

These notes refer to the Dealing in Cultural Objects (Offences) Act 2003, which received Royal Assent on 30 October 2003

DEALING IN CULTURAL OBJECTS (OFFENCES) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes refer to the Dealing in Cultural Objects (Offences) Act 2003, which received Royal Assent on 30 October 2003. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Culture, Media and Sport Committee of the House of Commons reported on *Cultural Property: Return and Illicit Trade* in July 2000 (TSO 0-10-251200-0) and recommended that the criminal law of the United Kingdom (UK) should be changed to include a criminal offence of trading in cultural property in designated categories from designated countries which had been stolen, illegally excavated or illegally exported from those countries. The Secretary of State for Culture, Media and Sport established the Ministerial Advisory Panel on the Illicit Trade in Cultural Objects (ITAP) in May 2000 under the Chairmanship of Norman Palmer, Barrister and Professor of Commercial Law at University College London, to advise him on the recommendations of the Select Committee. ITAP had the following terms of reference:

- to consider the nature and extent of the illicit international trade in art and antiquities, and the extent to which the UK is involved in this;
- to consider how most effectively, both through legislative and non legislative means, the UK can play its part in preventing and prohibiting this illicit trade, and to advise the Government accordingly.

4. ITAP reported in December 2000 and made a number of recommendations. Included in its report was the recommendation that a new criminal offence be created

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in the following terms:

“We propose that, to the extent it is not covered by existing criminal law, it be a criminal offence dishonestly to import, deal in, or be in possession of any cultural object, knowing or believing that the object was stolen, illegally excavated, or removed from any monument or wreck contrary to local law”.

5. The Government accepted this recommendation and indicated that it was committed to introduce a new criminal offence of trading in illegally removed cultural objects as part of a package of measures to combat the international illicit trade in art and antiquities (*The Historic Environment: A Force for our Future* (Department for Culture, Media and Sport/Department of Transport, Local Government and the Regions, December 2001, paragraph 4.44)).

6. ITAP also recommended that the UK should accede to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property. ITAP considered that the current state of UK law and practice would enable the UK to implement the Convention without new legislation. The Government has accepted ITAP’s recommendation and the UK acceded formally to the Convention on 31st October 2002. The Government agreed that new legislation is not required to implement the UNESCO Convention. However, it accepted that this offence would complement its treaty obligations and reinforce its implementation in the UK.

SUMMARY

7. The offence is designed to combat traffic in unlawfully removed cultural objects and, thereby, to assist in maintaining the integrity of buildings, structures and monuments (including wrecks) worldwide by removing the commercial incentive to those involved in the looting of such sites. As such it will go further than the protection of proprietary interests under the Theft Act 1968 (c.60) and will cover objects, which, although not stolen, have been illicitly excavated or removed from a monument. The offence will apply irrespective of the place where the cultural object was illicitly excavated or removed and thus will apply equally to objects illegally excavated or removed in the UK and objects illegally excavated or removed outside the UK.

8. A person will be guilty of the offence if he deals in a cultural object that is tainted knowing or believing it to be tainted. For these purposes, a person deals in a tainted cultural object if he-

(a) acquires or disposes of it,

(b) imports or exports it,

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(c) agrees with another to do (a) or (b),

(d) makes arrangements to do (a) or (b).

9. A cultural object is an object of historical, architectural or archaeological interest and it is tainted if it is removed from a building, structure or monument of historical, architectural or archaeological interest or it is excavated, provided the removal or excavation constituted a criminal offence at the time it was done.

10. It will be necessary for the prosecution to prove, that a person-

- knew or believed that the object was tainted, and
- acted dishonestly in his acquisition, disposal, import or export of the object.

11. The offence does not impose an import or export restriction on the trade in cultural objects. The variety of objects defined as cultural objects will be so wide that such a prohibition would be unworkable for users, administrators and HM Customs. In addition, such a wide prohibition would constitute a restraint on trade, which is contrary to EC law. The offence will apply only to persons who dishonestly import or export a cultural object knowing or believing that the object is tainted.

12. Provision is also made for:

- search and seizure powers for HM Customs and Excise;
- the liability of officers of bodies corporate.

COMMENTARY ON SECTIONS

Section 1: Offence of dealing in tainted cultural objects

13. *Subsection (1)* makes it an offence for a person dishonestly to deal in a cultural object that is 'tainted' knowing or believing it to be tainted (the *Section 1* offence). *Sections 2* and *3* inform *subsection (1)* by providing a definition of 'cultural object' (paragraph 17) describing the circumstances in which a cultural object may be 'tainted' (paragraphs 18 to 25) and providing a definition of 'deal in' (paragraph 26). The test in *subsection (1)* is a high one. The prosecution must show, both, that the person knew or believed the cultural object to be tainted and that his dealing in it was dishonest.

14. The effect of *subsection (2)* is that the prosecution will not need to prove that

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a person knows or believes an object to be a cultural object.

15. The offence will be triable either way. Under *subsection (3)(a)* a person who is found guilty of an offence under the Act is liable on conviction in the crown court to a prison term not exceeding seven years or a fine (or both).

16. Under *subsection (3)(b)* a person who is found guilty of an offence under the Act is liable on conviction in a magistrate's court to a prison term not exceeding six months or a fine not exceeding the statutory maximum (currently £5,000) (or both).

Section 2: Meaning of “tainted cultural object”

17. *Subsection (1)* defines “cultural object” as an object of historical, architectural or archaeological interest. This is a wide definition and 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.

18. *Subsection (2)* specifies the circumstances in which a cultural object will become tainted. This will narrow the types of cultural object covered by the Act by requiring that a link exists between the cultural object and the place from which it was illegally removed. An object will only become tainted in three circumstances:

- if it is excavated;
- if at any time it formed part of a building or structure of historical, architectural or archaeological interest and is removed from that building or structure;
- if it is removed from a monument.

In each case the excavation or removal of the object must constitute an offence. This means that where an object is excavated and in the circumstances the excavation constituted a theft, the *Section 1* offence could be triggered. Thus objects, such as artefactual deposits, which have no relation to a defined area such as a structure, work or excavation, could be tainted objects.

19. Buildings and structures of historical, architectural or archaeological interest may take different forms and could cover structures as diverse as castles and cathedrals to pubs and village pumps.

20. Monuments are defined at *subsection (5)* to mean 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.

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21. This provides a wide definition of monument and will cover a range of sites of historical, architectural or historical interest. A work, for example, may include surface traces or contours of structural remains, such as a prehistoric hill-fort, a burial cairn, field system or a deserted medieval village; an excavation may refer to any site under archaeological investigation, including areas containing such artefact-rich deposits as votive offerings, cemeteries and graves, production sites, battlefields or encampments.

22. A building, structure or work could be above or below the land (*subsection (7)(a)*), and a vessel, or aircraft etc. could be above or below water (*subsection (7)(b)*). The definition of monument at *subsection (5)(b)* or *(c)* covers the removal of, for example, a structure or vessel from the site which comprises the structure or vessel.

23. *Subsection (4)(a)* provides that as regards a building or structure, an object will only become tainted if it has formed part of the building or structure of historical, architectural or archaeological interest and it has been removed from that building or structure. By virtue of *subsection (2)(b)* the removal must constitute an offence at the time it was done. This means that the illegal detachment or amputation of structural, architectural or ornamental elements of a building or structure will be tainted, but chairs and tables or works of art hung in a building, for example, will not become tainted if they are illegally removed even though the building itself may be of historical, architectural or archaeological interest.

24. *Subsection (4)(b)* provides that as regards all other types of monument, an object will become tainted if it is simply removed from a monument of historical, architectural or archaeological interest and the removal constituted an offence at the time it was done. This means that the illegal removal of pottery fragments or coins from an archaeological site as defined under *subsection (5)(b)* will taint those objects.

25. The effect of *subsection (3)* is that the illegal excavation or removal could take place inside or outside the UK. So, for example, illegal removal from a monument in China could trigger the *Section 1* offence. In addition, *subsection (3)(b)* provides that it will not matter whose law is contravened, provided an offence has been committed. This provision is particularly relevant to wrecks in international waters. If a cultural object is removed from a wreck in international waters off Egypt, for example, that monument may not be protected by the criminal law of Egypt. If, however, the object's removal is an offence under the UK criminal law, or under the law of any other country asserting jurisdiction over the wreck, e.g. the country whose flag the wreck was flying, a contravention of that law will be sufficient to trigger the *Section 1* offence.

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Section 3: Meaning of “deals in”

26. *Subsection (1)* defines “deals in” as:

- (a) the act of acquiring, disposing of, importing or exporting,
- (b) agreeing with another person to do any of those acts in (a), or
- (c) making arrangements by which another person does the above or agreeing with a third person to do such an act.

27. The Act does not impose an import or export prohibition on tainted cultural objects. *Subsection (1)(a)* simply indicates the activities which may constitute dishonest dealing in a tainted object.

28. Although many agreements regarding dishonest dealing in an object will be covered by the law of conspiracy, *subsection (1)(b)* ensures that where, for example A and B make an agreement to acquire a tainted object and B is an innocent party, A can still be prosecuted for the *Section 1* offence. *Subsections (1)(b)* and *(4)*, when read together ensure that for the purposes of prosecuting A it does not matter whether the acquisition is made abroad so long as the agreement is made in the UK.

29. *Subsection (1)(c)* applies in a similar way to arrangements made in the UK.

Section 4: Search, Seizure and Retention Powers

30. Although the Act does not impose an import or export restriction on tainted cultural objects, *section 4* provides Her Majesty’s Customs and Excise with necessary powers of enforcement where an offence involves the importation or exportation of a tainted cultural object.

Section 5: Offences by bodies corporate

31. Where an offence is committed by a body corporate and a director, manager, secretary etc. or a person purporting to act in such capacity is proved to have consented or connived at or caused by neglect the commission of the offence, that person is guilty of the offence as well as the body corporate. Where the affairs of a body corporate are managed by its members the same will apply to the acts and defaults of a member in connection with his functions of management.

Section 6: Short title, commencement and extent

32. *Subsection (3)* provides that the Act does not extend to Scotland. The reason for this is that the subject matter of the Act is devolved. The Act extends to

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England and Wales and to Northern Ireland.

COMMENCEMENT

33. The Act comes into force two months after it is passed (*Section 6(2)*).

HANSARD REFERENCES

Stage	Date	Hansard reference
House of Commons		
Introduction	11 December 2002	Vol 396 Col 287
Second Reading	4 April 2003	Vol 402 Cols 1219-1238
Committee	15 May 2003	Hansard Standing Committee F
Report and Third Reading	4 July 2003	Vol 408 Cols 648-670
House of Lords		
Introduction	7 July 2003	Vol 651 Col 12
Second reading	12 September 2003	Vol 652 Cols 543-561
Committee	6 October 2003	Vol 653 Col 22
Report	6 October 2003	Vol 653 Col 22
Third Reading	10 October 2003	Vol 653 Cols 545-547

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House of Lords Hansard Vol 654 Col 375

House of Commons Hansard Vol 412 Col 415