

Return of Cultural Objects Regulations 1994

Made
Coming into force

1st March 1994
2nd March 1994

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the return of cultural objects unlawfully removed from the territory of a member State;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 2(2) of and paragraph 2(2) of Schedule 2 to that Act;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by section 2(2) of that Act and of all other powers enabling him in that behalf hereby makes the following Regulations

Citation, commencement and extent

1—(1) These Regulations may be cited as the Return of Cultural Objects Regulations 1994.

(2) These Regulations shall come into force on the day after the day on which they are made.

(3) These Regulations apply only to cultural objects unlawfully removed from the territory of a member State on or after 1st January 1993.

(4) These Regulations extend to Northern Ireland.

Interpretation

2—(1) In these Regulations “the Directive” means the Council Directive on the return of cultural objects unlawfully removed from the territory of a member State (No 93/7/EEC) as amended by the Council Directive No 96/100/EC and Directive 2001/38/EC of the European Parliament and of the Council.

(2) Expressions used in these Regulations and in the Directive have the same meaning as in the Directive and accordingly expressions to which a meaning is assigned by Article 1 of the Directive have that meaning.

(3) The financial thresholds set out in the Annex to the Directive are set out . . . in the Schedule to these Regulations and for the purposes of converting the financial thresholds into United Kingdom currency the values expressed in euro in the Schedule shall be converted at the rate of exchange on 31 December 2001 published in the Official Journal of the European Communities.

(4) In these Regulations “the competent court” means—

- (a) in England and Wales, the High Court;
- (b) in Scotland, the Court of Session; and
- (c) in Northern Ireland, the High Court.

Investigation by Secretary of State etc

3—(1) Subject to paragraph (2) below, upon application by a member State, the Secretary of State—

(a) shall seek a specified cultural object which has been unlawfully removed from its territory; and

(b) shall take steps to identify any possessor or holder.

(2) The Secretary of State is not under any duty by virtue of paragraph (1) above unless the application includes all information needed to facilitate the search and, in particular, information with reference to the actual or presumed location of the object.

(3) The Secretary of State shall notify the member State concerned, where a cultural object is found in the United Kingdom (whether as the result of a search under paragraph (1) above or not) and there are reasonable grounds for believing that it has been unlawfully removed from the territory of that State.

(4) Subject to paragraph (5) below, the Secretary of State—

(a) shall take steps to enable the competent authorities of the member State concerned to check that the object in question is a cultural object;

(b) shall take any necessary measures, in cooperation with the member State concerned, for the physical preservation of an object which appears as a result of such a check to be a cultural object;

(c) shall prevent, by the necessary interim measures, any action to evade the return procedure set out in these Regulations.

(5) If the check for which paragraph (4)(a) above provides is not made within two months of the notification under paragraph (3) above, the Secretary of State shall cease to be under any duty by virtue of paragraph (4) above.

(6) Expenses incurred in taking necessary measures for the preservation of a cultural object shall be borne by the member State which made the application under paragraph (1) above as respects the object or (where no such application is made) which, having been notified under paragraph (3) above as respects the object, seeks its return (whether by proceedings under Regulation 6 below or otherwise).

Power of court to make orders ancillary to Regulation 3

4—(1) The competent court shall have power, on an application made by the Secretary of State for the purpose of performing his functions under Regulation 3 above, to make such order as it considers appropriate—

(a) to enable a check to be made under Regulation 3(4)(a) above;

(b) for the physical preservation of an object which appears as a result of such a check to be a cultural object;

(c) to prevent any such action as is mentioned in Regulation 3(4)(c) above.

(2) An application for an order under this Regulation—

(a) may be made ex parte; and

(b) shall be supported by an affidavit.

(3) Without prejudice to the generality of paragraph (1) above, the power to make an order under that paragraph includes power to authorise the Secretary of State's officer—

(a) to take possession of the object;

(b) to hand the object over to the custody of a person or institution specified in the order.

Powers of entry and search

5—(1) If on an application made by the Secretary of State for the purpose of performing his functions under Regulation 3 above the competent court—

(a) is satisfied that there are reasonable grounds for believing—

(i) that a cultural object has been unlawfully removed from the territory of a member State; and

(ii) that it is on premises specified in the application; and

(b) is satisfied that any of the conditions specified in paragraph (2) below applies,

the court may make an order authorising an officer of the Secretary of State to enter and search the premises and such an order may authorise other persons to accompany that officer.

(2) The conditions mentioned in paragraph (1)(b) above are that admission to the premises has been refused, or that the case is one of urgency, or that an application for admission to the premises would defeat the object of the entry.

(3) An application for an order under this Regulation—

(a) may be made ex parte;

(b) shall be supported by an affidavit; and

(c) shall specify the premises which it is desired to enter and search, and identify, so far as practicable, the cultural object to be sought.

(4) An order made under this Regulation shall authorise an entry on one occasion only and—

(a) shall specify—

(i) the name of the officer and of any other person authorised to accompany him;

(ii) the date on which it is made;

(iii) that it is made under this Regulation; and

(iv) the premises to be searched; and

(b) shall identify, so far as practicable, the cultural object to be sought.

(5) Entry and search under an order made under this Regulation must be within one month from the date of the order and must be at a reasonable hour unless it

appears to the officer executing it that the object of the entry may be defeated on an entry at a reasonable hour.

(6) Where the officer seeks to execute an order made under this Regulation he shall, if requested by the occupier or other person appearing to him to be in charge of the premises, identify himself and produce the order to him.

(7) A search under an order made under this Regulation may only be a search to the extent required for the purpose for which the order was made.

Member State's right to take proceedings

6—(1) Subject to the provisions of this Regulation, a member State shall have a right of action against the possessor or, failing him, the holder, for the return of a cultural object which has been unlawfully removed from its territory.

(2) Proceedings under this Regulation may not be brought if removal from the national territory of the member State is no longer unlawful at the time when they are to be initiated.

(3) Proceedings under this Regulation shall be brought in the competent court.

(4) The document initiating the proceedings must be accompanied by—

(a) a document describing the object covered by the request and stating that it is a cultural object;

(b) a declaration by the competent authorities of the member State that the object has been unlawfully removed from its territory.

(5) Subject to paragraph (6) below, the court shall order the return of the object where it finds it—

(a) to be the cultural object covered by the request; and

(b) to have been removed unlawfully from the national territory of the member State.

(6) The court shall not make an order for the return of the object if it is satisfied—

(a) that the proceedings were brought more than one year after the member State became aware of the location of the cultural object and of the identity of its possessor or holder; or

(b) that they were brought after the expiry of the special limitation period.

(7) The special limitation period in the case—

(a) of objects forming part of public collections, referred to in Article 1(1) of the Directive; and

(b) of ecclesiastical goods subject to special protection arrangements under the national law of the member State,

is the period of 75 years commencing with the date on which the object was unlawfully removed from the territory of the requesting member State.

(8) In any other case the special limitation period is the period of 30 years commencing with that date.

(9) The rules set out in the preceding three paragraphs have effect in place of any other rule as to the limitation of actions.

Order for compensation

7—(1) Subject to paragraph (2) below, where return of the object is ordered, the competent court shall order the requesting member State to pay the possessor such compensation as the court deems fair according to the circumstances of the case.

(2) The court shall not order the payment of compensation unless it is satisfied that the possessor exercised due care and attention in acquiring the object.

(3) In the application of paragraph (2) above where there has been a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object upon the donation or succession.

Expenses of implementing an order for return

8. Expenses incurred in implementing an order under these Regulations for the return of a cultural object shall be borne by the requesting member State.

SCHEDULE FINANCIAL THRESHOLDS

Regulation 2(3)

VALUE: Whatever the value

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 8 (Incunabula and manuscripts)
- 11 (Archives)

€15,000.00

- 4 (Mosaics and drawings)
- 5 (Engravings)
- 7 (Photographs)
- 10 (Printed maps)

€30,000.00

- 3A (Water colours, gouaches and pastels)]

€50,000.00

- 6 (Statuary)
- 9 (Books)
- 12 (Collections)
- 13 (Means of transport)
- 14 (Any other item)

€150,000.00

- 3 (Pictures)

Categories of objects are numbered in this Schedule in accordance with the numbering in the Annex to the Directive.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations implement Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member State (OJ No. L74/74, 27th March 1993).

The Regulations apply to certain cultural objects unlawfully removed from the territory of a member State on or after 1st January 1993. To be covered by the Regulations cultural objects must be national treasures of artistic, historic or archaeological value and also either belong to one of the categories listed in the Directive (with in some cases a monetary value above certain financial thresholds) or be on the inventory of a public collection or ecclesiastical institution. The financial thresholds applicable to the various categories of cultural objects are set out in sterling in the Schedule to the Regulations.

Regulation 3 provides that the Secretary of State shall, upon application by a member State, seek specified cultural objects. Upon notification by the Secretary of State that a cultural object has been found in the United Kingdom the member State concerned has two months in which to check that the object in question is a cultural object covered by the Regulations. If the member State concerned does not make the check within two months the Secretary of State ceases to be under any duty to preserve the object.

Regulations 4 and 5 enable the Secretary of State to apply for court orders so that the object can be located and preserved in accordance with the requirements of Regulation 3. The court is, in particular, given power to authorise the taking into custody of an object and the entry and search of premises.

Regulation 6 confers a right of action on a member State to recover cultural objects unlawfully removed from its territory. A member State loses its right of action if it fails to commence proceedings within a year of becoming aware of the location of the object and the identity of its possessor or holder. The right is also lost if proceedings are not commenced within 30 years of the date of unlawful removal (or 75 years in the case of objects from public collections or certain ecclesiastical goods).

Regulation 7 provides that where return of an object is ordered the court shall order the payment of fair compensation by the requesting member State to a possessor who exercised due care and attention in acquiring the object.

Expenses incurred in preserving a cultural object under Regulation 3 or in returning a cultural object consequent on an order under Regulation 6 are to be borne by the requesting member State.

The court competent to make orders under the Regulations is the High Court in England, Wales and Northern Ireland and the Court of Session in Scotland.