



STATUTORY INSTRUMENTS.

S.I. No. 53 of 2016



EUROPEAN UNION (RETURN OF FOREIGN CULTURAL OBJECTS)
REGULATIONS 2016

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I, HEATHER HUMPHREYS, Minister for Arts, Heritage and the Gaeltacht, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes of giving effect to Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Return of Foreign Cultural Objects) Regulations 2016.

Interpretation

2. (1) In these Regulations—

“central authority in the State” means the Minister or any person designated as a central authority under Regulation 5;

“Commission” means European Commission;

“Court” means High Court;

“Directive” means Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014¹;

“foreign cultural object” means an object which is classified or defined by another Member State under its legislation, 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;

“holder” means the person physically holding a foreign cultural object for third parties;

“Minister” means Minister for Arts, Heritage and the Gaeltacht;

“national cultural object” means—

(a) a cultural object within the meaning of section 42 of the National Cultural Institutions Act 1997 (No. 11 of 1997), or

(b) a cultural object entered in the register of cultural objects established and maintained under section 48 of that Act;

¹OJ No. L 159, 28.05.2014, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 9th February, 2016.*

“possessor” means the person physically holding a foreign cultural object on his own account;

“public collection” means a collection of an institution specified in the Second Schedule to the National Cultural Institutions Act 1997;

“requesting Member State” means the Member State from whose territory a foreign cultural object has been unlawfully removed;

“unlawfully removed”, in relation to a foreign cultural object, means-

- (a) removed from the territory of the requesting Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EC) No 116/2009 of 18 December 2008², or
- (b) not returned to the requesting Member State at the end of a period of lawful temporary removal from that Member State or a breach of a condition governing such temporary removal.

(2) A word or expression which is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

National cultural objects

3. National cultural objects are classified as national treasures possessing artistic, historic or archaeological value.

Central authority in State

4. The Minister is appointed to be the central authority in the State to carry out the tasks provided for in the Directive and in these Regulations.

Designation of other central authority in State

5. (1) Notwithstanding Regulation 4, the Minister may designate any other person, for such period as the Minister sees fit and specifies in the designation, also to be a central authority in the State, subject to any limitations or conditions that he or she decides.

(2) Where the Minister makes or revokes a designation under this Regulation, the designation or revocation shall be published in *Iris Oifigiúil*, and notice of this shall be published on the website of the Department of Arts, Heritage and the Gaeltacht and in at least 1 daily newspaper published and circulating in the State.

Search for foreign cultural object unlawfully removed

6. (1) Subject to paragraph (2), upon application by a requesting Member State, the central authority in the State—

- (a) shall seek any foreign cultural object, specified by the requesting Member State, which has been unlawfully removed from its territory, and

²OJ No. L 39 10.2.2009, p.1.

(b) shall take steps to identify the possessor or holder of the object.

(2) An application made under paragraph (1) shall include all information needed to facilitate the search, and in particular, information as to the actual or presumed location of the object.

(3) The central authority in the State shall notify the competent central authority of the other Member State concerned where a foreign cultural object is found in the State (whether as the result of a search under this Regulation or not) and there are reasonable grounds for believing that it has been unlawfully removed from the territory of that Member State.

(4) The central authority in the State shall—

(a) take steps to enable the central authority of the other Member State concerned to check that the object in question is a foreign cultural object,

(b) subject to paragraph (6), take any necessary measures, in cooperation with the competent central authority of the other Member State concerned, for the physical preservation of that object, and

(c) take such steps as appear to the central authority in the State to be necessary to prevent any action to evade the procedures for the return of the object concerned.

(5) The central authority in the State shall be under no obligation to take any further action under paragraph (4)(b) or (c) if the check provided for in paragraph (4)(a) is not made within 6 months of the notification under paragraph (3).

(6) Costs incurred in taking necessary measures for the preservation of a foreign cultural object shall be borne by the requesting Member State which made the application under this Regulation.

Application to Court — check and preservation of foreign cultural object

7. (1) The Court may, on an application made by the central authority in the State for the purpose of performing its functions under Regulation 6, make such order as it considers appropriate—

(a) to enable a check to be made under Regulation 6(4)(a),

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

(c) to prevent any such action as is mentioned in Regulation 6(4)(c).

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

(a) may be *ex parte*, and

(b) shall be supported by an affidavit.

(3) Without prejudice to the generality of paragraph (1), the power to make an order under that paragraph includes power to authorise any one or more of the following, namely, any officer of the central authority in the State, the Director of the National Museum of Ireland, the Director of the National Library of Ireland or the Director of the National Gallery of Ireland or any person employed in those institutions—

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

Search warrant

8. (1) If, on any application made by the central authority in the State for the purposes of performing its functions under Regulation 6, the Court—

- (a) is satisfied that there are reasonable grounds for believing—
 - (i) that a foreign cultural object has been unlawfully removed from the territory of another Member State, and
 - (ii) that it is on premises specified in the application, and
- (b) is satisfied that a condition specified in paragraph (2) applies,

the Court may make an order authorising any one or more of the following, namely, any officer of the central authority in the State, the Director of the National Museum of Ireland, the Director of the National Library of Ireland or the Director of the National Gallery of Ireland or any person employed in those institutions to enter and search the premises and such an order may authorise any one or more members of the Garda Síochána to accompany such person or persons.

(2) The conditions mentioned in paragraph (1)(b) are that admission to the premises has been refused or that any request 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 foreign cultural object to be sought.
- (4) An order made under this Regulation shall authorise an entry and shall—
 - (a) specify—
 - (i) the names of the persons so authorised,

- (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) identify, so far as is practicable, the foreign cultural object to be sought.

(5) Entry and search under an order made under this Regulation shall be within one month from the date of the order at such time or times sanctioned in the order.

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

Application to Court — return of foreign cultural object

9. (1) Subject to this Regulation, a requesting Member State may initiate, before the Court, proceedings against the possessor or, failing him or her, the holder, for the return of a foreign cultural object which has been unlawfully removed from its territory.

(2) Proceedings under this Regulation may not be brought if the removal of the foreign cultural object from the territory of the requesting Member State was lawful at the time when those proceedings are to be initiated.

(3) When the central authority of a requesting Member State informs the central authority in the State that proceedings have been initiated with the aim of securing the return of the object in question, the central authority in the State shall forthwith inform the central authorities of the other Member States.

(4) The exchange of information shall be conducted as set out in Article 7 of the Directive.

(5) Proceedings under this Regulation shall be brought in a summary manner.

(6) There shall be exhibited to the affidavit grounding the originating notice of motion in proceedings under this Regulation—

- (a) a document describing the object covered by the request and stating that it is a foreign cultural object, and
- (b) a declaration by the competent central authority of the requesting Member State that the object has been removed unlawfully from the national territory of the Member State.

(7) Subject to paragraphs (8) and (9) and Regulation 14, the Court shall order the return of the object where it finds the object—

- (a) to be a foreign cultural object,
- (b) to be the foreign cultural object to which the request relates, and
- (c) to have been removed unlawfully from the national territory of the requesting Member State.

(8) Proceedings shall not be brought under this Regulation—

- (a) more than 3 years after the competent central authority of the requesting Member State became aware of the location of the foreign cultural object and of the identity of its possessor or holder, or
- (b) more than 30 years after the object was unlawfully removed from the territory of the requesting Member State.

(9) Notwithstanding paragraph (8), proceedings in respect of objects forming part of a public collection and objects belonging to an inventory of ecclesiastical or other religious institutions shall be subject to a time-limit of 75 years.

(10) Paragraphs (8) and (9) shall have effect in place of any other enactment as to the limitation of actions.

(11) The requesting Member State shall satisfy the Court as to the date on which it became aware of the location of a foreign cultural object for the purposes of paragraph (8).

Compensation to possessor of foreign cultural object

10. (1) Where the return of a foreign cultural object is ordered by the Court, the Court shall make an order for the requesting Member State to pay the possessor of that object such compensation as the Court considers fair according to the circumstances of the case, provided that the possessor demonstrates that he or she exercised due care and attention in acquiring the object.

(2) In determining whether the possessor exercised due care and attention, consideration shall be given by the Court to all the circumstances of the acquisition, in particular, the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen foreign cultural objects and any relevant information which he or she could reasonably have obtained and whether he or she took any step which a reasonable person would have taken in the circumstances.

(3) In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he or she acquired the object by those means.

Expenses incurred in implementing decision to return foreign cultural object

11. Any expenses incurred in implementing an order under Regulation 9 for the return of a foreign cultural object shall be borne by the requesting Member State.

Caveat to Regulations 10 and 11

12. Payment of the compensation referred to in Regulation 10 or the expenses referred to in Regulation 11 shall be without prejudice to a requesting Member State's right to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

Ownership of returned foreign cultural object governed by law of requesting Member State

13. Ownership of a foreign cultural object after its return shall be governed by the law of the requesting Member State concerned.

Central authority in State acting as intermediary

14. The central authority in the State may act as an intermediary between the possessor or the holder of a foreign cultural object and the requesting Member State concerned and may, in appropriate cases, without prejudice to Regulation 9, facilitate the implementation of an arbitration procedure under the Arbitration Act 2010 (No. 1 of 2010), where the requesting Member State and the possessor or holder approve of such action.

Regulations do not prejudice proceedings brought outside State

15. These Regulations are without prejudice to any civil or criminal proceedings that may be brought, under the national laws of other Member States, by the requesting Member State or the owner of a foreign cultural object that has been stolen.

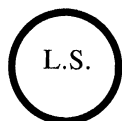
Application

16. These Regulations apply to cultural objects unlawfully removed from the territory of another Member State on or after 1 January 1993.

Revocations

17. The following are revoked:

- (a) the European Communities (Return of Cultural Objects) Regulations 1994 (S.I. No. 182 of 1994);
- (b) the European Communities (Return of Cultural Objects) (Amendment) Regulations 1998 (S.I. No. 24 of 1998).



GIVEN under my Official Seal,
3 February 2016.

HEATHER HUMPHREYS,
Minister for Arts, Heritage and the Gaeltacht.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations implement Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast). Council Directive 93/7/EEC has been substantially amended and it was recast in the interests of clarity. These Regulations apply to cultural objects unlawfully removed from the territory of another Member State on or after 1 January 1993 (Regulation 16).

Regulation 2 contains the interpretation of various terms in the Regulations.

Regulation 4 provides that the Minister for Arts, Heritage and the Gaeltacht is appointed to carry out the tasks provided for in the Directive and the Regulations.

Regulation 5 provides that the Minister for Arts, Heritage and the Gaeltacht may designate another person to be a central authority to carry out the tasks provided for in the Directive and Regulation.

Regulations 6 and 7 enable the Minister to apply for court orders so that a foreign cultural object can be located and preserved. In addition, Regulation 8 deals with entry to and search of premises.

Regulation 9 confers a right of action on a Member State to recover a foreign cultural object which has been unlawfully removed from the territory of the Member State and sets out the associated procedure. A Member State loses its right of action if it fails to commence proceedings within 3 years of becoming aware of the location of the relevant object and the identity of its possessor or holder. The right is also lost if proceedings are not commenced within 30 years of the unlawful removal (or 75 years in the case of objects from public collections or certain ecclesiastical goods).

Regulation 10 deals with the payment of compensation in certain circumstances.

Regulation 11 provides that expenses incurred in implementing an order under Regulation 9 are to be borne by the requesting Member State.

Regulation 13 provides that ownership of a returned foreign cultural object (after it is returned) is to be governed by the law of the requesting Member State.

Regulation 14 provides that the Minister as central authority can act as an intermediary between the parties (subject to their consent) and facilitate an arbitration procedure under the Arbitration Act 2010.

Regulation 15 provides that these Regulations are without prejudice to any proceedings outside the State.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05

