural property protection.

An increased awareness and concern of the damage to archaeological objects and heritage assets is also noticeable on the domestic front. Remarkably, apart from the old laws of ‘Treasure Trove’ (relating to objects made of gold and silver), prior to 1996, England and Wales had no legislation governing portable antiquities. Attempts to address this, and perceived losses to archaeological knowledge through increased metal detecting activities from the 1970s, came in the form of the Treasure Act 1996 and the Portable Antiquities Scheme. There have also been efforts within the police force to raise awareness of and tackle heritage damage over the last decade. This is also complimented by the English Heritage Crime Initiative.

As to the future of cultural property laws, there is some uncertainty due to the UK’s decision to leave the EU and the number of EU legislative measures that nowadays still govern cultural property in the UK.

In summary, the system of applicable laws in general has developed to allow for the ownership and circulation of cultural property from the UK and from abroad, both in the public eye, and in private, as well as between borders. Over the course of the 20th and 21st centuries, and particularly in the last few decades, there has been a shift (concurrent with global trends) towards a more protectionist approach in the law. This can be seen on domestic cultural property and also property from other countries, while maintaining (or attempting to maintain) a market for trade in cultural property. Protectionist is used here in the sense of not only protection from physical destruction and loss, but also protection from loss of the benefit of national cultural property, or indeed the loss of potential knowledge about cultural property.

The format of this report is as follows. After mapping the laws which deal with cultural property in the United Kingdom, principally England and Wales, both domestically and internationally, this report explores the different classifications of cultural property and the legal ramifications of these different categorizations. Section II considers ownership of cultural property, looking at private and public ownership, modes of transfer and illicit markets, including with respect to the criminal and civil offences for illicit trade and possession. The administration of cultural property in terms of the relevant governmental agencies and cultural institutions, any existing registration system and mechanisms for the enforcement of the various legislation also plays a crucial role in the preservation of cultural property in the United Kingdom (Section V). Amongst cultural property, one must distinguish in particular (i) archaeological works (Section VII.A); (ii) religious heritage and community property (Section VII.B); and (iii) cultural property that can be found in the United Kingdom but that is originally from elsewhere (Section VI). Section VIII finally comments on trends and changes in the law and what the future may look like.

Appendix 1 (The English Legal System) sets out a brief explanation as to how the English legal system works with a particular focus on common law and the role of precedent, the passing of domestic legislation and how international treaties and EU law operates within England and Wales. Appendix 2 (Glossary) gives a further explanation of the terms referred to within this report.

II. APPLICABLE LEGISLATION

For each country, identify national laws, decrees, resolutions, and cultural property regulations including export regulations in chronological order.

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8 Of some interest is the scathing review of the state of the laws from Lord Collin Renfrew in the Culture, Media and Sport Department’s Seventh Report to the House of Commons, 18 July 2000, before the adoption of the Dealing in Cultural Objects (Offences) Act 2003: https://publications.parliament.uk/pa/cm199900/cmselect/cmcumeds/371/37102.htm: (in relation to importing) “It is a scandal, that it is a thieves’ kitchen, or it could be so described, the freedom with which illicit antiquities may enter this country, and it is not even officially disapproved of in any way”. Note: it is now an offence under the Dealing in Cultural Objects (Offences) Act 2003 to import into the UK cultural objects illegally exported from another country, though only if such is done dishonestly and with knowledge or belief that the object was illegally exported.

9 See Appendix 2 (Glossary).

10 http://intarch.ac.uk/journal/issue33/bland.cfm

11 See sections IV.C and V.A.2 below.

12 For example, as detailed further in the Report below, the implementation of legislation (a) creating offences relating to the destruction of monuments; and (b) prohibiting dealing in tainted cultural property.

13 For example, as detailed further in the Report below, the development of export controls and the ‘Waverley Criteria’; the EU regulation of the return of cultural objects; the implementation of the Treasure Act 1996 and the creation of the PAS system.
A. DOMESTIC LAWS

This section deals with the most important domestic legislation, including law enacted by virtue of EU membership, that applies to cultural property, as determined based on the specific questions required to be answered in this report. However, due to the nature of the English legal system and the fact that there is no unified and single legislation that applies to cultural property, other legislation may also be referenced in the answers to the specific questions. In each sub-section, the legislation is ordered chronologically.

1. Cultural Heritage Laws

(a) Ancient Monuments and Archaeological Areas Act 1979, as amended

Commencement Date: 16 July 1979.

Only extends to England, Wales and Scotland (to varying degrees and with different applicable provisions in certain instances).

The Ancient Monuments and Archaeological Areas Act 1979 provides for, amongst other things, the protection of scheduled monuments, setting out the regime for the designation of a scheduled monument; the guardianship of ancient monuments (whereby privately owned ancient monuments are put under the guardianship of the Secretary of State for the Department for Digital, Culture, Media and Sport ("DCMS"); and the protection and designation of areas of archaeological importance. It also creates various offences, including (a) metal detecting at the site of a scheduled monument or in an area of archaeological importance without written consent of the Commission or the Secretary of State for DCMS; and (b) damaging or destroying any protected monument (scheduled monument or monument under the ownership or guardianship of the Secretary of State).


These acts are the principal acts, along with various planning related acts and Orders, that regulate the development of land in England and Wales, providing for, amongst other things, the need for planning permission of various different restrictions and limitations for the development, destruction, or alteration of property and land. Of particular relevance, which is explored further below, are the provisions relating to listed buildings, conservation areas, Scheduled Monuments, and protected wrecks (which are regulated by the Protection of Wrecks Act 1973).

(c) The Treasure Act 1996 ("Treasure Act")

Commencement Date: 24 September 1997.

The Treasure Act 1996 applies in England, Wales and Northern Ireland. It does not apply in Scotland or the Isle of Man. Archaeological objects found in Scotland are covered by Treasure Trove.

Summary: Under the Treasure Act 1996, finders of objects that are defined as treasure under the Treasure Act 1996

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14 https://www.legislation.gov.uk/ukpga/1979/46
15 All Acts passed by Parliament pass into law when they receive Royal Assent – in practice Royal Assent is never withheld from an Act passed by Parliament. Please see Appendix 1 (The English Legal System) for further information. All Acts passed by Parliament pass into law when they receive Royal Assent – in practice Royal Assent is never withheld from an Act passed by Parliament. Please see Appendix 1 (The English Legal System) for further information.
16 Every Act passed by Parliament will specify when the Act – in its entirety or by sections – comes into force which is referred to as the commencement date. Please see Appendix 1 (The English Legal System) for further information.
17 As the UK is made up of four countries – England, Wales, Northern Ireland and Scotland – each with their own parliaments with certain devolved powers, every Act will specify to which country the provisions therein apply. Please see Appendix 1 (The English Legal System) for further information.
19 See further below at section III below.
are legally obligated to report their find to their local coroner within 14 days. The coroner will then lead an inquest to determine whether or not the find constitutes treasure. If the coroner finds that the find is indeed treasure, the finder must offer the object for sale to museums at a price set by an independent board of antiquities experts. Where a find is acquired by a museum, the finder, the landowner and/or occupier may be eligible for a reward, which would normally be a share of an amount equivalent to the market value of the find. If a museum is unable to purchase it, or expresses no interest in purchasing it, the finder may keep the object. As set out further below, there are significant proposed changes to the Treasure Act, including updating the Treasure Act 1996 Codes of Practice, revising the Treasure Act’s definition of treasure and the process for finds that may be treasure.

**Definition:** Treasure is defined under Section 1, as supplemented by Section 3, of the Treasure Act 1996 as:

a) Any object which is at least 300 years old, and when found is: (i) not a coin, but has a metallic content that is precious metal by at least 10% in weight (where precious metal means silver or gold (see Section 3(3) of the Treasure Act 1996)); (ii) one of at least two coins in the same find and is precious metal by at least 10% in weight; or (iii) one of at least ten coins in the same find.

b) Any object that is at least 200 years old when found belonging to a class of object which the Secretary of State has designated as being of outstanding historical, archaeological or cultural importance.

c) Any object which would have been treasure trove if found before the commencement of the Treasure Act 1996.

d) Any object which when found, is part of the same find as any object within (a), (b) or (c) above found at the same time or earlier; or an object found earlier which would have fallen within paragraphs (a) or (b) above if it had been found at the same time. The practical effect of this is that objects that are subsequently found but can be determined to belong to a find which constitutes treasure, will be treasure for the purposes of the Treasure Act 1996.

**Exclusions:** Excluded from the definition of treasure are unworked natural objects and minerals extracted from a natural deposit. An object will also not be treasure if it is a wreck as defined by the Merchant Shipping Act 1995.

**What constitutes a find (Section 3(3)):** An object is part of the same find as another object if they are found together, or if that other object was found earlier in the same place where the objects had been left together. Objects will also be of the same find if an object was found earlier in a different place but it had been left together with other object(s) and had become separated before being found.

**Ownership (Section 4):** When treasure is found, ownership vests in a franchisee of the Crown as successor in title or under the right of treasure trove; or otherwise in the Crown. This is subject to any prior interests and rights and applies to any treasure found prior to the commencement of the Treasure Act 1996 and which would have been treasure trove. Previous laws as to ownership under the laws of treasure trove no longer apply. This section applies irrespective of the nature of the place where the treasure was found and of the circumstances in which it was left, including if it had been lost or left with no intention of recovery. While ownership vests in the Crown or franchisee, if a museum does not wish to purchase the object or find (all or part), Section 6 of the Act gives the Secretary of State for DCMS the power on behalf of the Crown and the body or person who enjoys the rights of the relevant franchisee of the Crown to disclaim title to an object determined to be treasure. As a result, the object or find will return to the land owner and/or the finder.

**Offence (Section 8):** If a person finds an object which he believes or has reasonable grounds for believing is treasure, that person must notify the coroner in the district where the object was found within 14 days of the find, otherwise that person will be guilty of an offence and be liable to imprisonment of up to three months or a fine or both. That person will have a defence if they can show they had and continue to have a reasonable excuse for failing to notify the coroner themselves.

**Offence (Section 8A) (inserted by the 2009 Coroners and Justice Act 2009 and proposed to be brought into force under the current consultation (see further below)):** Under this provision it will also be an offence if a person who acquires property rights in an object and has reasonable grounds for believing (a) that the object is treasure and (b) that notification has not been given to the relevant coroner and that person does not notify the relevant coroner.

24 See further Appendix 2 (Glossary).
25 See further Appendix 2 (Glossary).
26 See further Appendix 2 (Glossary).
Proposed changes: In February 2019, the DCMS announced planned changes to the Treasure Act 1996 and opened a public consultation on the proposed changes. The consultation was open until 30 April 2019. The most significant changes proposed and upon which the consultation sought opinion are as follows:

a) Preliminary suggestions for the future form of the treasure process to ensure its long term financial sustainability, including:

- The introduction of a process similar to that in Scotland, where all archaeological objects become the property of the Crown;
- Strengthening educational outreach to the metal detecting community to encourage proactive reporting of finds and adherence to codes of practice and the treasure process; and
- The introduction of a regulation as in Northern Ireland where archaeological digging of any sort is only allowed by permit.

b) Changes to the definition of treasure:

- Changing the requirement that the find/object be over 300 years old to the static requirement of being pre-1714. The rationale is that from the Industrial Revolution in the 18th century in the UK, mass production began with the result that an increasing number of lower value mass produced finds will be defined as treasure, most of which will be disclaimed. This will place an increasing administrative burden on the treasure process (although such finds would still be recorded by the Portable Antiquities Scheme).
- Designation of an additional class of treasure to include objects that meet the age criterion (i.e. are at least 200 years old when found) and have a value of over £10,000. The aim is to capture important and rare objects that do not fall within the current definition of treasure in the Act. The duty to report possible treasure within 14 days would apply in relation to the proposed new designation.
- Designation of a further additional class of treasure to include single gold coins dated between AD43 (beginning of the Roman period) and ending in 1344 (the year King Edward III re-introduced gold coinage). The aim is to capture single coins, which do not fall within the definition of treasure, from this period as they are comparatively rare, which is seen as indicative of their archaeological, cultural and historic importance.
- The inclusion within the designated treasure objects under the Treasure Designation Order 2002, of any base metal Roman object (other than coins), which, when found, is 1 of at least 2 base metal objects in the same find and of Roman date.
- An express exemption of objects from classification as treasure if the objects are found on land under the jurisdiction of the Church of England, taking into account the specific legal status of the Church of England. This includes a legal system of control that relates to moveable articles connected to cathedrals, churches and land, including burial grounds. So the exemption, for example, would apply to objects found within the precincts of a cathedral, which but for the Treasure Act 1996, would be subject to the Care of Cathedrals Measure 2011.

(d) Dealing in Cultural Objects (Offences) Act 2003 (“DCOA 2003”) 31

Royal Assent: 30 October 2003.

Commencement Date: 30 December 2003.

Extends to England, Wales and Northern Ireland. This legislation is not applicable in Scotland.

28 See further below at section V.A.2 et seq.
29 For example, if the object does not have at least 10 per cent by weight of precious metal. A prime example is that of the Crosby Garrett Helmet, discovered in 2010 by a metal detectorist in Cumbria. The helmet is made of copper alloy and dates back to the late 1st-3rd century AD, and is considered an exceptional example of a cavalry helmet, which were used in sporting events. As it was not made of 'precious metal', it could not be classed as treasure and was sold to a private buyer at auction for £2.3 million.
30 See further section VII.B below.
Explanatory Notes prepared by the DCMS are publicly available. The Explanatory Notes do not form part of DCOA 2003, nor are they endorsed by Parliament, but give practical guidance on DCOA 2003 and background information on the development of the policy.

According to the Explanatory Notes, the DCOA 2003 was passed into law following the UK’s formal accession to the 1970 UNESCO Convention on 31 October 2002 in order to complement its treaty obligations and reinforce its implementation in the UK. The DCOA 2003 goes further than the Theft Act 1968 (see section II.A.4 below), in that it covers objects that have not been stolen, but have been illegally excavated or removed from a monument. Further, the offence applies irrespective of the place where the cultural object was removed or excavated. As such, if an object was excavated or removed from a monument in a country outside the UK, and it was an offence to do so under the laws of that country, the offence will apply provided the other conditions are met (see section II.A.1(d) below).

**Offence (Section 1):** Under Section 1(1), a “person is guilty of an offence if he dishonestly deals in a cultural object that is tainted, knowing or believing that the object is tainted”. It does not matter if the person knows or believes that the object is a cultural object (Section 1(2)). ‘Dealing’ is defined under the DCOA 2003 as (a) acquiring or disposing; (b) importing or exporting; (c) agreeing with another to acquire or dispose, import or export; or (d) making arrangements to acquire or dispose, import or export (Section 3(3)). It would be necessary for the offence to be made out for the prosecution to prove that a person (a) knew or believed that the object was tainted; and (b) acted dishonestly in his acquisition, disposal, import or export of the object.

Section 5 provides that if an offence under Section 1 committed by a corporate body is proved to have been committed with the consent or connivance of an officer or to be attributable to any neglect on the officer’s part, the officer as well as the corporate body is guilty of an offence (Section 5(1)). Officer is defined in Section 5(2) to mean (a) a director, manager, secretary or similar officer of the corporate body or (b) a person purporting to act in any such capacity.

**Sentencing:** A person guilty of the offence is liable on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both); and on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both) (Section 1(3)).

**Definitions:** Section 2 of the DCOA 2003 provides for the meaning of “

a) Cultural object for the purposes of the DCOA 2003 is defined as “an object of historical, architectural or archaeological interest” (Section 2(1)). This is a wide definition, and the Explanatory Notes set out that this may cover “a diversity of objects from structural, architectural and ornamental elements to portable artefacts of precious or base metal, ceramic, glass, stone or organic material”. A cultural object will be tainted if, after the date of commencement, a person removes an object from a building or structure of historical, architectural or archaeological interest where the object has at any time formed part of the building or structure or removes an object from a monument of historical, architectural or archaeological interest (Section 2(2)(a) and Section 2(4)). The excavation or removal of the object must constitute an offence (Section 2(b)). A monument is defined as any work, cave or excavation; any site comprising the remains of a building or structure, work or cave or excavation; and any site comprising the remains of any vehicle, vessel, aircraft or other moveable structure or part of any such thing (Section 2(5)).

Therefore, where an object is removed from a building or structure, the object thereby becomes tainted if it formed part of the building or structure; the building or structure is of historical, architectural or archaeological interest; and the removal constituted an offence at the time it was done (Section 2(4)(a); Section 2(2)(b)). Thus, for example, a piece of art hung in a building of historical interest will not thereby become tainted, even if illegally removed, but an ornamental element that is illegally detached from the same building will become tainted. For all other types of monument, an object will become tainted simply by virtue of it having been illegally removed from a monument of historical, architectural or archaeological interest (Section 2(4)(b); Section 2(2)(b)). Thus, for example, an object such as a coin or pottery shard illegally removed from an archaeological site will be tainted.

**Location:** Under Section 2(3), it is immaterial whether the removal or excavation was done in the UK or elsewhere; or whether the offence is committed under the law of a part of the UK or the law of another country.
Relevant Case law: To date there has been only one conviction, in which the defendant pleaded guilty, to dealing in tainted cultural objects, as well as to 37 counts of theft of various statues, paintings, and friezes from churches across the country. He was charged under both the DCOA 2003 and the Theft Act 1968. He was sentenced to three years in prison on seven charges of theft and three years for dealing in tainted cultural objects, those sentences running concurrently.

(e) The Iraq (United Nations Sanctions) Order 2003

The Iraq (United Nations Sanctions) Order 2003 (the “Iraq Order”) was passed to implement the UN Security Council Resolution 1483, of which paragraph 7 states that “all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical and cultural, rare scientific and religious importance illegally removed from the Iraq National Museum…”.

Commencement Date: 14 June 2003.

The Iraq Order extends to the United Kingdom.

Offence: The Iraq Order makes it an offence, under Section 8, to (a) hold or control any item of illegally removed Iraqi cultural property and not cause the transfer of that item to the police; and (b) deal in illegally removed Iraqi cultural property (‘deal’ means acquire (buy / borrow / accept / hire), dispose of (sell, let on hire, lend or give), import, export, agree with another to do one of these things or make arrangements under which another person does such an act or under which another person agrees with a third person to do such an act). For both offences, a person will not be guilty of an offence if he proves that he did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property. Notably therefore, unlike under the Theft Act 1968 and the DCOA 2003, there is no requirement for dishonesty.

Definitions: Illegally removed Iraqi cultural property is defined as “Iraqi cultural property and any other item of archaeological, historical, cultural, rare scientific or religious importance illegally removed from any location in Iraq since 6th August 1990. It is immaterial whether the removal was illegal under the law of a part of the United Kingdom or of any other country or territory”.

Sentencing: A person found guilty of the offence is liable on conviction on indictment to a prison term not exceeding seven years or to a fine or to both; or on summary conviction to a prison term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(f) Cultural Property (Armed Conflicts) Act 2017 (“CPACA 2017”)


Commencement Date: 12 December 2017.

CPACA 2017 extends to England and Wales, Scotland and Northern Ireland. Explanatory Notes prepared by the Department for Culture, Media and Sport are also publicly available. The Explanatory Notes do not form part of CPACA 2017, nor are they endorsed by Parliament, but give practical guidance on CPACA 2017 and background information on the development of the policy.

CPACA 2017 was enacted so that the UK could meet the obligations set out in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the “1954 Hague Convention”), and its two Protocols. While a number of existing offences, for example under the International Criminal Court Act 2001, cover the offences covered by the Second Protocol to the 1954 Hague Convention, they do so only to a limited extent. In particular, the definition of existing offences was not considered sufficient to protect all forms of cultural property as defined under the Second Protocol, and the UK’s jurisdiction under such offences was not considered wide enough to meet the jurisdictional requirements of the Second Protocol.

New Offence: CPACA 2017 also introduced a new offence, that of dealing in “unlawfully exported cultural property”. Unlawfully exported cultural property is defined under Section 16 as cultural property which had been unlawfully exported.
The Roman Baths (Thermae) of Bath Spa, England, Photo by DAVID ILIFF, License: CC BY-SA 3.0, 2 July 2006. Image has been cropped.
exported from a territory that is (a) occupied by a state party to the First or Second Protocol; or (b) (i) is a party to either Protocol of the 1954 Hague Convention and (ii) is occupied by another state. It does not matter whether the property was exported before or after Section 16 came into force (12 December 2017).

There is some uncertainty as to which states would be considered occupied and when, and there is no definitive list of occupied territories and when they were occupied to accompany the Act.43 However, pursuant to Section 16(6), the UK Government can, once proceedings are started, certify whether a territory was occupied at a relevant time (which, of course, is too late for a person to avoid committing the offence).

Cultural property is widely defined, and unlike the DCOA 2003, may apply to artworks and objects that are not just of ‘historical, architectural or archaeological interest’.

A new offence created under Section 17 of CPACA 2017 is that of dealing in unlawfully exported cultural property when the person knows or has reason to suspect that the cultural property in question has been unlawfully exported from its country of origin. Dealing occurs where a person:

- a) acquires or disposes of unlawfully exported cultural property in the UK, imports it into or exports it from the UK,
- b) agrees with another to do an act in (a); or
- c) makes arrangements under which another person does an act in (a) or another person agrees with a third person to an act in (a).

While the proposed CPACA 2017 was being debated in the UK Government before its enactment, dealers and other members of the art market raised concerns at the low threshold for the requirement that the person “knows or has reason to suspect”, the latter of which is an objective standard.44 In effect, the due diligence that is being asked of dealers/collectors/museums with respect to this standard (i.e. that they must not have reason to suspect, as opposed to they must not suspect) is potentially very difficult to comply with. This is particularly so, given the lack of clarity as to which countries fall within the definition of “occupied”, and that often it is not known when an object was originally exported from a country.45

The offence is not retroactive and only applies to property that has been imported into the UK after the section came into force on 12 December 2017.

**Sentencing**: A person convicted of an offence under Section 17 may be given a maximum sentence of 7 years in prison and/or a fine. Section 17 does not have retroactive effect, therefore even if the cultural property under question was exported unlawfully prior to 12 December 2017 (the date Section 16 came into force), the ‘dealing’ had to have occurred after 12 December 2017 (the date Section 17 came into force).

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**2. Export Legislation Applicable to Cultural Heritage**

(a) **Customs and Excise Management Act 1979**46


**Commencement Date**: 1 April 1979.

Extends to England, Wales, Scotland and Northern Ireland.

The Customs and Excise Management Act 1979 makes it an offence to export or import goods with intent to evade a prohibition or restriction on those goods. Goods which have been imported or exported in breach of a prohibition or restriction are liable to forfeiture. The Customs and Excise Management Act 1979 also gives Her Majesty's Revenue

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43 The Government was requested to issue a definitive list in order to help the art market, but did not do so – most likely due to sensitivities surrounding foreign policy.

44 See for example, the Written Evidence Submitted by the ADA: https://publications.parliament.uk/pa/cm201617/cmpublic/CulturalProperty/memo/ CPB09.pdf; obtained from https://services.parliament.uk/bills/2016-17/culturalpropertyarmedconflicts/committees/houseofcommonspublicbillcommitteeeontheculturalpropertyarmedconflictsbill201617.html#_blank

45 For example, the object may have been in circulation for many years since 1954.

and Customs (“HMRC”)

certain powers to enter certain types of premises, including business premises for the purpose of exercising any powers under the Customs and Excise Management Act 1979, and to board ships, aircraft and vehicles for the purpose of conducting a rummage to identify smuggled goods and prohibited and restricted goods.

(b) Export of Objects of Cultural Interest (Control) Order 2003

The Export of Objects of Cultural Interest (Control) Order 2003 came into force on 1 May 2004. The order prohibits, except under the authority of a licence granted by the Secretary of State, the export of:

a) Any object of cultural interest manufactured or produced more than 50 years before the date of exportation except:

- Postage stamps and other articles of philatelic interest;
- Birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;
- Letters or other writings written by or to the exporter or the spouse of the exporter; and
- Goods exported by, and being the personal property of the manufacturer or producer thereof, or the spouse, widow or widower of that person.

Cultural goods has the meaning given in the EU Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (see section II.A.3(a) below).

There are particular provisions relating to the export of what is deemed to be a national treasure, the criteria and the procedure of which is further set out in section III.

The Order also creates offences relating to the provision of false information, and failure when required by the Commissioners of Customs and Excise to provide evidence of the destination to which the objects or cultural goods were delivered. It also confers, in applying the Customs and Excise Management Act 1979, powers on the Commissioners to take such action as necessary to enforce the order.

(c) The Export Control (Syria Sanctions) (Amendment) Order 2014

The Export Control (Syria Sanctions) Order 2013 makes provision relating to the enforcement of all existing EU trade sanctions against Syria. It provides for national offences, penalties and licencing provisions.

In order to address amendments to sanctions to include cultural property, the Export Control (Syria Sanctions) (Amendment) Order 2014 was passed and came into force on 8 August 2014. It provides for the enforcement of trade sanctions relating to Syrian cultural property specified in Article 11c of Council Regulation (EU) No. 36/2012 as amended. Regulation No. 36/2012 prohibits throughout the EU the import, export, transfer, or provision of brokering services for the import, export or transfer, of Syrian cultural property and other goods described in it, where there are reasonable grounds to suspect they have been removed illegally or without the consent of their owner. The prohibition shall not apply if it is demonstrated that the goods were exported before 9 May 2011 or the goods are being safely returned to their legitimate owners in Syria.

3. EU Regulations and Directives applicable to cultural heritage

It is worth highlighting the significant uncertainty as to the legislative position in respect of EU laws following the UK’s vote to leave the European Union. The effective date of “Brexit” remains unclear but the current deadline is 31 October 2019 (“Brexit Day”). The European Union (Withdrawal) Act 2018 was passed by parliament, coming partly into force on 26 June 2018. The Act legislates for the formal incorporation and adaptation of EU law onto the UK statute book, including, amongst other things:

47 See further Appendix 2 (Glossary).
49 The Export of Objects of Cultural Interest (Control) (Amendment) Order 2009, Section 2.
a) The conversion of directly applicable EU law (EU regulations); and

b) The preservation of all laws that have been made in the UK to implement EU obligations.

The Withdrawal Act also gives the UK Government powers to address deficiencies in UK law arising from the withdrawal of the UK from the EU. As such, all EU law will be adopted into domestic law upon Brexit Day, but in the future these laws could then be amended, repealed or supplemented as Parliament sees fit.

This could have an impact in the cultural heritage sector as there are a number of EU regulations and directives relating to cultural goods, which are set out further below. However, the current status of the negotiations determining the nature of the relationship of the UK with the EU following its formal exit from the EU is such that the shape of cultural heritage laws that govern the relationship between the UK and the EU (most significantly in relation to exportation, importation and return of cultural goods) and their applicability in the future is far from certain.

(a) EU Regulation on the export of cultural goods

The Council Regulation No. 116/2009 adopted by the Council of the European Union prohibits the export of certain cultural goods from the territory of the EU without a valid licence. The licence is obtained from the competent authorities in the Member States and is valid throughout the EU.

The definition of cultural objects is broad and includes, amongst other things:

a) Archaeological objects more than 100 years old which are the products of:
   - Excavations and finds on land or under water;
   - Archaeological sites;
   - Archaeological collections;

b) Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years;

c) Paintings executed entirely by hand; mosaics in any material executed by hand;

d) Original engravings, prints, serigraphs; lithographs;

e) Original sculptures or statuary and copies produced by the same process as the original;

f) Manuscripts; maps; musical scores;

g) Archives and any elements thereof which are more than 50 years old;

h) Books more than 100 years old, singly or in collections;

i) Any other antique items (e.g. toys, games, furniture, pottery, watches that are between 50 and 10 years old).

The cultural objects will only be covered by the Regulation if their value meets or exceeds certain financial thresholds. The only category of objects which must have a licence regardless of their value are archaeological objects as described above, dismembered monuments, incunabula, manuscripts, and archives.

This Regulation will be transposed into UK domestic law by the European Union (Withdrawal) Act 2018. As referenced above, the European Union (Withdrawal) Act 2018 allows the UK Government to deal with anticipated ‘deficiencies’ in retained EU law arising from Brexit under Section 8. What is provided for is a negative procedure – that is, Statutory Instruments implemented by the UK Government will be laid in Parliament after being made and become law without debate unless there is objection from either the House of Commons or the House of Lords. If the government proposes to introduce Brexit Statutory Instruments under these powers, they first have to go through what is known as a ‘sifting process’, whereby the European Statutory Instruments Committee in the House of Commons and the Secondary Legislation Scrutiny Committee in the House of Lords will consider whether the negative procedure is suitable.

53 See further Appendix 1 (The English Legal System) and Appendix 2 (Glossary).
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In November 2018, a Statutory Instrument (the Export of Objects of Cultural Interest (Control) (Amendment etc.) (EU Exit) Regulations 2018) was laid that will revoke Regulation No. 116/2009 on the export of cultural goods, effective on Brexit Day.\(^{56}\) In addition, in respect of the Export of Objects of Cultural Interest (Control) Order 2003,\(^{57}\) the regulation will amend the definition of the Commissioners to HMRC, and the definition of EU licence to “an export licence issued by the competent authority of the United Kingdom”. As such, subject to the agreement of the future relationship between the UK and the EU being finalised, from Brexit Day, cultural objects of an EU Member State situated in the UK will no longer be required to be licenced for export under Regulation No. 116/2009 (although will still be subject to domestic legislation on export\(^{58}\)). Conversely, cultural goods from the UK which are situated in another EU Member State will no longer be prohibited from being exported without a licence from that EU Member State.\(^{59}\)

(b) EU Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State

The EU Directive 2014/60/EU, a recast of Directive 93/7/EEC on the same subject, is the latest EU directive on the return of cultural goods, which provides for the physical return of cultural objects unlawfully removed from the territory of a Member State.\(^{60}\) Its aim is to reconcile the principle of free movement of goods with the protection of national treasures. It provides for cooperation mechanisms and return proceedings against the possessor to secure the return of the cultural object removed unlawfully from the territory of one EU Member State to the territory of another EU country on or after 1 January 1993.

The Directive covers all cultural objects identified as “national treasures possessing artistic, historic or archaeological value” under national legislation. It makes allowances therefore for the reciprocal recognition of national rules in relation to cultural objects. It provides that central authorities shall co-operate and promote consultation using the Internal Market Information System in order to:

- a) Search for a specified cultural object that has been unlawfully removed and identify its possessor;
- b) Notify the discovery of a cultural object;
- c) Enable a check on the cultural object; and
- d) Act as an intermediary with regards to the return of the cultural object.

It provides that return proceedings should be brought no longer than 3 years after the central authority of the requesting EU country became aware of the location of the object and the identity of its possessor. The possessor of a cultural object should prove that they exercised due care and attention when acquiring the object for the purpose of obtaining compensation when the return is ordered.


A Statutory Instrument in respect of the EU Directive 2014/60 on the return of cultural objects, the Return of Cultural Objects (Revocation) Regulations 2018, was proposed in July 2018.\(^{63}\) The Return of Cultural Objects (Revocation) Regulations 2018 was made on 10 October 2018,\(^{64}\) and comes into force on Brexit Day. The regulations revoke the UK’s legislation implementing EU Directive 2014/60.\(^{65}\) The Secretary of State under the regulations is required to comply with the duties in The Return of Cultural Objects Regulations 1994 in respect of any application by a Member State that was received by the Secretary of State before Brexit Day. The regulations were passed in order to avoid a one-sided obligation upon the UK to return cultural objects, while being unable to enjoy reciprocal rights. That is, on Brexit Day, until the future relationship is agreed in respect of the return of cultural objects (if any), when the UK leaves the EU, the UK and EU Member States will no longer be obligated to return objects unlawfully exported from the UK.

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57 See section II.A.2(b) above.
58 See section II.A.2 above.
65 See section II.A.3(b) above.
or a Member State under the framework of the Directive, as the UK will no longer be a Member State. In effect, the regulations remove the obligation of the UK under domestic law to co-operate with EU Member States on the return of unlawfully removed cultural objects.66

4. Other applicable legislation

(a) Theft Act 196867


Commencement Date: 1 January 1969.

The Theft Act 1968 only applies to England and Wales. It does not extend to Scotland or Northern Ireland.

Under the Theft Act 1968, a person will be guilty of an offence if he “dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it”. Each element of the offence must be proved and must be proved to have occurred at the same time. The Theft Act 1968 also provides for the offences, amongst others, of burglary, robbery, aggravated burglary, and handling stolen goods.

Sentencing: A person found guilty of theft will be liable to a maximum of 7 years in prison.68 Notably, in the updated Sentencing Guidelines, which became effective on 1 February 2016, an aggravating factor which the court will take into account when considering harm includes “damage to heritage assets”.69

(b) Proceeds of Crime Act 2002 (“POCA”)70


Commencement Date: 30 December 2002 to 13 January 2002 (different parts commenced at different times in accordance with various statutory instruments exercised by the Secretary of State).

Different parts of the Act apply to different parts of the UK – Part 7, which contains the money laundering legislation applies to the whole of the United Kingdom.

POCA sets out the law in relation to the recovery of criminal assets. It also contains the principle anti-money laundering legislation in Part 7 of POCA. This is complemented by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (see further below). Notably, under POCA money laundering offences are not limited to proceeds of serious crimes nor do they have to involve money, as it covers assets of any description. As such, if a person was to steal a cultural object, that person would potentially have committed a money laundering offence by being in possession of the stolen cultural object, as well as the predicate offence of theft of the cultural object.

Sentencing: Maximum penalty of 14 years in prison for money laundering.71

(c) Human Tissue Act 200472


Commencement Date: 15 November 2004.

The Human Tissues Act extends to England, Wales and Northern Ireland only.

The Human Tissues Act applies to museums that hold or intend to hold human remains under 100 years old. It regulates the acquisition, storage, use and disposal of human bodies, organs and tissue. Under the Human Tissues

66 Explanatory notes: https://assets.publishing.service.gov.uk/media/5b55d8d440f0b63397121800/Explanatory_memorandum_Cultural_Objects__Revocation__Regulations.pdf.
69 Theft Offences Sentencing Guidelines, effective from 1 February 2016, pages 5 and 17.
71 Section 334, POCA.
Act, organisations that hold and display human remains must have a licence. There is an express right granted to certain institutions under Section 47 to deaccession human remains less than 1,000 years old. This includes the British Museum, which can therefore, at its own discretion, deaccession human remains without fear of breaching the terms of the statute governing its ability to dispose of goods.

(d) Fraud Act 2006

Royal Assent: 8 November 2006.

Commencement Date: 15 January 2007.

The Fraud Act 2006 extends to Wales, England and Northern Ireland only.

The Fraud Act 2006 creates the offence of fraud and relates to obtaining property by deception. The Act gives a statutory definition of the offence, defined as:

a) Fraud by false representation;

b) Fraud by failing to disclose information; or

c) Fraud by abuse of position.

Sentencing: A person who is guilty of fraud is liable (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both; or (b) on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(e) Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“MLR 2017”)

Commencement Date: 26 June 2017.

The MLR 2017 replaced the Money Laundering Regulations 2007, and implemented the EU’s 4th Directive on Money Laundering. The MLR 2017 aim to discourage the use of financial and other institutions to launder assets, including creating, amongst other things, reporting obligations, obligations to conduct due diligence and enhanced due diligence in certain circumstances, and related offences.

(f) Consumer Rights Act 2015

Royal Assent: 26 March 2015.

Commencement Date: 1 October 2015.

The Consumer Rights Act 2015 extends to England, Wales, Scotland and Northern Ireland (although certain sections apply to Scotland only, and others to England and Wales only).

The Consumer Rights Act 2015 combines and replaces three previously enacted statutes relating to consumer rights. It is now the principal consumer legislation, which expressly provides various rights for consumers and will therefore apply to legal sales and purchases of cultural property. It provides that goods purchased must be of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactory quality, fit for purpose and/or as described. It gives rights to the consumer as against the retailer or the company that sold the product. For example, if a consumer makes a claim within 30 days he / she will have the right to legally reject the goods and get a full refund if they are not of satisfactor
Tower ceiling inside Canterbury Cathedral, Canterbury, Kent, England, UK, Author Michael D. Beckwith, 14 March 2018, Creative Commons CC-Zero license, Creative Commons CC0 1.0 Universal Public Domain Dedication. Image has been cropped.
(g) **Ivory Act 2018**^76^  

**Royal Assent:** 20 December 2018.

**Commencement Date:** The Ivory Act has not yet commenced or come into force, and will do so by provision made by the Secretary of State by regulations (Section 43). The UK Government expects that it will come into force in late 2019.\(^77^\)

The Ivory Act extends to England, Wales, Scotland and Northern Ireland (Sections 18(7), (8) and Schedule 2 in respect of search and warrant powers extend to England, Wales and Northern Ireland only).

As explained in more detail in the following paragraph, the Ivory Act is extensive and prohibitive, and will introduce a near total ban on dealing in, exporting and importing items containing elephant ivory, regardless of age. There will be a limited, carefully defined, set of exemptions. The Ivory Act will create a new compliance system, with the aim of allowing owners to continue to trade in exempt objects. Furthermore, it introduces new penalties, including fines and possible imprisonment, for those found guilty of breaching the ban. The Ivory Act will likely have a significant impact on the cultural property trade, as many antiques, as well as for example, musical instruments, contain elephant ivory and are therefore, subject to falling within the limited exemptions, caught by the prohibition.

**Prohibition:** Section 1(1) of the Ivory Act prohibits dealing in ivory (which applies to both items made of ivory, and items that have ivory in them). Ivory means ivory from the tusk or tooth of an elephant (Section 37(1)). The Act expressly provides that the relevant national authority may amend the meaning of ivory to include ivory from other animals or species (extant or not). Dealing is widely defined to include buying, selling, hiring, offering (including advertising and inviting to treat) or arranging to buy, sell or hire, keeping it for sale or hire, exporting it from the UK for sale or hire, and importing it to the UK for sale or hire.

**Exemptions:** Sections 2 to 11 of the Ivory Act sets out the exemptions to the prohibition and the compliance processes for registration / the obtaining of exemption certificates. The exemptions include:

- **a)** Items with a small amount of ivory: such an item will be exempt if the amount of ivory is integral to the item; the ivory is less than 10% of the total of the material of which the item is made; the item was produced prior to 1947; and the item is registered in accordance with the provisions of the Act.

- **b)** Musical instruments will be exempt if the item was produced prior to 1975; the volume of ivory in the instrument is less than 20% of the total volume of the material of which the instrument is made; and the instrument is registered in accordance with the provisions of the Act.

- **c)** Portrait miniatures will be exempt if the item is a pre-1918 portrait miniature with a surface area of no more than 320 cm\(^2\); and it is registered in accordance with the provisions of the Act.

- **d)** Sales to and between accredited museums. This applies to museums accredited by Arts Council England, Welsh Government, Scottish Government or the Northern Ireland Museums Council in the UK and by the International Council of Museums outside of the UK.

- **e)** The Secretary of State may grant an exemption certificate if an item was produced pre-1918 and has been assessed by an independent advisory institution to be of outstandingly high artistic, cultural or historical value. Factors to be taken into account when considering whether the item meets this criteria include the rarity of the item and the extent to which it is an important example of its type.

**Penalties:**^78^ Under the Ivory Act a person will be guilty of an offence if he breaches the prohibition, causes the prohibition to be breached or to facilitate a breach of the prohibition and he knows or suspects, or ought to know or suspect, that the item is ivory, made of ivory or has ivory in it. It is a defence for a person to prove that he took all reasonable precautions and exercised all due diligence to avoid committing the offence. A person guilty of the offence will be liable on summary conviction to a prison sentence of up to 12 months or a fine (or both); and on indictment to prison for up to 5 years or a fine (or both).

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^78^ Please note that there are already in existence offences which may be committed in association with illegal trade in ivory, under for example, the Serious Crime Act 2007. The Ivory Act will not duplicate these offences.
5. National laws on cultural property of other nations

(a) Iraq (United Nations Sanctions) Order 2003\textsuperscript{79} and The Export Control (Syria Sanctions) (Amendment) Order 2014\textsuperscript{80}

With respect to national laws on cultural property of other nations, the UK only has specific legislation regarding the cultural property of Iraq and Syria. Refer to Sections II.A.1(e) and II.A.2(c) above.

(b) Other relevant legislation

The UK has a variety of legislation directly or indirectly addressing cultural property of other nations.

In particular, in response to an increasingly global art market and cultural scene, the UK enacted legislation with respect to cultural property coming from abroad for temporary public exhibitions. Part 6 of the Tribunals, Courts and Enforcement Act 2007 provides immunity from seizure to objects which have been lent from overseas to be included in a temporary exhibition at a museum or gallery in the UK. Immunity is provided from any form of seizure ordered in civil or criminal proceedings, and from any seizure by law enforcement authorities. It will apply to objects of any description which are usually kept outside the UK, whether they belong to a person, an institution or another sovereign entity. The immunity will apply provided that the import of the object in question complies with the law on the import of goods, and that the museum or gallery has published information about the object as required in regulations made by the Secretary of State.

The Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008\textsuperscript{81} came into force on 20 May 2008 and it provides details on the type of information that must be published for an object on loan to be protected from seizure.

B. INTERNATIONAL CONVENTIONS

1. UNESCO Convention 1970

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970\textsuperscript{82} was created to address thefts of, and the illicit trade in, cultural objects. It requires State Parties to the UNESCO 1970 Convention to implement preventative measures, and to take appropriate steps to recover and return cultural property imported after 1970 at the request of a State Party. Subject to domestic legislation, it also has express provisions on restitution and cooperation. Underlining the UNESCO 1970 Convention is the principle of strengthening cooperation among and between State Parties, and in cases where cultural patrimony is in jeopardy from pillage, it provides for the possibility for more specific undertakings, for example export and import controls.


2. Hague Convention 1954

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted at the Hague in 1954, following the destruction of cultural heritage during the Second World War. It focuses on the protection of cultural heritage in the event of armed conflict, as well as providing for security measures during times of peace, and covers immovable and movable cultural heritage. It was supplemented and clarified by two protocols concluded in 1954 and 1999. It is governed by the guiding principle that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind”.\textsuperscript{84}

\textsuperscript{81} http://www.legislation.gov.uk/uksi/2008/1159/introduction/made.
The UK only ratified the Hague Convention in 2017 due to apparent concern in parliamentary deliberations over (i) the process by which properties in the UK would be selected for listing as cultural property under the Convention; (ii) potential implications for UK military effectiveness abroad in the event of “cheating” (appropriation of local cultural sites for military purposes) by hostile forces; (iii) inadequate process under the implementing legislation for the blue shield designation of transport convoys deemed to be moving cultural property; (iv) redundancy with the red cross/red crescent designation system implemented under the Geneva Conventions. (Note also that even before ratification in 2017, the UK Manual of the Law of Armed Conflict had set out procedures for designating cultural property sites in conflict zones and limited permissible use of force at such sites, broadly in line with the convention’s requirements.)

3. **UNIDROIT Convention 1995**

The UK has not ratified the UNIDROIT Convention.

4. **Council of Europe Convention 2017**

In 2017, the Council of Europe (the “CoE”) put forward the European Convention on Offenses Related to Cultural Property (the “CoE Convention”) as a successor to the 1985 Valetta Convention which was ratified by only three CoE states and never became effective. Under existing domestic legislation, the UK largely already conforms to these requirements, except on the following points:

a) Under the CoE Convention, dealers in cultural property would face criminal liability for dealing in property they “should have known” was illicitly obtained. Under the UK’s DCOA 2003, liability arises...
only if a person “knows or believes” the object is tainted (as defined in the act).

b) The CoE Convention creates a new offense for falsification of documents relating to object provenance and export compliance (though this is largely covered by the Export Control Order, existing UK export documentation rules and criminal law regarding fraud).

c) The CoE Convention provides for increased liability and penalties in light of certain aggravating factors, including breach of fiduciary duties, not provided under the DCOA 2003.

d) The CoE Convention provides for potential criminal liability for organizations, such as auction houses, which as a result of recklessness fail to identify potentially tainted objects.

It is unclear whether the UK will sign the convention or otherwise adopt measures like the above. The areas of non-conformity are likely most relevant to members of the antiquities trade (see 121a), 121c), 121d)), which has featured prominently in consultations on proposed cultural property regulation in recent years and has generally resisted calls for heightened due diligence obligations, particularly where these do not provide safe harbour or “bright line” rules for dealers. The significance of the art and antiquities trade in the UK could possibly impact the likelihood the UK will sign and ratify the convention.

5. Bilateral Treaties

The UK is not a party to any bilateral treaties concerning cultural property.

III. CULTURAL PROPERTY – CLASSIFICATION

What terms and classifications exist for the categorization of cultural property under the laws? (e.g. tangible, intangible, state property, private property, real-estate property, movable property, archaeological, Paleolithic, pre-colonial, colonial, church-owned/religious).

Different UK statutes and regulations define cultural property in different ways, and an object may sometimes fall within the scope of more than one such definition. Key relevant terms are defined below.

Return of cultural objects unlawfully removed from an EU Member State (‘cultural objects’)

For purposes of the Return of Cultural Objects Regulation (1994) ‘cultural objects’ are ‘national treasures of artistic, historic or archaeological value and also either belong to one of the categories listed in Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (with in some cases a monetary value above certain financial thresholds) or be on the inventory of a public collection or ecclesiastical institution.’ In addition, for the provisions of the act to apply, the object must have been unlawfully removed from a Member State as set out in the Directive.

Cultural property unlawfully exported from occupied territories in armed conflict (‘cultural property’)

For purposes of the CPACA 2017, cultural property is defined as:

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) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as “centres containing monuments”.

Note CPACA 2017 applies only to a limited category of cultural property, i.e. that which is of importance to ‘the cultural heritage of every people’. The precise meaning of this qualification is not specified in the statute or guidance, though suggests a narrower definition than is applied under the other statutes discussed in this report. There seems
to be no case law as yet elaborating on this definition. Note also that the CPACA 2017 applies only to such cultural property exported from an occupied territory ‘as defined under international law’, where the state of such territory, or the occupying state, was a state party to the first or second protocol under the Hague Convention at the time of export. It is unclear whether this definition encompasses property from territories occupied by non-state actors or by the domestic state during or after insurrection, civil war or revolution.

Trading generally – (‘cultural objects’)

For the purposes of the DCOA 2003, a ‘cultural object’ is ‘an object of historical, architectural or archaeological interest’. DCOA 2003 criminalizes dealing in ‘tainted’ cultural objects—i.e. those illicitly excavated or removed from a monument or site of historical, architectural or archaeological interest, in the UK or abroad—where the dealer knows or believes the cultural object is so tainted. ‘Dealing’ includes acquisition, disposal, import or export or an agreement to undertake or procure another to undertake such actions.

EU Return of Cultural Objects Directive (2014/60/EU) and Regulation (1994, as amended) – (‘cultural objects’)

A cultural object is defined as an object that is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the ‘national treasures possessing artistic, historic or archaeological value’ under national legislation or administrative procedures within the meaning of Article 36 of the Treaty on the Functioning of the European Union regarding permissible restrictions on trade to protect ‘national treasures’. See above at section II.A.3(b) in respect of the uncertain future of the status of EU law within the UK following Brexit.

UNESCO Convention (1970) – (‘cultural property’)

‘Cultural property’ is defined as property ‘of importance for archaeology, prehistory, history, literature, art or science’ and which falls into one of 11 categories of property set out in Article 1 of the convention.


Export (‘objects of cultural interest’; also ‘cultural goods’)

The Export of Objects of Cultural Interest (Control) Order (2003) sets out certain categories of cultural property which may be subject to export licensing restrictions. The Order prohibits the export of any object of cultural interest manufactured or produced more than 50 years before the date of exportation unless licensed by the Secretary of State or allowed for by one of the exceptions. See section II.A.2(b) above.

The Export Control Order was adopted under the Export Control Act 2002(a), Sections. 1, 5, 7, implementing EU Council Regulation EEC No, 3911/92 (9 December 1992) on the export of ‘cultural goods’ such that ‘objects of cultural interest’ may be understood to be a subset of this EU-defined category.85

The Order also contains provision for ‘any further actions’ by customs and excise officials necessary for the enforcement of Regulation 3911/92 in regard to ‘cultural goods’. Regulation 3911/92 defines ‘cultural goods’ to include archaeological objects more than 100 years old or integral elements of artistic, historical or religious monuments of such age; certain other works more than 50 years old and not belonging to their originator; books more than 100 years old; printed maps more than 200 years old; archives and elements thereof more than 50 years old; and certain other objects subject to age and value thresholds as set out in the regulation.

Under procedures adopted by the DCMS, an object of cultural interest (as defined above) may be referred to an expert advisor and thereafter to a reviewing committee to determine if the object qualifies as a ‘national treasure’ subject to further export restrictions (see discussion at section IV.E below). A ‘national treasure’ is defined under DCMS guidance as an object which meets one or more of the ‘Waverley Criteria’ set out below:

1. Is the object closely connected with our history and national life?

2. Is the object of outstanding aesthetic importance?

85 According to a 2016 report by the House of Commons Library Research Service, to the extent that the Export Control Order implements an EU regulation, it may be subject to repeal upon Brexit as part of the contemplated programme of Brexit implementing legislation. However, as the statute already applies to exports globally (not just to EU Member States), is focused on protecting domestic interests and imposes no non-reciprocated obligation on the UK it seems unlikely that this would be repealed as part of a considered approach to Brexit-implementing legislation.
3. Is it of outstanding significance for the study of some particular branch of art, learning or history?

The criteria are not precisely or extensively defined in DCMS guidance and their application requires some subjective interpretation and judgment by expert advisors and the reviewing committee. While such an approach could arguably lead to some inconsistency in the application of the criteria, DCMS guidance suggests that the criteria are designed to encompass, along with more obvious candidates, cultural objects whose importance may be very specific to their nature, history or context and not easily captured in a more precise general formulation. For a clearer sense of how the criteria are applied in practice, one can review the DCMS reviewing committee’s annual reports, available at https://www.artscouncil.org.uk/supporting-collections-and-cultural-property/reviewing-committee. Each annual report elaborates on the reviewing committee’s Waverley Criteria decisions and subsequent export licensing actions during the preceding year.

Ancient monuments and archaeological areas

For the purposes of the Ancient Monuments and Archaeological Areas Act 1979 the Secretary of State for DCMS (or, in Scotland, Historic Environment Scotland) maintains a schedule of ‘monuments’ including, subject to provisions for subsequent removal, any monuments listed pursuant to Section 12 of the Ancient Monuments Consolidation and Amendment Act 1913 or Section 6(1) of the Ancient Monuments Act 1931, as well as ‘any monument which appears to be of national importance’ in the judgment of the Secretary of State after consultation with the Historic Buildings and Monuments Commission for England (now known as Historic England) and subject to notice and publication requirements and provisions for appeal of such designation (“Scheduled Monument”). Monuments so designated are subject to certain use restrictions and to inspection and, in certain cases, mandatory access for maintenance and repair by Historic England. Historic England may also acquire or accept donations of such sites, which thereby become subject to the Act’s supervisory regulations.

Listed buildings

The Secretary of State for DCMS maintains a schedule of ‘buildings of special architectural or historic interest’ which are subject to certain restrictions and inspections and, in certain cases, mandatory maintenance and repair by Historic England. Buildings may be added to the list by the Secretary of State upon consultation with Historic England and such other persons or bodies as the Secretary of State determines have special knowledge or interest in such buildings, and subject to publication, notice and appeal provisions. Such designation may be based on consideration of the building itself, as well as ‘any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part’ and ‘the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.’ Sites may be listed in one of three graded categories, grade 1, grade 2* and grade 2 (in descending level of importance), depending on the level of architectural and historic interest they are deemed to have, with grade 1 and 2* listed buildings subject to greater restrictions and supervisory regulation. Historic England may also acquire or accept donations of such sites, which thereby become subject to the Act’s supervisory regulations.

Treasure

A special legislative regime applies to objects that fall within the definition of ‘treasure’ set out in the Treasure Act 1996, which is set out above in section II.A.1(c) above. Treasure also includes any items so designated by the Secretary of State for Digital, Culture, Media and Sport or which formed a part of the same find as any objects failing within the definition of treasure.

IV. CULTURAL PROPERTY – OWNERSHIP AND DISTRIBUTION

A. OWNERSHIP

What constitutes “cultural property” subject to domestic laws? Have there been significant changes over time in what types of objects are considered cultural property under the law? Have there been significant changes over time in what types of objects are considered state-owned or an inalienable part of the national heritage?

For definitions related to cultural property, see section III above. Regarding alienability, other than the DCOA 2003’s

86 See Appendix 2 (Glossary).
87 See also section II.A.1(c) above, which sets out proposed changes to the definition of treasure under the Treasure Act.
prohibition on dealing (including sale, purchase, import or export) in cultural objects unlawfully obtained, cultural property can generally be freely bought and sold within the domestic market, subject to other laws of more general application. Export licensing restrictions may apply (as described above), though even objects deemed to be ‘national treasure’ may generally be exported if no domestic buyer, at an equal or higher price to that offered abroad, can be found. Although the UK state, through Historic England, indirectly owns or administers many heritage properties acquired through acquisition, donation or tax payment-in-lieu arrangements, heritage property generally may be privately owned and freely bought and sold, subject only to use restrictions and preservation rules under applicable legislation described above.

Does the law recognize religious or other cultural institutional ownership of cultural property?

Yes, subject to the laws described above.

Does the law recognise private ownership of cultural property? (Describe any restrictions on private ownership, if any)

The law does recognise private ownership of cultural property, subject to the restrictions set out under the Treasure Act 1996 (see further section II.A.1(c) above and section IV.A below) or if such ownership constitutes an offence, for example under DCOA or CPACA 2017. It should be noted that if a finder of an object that is determined by a coroner to be treasure under the Treasure Act 1996 and no museum wishes to purchase it, then the treasure object will be returned to the finder.
While there are no restrictions on private ownership of property that is designated as a heritage asset, whether a listed building, Scheduled Monument or archaeological site of national importance, there are restrictions on what owners can do (indeed, the vast majority of historic buildings and sites in England are in private ownership and maintained at personal cost). Therefore, depending on the classification of the property, an owner will need to seek consent from the relevant government body for any works to be carried out. For example:

- a) Scheduled Monuments: an owner of a Scheduled Monument who wishes to carry out works to repair, alter, add to, destroy or damage the monument will need to apply for Scheduled Monument Consent from the Secretary of State for DCMS through Historic England. The protection scheme can be quite onerous and restrictive.

- b) Listed Buildings: Owners of buildings and other structures that are listed by the Secretary of State for DCMS must obtain listed building consent from the local planning authority for demolition, alteration or extension works that affect the character of the building as a building of special architectural or historic interest. It is important to note also that a listing extends to buildings nearby the designated listed building and the same legislative regime applies – for example barns within a property of a listed house will also be listed. It is a criminal offence to carry out works to listed buildings without the requisite permissions.

There are over 400 historic buildings, monuments and sites that are owned by the state (including Stonehenge, Dover Castle, and parts of Hadrian's Wall). English Heritage Trust, established on 1 April 2015 (the old Historic Buildings and Monuments Commission for England) was split into 1) Historic England which inherited the statutory and protection functions and is responsible for listing; and 2) English Heritage Trust, an independent charity that operates and manages these state owned buildings, monuments and sites. State owned properties represent only a small proportion of the over 19,000 entries on the Schedule of Monuments alone. In Wales, Welsh ministers through Cadw (the Welsh Government's historic and environment service) compile the schedule of monuments, with over 4,000 currently scheduled.

**Does the law clearly vest title to cultural property in the state from a certain date?**

The state has no entitlement under the law to any cultural property, subject to the provisions of the Treasure Act 1996. The common law of treasure trove, which was replaced by the Treasure Act 1996, will only apply to objects that were found prior to the commencement of the Treasure Act 1996. Under the Treasure Act 1996, the definition of treasure includes an age criterion, and if an object meets this criterion as well as the other criteria (as to which see further above at section II.A.1(c), the title of the object, or find of objects, vests in the Crown or a franchisee of the Crown. The Treasure Act 1996 allows the relevant national museum (The British Museum in England and the National Museum of Wales in Wales), with a right of first offer in the particular franchise (for example, the Museum of London in the Corporation of London) or any local museum, to purchase the object or find. Where no museum can raise the funds or no museum expresses an interest in purchasing the find, the Secretary of State will be advised to disclaim title on behalf of the Crown or the relevant franchisee of the Crown in which title had vested. There is no legal obligation to disclaim title, but in practice if so advised, the Secretary of State / franchisee will disclaim title. Only then can an object ruled as treasure be returned to the finder (although see further below on laws of ownership relating to finds – under English and Welsh law generally the object or find belongs to the relevant landowner) and the finder and / or landowner owns the object or find without any restrictions, subject to laws of general applicability.

**Can the classification of an object or a real estate property as a cultural property be extinguished? (Can something revert from being cultural property to not being cultural property? Who manages this?)**

The only moveable cultural property that can be said to be ‘classified’ is treasure – once designated as treasure this cannot be removed or extinguished. Even if the Secretary of State disclaims title and the finder and / or landowner now has title to the object, the designation of treasure does not extinguish. The practical ramifications are that if you wish to purchase an object that you think might be treasure, you must ensure that you do your due diligence as to a) whether it was properly reported; and if so b) whether there is proof as to this disclaim of title. An offence is provided for under the Treasure Act 1996 that if a person acquires property in an object and does not notify the coroner if that person believes or has reasonable grounds for believing that the object is treasure and prior notification had not been
given to the coroner (Section 8A of the Treasure Act 1996⁹⁴).

Under the Ancient Monuments and Archaeological Areas Act 1979 (Section 1), the Secretary of State for DCMS maintains a list of Scheduled Monuments (historic buildings or sites) (see further sections II.A.1(a) to II.A.1(b) on the Ancient Monuments and Archaeological Areas Act 1979). A Scheduled Monument can be de-scheduled upon application to Historic England, who carries out an assessment and makes a recommendation to the Secretary of State.

If a building is considered by the Secretary of State for DCMS to be of special architectural or historic interest it will be included in a list of such buildings (see further above at section II.A.1(b) on the Planning (Listed Buildings and Conservation Areas) Act 1990). The Secretary of State may decide to remove a building from the list if it is no longer considered to hold special architectural or historic interest. Applications to remove a building from the list must be made to Historic England.

B. HERITAGE ASSETS

Under the Historic Buildings and Ancient Monuments Act (1953, as amended), the DCMS maintains a schedule of ‘buildings of special architectural or historic interest’ which are subject to certain restrictions and inspections and, in certain cases, mandatory access for maintenance and repair by Historic England. Buildings may be added to the list by the Secretary of State for DCMS upon consultation with the Commission and such other persons or bodies as the Secretary of State for DCMS determines have special knowledge or interest in such buildings, and subject to publication, notice and appeal provisions. Such designation may be based on consideration of the building itself, as well as ‘any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part’ and ‘the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.’

With respect to monuments and areas of archaeological interest, under the Ancient Monuments and Archaeological Areas Act 1979 the Secretary of State for DCMS maintains a schedule of ‘monuments’, including any monument which appears to be of national importance in the judgment of the Secretary of State for DCMS after consultation with Historic England and notice subject to notice and publication requirements and provisions for appeal of such designation.

C. DOMESTIC DISTRIBUTION AND TRANSFER OF OWNERSHIP

The law applying to the purchase of art / cultural objects is the same as the general law of contract as it pertains to transactions for the sale and purchase of any item.

Liability for dealing in fakes / forgeries / counterfeit cultural objects is addressed under generally applicable laws regarding fraud and the sale of goods. Buyers injured in the sale of such an item may have recourse under the law of misrepresentation. Note that, in the absence of any express warranty of authenticity, whether or not there is a remedy for the buyer against an innocent seller under English law is not clear. Standard seller terms and conditions (e.g. those included in Sotheby’s and Christie’s auction catalogues) effectively disclaim seller liability for negligence in giving its opinion on the authorship of works. Such disclaimer could be invalid as an “unfair contract term” under statute unless it is deemed “reasonable”. Absent an express warranty (and thus an alternative remedy for the disappointed buyer), “reasonableness” likely depends to a large extent on the sophistication of the buyer and the circumstances of the sale.⁹⁵

Does the state allow domestic trade (shop or gallery or auction sales, private sales or other transfers) in the same kinds of cultural property that it restricts export in?

Yes. Unless an object falls within DCOA 2003’s general prohibition on dealing in illicit goods, and subject to other laws of general applicability, cultural goods, (including national treasures) and heritage properties may be freely bought and sold in the domestic market. Note, however, that certain use restrictions and preservation requirements may apply to heritage properties under the Historic Buildings and Ancient Monuments Act (1953, as amended).

Is inheritance or gifting permitted? (Describe any limitations on transfer, time frame etc.)

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⁹⁴ Not yet in force, see section II.A.1(c) above.

Yes, it is possible to transfer cultural property by gift and by will under inheritance laws. Where there is no will, cultural property owned by the deceased will pass under intestacy laws. Note, with regard to inheritance of cultural objects, under the HMRC’s acceptance-in-lieu scheme, a person may transfer important works of art or other heritage objects into public ownership in lieu of paying inheritance or estate tax due on the objects themselves or other components of the relevant estate. In such a transaction, the object is acquired directly by any of a list of national and regional museums, libraries and academic institutions maintained by the DCMS for a negotiated price based on the fair market value of the object as determined by an independent valuation committee. Such price may be paid entirely or partly in the form of an offset of inheritance or estate tax owed by the seller. If the market value of the object exceeds such offset, the acquiring institution must pay the difference, in cash, to the seller from its own funds. The proceeds from acceptance-in-lieu sales are tax exempt. Accordingly, the total price payable for an object (whether in the form of a tax offset or a tax offset plus cash) is generally the object’s market price less any tax (including capital gains, inheritance and estate taxes) that would otherwise be payable by the seller on the sale, plus a douceur, or ‘sweetener’, paid to the seller and equal to a percentage (typically 25%) of such notional tax amount. Thus in such a transaction the seller obtains a premium, the douceur, over the post-tax market price she would otherwise realise in selling the object equal to 25% of the amount of tax otherwise payable on the sale proceeds. The combined cost of the acquisition for the state and the acquiring institution in the form of the price paid and the foregone tax on the sale, however, exceeds the market value by the value of the douceur.

Is transfer by sale permitted? (Describe any limitations on transfer)

Yes. As noted above, unless an object falls within DCOA 2003’s general prohibition on dealing in illicit goods, and subject to other laws of general applicability, cultural goods, (including national treasures) and heritage properties may be freely bought and sold in the domestic market.

Under the various laws or at different points in time, does a non-permitted transfer of private property actually result in a confiscation/seizure, and/or transfer of ownership to the state?

UK laws regarding cultural property do not generally provide for the transfer of ownership to the state of cultural objects as a result of an actual or attempted improper private transfer.

As noted above, however, title to treasure rests, upon discovery, with the Crown or its franchisee, reverting to the finder or land owner upon the Crown’s customary disclaimer of title.

As also noted above, the state can, under certain circumstances, compel the sale of a heritage property if necessary for its preservation. Pursuant to the Ancient Monuments and Archaeological Areas Act 1979 and planning laws (see above), the DCMS or local councils in consultation with DCMS and English Heritage (or, in Greater London, English Heritage directly) may issue a vesting order to acquire a Scheduled Monument or listed building to undertake “urgent works” or preserve sites that are severely degraded.

Both the DCOA 2003 and the Dealing in Cultural Objects (Control) Order provide for proceedings in relation to goods seized in the course of import or export to be conducted under the Customs and Excise Management Act 1979, which provides that prohibited or restricted goods seized at the border may be subject to forfeiture.e Other laws of general applicability, for example regarding civil or criminal forfeiture, may apply to cultural property in certain other circumstances, though there are no forfeiture provisions specific to cultural property.

What other actions or treatment of the cultural property will trigger a transfer of ownership to the state under the law? Is there compensation?

The Land Compensation Act (1981, as amended) (the “Land Compensation Act”) sets out procedures for determining fair value of property subject to compulsory purchase by the state (e.g. for the purposes of “urgent works” on heritage properties), for the appeal of such value determination and for payment of compensation. Under the Land Compensation Act owners and occupiers are entitled to compensation for property value and for ‘loss’ costs related to the loss of such property (including inconvenience and, in the case of commercial or civic entities, reestablishment costs). Conversely, owners who have deliberately allowed a site to degrade or fall into disrepair, e.g. in order to justify demolition and redevelopment, may be liable to the DCMS for compensation for the costs of repair to return the site to its condition at the time of listing or scheduling.

How broadly or narrowly is the national law applied, in actual fact, in the following circumstances:

(i) Domestic transfer by inheritance and gift transfers?

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e For further information on seizure and forfeiture at the border, see section IV.G.1, below.
See above Section IV.C.

(ii) Domestic transfer by sale?

As noted below, domestic transfer (whether by inheritance, gift or sale) of cultural property is not specifically restricted other than in the case of “tainted” cultural objects falling under the DCOA 2003 or statutes applicable to illicit cultural objects from Syria or Iraq.

It is difficult to determine from available case law how regularly these statutes are enforced. While it appears that to date the state has successfully brought criminal charges under the DCOA 2003 in only one case, for instance, this may reflect a choice by prosecutors in other cases involving stolen or illicitly exported cultural objects to bring charges under other, more widely applicable and perhaps more familiar, criminal statutes (e.g. under the Theft Act 1968 or POCA provisions related to handling of stolen goods). The difficulty of detection of DCOA 2003 and related crimes may also limit the scope of enforcement. While the Metropolitan Police maintains a dedicated Art and Antiques Unit, the unit’s staff has reportedly been diverted in the past to other functions to fill general staffing shortages.\(^9^7\)

**Is there a system of registration for legal trade in cultural property, such as a dealer’s registry?**

No. While there is no regulatory regime in the UK requiring registration of transactions in cultural property, voluntary

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\(^{97}\) See further section V.B on Enforcement.
schemes exist within the UK to highlight and help track objects and collections of particular cultural importance. These include:

a) Arts Council Designation Scheme: Under its Designation Scheme (established in 2006), the Arts Council designates collections of objects and printed material of national importance which are held outside of national museums and libraries. Designation is by application of the collection holder. The listing is intended in part to document and highlight the importance of such collections in order to prevent their waste or disposal—and could impact evaluations of specific export licence applications above statutory age and value thresholds—though inclusion in the Designation Scheme list does not entail any restrictions on ownership or export.

b) Portable Antiquities Scheme98 (“PAS“): The British Museum and National Museums of Wales maintain an online database of privately held antiquities classified as “treasure” under the Treasure Act 1996, as well as all archaeological objects, voluntarily registered by their owners. As with the Arts Council Designation Scheme, inclusion in the database does not restrict ownership or export of the objects.

In addition, as noted above, under the Historic Buildings and Ancient Monuments Act 1953, the DCMS maintains a schedule of ‘buildings of special architectural or historic interest’ and under the Ancient Monuments and Archaeological Areas Act 1979 the DCMS maintains a schedule of monuments, including sites of archaeological interest. As described above, inclusion in either list imposes certain use and preservation rules on listed sites.

Is there a system for the documentation of objects in a dealer's inventory?

There is no central system for the documentation of objects in a dealer's inventory.

D. ILICIT ART AND ARTEFACT MARKET

If there is an illicit art and artefact market in the country, who are the participants? Is there a public marketplace, whether in galleries or in a bazaar? On higher social levels?

We have not been able to locate an authoritative estimate of the scale of the illicit art and antiquities market in the UK. However, given the scale of the legitimate art and antiquities market in Britain, it seems likely that the illicit market is also substantial. Anecdotally, experts in the trade note that the UK has historically been at the centre of the black market in cultural goods, largely due to its colonial past and related trade links. In the words of one expert, England remains “a dream location for well constructed [false] provenances” for illicit art and antiquities, as a seller can often credibly claim that an object with a missing or incomplete provenance was exported to Britain during the colonial period of the 17th, 18th or 19th centuries (long before 1970, the customary minimum cut-off date for provenance required in the legitimate market) and only recently brought to light in the market, e.g. following the distribution of an estate.99

E. EXPORT

The export licensing unit issues licences, on behalf of the Secretary of State, to export cultural goods. Certain cultural objects more than 50 years old and valued above specified amounts need an individual licence for export out of the UK, whether on a permanent or temporary basis.

The Export Control Act 2002 provides for a licensing regime for the export of objects of cultural interest under several licensing categories.

a) Open export licences (applicable to objects below the age and value threshold set out in the Export Control Act 2002 and Export of Objects of Cultural Interest (Control) Order)

• Open general export licence (OGEL): An OGEL permits temporary export or re-export after temporary import (and permanent export under certain other circumstances) of categories of cultural object. An OGEL may also be granted by the Secretary of State in relation to certain categories of cultural object upon a recommendation by the Spoliation Advisory Panel, a body of the DCMS.

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98 https://finds.org.uk/. See further below on the Portable Antiquities Scheme at section V.A.2(e).
• **Open individual export licence (OIEL):** An OIEL may be granted to a specific individual or institution for the permanent or temporary export of certain cultural objects within a fixed period (typically, three years).

• **Specific open export licence (SOEL):** A SOEL may be granted for the temporary export (or temporary export on multiple occasions within a three year period) of a specific cultural object by a specific exporter for exhibition.

b) **Individual export licences** (applicable to objects above the age and value threshold set out in the Export Control Act 2002 and Export of Objects of Cultural Interest (Control) Order)

• **Permanent individual export licence (PIEL):** Before a specific cultural object that is beyond the above age and value thresholds can be exported, its export is subject to specific review by the Secretary of State. In the first instance, the object will be referred to an independent expert advisor (i.e. a person with professional or academic expertise in objects of such kind) who will opine on whether or not the object constitutes a ‘national treasure’ within the meaning set out in the March 2015 statutory guidance promulgated by the Secretary of State in respect of the Export Control Order. The Export Control Guidance adopts a set of qualitative criteria, known as the Waverley Criteria, by which independent advisors are to assess whether an object is a national treasure.100

If the expert advisor concludes that the object may be a national treasure under the above criteria, the licence application is referred to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest, where the applicant and the expert will present evidence as to the proposed designation. The committee will then make a recommendation to the Secretary of State as to whether the object should be deemed a national treasure.

If the Secretary of State, in her discretion, does not deem the object a national treasure, an export licence will be granted. If the object is deemed a national treasure, the licence application will ordinarily be deferred for an initial, extendable period of (typically) three months to provide potential domestic purchasers, such as museums, an opportunity to bid on the object. If a domestic bid of equal or higher value is received during the deferral period, the licence application will ordinarily be rejected. If no such bid is received, the licence will ordinarily be granted or the deferral period extended to allow time for further bids to be submitted.

• **Temporary individual export licence (TIEL):** A temporary individual export licence may be granted for temporary export (typically for no more than three years) of a cultural object falling above the specified age and value thresholds. As in the case of a PIEL application, the object will be referred to an independent expert advisor, who will assess the object not for national importance but for its fitness for travel and whether sufficient assurances have been provided as to its return in good condition at the end of the licence period. The application will ordinarily not be referred to the Reviewing Committee.

**Does the law clearly prohibit export of cultural property?**

No. Although note that under the Export of Objects of Cultural Interest (Control) Order the export of objects of national importance may be delayed or prevented if the object is deemed to meet one of the Waverley Criteria.101

**Is there a permitting system, or other mechanism, for the export of cultural property, and for what purposes (sale, exhibition, exchange)?**

See above at section IV.E.

**Does the state allow export to any other nation of cultural property that is restricted under a US law or MOU under the US Cultural Property Implementation Act?**

Trade in tainted cultural objects is broadly prohibited under the DCOA 2003 in the UK, though the act does not provide for specific procedures for determining whether goods being imported have been lawfully exported from source

100 See further section III above.

101 For a recent example of a ‘successful’ intervention by the DCMS to prevent export of a cultural object of national importance (in this case, a marble bust of Queen Victoria), see https://www.theguardian.com/uk-news/2018/jun/19/queen-victoria-marble-portrait-saved-from-export-to-tune-of-1m.
countries. Existing US MOUs by contrast do provide for specific customs procedures for certain categories of goods exported from source countries party to an MOU (generally a licensing regime for relevant goods), which may be more restrictive than the general customs procedures applied to such goods when imported to the UK.

Similarly, procedures under UK laws governing import may be less rigorous than those required under some US statutes. For instance, the US Pre-Columbian Monumental and Architectural Sculpture and Murals Statute restricts specifically the import of certain categories of cultural goods originating in the Americas, requiring evidence of authorized export for such goods upon import to the US. The US Archaeological Resources Protection Act and US laws governing the excavation and trade in Native American artefacts also impose an evidence of authorization requirement for removal from federal or Indian lands (as defined in the statute) of, respectively, goods over specified age and value thresholds and goods of Native American origin.

Does the state maintain an inventory of cultural property so that it is possible to establish the date of illicit removal or of export?

No. See discussion above of unofficial and voluntary registries in section IV.C.

Does the state make its domestic laws available domestically or internationally so that an exporter (or a subsequent owner or holder) could reasonably know whether at the time of export (or later come to know) that the object was exported in violation of the law.

Yes, legislation is available online at http://www.legislation.gov.uk/ and the majority of court judgements are a matter of public record. The British and Irish Legal Information Institute (BAILII) provides access to freely available British, Irish and European Union primary legal materials, including case law, and can be accessed online here: http://www.bailii.org/.

Please provide copies or examples of any export or import forms, or other documents that an individual or entity is required by law to complete in respect of cultural property, for example as part of any registration process.

Export forms can be found on the Arts Council's website here: https://www.artscouncil.org.uk/export-controls/export-licensing#section-2.

F. PRIVATE COLLECTIONS AND PRIVATE MUSEUMS

Are there private collections of cultural property? Are they well known? Are there private museums?

Yes, yes and yes. While the UK has a rich heritage of public museums, there are also notable private museums and galleries, including the Saatchi Gallery and the Geffrye Museum.

Is there a privileged group that collects art or artefacts that is not subject to general laws?

No, cultural property laws apply to all equally.

G. CRIMINAL AND CIVIL PENALTIES

1. Illicit trade in cultural property

What is the penalty for violation of illicit trade provisions?

Under the DCOA 2003, a person guilty of the offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both, and on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

Do the laws allow seizure and forfeiture?

See section IV.G.1, below.

Are these laws/regulations enforced?

As explained in Section IV.C.
What happens to seized property?

Section 4(4) of the DCOA 2003 provides that where ‘there are grounds for believing that a person has committed an offence which relates to the dealing in a tainted cultural object and which involves the importation or exportation of such an object’, the state may act under the Customs and Excise Management Act 1979, under which HMRC or the UK Border Force may seize prohibited objects.

According to general HMRC and UK Border Force guidance\(^\text{102}\), non-perishable seized items whose value exceeds their expected storage costs will be temporarily stored and, subject to receiving a notice of claim from any purported rightful owner and undertaking condemnation proceedings before a magistrate, will generally be sold. In the event of a successful claim made after a seized object has been sold, the State will typically provide financial compensation for the value of the object, excluding indirect costs and interest. It seems unlikely, however, that objects seized under the DCOA 2003 specifically would be sold after seizure as (i) the DCOA 2003 is designed to prevent any trade in cultural objects illicitly exported from source countries and (ii) the UK is obliged under the UNESCO Convention 1970 and EU Directive 2014/60/EU and the Return of Cultural Objects Regulations to cooperate in the return of illicitly exported cultural objects to source countries.

Under the Tribunals, Courts and Enforcement Act 2007, however, cultural objects imported to the UK are protected from seizure if they meet the following criteria:

a) the object is usually kept outside the United Kingdom;

b) it is not owned by a person resident in the United Kingdom;

c) its import does not contravene a prohibition or restriction on the import of goods, imposed by or under any enactment, that applies to the object, a part of it or anything it conceals;

d) it is brought to the United Kingdom for public display in a temporary exhibition at a museum or gallery; and

e) the museum or gallery has complied with any requirements prescribed by regulations made by the Secretary of State under this paragraph about the publication of specified information about the object.

2. Unauthorised possession of cultural property

What is the penalty for violation of illicit possession of cultural property provisions?

There is no specific crime for possession of cultural property under the current legislative and common law framework, subject to the Treasure Act 1996 and DCOA 2003.

However, the DCOA 2003 defines ‘dealing’ broadly such that it encompasses many aspects of possession. Dealing is defined as: (i) acquiring (defined as buying, hiring, borrowing or accepting); (ii) disposing (defined as selling, letting on hire, lending or giving); or (iii) importing or exporting (Section 3 DCOA 2003). In particular “acquire” could be used to cover many of the conducts related to the illicit possession of cultural property.

With respect to the penalty, under the DCOA 2003, a person guilty of the offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both, and on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both (Section 1(3) DCOA 2003).

Similarly, under the Treasure Act 1996, finders of objects that are defined as treasure are legally obligated to report their find to their local coroner within 14 days. The same applies to a person who acquires property in an object and has reasonable grounds for believing (a) that the object is treasure and (b) that notification has not been given to the relevant coroner. If either person fail to notify the coroner within 14 days, s/he will be guilty of an offence and be liable to imprisonment of up to three months or a fine or both (Section 8 and Section 8A of the Treasure Act 1996). That person will have a defence if they can show they had and continue to have a reasonable excuse for failing to notify the coroner.

Do the laws allow seizure and forfeiture?

See section IV.G.1 above.

Are these laws/regulations enforced?

See above (section IV.G.1).

What happens to seized property?

The Police and Criminal Evidence Act 1984 allows for property to be retained for as long as necessary in all the circumstances, so long as the property was seized in accordance with provisions in the Act; this includes retaining a thing in order to establish its lawful owner. The Criminal Justice and Police Act 2001 gives any person with a relevant interest in the property seized the right to apply to the appropriate judicial authority for it to be returned. Even if the property was unlawfully seized, if it can be proven that if it were returned, there would be sufficient statutory grounds to seize it again, it need not be returned for the duration of the investigation or so long as reasonable.

V. ADMINISTRATION AND ENFORCEMENT

A. ADMINISTRATION

1. Government agencies and cultural institutions

What in-country systems exist specifically for cultural property management and administration, and public education?
The DCMS is the principal government department responsible for administering laws regarding the trade in cultural objects and in supervising the maintenance of national monuments, archaeological areas and heritage properties. As elaborated in sections IV.C and IV.G.1 above, HMRC, the UK Border Force and other government agencies are also involved in various aspects of administration and enforcement of these regulations.

As discussed in section IV.A above, the DCMS, together with Historic England and local councils, is also responsible for maintaining a schedule of listed buildings and monuments and establishing rules for their maintenance, as well as for administering a number of heritage properties in public ownership.

Management of movable cultural property and related public education occurs principally through private and public museums and other private owners.

Which government agencies or cultural institutions document and track cultural property?

See section V.A.1 above.

What institution or ministry administers cultural property? What institution or ministry historically managed cultural property? Explain the basic administrative structure and the process through which an object passes.

See section V.A.1 above.

2. Registration

Is there a state registry or database?

No. See above at section IV.C. Although note there is an online database for designated heritage assets in England called the National Heritage List for England (i.e. Scheduled Monuments, listed buildings, registered parks and gardens).

Does state law require registration of both state-owned cultural property and cultural property held by individuals within that state? Under what law or laws?

No, see above in respect of voluntary registration at section IV.C, although note the database for designated heritage assets (see section V.A above).

What institution or ministry administers the registry/database?

Historic England on behalf of the Secretary of State for the DCMS administers the list of Scheduled Monuments, listed buildings, registered parks and gardens.

What terms and classifications exist for the categorization of cultural property under a state or ministerial registry or database?

See above at sections III.A to III.A above in relation to listed buildings and Scheduled Monuments.

Are registries publicly accessible?

Certain unofficial registries (discussed above) are publicly accessible online. The Portable Antiquities Scheme’s (PAS) searchable database can be accessed via their website, at https://finds.org.uk/database. Information about designated collections under the Arts Council’s designation scheme is published on its website, at https://www.artscouncil.org.uk/publication/designated-outstanding-collections.

PAS, which was set up in 1997, also records all archaeological finds discovered and reported by members of the public, which are not specifically classified as ‘treasure’. PAS was set up as a means to tackle the many finds, treasure or not, that were going unrecorded due to the lack of systems and resources to record the finds and of resources. PAS was initially funded by the Heritage Lottery Fund, followed by direct funding from the DCMS until the administration changed hands to the British Museum.

It is a system which relies on voluntary reporting to the local Finds Liaison Officer, and therefore also relies on adequate guidance and education as to best practice and the importance of archaeological finds. It has broadly been successful in raising awareness, getting people involved in archaeology, and contributing to archaeological research, as well as preserving finds and contexts of the finds that may otherwise have been lost to the public and to researchers. Indeed,
it has recorded over 1 million finds discovered by the public on its online database, which has also helped to identify new archaeological sites. The finds are returned to the finders after recording. Roger Bland, Keeper at the Departments of Prehistory & Europe and Portable Antiquities & Treasure, British Museum, who compiled a corpus of all finds of Roman gold coins in Britain, showed that since the start of metal detecting in the 1970s, finds in England and Wales have increased nearly threefold. The corpus includes finds from sources such as sales catalogues, online sources and metal detecting magazines and shows that PAS recorded 70% of the current finds.

Although it does have its critics (for example, arguably it does not do enough to address issues of illegal metal detecting, or ‘nighthawking’), it has been a successful way to implement a system that was lacking to ensure objects of archaeological interest are recorded for public and research benefit within the current legislative framework, which allows for private ownership of such objects. It remains relatively easy for ‘nighthawks’ however to sell finds to dealers who do not check that they are acting legally and with agreement of the landowners – particularly on the internet. For example, PAS monitors eBay and reports that it has followed up on several hundred cases of potential treasure for sale but there have not been any criminal prosecutions. There is therefore a gap in the law to make it more difficult for dealers to sell unreported treasure finds.

B. ENFORCEMENT

Describe how law enforcement and prosecutorial and penal systems are involved in violations of cultural property law.

There is currently no dedicated national policing investigative unit for heritage and cultural property crime. Some police forces have existing networks with local authorities, communities and heritage sector professionals to develop local crime prevention initiatives to protect the historic environment and museums. In London, there is a dedicated police unit at New Scotland Yard called the Metropolitan Police Art and Antiques Unit, which specialises in investigating crimes relating to the burglary of art and antiquities, international cultural property theft, fraud and money laundering. The unit is very small, however with only a handful of dedicated officers, and it has been temporarily disbanded in the past to re-deploy the officers in situations of national crisis, for example from August until December 2017 to provide more resources to the investigation of the fire at Grenfell Tower. There are fears that it will be permanently closed due to budgetary pressures. It is also responsible for maintaining the London Stolen Art Database, which catalogues details of stolen works (around 54,000 items in 2017).

Within the police there is a National Heritage and Cultural Property Crime Working Group, which published its first strategic assessment in 2013. The aim of the working group is to work with strategic partners to monitor threats and risks to heritage assets and cultural property crime matters and to ensure that heritage and cultural property crime prevention, enforcement, intelligence and reassurance activity remains aligned with other groups responsible for supporting heritage and culture. Their most recently issued report in 2017, which assessed progress and changes since 2013 in tackling heritage and cultural property crime, highlighted that “it is clear that the lack of intelligence and data and the inability to analyse and assess the current and emerging threats to heritage assets presents the greatest challenge in the development of effective and efficient tasking and coordination of the police and partnership resources” and that there is a distinct lack of readily available reference material for police officers and other agencies to refer to out in the field. It does note however that progress has been made with forces making efforts to integrate heritage assets and cultural property within call handling, crime recording and intelligence systems.

The report highlighted that heritage assets and cultural property crime has a low priority compared to other crime types and that there is still limited awareness of heritage assets and cultural property crime, as well as the significance of historic sites and assets. It also highlighted that there is a limited knowledge amongst police of relevant legislation, limited training and inconsistent descriptions of stolen cultural property. The recommendations of the report focus on increasing training, education and awareness, as well as strengthening links with national and local heritage bodies to

develop strategies and advice to enhance preventative and enforcement activities.\(^{111}\)

The report indicated that there were a growing number of forces that are developing heritage crime training, as well as an increased engagement with local landowners, organisations and councils to encourage reporting, while acknowledging that the true scale of the problem is still poorly understood. Further, there appeared amongst the police surveyed that there was a perceived lack of legal powers and understanding in relation to the control of importation and exportation of artefacts and antiquities at UK borders.\(^{112}\)

HMRC are the front line against illegal exportation of cultural property. HMRC have powers to seize cultural property that it suspects of being illegally exported or imported.

Where the police have evidence that a crime has been committed, they will liaise with the Crown Prosecution Service (“CPS”)\(^{113}\), who in England and Wales is responsible for prosecuting criminal offences. The potential offences that relate to cultural property have been summarised above in section II.A and include offences of dealing in tainted cultural objects under DCOA 2003, not reporting finds under the Treasure Act 1996, theft, fraud, money laundering, illegal exportation. The CPS determines whether there is sufficient evidence to bring a prosecution against the person. The relevant criminal courts are the Magistrates Court, the Crown Court and for appeals, the Court of Appeal Criminal Division and the Supreme Court. There are no specialist courts for cultural heritage crime.

Where there are violations of foreign export controls, the following remedies may be sought:

a) Where an object has been illegally exported from a country, a state can seek a court declaration that the object was illegally exported from the source nation (for example, see Kingdom of Spain v Christie’s (1986))\(^{114}\), in which Spain claimed that the export documents of a Goya painting were forgeries. The outcome was that the painting was declared illegally exported, although Christie’s could still sell the painting but without the forged export documents.\(^{115}\). Under such a court declaration the object will not be returned, but there is likely to be negative ramifications on the marketability of the object. This is especially likely with increasing public awareness, legislation and public opinion as it relates to illegal trade of cultural goods.

b) Criminal liability: As set out in detail above, there are offences under the DCOA 2003 (but note that the buyer is only liable for an offence if he knows or believes the object to be tainted) and CPACA 2017.

c) Obligations under 1970 UNESCO Convention and EU Directive 2014/60/EU. The Department for Culture, Media and Sport will assist foreign governments to recover objects, but will need evidence that the conditions in the relevant convention are met before it contacts the owner. Under the EU Directive 2014/60/EU, it is possible for a claimant government or for institutions to commence proceedings in the court for an order of restitution. The UNESCO Convention however requires only that government authorities take action.

Are there procedures for the recovery of cultural property (under treaties, or other agreements) that has been ‘lost’ to foreign nations? Analysis of enforcement/lack of enforcement: how does the law on paper match current and past practice?

Within the EU, the Return of Cultural Objects Regulation (1994) sets out procedures for cooperation among EU Member States in locating and returning cultural objects unlawfully removed from one Member State to another. As to the status of this regulation post-Brexit, please see section II.A.3(b) above.

The UK will in any event remain subject to a general obligation under the 1970 UNESCO Convention to return illicitly exported cultural objects to source countries, though the convention does not provide for the information sharing and investigation mechanism set out under the Return of Cultural Goods regulation. Similar provisions are included

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\(^{113}\) See further Appendix 1 (The English Legal System).

\(^{114}\) Kingdom of Spain v. Christie, Manson and Woods Ltd. [1986] 1 WLR 1120.

\(^{115}\) It is notable that in this case Spain did not exercise its sovereign power when requesting the English court to recognise the forgery. Spain argued that the forgery of the export licences deprived the inhabitants of Spain of their valuable Goya paintings and the protection of a country’s wealth comes under the State’s administrative power. A claim for the return of artefacts predicated on the grounds of illegal export is one of sovereign authority, and is generally non-justiciable in the English Courts. See V. Vadi, H. E.G. S, Hildegard: Art, Cultural Heritage and the Market, Ethical and Legal Issues (2014), pages 124-125.
in the European Convention on Offenses Related to Cultural Property (2017) put forward by the Council of Europe (as successor to the 1985 Valetta Convention), though the UK has not yet signed this convention and it is unclear if it will do so.

What is the funding for law enforcement and prosecutions?

There are no specific funding arrangements for law enforcement and prosecutions regarding the protection of cultural property.

The following mechanisms can however be used to indirectly serve this purpose:

a) the National Heritage Memorial Fund provides financial assistance towards the acquisition, preservation and maintenance of some of the UK’s finest objects and landscapes.

b) The Government Indemnity Scheme offers loans for covering the cost of commercial insurance. In the last ten years only 12 claims for damage and loss have been received.

c) There is a heavy reliance on non-public investment rather than the Department for Culture, Media and Sport. EU grants for funding can be sizeable such as 105 million Euros funding for The Great Pompeii Project in Italy, which came mostly from the European Regional Development Fund.

What national agencies are responsible for enforcement of cultural property laws?

The Cultural Property Unit (the “CPU”) located at the Department for Culture, Media and Sport has overall responsibility for policy on the prevention of illicit trafficking in cultural property.

The CPU liaises with the UK Border Force, HMRC, the Export Licensing Unit (ELU) at Arts Council England, the National Crime Agency (SOCA) and the Association of Chief Police Officers (ACPO).

As set out above at section V.B, the Art and Antiques Unit are a specialist Metropolitan Police unit dedicated to combating crimes involving cultural heritage.

The National Museum Security Group was also set up in 2011 and acts as a way to share information between museums.

What federal, state or local prosecutors prosecute and which courts have jurisdiction over cultural property violations?

The English High Court would have jurisdiction to hear cases concerning cultural property violations, particularly as these often fall under theft and fraud offences.

How many prosecutions are there each year for violation of cultural property laws, export laws and related offences?

It is difficult to ascertain the number of prosecutions relating directly to cultural property laws, export laws and related offences as the data collected in government reports does not separate out theft of cultural objects or from museums explicitly from other theft.

How many convictions are there each year for violation of cultural property laws, export laws and related offences?

Again, it is difficult to ascertain the exact figure of thefts and fraud convictions that concern cultural property.

As referred to in section II.A.1(d) of this report, to date the only conviction under DCOA 2003 was in 2016. The individual was sentenced under both DCOA 2003 and the Theft Act 1968.\textsuperscript{116}

A successful prosecution was brought following investigations by the Maritime & Coastguard Agency under Section 2 of the Fraud Act 2006. In that case a commercial diver was found to have concealed wreck items including cannons and ship’s bells.\textsuperscript{117}

\textsuperscript{116} https://ial.uk.com/1448-2/. Accessed on 04.10.2018

There has not been any conviction yet under the CPACA 2017. In any event, this legislation is not expected to trigger numerous prosecutions (the UK Government’s Impact Assessment anticipates just one in 30 years).\footnote{Impact assessment for the draft Cultural Property (Armed Conflicts) Bill p.12. Accessed on 04.10.2018.}

In many cases, a violation of cultural property laws, export laws and related offences is dealt with through a prosecution under the Theft Act 1968 or the Fraud Act 2006 which is much more familiar to law enforcement institutions and the Crown Prosecution Service favoured this course of action rather than the DCOA 2003. The exact figure of the subset of thefts and fraud convictions that concern cultural property is impossible to extract.

**Is there information available on the financial value of seizures of cultural property?**

BBC Five Live Investigates series report from November 2013 state that thefts of valuable works of art and antiques in the UK totalled more than £300 million a year.\footnote{BBC Five Live Investigates series referenced in Articles in the Telegraph https://www.telegraph.co.uk/news/uknews/crime/10455560/More-than-300m-of-art-being-stolen-in-Britain-each-year.html and the BBC news online at https://www.bbc.co.uk/news/uk-24956337. Accessed on 04.10.2018.}

In 2012, the Fitzwilliam Museum reportedly had £57 million worth of Chinese cultural property stolen. The gang responsible were convicted of conspiracy to steal. Also in 2012, a vase valued at £750,000 was also stolen though later recovered and one man was convicted for handling stolen goods. In April 2018, 48 objects were stolen from The Museum of East Asian Art in Bath, these have been stated to have been priceless and no value has precisely been attached to the stolen goods.
VI. INTERNATIONAL CULTURAL PROPERTY LAWS – APPLICATION AND ENFORCEMENT

Does the country apply the same sort of export restriction that it places on its own cultural property to the cultural property of other nations? Explain and give examples.

Yes, the DCOA 2003 prohibitions on trade apply to goods illicitly exported from any source country (see section II.A.1(d), above). Similarly, it is not necessary for an object to have originated in the UK for the export licensing and review requirements for cultural objects under the Export of Cultural Objects (Control) Order to apply (see section IV.E, above).

Does the country allow domestic trade in cultural property of other nations which have restrictive cultural property laws?

No, trade in cultural objects illicitly exported from source countries is prohibited under the DCOA 2003 (see section II.A.1(d), above).

Does the nation participate in international efforts to preserve cultural property in other nations? UNESCO projects? World Monuments Fund projects?

Yes. World Monuments Fund Britain claims to be the largest affiliate of the World Monuments Fund globally and sponsors a number of projects across the UK and globally. The UK is a signatory to the UNESCO Conventions of 1970 and 1972 and the UNESCO UK National Commission participates in a number of global UNESCO initiatives, including maintaining the UNESCO chairs and UNITWIN network at UK universities to promote research in areas of UNESCO competency.

VII. SPECIFIC CATEGORIES OF CULTURAL PROPERTY

A. ARCHAEOLOGICAL WORK

By way of summary, there are extensive planning laws which affect public and private construction with varying degrees of restrictiveness depending on the designation of the building. In general, whether or not you can excavate or search for finds at a certain location is dependent on the laws of property - i.e. consent will be needed from the landowner. There is otherwise no or little governmental oversight or legislative restrictions. There are exceptions to this general rule which arise from legislation applicable to protected sites, including, for example, Scheduled Monuments. Most of the key nationally important archaeological sites are protected by law and permission is required before they can be investigated if that might involve damage or removal of material from site. Note also, as discussed above in section II.A.1(c), one of the proposals in the current consultation in respect of updating the Treasure Act 1996, is to introduce a regulation whereby archaeological digging of any sort would only be allowed by permit.

Any objects found or excavated, subject to any agreements between the interested parties, will belong to the landowner. If human remains are uncovered, the police must be notified. It is an offence to excavate without a licence from the Ministry of Justice for the removal of buried remains.

The laws generally respect private ownership with limited governmental or state intrusion or restriction, subject to criminal legislation as set out above, and of course, the Treasure Act 1996. There is a particular focus on education as to the importance of archaeological objects, as well as their relationship to the context in which they are found, and the voluntary reporting of finds in the form of PAS.

120 See http://wmf.org.uk/about/.
121 Waverley BC v Fletcher [1996] Q.B. 334 CA – owner of the land entitled – finder takes possession “unless the owner had demonstrated an intention to control the land and anything found on it”.
122 See further below at section VII.A.1(f).
1. **Authorised / Organisation of Archaeological Work**

Is there a system of registration for metal detectorists or private archaeological groups?

There is no system of registration for metal detectorists or private archaeological groups.

The National Council for Metal Detecting and the Independent Detectorists are organisations with which metal detectorists can be members. Both organisations have Codes of Conduct by which members are required to operate as a condition of membership and both provide members with public liability insurance.\(^\text{123}\)

Is archaeological work within the country organized and managed by the government through a ministry of culture or by universities through archaeological departments, or both?

There is a long history of archaeological work and associated legal protections within England and Wales.

There are a number of relevant organisations, including governmental departments, quasi-autonomous non-governmental organisations, local government offices and non-governmental bodies (universities, independent contractors, local societies, volunteer archaeology groups).

Generally, the management of archaeology in England and Wales is mainly achieved through complex and intertwined laws relating to land ownership, planning and planning permission, Scheduled Monuments, listed buildings, and protected archaeological sites.

Historic England is the statutory body that is responsible for the protection and regulation of archaeological sites. Where permission is needed to excavate (on which, see below at section VII.A.1, applications for permission are made to the Secretary of State through Historic England, which will give recommendations to and advise the Secretary of State.

Local authorities maintain and manage Historic England Records (HERs), which contain details on local archaeological sites and finds, historic buildings and historic landscapes. A number of HERs are also maintained by district councils, national parks and major landowners such as the National Trust. Historic England maintains and makes publically available contract details for all local authority HERs in England, and most national park authority HERs.

There are a number of important non-governmental organisations, including the Council of British Archaeology and the Institute for Archaeologists. The Institute for Archaeologists is a self-regulating body for the archaeological profession, which represents archaeologists in the UK and overseas. It represents the interests of archaeology to government and policy makers, as well as setting standards and issuing guidelines to professional archaeologists. Since 2014 it has been governed by Royal Charter.

The Council of British Archaeology\(^\text{124}\) is an educational charity which works throughout the UK to get people involved in archaeology and to promote the appreciation and care of the historic environment. There is also the Institute of Field Archaeologists, which is a professional body for archaeologists.

Who gives permissions for archaeological excavations and study to domestic archaeologists?

The type of permission needed for archaeological excavations depends on the place where the excavation is to be carried out. An archaeologist wishing to excavate on private land must seek the consent of the landowner, otherwise he or she may be committing an offence of trespass.

A person or group who wants to excavate a Scheduled Monument must obtain the consent of the Secretary of State. If consent is granted for works that could result in harm to, or loss of significance of a Scheduled Monument, the Secretary of State is likely to impose conditions to require this to be captured and recorded.\(^\text{125}\) It is a criminal offence to undertake works (including field walking and excavation) affecting a Scheduled Monument without written consent from the Secretary of State.

There are also restrictions to metal detecting on ‘known archaeological sites’ on Agreement Land as identified on the Historic Environment Farm Environment Record (HEFER).

If human remains are discovered with an archaeological context, an exhumation licence must be obtained from the

\(^{123}\) [https://finds.org.uk/getinvolved/guides/guidancelandowners](https://finds.org.uk/getinvolved/guides/guidancelandowners).

\(^{124}\) [http://new.archaeologyuk.org/about-us/](http://new.archaeologyuk.org/about-us/).

Ministry of Justice before the remains are disturbed. This licence is required to remove or ‘exhume’ human remains – either in the form of a body or cremated remains. The Coroner’s licence for excavating archaeological remains is called the ‘Authority to Exhume Buried Remains for Archaeological Purposes.’ Some burial grounds may be classified as ancient monuments. Work involving exhumation will require consent under the Ancient Monuments and Archaeological Areas Act 1979.126

Who grants permissions for foreign archaeological excavations and what are the requirements for permit or criteria for qualifications? Is foreign archaeological work subject to review or censorship by the state prior to publication?

The same permissions apply to foreign archaeological excavations as to domestic archaeological excavations (see section VII.A.1 above).

Are there requirements for archaeological excavation as part of state or other government development and construction? Are these regulations enforced?

The Town and Country Planning General Regulations 1992 enable local planning authorities to determine their own development proposals on land in which they have an interest, subject to certain restrictions. Local authorities will therefore have discretion as to whether to conduct an archaeological excavation (see further below section VII.A.1).

Are there requirements for archaeological excavation as part of private development and construction? Are these regulations enforced?

As set out above, the law requires planning permission to be obtained for most developments or changes of use of existing buildings. Local planning authorities are generally responsible for deciding developments or changes to historic buildings and places in their areas. Furthermore, special heritage consents are required for some designated heritage, such as Scheduled Monuments and listed buildings. The National Planning Policy Framework sets out the government’s planning policy, most recently updated in July 2018,127 and Chapter 16 deals with the historic environment.128 It is not an absolute requirement to carry out an archaeological excavation, but the local authority may require the individual or the developer to carry out an archaeological investigation either pre-application or as a condition of a planning permission.

In that regard, in determining planning applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum, the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.129 The developer is expected to cover the costs of the archaeological work needed.

Further, local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible.130

There is therefore discretion given to local authorities as to whether or not an archaeological excavation must be carried out. If archaeological work is a condition to the planning permission and it has not been complied with, this will constitute a breach of planning control against which enforcement action may be taken (Town and Country Planning Act 1990). Local planning authorities have discretion as to when to take enforcement action, and when exercising that discretion they should have regard to the National Planning Policy Framework, which in paragraph 207 sets out that they should act proportionately in responding to suspected breaches of planning control. Local authorities do have broad powers, and some will look at the amount of harm caused by the suspected breach.131 Enforcement actions include issuing a stop notice, failure to comply with which constitutes a criminal offence, or seeking injunctions from

128 Note: this policy does not apply to Scheduled Monument Consent Policy: the Secretary of State for Digital, Culture, Media and Sport, set out some broad considerations that will be taken into account when deciding whether to grant scheduled monument consent in Scheduled Monuments, published October 2013.
130 National Planning Policy Framework, section VA.2.
court. Official statistics on the enforcement of each local authority of archaeology conditions to planning permissions have not been located. In general, due to the retrospective nature of the enforcement powers of the local authority, as well as the lengthy, complicated planning laws and over-stretched local authorities there has been much criticism as to the success of local authorities in enforcing planning laws, with one 2009 report saying “[t]he planning process has become so lengthy, complicated and bureaucratic that unscrupulous developers have found a more effective, profitable and quicker method of obtaining permissions. They simply ignore the system...”.

Burial grounds: In England, disused burial grounds that are to be developed are subject to different regulations. If the land to be developed has been purchased by compulsory purchase, it will be covered by the Towns and Country Planning Regulations – the land cannot be redeveloped until all human remains have been removed and notice of the intention to remove human remains must be given to the general public and any known relatives.

If the land to be developed is consecrated ground, it comes under the jurisdiction of the Church of England. Where human remains are to be removed, an application for the granting of a faculty from the Church is required, such


application to be made to the Church of England Diocese.

If the development site is a recognised burial ground but is not consecrated and human remains will be disturbed as the result of the construction of a building that is not an extension to a church, or as a result of non-building-related works, the Disused Burial Grounds Act 1981 applies. In this case, removal of human remains will require directions to be made from the Ministry of Justice.

2. Unauthorized/criminal extraction of archaeological objects/looting

Are there domestic laws prohibiting unauthorized extraction of archaeological objects?

Yes. However, except on designated land, this is rooted in general laws relating to, for example, trespass, theft and criminal damage, such as:

a) Searching on a land without permission could amount to trespass.

b) Removing objects from the land without the landowner / farmer occupier’s permission could amount to theft.

c) Anyone metal-detecting and removing objects from a Scheduled Monument or an area of archaeological importance designated under the Ancient Monuments and Archaeological Areas Act 1979 134 will be committing an offence under the Ancient Monuments and Archaeological Areas Act 1979. Such activities may also amount to offences of criminal damage associated with these activities.

There are also civil remedies, for example under the tort of conversion. If someone wrongly interferes with your goods and causes damage or injury, this would constitute a tort and you may have a claim for negligence, provided you prove that you were owed a duty of care, that duty of care was breached and that breach caused damage or injury. The Torts (Interference with Goods) Act 1977 defines conversion as dealing with goods in a manner inconsistent with the rights of the true owner, whereby the person in possession of the goods intends to deny the owner’s right or to assert a right inconsistent with the owner’s. The key elements to be established are the possession of goods that you do not own and an intention to deny the owner’s rights or to assert an inconsistent right. Examples would be purchasing goods from a thief, selling someone else’s goods or destroying another’s goods. The Act also provides remedies for tort of trespass, the definition of which includes using, removing, touching or destroying another’s goods, for example removing an archaeological object from someone else’s land – as set out above at section VII.A, the object would usually ‘belong’ to the landowner.

Are such laws criminal or civil or both?

The laws are mainly criminal but civil law rights of ownership, possession and the tort of conversion and/or trespass also must be considered.

How are they enforced? (Regularly, sporadically, occasionally, often or not at all?)

See further above section V.B on enforcement.

It is difficult to assess the extent of enforcement as there is currently no automated system to identify heritage crimes in police national computer data, and therefore it is also difficult to assess the extent of enforcement in respect of archaeological sites specifically. A 2012 National Heritage Crime Report commissioned by English Heritage, looked at the extent of crime and anti-social behaviour facing designated heritage assets. 135 It concluded that there is an estimated 75,000 crimes against heritage assets every year, with heritage assets most at risk of criminal damage and theft. The impact of these crimes of course varies across heritage asset types. The report also suggested that crimes may go un-reported, or the heritage element may be missed.

A report was commissioned by English Heritage (since 2015, Historic England) looking into the problem of ‘nighthawking’, which is the search for and removal of antiquities from the ground using metal detectors without the permission of the landowners or on prohibited land such as Schedule Monuments (the first such report since 1995). The most recent report was published in 2009 136 and showed that there had been a decrease since 1995 in the number of reported attacks on Scheduled Monuments and archaeological excavations. For example, in 1995, 74% of

134 Of which there are five areas: the historic city centres of Canterbury, Chester, Exeter, Hereford and York.
archaeological units reported their sites had been molested: in 2008, that number was 28%. It also concluded that it was clear that there had not been many arrests or prosecutions for nighthawking, encouraging a belief that it was a low-risk crime. However, the decrease in nighthawking suggested by the report was concluded to show that ongoing education and outreach initiatives, including the Portable Antiquities Scheme, are increasing public awareness of cultural heritage and the damaging effects of heritage crime. The report recommended that clear guidance was issued to the police, Crown Prosecution Service and Magistrates on the impact of nighthawking, how to combat it, levels of evidence and possible penalties. It also recommended further raising public awareness and encouragement of responsible metal detecting, along with strengthening links between archaeologists and metal detectorists.

In particular, the survey indicated that nighthawking is seen by many police forces as low priority, with police officers not clear how to proceed when they do get involved, as well as a frustration in difficulties with convincing the Crown Prosecution Service to pursue a prosecution or the courts to impose a sufficient sentence to be a deterrent. The survey identified 26 cases which resulted in one or more types of legal action. The survey indicated that there is a lack of awareness of the laws that can be used to prosecute nighthawks and of the true value of archaeological finds, which are often viewed in terms of monetary value and not their heritage value. The apparent lack of response was also shown to lead to a lack of confidence of the victims and therefore under-reporting of the crime, in turn creating a false picture of the seriousness of the situation.

Following the 2009 report, the prevention and detection of illegal excavations, illegal removal of artefacts and illegal metal detecting (including in relation to Scheduled Monuments) became one of the priorities of a new heritage crime initiative led by English Heritage, the Association of Chief Police Officers, the Crown Prosecution Service and the DCMS. See further above in relation to enforcement at section V.B.

As with other areas of cultural property laws in England and Wales, over the past decade there has been increased effort by Historic England to promote awareness of heritage crimes, which it defines as “any offence which harms the value of heritage assets and their settings to this and future generations”. Historic England maintains a Heritage at Risk register which lists heritage assets (listed buildings, Scheduled Monuments, archaeological sites) that are at risk of neglect, decay or inappropriate development. The most recently published edition indicates that Historic England had deemed 5,254 sites at risk in 2017, down from 5,341 in 2016. Historic England most recently reported that over the last five years 1,240 archaeological entries have been removed from the register for positive reasons. The register’s purpose is to assist the national and local government, individuals and heritage groups to establish the extent of risk and to help assess priorities for action and for funding.137

B. RELIGIOUS HERITAGE AND COMMUNITY PROPERTY

Are objects of religious heritage included or excluded within state controls?

Religious buildings and sites: the legislative regime for protecting the religious historic environment is the same as set out above in respect of general heritage assets in terms of consents, planning etc. As such, two categories of protected religious structures co-exist: Scheduled Monuments, and listed edifices of special historic or architectural value.138

In relation to listed buildings, there is official exemption from State control and relevant restrictions, for example, requirements for listed building consent and conservation area consent, although not planning permission, for certain edifices used currently as worship.139 In England, under the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010,140 ecclesiastical exemption is retained for places of worship currently used for ecclesiastical purposes. This is limited to specified denominations, which have demonstrated that they have established acceptable internal procedures for dealing with works to listed ecclesiastical buildings.141 The denominations specified include the Church of England, the Roman Catholic Church, the Methodist Church, the Baptist Union of Great Britain, the Baptist Union of Wales and the United Reformed Church.142 Notably therefore, other denominations and faiths, for example Judaism and Islam do not fall within this exemption and full listed building or conservation area controls apply to the relevant places of worship, for example synagogues and mosques. Exempt denominations, except for the Church of England, will still require listed building consent or conservation area consent

137 https://historicengland.org.uk/advice/heritage-at-risk/findings/.
for the demolition of a listed religious edifice or a religious edifice in a conservation area respectively.\textsuperscript{143}

All works to buildings belonging to the Church of England, whether listed or not, are governed by the Church’s own faculty jurisdiction system and alterations to cathedrals are governed by the provisions of the Care of Cathedrals Measure of 2011 passed by the General Synod of the Church of England.\textsuperscript{144}

Portable religious objects are governed by the general cultural heritage laws and laws of general applicability as to sale, transfer, export, and ownership.

**Are objects of religious heritage belonging to individuals included or excluded within state controls? Family Bibles? Marriage documents? Letters or photographs?**

Marriage certificates that are 50 years old at the date of exportation are expressly excluded from the Export of Objects of Cultural Interest (Control) Order 2003, which prohibits the exportation of cultural objects over 50 years old without a licence.\textsuperscript{145} Marriage certificates that are under 50 years would not be covered by the Order and therefore would not need a licence for exportation in any event. Objects of religious heritage belonging to individuals are subject to the laws relating to other cultural goods and laws of general applicability.

**Do national cultural property laws include community-owned artefacts, for example, objects used in religious rituals or ceremonies by a minority or majority religion?**

Such objects are governed by the general cultural heritage laws and laws of general applicability as to sale, transfer, export, and ownership.

**Is there a date-based division or a point at which such community records or property is held to belong to or be under the “protection” of the state government when it is over a certain age?**

Not applicable.

**Does national cultural property legislation apply to the export of such minority individual or community property?**

Not applicable.

**VIII. TRENDS AND THE FUTURE**

**How would the researchers characterize trends in their state’s national policy on cultural heritage since UNESCO – and over the last 10-15 years? Changing, fixed? In what areas?**

Since the UK ratified the UNESCO convention in 2002, it has passed more legislation relating to the illegal export, import and removal of cultural goods, as well as in relation to the destruction of cultural property – not only from the UK but from other countries. This corresponds with an increased awareness and concern amongst the international community as to the destruction and illegal trade in antiquities and cultural objects.

There is some criticism as to the effect of the legislation that has been passed, and it is notably limited in scope. For example, it is likely that the CPACA 2017 will have little, if any impact with only one prosecution every 30 years envisaged, and further little impact on the art market, given that dealers must already conduct due diligence about the provenance of their artworks (although note the difficulties surrounding the conduct of due diligence so as not to commit an offence as set out in section II.A.1(f) above). The passing of the Act does show, however, that the UK Government is willing to accede to modern norms in relation to cultural property protection as nations become more aware of the consequences of cultural destruction and the need for innovative solutions.\textsuperscript{146}

Domestically, there has been an increase in attempts to elevate heritage crime in importance. This has not, however, resulted in specific legislation, but a system focussing on education and awareness (such as, for example, the PAS and the police working groups) which operates within the current legal framework. Noticeable also are the changes in Court sentencing guidelines to include heritage damage as an aggravating factor to be considered. This is consistent

\textsuperscript{143} Tsivolas, T (2014), Law and Religious Cultural Heritage in Europe, page 170.

\textsuperscript{144} Tsivolas, T (2014), Law and Religious Cultural Heritage in Europe, page 170.

\textsuperscript{145} See section II.A.2(b) above.

with the general approach to heritage legislation over the past 100 years – although an increasing number of laws have been passed in order to attempt to protect heritage and cultural property, both moveable and immovable, with a corresponding host of offences, these tend to not be unduly restrictive.

Are there any draft laws, regulations or proposals in relation to cultural property, and will they have a significant impact on the current system?

The most significant impact, if any, on the current system in the near future will be the result of the relationship between the EU and the UK following Brexit, as discussed above. However, this will only relate to export and import to, trade with, and return of illegally removed goods between the UK and other EU Member States. As can be seen above, much of the current legislation as it pertains to cultural property and systems such as PAS are national and separate to that of the UK’s obligations under EU regulations and directives.

Furthermore, in December 2018, a provisional inter-institutional agreement between the European commissions, the EU Council and the EU Parliament, was reached on the 2017 European Commission proposed Regulation on the Import of Cultural Goods into the EU. The final version of the text of the regulation has still to be agreed and approved.

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The EU Parliament adopted its position at first reading, with amendments to the draft regulation, on 12 March 2019.\textsuperscript{148} The draft regulation is now with the EU Council, awaiting its position at first reading.\textsuperscript{149} Once formally approved, the regulation will become effective after the introduction of an EU-wide electronic system for licensing is established, approximately six years after formal adoption of the regulation.

In summary, the new regulation seeks to stop imports into the EU of cultural goods that have been illicitly exported from their country of origin, expanding on the previous EU legislation covering the import of cultural heritage from areas of conflict including Iraq and Syria (currently applicable in the UK).\textsuperscript{150} The Regulation provides for the following:

\begin{itemize}
  \item[a)] A new common EU definition for ‘cultural goods’ at importation, which is comprehensive and includes archaeological finds, manuscripts and rare books, art work, as well as rare specimens of flora and fauna.
  \item[b)] Introduction of a new EU wide licensing system for the import of archaeological objects and elements of monuments that have been dismantled. The application for an import licence must be accompanied by supporting documents and information providing evidence that the cultural goods have been exported from the country where they were created or discovered in accordance with its laws and regulations, or providing evidence of the absence of such laws and regulations at the time they were taken out of its territory. The import of other cultural goods, as defined in the Regulation, including coins and seals, objects of ethnological interest, engravings, statuary art and rare manuscripts, will be subject to the submission of an importer’s statement.
  \item[c)] Powers will be given to customs authorities to seize and retain goods if it cannot be demonstrated that the cultural goods in question have been legally exported.
\end{itemize}

The applicability of the Regulation in the UK will remain unclear until the conditions of the UK’s post-Brexit relationship with the EU is certain as it cannot be said with any certainty whether once adopted and coming into effect, it will apply in the UK as a member of the Customs Union or a third-country. For example, if the Regulation takes effect during any transition period (unlikely given the proposed 6 year implementation period), HMRC would have to enforce it with respect to cultural goods entering from non-EU countries. Once, and if, EU customs law ceased to apply directly in and to the UK, HMRC would not need to enforce the Regulation at the UK’s borders; and from then EU Member States would need to start applying the new customs procedures to objects entering their territory from the UK.

Commentators have argued that the new EU regime on importing will place a significant burden on dealers in the art and antiquities trade to meet the conditions of obtaining an import licence. This will consequently have a significant impact on the art and antiquities market in the EU in light of the fact that the vast majority of art and antiquities that would be caught are undocumented, with export permits existing for only a small proportion of the art in circulation.\textsuperscript{151} The impact on the UK art and antiquities market, and the added burden exporters from the UK into the EU will face, cannot be fully certain, until both the final text of the Regulation is agreed and the UK’s relationship with the EU is clear.\textsuperscript{152}

An explanatory memorandum was nevertheless prepared by DCMS for the Minister’s review, which explored the applicability in the context of the UK as a third country with respect to the EU, depending on the transition period and terms of the future relationship. It assumed that under the regulation cultural goods being exported from the UK into the EU would need a licence; this suggests that as the UK, in conformity with EU law, already requires an export licence to be issued before certain types of cultural objects can be removed from the UK to a non-EU country,\textsuperscript{153} the provision of the necessary documentation by the Government to exporters should be relatively straightforward.
IX. APPENDIX 1 - ENGLISH LEGAL SYSTEM

Overview

The English legal system (also known as a common law or case law system) is not entirely codified. The system is primarily comprised of two limbs – statute and case law. Statutory law is created by acts of parliament and is the most authoritative law. Case law is made up of judicial decisions, custom and usage, filling any gaps in the law where statute is silent, as well as serving to help interpret statute.

Statute

Statutes are acts passed by the United Kingdom Parliament, which sits in the Palace of Westminster; it is the most authoritative law in the land. Parliamentary Sovereignty is a principle of the UK constitution. It makes Parliament the supreme legal authority in the UK, which can create or abolish any law. Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change.

Northern Ireland, Scotland and Wales each have their own parliaments: Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales respectively. Specific powers to these bodies and their associated executive bodies have been granted by the UK Parliament at Westminster. These devolved powers can ultimately be repealed or amended by the UK Parliament in the same way as any statute. Matters relating to sport and the arts (including protection of cultural property) are one of the devolved powers to Scotland, on which the Scottish Parliament can pass laws without reference to the UK Parliament at Westminster.

Each Act passed at the UK Parliament will specify to which country within the UK it applies.

The UK parliament is bicameral – the lower house is the House of Commons and the upper house is the House of Lords. The House of Commons is made up of 646 elected Members of Parliament; the House of Lords is made up of some 800 unelected Lords. The House of Commons is the primary forum for the proposal and implementation of legislation with the House of Lords serving a more advisory and supervisory role. There are certain conventions that govern the relationship between the two but ultimately power rests with the House of Commons.

Both houses are involved in the process of creating Acts of Parliament. An Act will begin its life as a document known as a bill and only when it has passed through the required stages will it eventually become an act of parliament and have full legal authority. The stages involved include several readings of the bill in the House of Commons where the nature of the bill and any amendments are debated; several readings in the House of Lords where the nature of the bill and any amendments are debated (note that the House of Lords does not have the power to strike down a bill but can refer it back to the House of Commons before giving its assent); finally the royal assent where the monarch formally gives approval to the bill and it becomes an act of parliament and thus law.

Case Law (common law)

Case law is a body of law derived from previous judicial decisions. The defining characteristic of case law is that of stare decisis (precedent). Cases previously decided bind or persuade courts to decide future cases that are materially the same or similar in the same way. The court system is hierarchical with judgments from the more senior court binding all courts beneath it. The hierarchy of courts is (in order of seniority): Supreme Court, Court of Appeal, High Court; Crown Court; Subordinate Courts (County, Family, Magistrates, Youth).

These precedents are maintained over time through the records of the courts as well as documented in collections of case law known as reports. The precedents to be applied in the decision of each new case are determined by the presiding judge, with judges having scope to distinguish the facts in the case from previously decided cases as a way to circumvent the rules of precedent. In their judgments, judges can give comments that are obiter dictum (by the way), which are expressions of opinion not essential to the decision and so not legally binding, but can be used persuasively in future.

EU law

Section 2 of the European Communities Act 1972 ("ECA") gives force to EU law within the UK. The ECA directly gives effect to EU law in domestic law. Ostensibly EU law had supremacy of UK law where the two conflicted. However, the doctrine of Parliamentary Sovereignty meant that Parliament could decide to reassert its supremacy and the supremacy of UK law at any moment. Indeed, this is what happened with the passage of the European Union (Withdrawal) Act 2018, which repeals the ECA.
It is unclear what the status of EU law will be once the UK leaves the EU on 29 March 2019 but it is likely that Parliament will pass an act transposing EU law into UK law. However, the process is unlikely to be a simple one given that many statutes refer to EU institutions as well as judgments referring to decisions of the European Court of Justice.

**International Treaties**

The government has the authority to enter international treaties but these treaties are seen as automatically creating rights and duties only for the Government under international law. When the Government ratifies a treaty this does not amount to legislating. For a treaty provision to become part of domestic law, it must be explicitly incorporated.

However, Parliament does not have the power to approve, reject or amend the treaty itself. It does have the opportunity to say whether a treaty should be ratified but it does not debate or vote on most treaties.

### X. APPENDIX 2 – GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Arts Council</td>
<td>Arts Council is a non-departmental public body of the DCMS (there is a separate body for England, Scotland and Wales), dedicated to promoting the performing, visual and literary arts.</td>
</tr>
<tr>
<td>Border Force</td>
<td>Border Force is a government department, responsible for frontline border control operations, including customs.</td>
</tr>
<tr>
<td>Coroner</td>
<td>Coroners are independent judicial officers responsible principally for investigating the cause of deaths, and where the deceased has died a violent or unnatural death the Coroner is expected to open an inquest. Coroners are either doctors or lawyers and are appointed by the local government. Coroners also have a role in relation to the Treasure Act 1996. A find of suspected treasure must be reported to the local coroner, and where a museum wishes to acquire a find of potential treasure the Coroner must hold an inquest to determine whether the find constitutes Treasure and determine the facts of the case – who found what, where and when.</td>
</tr>
<tr>
<td>The Crown</td>
<td>Reference to the Crown in relation to the Treasure Act 1996 refer to the ruling monarch. The UK is a constitutional monarchy and there remain laws that give the monarch certain rights. However, The Treasure Act 1996 gives the power to the Secretary of State for the Department of Digital, Culture, Media and Sport on behalf of the Crown to disclaim title to treasure in the event a museum does not wish to acquire the object.</td>
</tr>
<tr>
<td>Crown Prosecution Service</td>
<td>The Crown Prosecution Service prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. While a public agency, it operates independently of the government. Its main responsibilities include providing legal advice to police and other investigative agencies, to decide whether criminal charges should be brought against a suspect following an investigation and to conduct prosecutions against suspects. More information can be found on the following website: <a href="https://www.cps.gov.uk/">https://www.cps.gov.uk/</a></td>
</tr>
<tr>
<td><strong>Cultural Property Unit (&quot;CPU&quot;)</strong></td>
<td>The CPU is a part of the DCMS (see below) and has overall responsibility for policy on the prevention of illicit trafficking in cultural property.</td>
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<tr>
<td>-----------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
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| **Department of Digital, Culture, Media and Sport ("DCMS")** | A ministerial department of the UK government with responsibility for culture and sport in England, as well as some aspects of the media including broadcasting and internet. It is a government organisation headed by a minister (the Secretary of State for the DCMS), but is supported by 45 agencies and public bodies, including Arts Council England, the British Museum, and Historic England.  

More information can be found on the following website: [https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport](https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport) |
| **English Heritage Trust** | An independent charity that manages state-owned buildings, monuments and sites. |
| **Export Licencing Unit** | The Export Licencing Unit at Arts Council administers and issues export licences that are required for cultural goods on behalf of the Secretary of State for DCMS.  

[https://www.artscouncil.org.uk/export-controls/export-licensing](https://www.artscouncil.org.uk/export-controls/export-licensing) |
| **Franchisee of the Crown** | Over 100s of years, the monarch has granted franchises of treasure trove to various individuals and bodies (although none have been made in recent times): that is, the monarch has granted rights of ownership over objects deemed to be treasure trove found within a certain geographical area. The principal bodies that hold treasure trove franchises are believed to be the Duchy of Lancaster, the Duchy of Cornwall and the Corporation of London; the City of Bristol may hold a treasure trove franchise. These rights have been retained under the Treasure Act 1996.  

For further information, please see the Treasure Act Code of Practice.\(^{154}\) |
| **Her Majesty's Revenue and Customs ("HMRC")** | HMRC is a non-ministerial department of the UK Government and is responsible for the administration of the tax system, including customs duties at the border.  

(A non-ministerial department is a government department over which direct political oversight has been deemed unnecessary or inappropriate. This is to protect them from political interference and they are generally headed by senior civil servants, and not a government minister).  

Further information on HMRC can be found on the government's website here: [https://www.gov.uk/government/organisations/hm-revenue-customs/about](https://www.gov.uk/government/organisations/hm-revenue-customs/about) |

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Historic England is an executive non-departmental public body of the UK government and is largely funded by the DCMS (see above). Its role is to protect the historical environment of England by preserving and listing historic buildings, ancient monuments and advising central and local government.

Historic Buildings and Monuments Commission for England

The Historic Buildings and Monuments Commission for England has direct responsibility for the work of Historic England, as well as overall responsibility for the National Heritage Collection which is managed by English Heritage Trust on its behalf.

It is formed of a maximum of 17 individuals, who are appointed by the Secretary of State for the Department for Digital, Culture, Media and Sport for their skill or professional standing in one or more area of expertise.

More information can be found here: https://historicengland.org.uk/about/who-we-are/commission/

House of Commons

The House of Commons is the lower house of the Parliament of the UK, and is an elected body consisting of 650 members known as Members of Parliament (MPs). See further Appendix 1 – The English Legal System.

House of Lords

The House of Lords is the upper house of the Parliament of the UK, and is independent from the elected House of Commons. It is made up of around 800 appointed members – its role is to scrutinise bills (proposed legislation) that have been approved by the House of Commons and can review / suggest amendments but it cannot prevent bills being passed into law except in certain limited circumstances. See further Appendix 1 – The English Legal System.

Metropolitan Police Arts and Antiques Unit

A small dedicated police unit operating in London at the Metropolitan Police, which specialises in investigating crimes relating to the burglary of art and antiques, international cultural property theft, fraud and money laundering.

National Crime Agency

The National Crime Agency is a national law enforcement agency in the United Kingdom, and is a non-ministerial government department. It is the lead agency against organised crime, including human, weapon and drug trafficking; cybercrime; economic crime that goes beyond regional / international borders.

Secretary of State for the Department of Digital, Culture, Media and Sport

DCMS is headed by the Secretary of State for the DCMS, who is a minister in the UK government and is Member of Parliament appointed by the Prime Minister to the position.
<table>
<thead>
<tr>
<th>Statutory Instruments</th>
<th>Statutory instruments in the UK are a form of delegated legislation, of which the power to order has been granted to a minister by an Act of Parliament (legislation). Most statutory instruments are subject to one or two forms of control by Parliament, depending on what is specified in the Act of Parliament.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treasure Trove</td>
<td>Prior to the Treasure Act 1996, only the common law of treasure trove existed as legal protection afforded to antiquities found on land in England, Wales and Northern Ireland. Under the common law of treasure trove there was a requirement that finds of objects made of gold or silver were reported to the coroner. Before an object could be declared treasure trove and be the property of the Crown it had to pass three tests: it had to be made substantially of gold or silver, it had to have been deliberately hidden with the intention of recovery, and its owner or his heirs had to be unknown. In practice national and local museums had the opportunity to acquire finds of treasure trove. If a museum chose to acquire the find, the lawful finder normally received the full market value.</td>
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