

Title: Ratification of 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and accession to its two Protocols (of 1954 and 1999) RPC Reference No: Lead department or agency: DCMS Other departments or agencies:	Impact Assessment (IA)
	Date: 07/09/16
	Stage: Final (Fast track)
	Source of intervention: Domestic
	Type of measure: Final (Fast Track)
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Summary: Intervention and Options	RPC Opinion: EANDCB VALIDATED
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-0.22	-0.05	0.0	No	Qualifying Regulatory Provision

What is the problem under consideration? Why is government intervention necessary?

The Government has announced its intention to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and accede to its two Protocols (of 1954 and 1999). For the UK to meet the obligations of the Convention and thus become a party to it, new legislation is required. The Convention requires the creation of new criminal offences for serious violations of the Convention; the suppression of trade in, and return of, cultural property unlawfully exported from occupied territory; protection of the blue shield emblem; and immunity from seizure for certain cultural property.

What are the policy objectives and the intended effects?

The overall policy objective is to introduce and pass the Cultural Property (Armed Conflicts) Bill and thus allow the UK to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and accede to its two Protocols (of 1954 and 1999). This is only achievable by introducing new primary legislation which creates offences designed to protect cultural property in the event of an armed conflict, including an offence of making such property the object of attack; introduces the blue shield as an emblem that signifies cultural property protected under the Convention and its two Protocols (the emblem may be voluntarily affixed to protected cultural property); creates an offence of dealing in cultural property that has been unlawfully exported from occupied territory and allows such property to be seized and returned to a competent authority in the occupied territory after the close of hostilities, where appropriate; and introduces immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between two or more other States.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing The UK Government first announced its intention to ratify the Convention and accede to its two Protocols in 2004 and in 2008 it published the draft Cultural Property (Armed Conflicts) Bill. Since then it has not proved possible to find parliamentary time to introduce the necessary legislation. The UK is the only member of the P5 UN Security Council not to have ratified the 1954 Convention.

Option 2: Introduce primary legislation (preferred option) Ratification will strengthen our commitment to the protection of our own heritage and highlight our respect for the cultural property of other nations. Ratification without introducing primary legislation would run a significant risk of the UK being in breach of its obligations under the Convention and being both exposed to international censure and subject to domestic judicial review. None of the measures proposed incur any one off or recurring costs to business.

The Department does not consider any alternative to primary legislation to be a credible option.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope? (public sector organisations)	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

 Date: 7.9.16

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.22

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.1	0.01	0.2

Description and scale of key monetised costs by 'main affected groups'

National heritage agencies and enforcement agencies will bear one-off familiarisation costs. Prosecuting/enforcement authorities may face some costs if a crime is committed but we believe the costs incurred to be low. These are not businesses but public sector organisations.

Other key non-monetised costs by 'main affected groups'

Costs to dealers in cultural property will be minimal as the legislation is unlikely to add additional burden beyond normal due diligence that they should undertake for any piece of cultural property that they wish to buy or sell. Owners/guardians of cultural property protected by the Convention may choose to affix the blue shield to their cultural property to visibly demonstrate that it is protected by the Convention. As this is voluntary, this cost will be considered as indirect.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

The main benefits are the protection of cultural property in the UK and internationally and the formalising of our armed forces' responsibilities to cultural property when operating abroad. The main beneficiaries of this are the military, owners/guardians of protected cultural property, occupied states and the general public (both within the UK and internationally). The UK would stand to benefit reputationally, both in relation to its own heritage sector and internationally as a recognised guardian of universally important cultural property. The benefits of the proposal are difficult to monetise given the large and varied number of cultural assets covered by the Convention. Furthermore, many of the benefits can only be realised in the event of an armed conflict and/or occupation, such as the livelihood of businesses, which depend on protected cultural property.

Key assumptions/sensitivities/risks

3.50

We have assumed that the UK armed forces already act in a way which would not contravene any of the offences being proposed, and that there will be a low level of offences committed under the provisions included within the legislation.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.05	Benefits: 0.0	Net: -0.05	
			-0.05

PROBLEM UNDER CONSIDERATION

The UK has a long-standing commitment to ratification, but is the only permanent member of the UN Security Council not to have yet done so. The Government of the day announced its intention to ratify the 1954 Hague Convention and accede to both its Protocols in 2004, on the 50th anniversary of the Convention. In June 2015, with the support of the Foreign Secretary and the Chancellor, the Secretary of State for Culture, Media and Sport publicly reiterated the Government's pledge to ratify the Convention and its two Protocols at the first opportunity.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) was signed at The Hague on 14 May 1954. The Convention provides for a system of general and special protection of cultural property in situations of international and non-international armed conflict.

Cultural property for this purpose is defined as movable and immovable property of great importance to the cultural heritage of every people (the full definition is rather lengthy but is set out in Article 1 of the Convention). The Convention is supplemented by two Protocols – the First Protocol was adopted at the same time as the Convention, and the Second Protocol was adopted in 1999.

Given the disproportionate effect that damage to cultural property in armed conflicts can have on local populations and on post-conflict reconciliation and stabilisation processes, as well as the potentially negative impact on the reputation of the party responsible for inflicting such damage, ratification of the treaty would serve to enhance the UK's standing internationally, and provide a stronger basis for wider UK action in preventing cultural destruction overseas.

Obligations under the Convention

Parties to the Convention are required to respect cultural property situated within their own territory as well as within the territory of other Parties, by refraining from using the cultural property, the appliances in use for its protection or its immediate surroundings for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from committing any hostile act against the cultural property. Parties are also required to take measures in peacetime to safeguard cultural property situated within their own territory in the event of armed conflict. Some measures which should be taken are identified in the Second Protocol. It is not required to make the failure to take these safeguarding measures a criminal offence.

The Convention also prescribes a distinctive emblem, the blue shield, which may be used to identify cultural property protected by the Convention. Use of the emblem is voluntary and it is the responsibility of the owner to affix the emblem to their property. States Parties are required to prevent the abuse of that emblem.

The Convention also makes provision for the transport of cultural property to receive special protection. This is aimed at the situation where a country wishes to move its national cultural treasures out of harm's way in the event of actual or potential armed conflict. The obligations on States Parties in relation to the transport of protected cultural property include an obligation to grant immunity from "capture, seizure or taking in prize" to both cultural property and the means of transport.

Obligations under the First Protocol

The First Protocol imposes a number of obligations on States Parties in relation to the protection of cultural property in occupied territories. States Parties must undertake to prevent the export of cultural property from territory occupied by it and to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. At the end of the occupation, each Party is obliged to return any cultural property in its territory that was unlawfully exported from the occupied State and refrain from retaining it as war reparations.

Obligations under the Second Protocol

The Second Protocol introduces, among other things, a new system of enhanced protection which is designed to replace the original, and generally accepted as flawed, system of special protection. It clarifies the definition of certain terms, such as "military objective" and "military necessity" and it

introduces five specific acts which need to be criminalised by State Parties. These are set out in Article 15(1) as follows:

- (a) Making cultural property under enhanced protection the object of attack;
- (b) Using cultural property under enhanced protection or its immediate surroundings in support of military action;
- (c) Extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;
- (d) Making cultural property protected under the Convention and this Protocol the object of attack;
- (e) theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

RATIONALE FOR INTERVENTION

The UK decided not to ratify the Convention when it was first drafted because, along with a number of other countries, it considered that certain terms were too imprecise and that it did not provide an effective regime for the protection of cultural property. The adoption of the Second Protocol in 1999, however, removed the concerns previously expressed by the UK over the Convention.

It is felt that ratification of the Convention will have three primary benefits for the UK:

- It will formalise the responsibilities of UK troops when operating in armed conflict overseas with regard to the protection of cultural property;
- It will provide reciprocal protection for UK cultural property in the event that we were attacked by a State party to the Convention; and
- In the current context of unprecedented cultural heritage destruction in the Middle East and North Africa region, especially in Iraq and Syria, it will ensure that the UK can act and be seen to act legitimately according to international law in response to such crises.

A copy of the Convention, Regulations and the two Protocols can be downloaded from the website of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) at: www.unesco.org.

POLICY OBJECTIVE

The overall policy objective is to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and accede to its two Protocols (of 1954 and 1999).

To achieve this, the UK must:

- introduce offences designed to protect cultural property in the event of an armed conflict. These include an offence of making such property the object of attack;
- introduce the blue shield as an emblem that signifies cultural property protected under the Convention and its two Protocols. The emblem can be affixed to protected cultural property;
- introduce a legal regime which makes it illegal to deal in cultural property unlawfully exported from occupied territory and allows such property to be seized and returned to a competent authority in the occupied territory after the close of hostilities, where appropriate; and
- introduce immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between two or more other States.

DESCRIPTION OF OPTIONS UNDER CONSIDERATION

Option 1: Do nothing

Existing domestic law is inadequate to meet the obligations of the Convention. Doing nothing means that no formal responsibilities will be put on the armed forces, and systems of cultural protection under the Convention would not be put in place. The UK will continue to be identified as the only major power (UN Security Council P5 member) not to have ratified the Convention.

Existing offences in relation to the Second Protocol offences are judged to be insufficient for the following reasons:

(a) The behaviour which article 15(1)(a) and (d) seeks to criminalise (making cultural property the object of attack) is partially covered by existing offences under section 1(1) of the Geneva Conventions Act 1957 (via Article 85(4)(d) of the First Protocol to the Geneva Conventions) and section 51 of the International Criminal Court Act 2001 (via Article 8(2)(b)(ix) of the Statute of the ICC). However, neither offence is sufficient:

(i) in neither case is the definition of the property protected sufficient to encompass attacks directed at all forms of cultural property, as defined in Article 1 of the Hague Convention;

(ii) the offences are more restricted than the offences under Article 15(1) of the Second Protocol.

(b) There is no equivalent offence for Article 15(1)(b) of the Second Protocol (using cultural property under enhanced protection in support of military action).

(c) A breach of Article 8(2)(b)(xiii) of the ICC Statute is a criminal offence under section 51 of the International Criminal Court Act 2001. This offence, though not specifically directed at cultural property would cover the behaviour criminalised under Article 15(1)(c). However, it does not apply in relation to non-international conflicts; and the jurisdiction we have taken to prosecute this offence is not sufficiently wide to meet our obligations under Article 16 of the Second Protocol.

(d) There are also a number of existing offences in domestic law which could be used to prosecute the behaviour covered by Article 15(1)(e), where the relevant acts take place within the United Kingdom, or were committed by someone subject to naval discipline or to military or air force law. Article 15(1)(e) is one of the offences for which a more limited jurisdiction is required – we would only have to establish jurisdiction over this offence where the offence is committed within the territory of the United Kingdom, or by a United Kingdom national. However, our jurisdiction to prosecute United Kingdom nationals for the existing domestic offences committed outside the United Kingdom only applies where they are subject to military discipline, or in the service of the Crown and acting (or purporting to act) in the course of their employment. This is not sufficient even to satisfy the more restricted jurisdictional requirements for this offence. For example, it would not enable the United Kingdom to prosecute a United Kingdom national for anything done as a member of a private company offering security services in another country in the context of an armed conflict.

Option 2: Introduce primary legislation

The Cultural Property (Armed Conflicts) Bill introduces a number of measures designed to allow the UK to fulfil its obligations under the Convention and its two Protocols. The Bill includes the following:

- It introduces offences (originally laid out in the Second Protocol) which are designed to protect cultural property (the Bill utilises the definition of cultural property included in the Convention) in the event of an armed conflict. These include making such property the object of attack, or its immediate surroundings, an offence.
- It introduces the blue shield, as an emblem that signifies cultural property protected under the Convention and its two Protocols. The emblem can (its use is voluntary) be affixed to protected cultural property. In addition to the emblem, DCMS will be utilising other means of signifying protected cultural property (for which no further legislation is anticipated).

- It introduces a legal regime which makes it illegal to deal in cultural property unlawfully exported from occupied territory and allows such property to be seized and returned to a competent authority in the occupied territory after the close of hostilities, where appropriate.
- It introduces immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between two or more other States.

MONETISED AND NON-MONETISED COSTS AND BENEFITS OF EACH OPTION

Option 1: Do nothing

There will be a net zero cost as this is a continuation of the current approach.

Option 2: Introduce primary legislation

COSTS

There will be one-off familiarisation costs associated with the legislation for public sector organisations and businesses (outlined on pages 7 and 9-11).

There may be annual costs associated with the measures proposed - and these costs have not been monetised as they are likely to be minimal. The groups who will be affected are:

- Dealers in cultural property
- The owners/guardians of protected cultural property

Dealers in cultural property

Familiarisation costs

We expect it to take approximately **15 minutes** for each **dealer** to read and understand the new legislation. This is because it is only Part 4 of the Bill that will directly affect dealers and the explanatory notes relating to this section are only 3 pages long. Further dealers should already be familiar with the due diligence procedures which are required by this section as it is likely they will already be undertaking them.

The British Art Market Federation (BAMF) was formed in 1996 to represent the interests of the UK's large and diverse art and antiques market in its contacts with Government. The UK Art and Antiques trade comprises of 7,850¹ businesses. We expect this to be around 95% of the businesses affected, and therefore, we assume that 8263 businesses will be affected in total. We expect it to take the same time for each **museum** to read and understand the new legislation. The Museums Association estimate there to be 2500 museums in the UK. Therefore, 10,763 businesses and museums will be affected in total.

Data from the Annual Survey of Hours and Earnings 2015² shows that the median hourly wage for employees in culture, media and sport occupations is £12.91 uplifted by 30³ per cent to cover non-labour costs £16.78.

Cost per business is:
 $£16.78 \times 0.25 = £4.20$

Total costs to all businesses are:
 $£4.20 \times 10,763 = £45,159$

Annual Costs

The legislation will create a new offence for a person to deal in cultural property knowing, or having reason to suspect, that it has been unlawfully exported from occupied territory. It will also provide that

¹ <http://tbamf.org.uk/>

² <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsocashetable2>

³ SCM Network, International Standard Cost Model, <http://www.oecd.org/gov/regulatory-policy/34227698.pdf>, page 19.

cultural property that has been unlawfully exported from occupied territory is liable to forfeiture whether or not an offence has been committed (even when a subsequent purchase has been made in good faith – provision is made for the court to make forfeiture conditional on payment of compensation).

The definition of cultural property used within this Bill, set out in Article 1 of the Hague Convention, is wide-ranging and non-exhaustive, however examples such as works of art; manuscripts, books and other objects of artistic, historical or archaeological interest, are provided, and the property must be 'of great importance to the cultural heritage of every people'. Despite this broad definition it is expected the number of cultural objects that apply to this legislation to be very low. This is because the dealing offence, introduced by Clause 17 of this Bill, only relates to cultural property unlawfully exported from occupied territories after either the occupying state or the occupied state became a party to the First or Second Protocol. The earliest date this could be is 7th August 1956, however the number of occupied territories since this time is indisputably very small, and therefore the number of important objects expected to meet this criteria is also very small when compared to the totality of cultural property which is traded in the UK.

This new legislation will have implications for both those who buy and sell cultural property such as art dealers and auction houses, and others who purchase cultural property such as museums and galleries and private collectors. They will need to satisfy themselves through due diligence checks that objects presented for sale have not been unlawfully exported from an occupied territory. We do not, however, believe that these checks will impose any significant new costs on dealers in cultural property. Dealers will not be required to conduct any further due diligence beyond that which is required under existing codes of practice and conduct. The current codes of practice and conduct are widely followed by art and antiques businesses. The Code of Practice for the Control of International Trading in Works of Art, which is intended to apply to all objects traded in the UK's fine art and antiques market, and to all persons active in that market, has been subscribed to by a number of trade associations including the British Antique Dealers Association, the Society of London Art Dealers and the Society of Fine Art Auctioneers. Compliance with this Code of Practice is a pre-requisite for any organisation or business that wishes to become a member of any of the subscribed trade associations. Furthermore, many of these national trade associations also work closely with the UK's major regional trade associations to ensure small and independent businesses follow industry standards of good practice, and as such we expect costs to be minimal to small businesses. Under the code of practice, dealers undertake not to import, export or transfer the ownership of such objects where they have reasonable cause to believe, inter alia:

- “(b) That an imported object has been acquired in or exported from its country of export in violation of that country's laws; and
- (c) That an imported object was acquired dishonestly or illegally from an official excavation site or monument or originated from an illegal, clandestine or otherwise unofficial site.”

Further, the established trade associations within the UK art and antique market have their own principles of conduct, some of which make explicit reference to the Hague Convention. For example, the Code of Conduct of the Antiquities Dealers Association contains the following provisions:

1. “The ADA subscribes to the tenets of the Hague Convention and will pay particular attention to items that may have originated from conflict zones. In these circumstances further documentation should be sought from the seller demonstrating they have been in circulation outside the conflict zone prior to conflict.”
2. “The ADA requires members to adhere to the relevant domestic and international laws that govern the markets for archaeological and ancient property and, in many respects, ADA standards go beyond the legal requirements.”
3. “Members undertake to carry out Due Diligence, as set out under this code, as far as they are able, that objects in which they trade were not stolen from excavations, architectural monuments, public institutions or private property and are lawfully on the market for sale.”

The 2003 Dealing in Cultural Objects (Offences) Act, which makes it a criminal offence to deal dishonestly in tainted cultural property from anywhere in the world, has already formalised the need for the art market to conduct due diligence in line with industry approved standards of good practice. Dealers of cultural property should already research and consider the provenance of cultural objects from any country, as outlined in the Code of Practice for the Control of International Trading in Works of

Art above. In 2008, the British Art Market Federation stated in a memorandum of evidence to the House of Commons Culture, Media and Sport Select Committee: "Auction houses and dealers routinely conduct due diligence before handling an object in order to determine to the best of their ability whether the owner has good title and, in the case of item being brought here from overseas, whether it has been exported legitimately. Such inquiries underpin the functioning of the legitimate art market." This legislation does not place any new due diligence requirements on cultural property dealers above the existing requirements.

The risk of prosecution for "acquiring" an illicitly traded item of cultural property should not have any impact on the market. A dealer does not commit an offence if, for example, they take temporary possession of a cultural object to enable them to carry out due diligence only for them to discover that it has been unlawfully exported from an occupied territory. In order to commit an offence in this context, a dealer would have to both acquire the object and do so knowing, or having reason to suspect, that it is unlawfully exported cultural property. Furthermore, the Code for Crown Prosecutors requires the prosecutor to consider whether prosecution would be in the public interest. Generally, it is unlikely to be in the public interest to discourage a person from reporting the matter where that person has acquired an object in good faith and subsequently discovers it has been or has reason to suspect it may have been unlawfully exported.

Owners/guardians of protected cultural property

Owners/guardians of cultural property protected by the Convention may choose to affix the blue shield to their cultural property to visibly demonstrate that it is protected by the Convention. The blue shield may be affixed during peacetime or only in times of armed conflict. The affixing of such an emblem is, however, an entirely voluntary matter. Neither the Bill nor the Convention require it. Cultural property will not lose its protection through the Convention because no emblem is affixed. Furthermore, the affixing of the emblem is not the only means by which opposing commanders will be able to identify protected property. It is the Government's intention to provide a password-protected list to UNESCO, containing the GPS co-ordinates of all cultural property that the Government considers to be protected by the Convention. In the event of armed conflict the password will be supplied to any opposing State Party and so there can be no doubt about the cultural property in the UK that is protected under the Convention. Thus, any costs incurred by private owners in affixing the emblem will be borne on a voluntary basis, and are therefore considered as indirect.

National heritage agencies and enforcement agencies

National heritage agencies and enforcement agencies will bear one-off familiarisation costs associated with the legislation. We engaged with these agencies to understand how much these costs will be and this is summarised below. We also found that the National Crime Agency and Border Force will not face any significant costs and any costs will be absorbed into daily business.

Agency	Number of personnel to be trained	Hourly wage (£/hr)	Training hours per person	Total cost (£)
Metropolitan Police Arts & Antiquities Unit	4	18	0.5	36
National Police (Heritage Specialist Officers to be trained at conference)	100	18	0.5	900
Crown Prosecution Service (CPS)	Face-face training for the UK's 16-18 Wildlife and Heritage Officers and production of an e-learning course for all prosecutors.			28,421
Historic England	see details below	see details below	see details below	26,600
Historic Environment Scotland				15,450

Cadw				8,666
Northern Ireland Environment Agency				8,500
Total				88,573

Breakdown of costs for national heritage agencies

Historic England

For England we would anticipate 6-8 training sessions for local authority and other relevant regional actors across the country over 2 years at £2,075 per day (each session would train approximately 30-35 people). This cost includes venue hire etc. Each session would have 2 trainers costing £200-£300 per day which is based on their current training programme costs:

Item	Cost per Unit	Cost per Course (1 day for 35 delegates)
Venue Hire (inc catering)	£35	£1225
External Trainer (1 per event)	£300	£300
External Trainers T&S per event	£250	£250
Training Delivery Officer T&S per event	£250	£250
Reprographics	£50	£50
Total for one session		£2075.00

Total for 8 sessions: £16,600

In addition we would expect to produce printed (leaflets, exhibitions etc.) and online training materials for local authorities, individual property owners and the wider public. Historic England has estimated this cost to be £10,000.

Historic Environment Scotland

For Scotland we would anticipate 4-6 training sessions for local authority and other relevant regional actors across the country over 2 years at £2,075 per day (the same cost as Historic England – set out above).

Total cost for 6 sessions: 12,450

In addition we would expect to produce additional training materials including printed (leaflets, exhibitions etc.) and online costing £3,000 for local authorities, individual property owners and the wider public.

Cadw

For Wales Cadw have estimated their costs to be one third of those estimated for England. This assumption is based on a need for a minimum of 2 training sessions in Wales, plus additional translation requirements (for the translation of written materials and the provision of simultaneous translation during the session).

Northern Ireland Environment Agency

For Northern Ireland we would anticipate 3 training sessions for local authority and other relevant regional actors across the country over 2 years at £2000 per day (each session would train approx. 30-35 people).

Total for 3 sessions: £6,000

In addition we would expect to produce additional training materials including printed (leaflets, exhibitions etc.) and online costing £2,500 for local authorities, individual property owners and the wider public.

BENEFITS

The main benefits of the proposals are protection of cultural property in the UK and internationally and the formalising of our armed forces' responsibilities to cultural property when operating abroad. The main beneficiaries of this are the military, owners/guardians of protected cultural property, occupied States and the general public (both within the UK and internationally). The benefits of the proposal are difficult to monetise given the large and varied number of cultural assets covered by the Convention. Furthermore, many of the benefits can only be realised in the event of an armed conflict and/or occupation, such as the livelihood of businesses that depend on protected cultural property.

Assessment of other impacts

The other parties who may incur a cost as a result of the legislation are:

- The prosecuting authorities;
- The enforcement authorities; and
- Central Government.

Prosecuting/enforcement authorities

As explained above, the 1954 Hague Convention and its two Protocols, broadly speaking, imposes three categories of obligation on signatories:

- To take measures to protect one's own cultural property when under attack;
- To take measures to protect another State's cultural property when one is attacking or occupying the State; and
- To take measures to stop the illegal removal and sale of cultural artefacts removed from a territory under occupation, and return them to their country of origin.

We believe that the costs incurred under each of these categories are likely to be very low and our reasons for this are as follows:

Measures to protect the UK's cultural property when under attack

Europe has seen a protracted period of peace since the conclusion of the Second World War and the creation of the European Union. The Government's assessment of the short and medium term threat of armed invasion of the UK by another country is zero. Thus, the likelihood of there needing to be any prosecutions in respect of this element of the Convention is considered to be practically zero.

Measures to protect other countries' cultural property when UK forces are operating overseas

The 1954 Hague Convention is treated by the UK military as being part of customary international law and so British troops have for a number of years been trained in the need to respect cultural property and not subject it to unnecessary attack or damage. The Tri-Service Manual has instructions explicitly covering cultural property and this forms part of the training for all UK troops. Thus, the likelihood of UK troops being prosecuted under this Bill for damaging cultural property is extremely small. It is worth noting in this regard that although there have been instances of damage to cultural property in Iraq by coalition forces, none of these have been carried out by UK troops.

In relation to the most serious offences under Article 15(1) of the Second Protocol, we would be obliged to take jurisdiction over offences committed anywhere if the offender is present in UK territory. However, we are only aware of two prosecuting actions being brought internationally in relation to the destruction of cultural property (this relates to a Serb commander's destruction of cultural property during the war with Bosnia-Herzegovina, and a Cambodian tribunal), and there is no reason to suppose that our adherence to the Convention and its Protocols would lead to demand for such prosecutions in the UK.

Measures to stop the illegal removal and sale of cultural property from an occupied territory

The cost of a police investigation may be in the region of £3,000, though this figure increases with the complexity of the investigation (figure provided by the Art and Antiques Unit, Metropolitan Police). Border Force are not able to provide a similar figure for the investigations they would have to undertake as there are too many variables involved to make any calculation reliable. Figures provided by the Crown Prosecution Service suggest that a trial where the accused pleads not guilty would cost in the region of £3,000, whereas, a guilty plea would reduce that figure to £500.

However, it is worth noting that the Dealing in Cultural Objects (Offences) Act 2003, the Iraq (United Nations Sanctions) Order 2003, and the Export Control (Syria Sanctions) (Amendment) Order 2014 contain similar (but not identical) offences to those proposed in the Bill in relation to the illegal removal and sale of cultural property from occupied territory. There have been no prosecutions to date under either of the sanctions Orders and only one prosecution under the Act. Thus, while there is a possibility that there might be prosecutions under the new offence of dealing in cultural property unlawfully exported from occupied territory we believe that the chances of this happening are extremely small (and therefore it is unlikely that the costs outlined above will be incurred). The First Protocol has been ratified by 104 countries and has been in existence for over 50 years. During that period we are only aware of one occasion in which the authorities of an occupied territory have sought to use the Protocol to obtain the return of cultural property unlawfully exported from their territory.

Any costs relating to the return of cultural property to its country of origin would be incurred by central Government and are covered below.

Central Government

Central Government may incur additional costs directly associated with the proposed legislation from the possible need to transport and store cultural property that has been removed from an occupied territory until such time as it can be returned to a competent authority, the return of such cultural property to its country of origin, and potential costs for forfeiture proceedings. For the reasons explained above, however, we anticipate that the number of such cases arising will be minimal.

The Government may also incur costs if it is obliged to pay compensation to the holders in good faith of cultural property that has been unlawfully exported from occupied territory and must be returned to the authorities of that territory. However, this only applies where:

1. the UK is the occupying power in relation to that territory, and therefore would be in a position and under an obligation to prevent the export of cultural property. The UK is not currently an occupying power, and there is a very low risk of this becoming the case;
2. the cultural property has been exported from a territory occupied by another state, whereby:
 - i) if the occupying state is a "State Party" to the Convention, they are liable to indemnify the holder of the cultural property which acquired it in good faith (the Government might need to pay a bridging compensation and pursue recouping those costs from the liable State Party); but
 - ii) if the occupying state is not party to the Convention the Government may accrue an expenditure in compensating the holder.

It should be noted that in cases of occupation by a non-state actor, the Government would not have any obligations of seizure or initiating forfeiture proceedings under the Convention and the proposed legislation, and hence the issue of paying compensation would not arise.

The Government will incur some additional costs associated with implementation of the 1954 Hague Convention and its two Protocols in the UK. For example, the costs associated with producing and then

periodically updating the list of cultural property that the Government considers to be protected by the Convention.

The armed forces are already compliant with the Convention, which informs existing training on cultural property protection, including respect for cultural property, precautions in attack, and recognition of the blue shield emblem signifying protected cultural property. Any need to adapt training following ratification will be done so without any significant cost implications.

There will also be some costs to the justice system and the National Offender Management System (NOMS) arising from the following offences created by the proposed Bill which are outlined in the table below:

Part 2 of the Bill creates an offence of serious breach of the Second Protocol (as set out in Article 15 of the Protocol). Article 15 applies to the intentional use, destruction, or looting of cultural property in war situations. Part 2 also creates ancillary offences.

Part 3 creates an offence of misuse of the Convention's cultural emblem (which is intended to be used to protect cultural property).

Part 4 creates an offence of dealing with cultural property unlawfully exported from an occupied territory.

	Estimated volumes	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated costs per case (£)
Criminal Offences and Sanctions	1 per 30 years	Prison place (Part 2 offence)	225,000 ⁴
	1 per 30 years	Summary fines (Parts 3 and 4 offences)	Nil ⁵
	Nil/negligible per 30 years	Prison Place (Part 4 offence)	Nil ⁶
HM Courts & Tribunals Services	1 per 30 years	Court hearing (Part 2 offence)	71,208 ⁷
	1 per 30 years	Court hearing (Part 3 offence)	3,080 ⁸
	Nil/negligible per 30 years	Court hearing (Part 4 offence)	Nil
Legal Aid	1 per 30 years	Court hearing (Part 2 offence)	3,900 ⁹
	1 per 30 years	Court hearing (Part 3 offence)	900 ¹⁰
	Nil/negligible per 30 years	Court hearing (Part 4 offence)	Nil

⁴ The maximum sentence time is 30 years, but in practice we will expect half of that to be given out so will assume that the average sentence time is 15 years. Each offender convicted will result in an additional financial burden to NOMS of £15,000 per year of imprisonment bringing the additional cost to be £225,000 for the 15 years.

⁵ We would expect fines to be at least cost neutral, if not a net income.

⁶ We would not expect any cases to be brought in 30 years.

⁷ Average costs per day of Crown and Magistrates Courts hearings is £1,548 and £154 respectively. 2012-13, Source: Hansard

http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131014/text/131014w0003.htm#131014w0003.htm_spnew67. Average number of days for Crown and Magistrates courts hearings is 46 and 20 days respectively.

<https://www.gov.uk/government/statistics/court-statistics-quarterly-april-to-june-2014> Total cost for crown court: £1548 x 46 = £71,208

⁸ See footnote above – Total cost for magistrates court: £154 x 20 = £3,080

⁹ p/c: per case. Average costs of Crown and Magistrates Court cases Legal Aid 2013, Source: Economist <http://www.economist.com/news/britain/21580184-better-ways-cut-states-justice-bill-what-price-justice>

¹⁰ *ibid* for a Magistrates Court hearing Legal Aid costs.

Total costs over 30 years is **£304,088**. As there is a 1/30 probability of these costs occurring per year, we will assume that the average costs per year is **£10,136**.

RISKS AND ASSUMPTIONS

The cost and benefit models outlined above are based on the following assumptions:

- That UK armed forces already act in a way which would not contravene any of the offences being proposed. This assumption is based on the recent operations of the UK armed forces and the inclusion of a section in the Tri-Service Manual which outlines their general responsibilities regarding cultural property;
- That there will be a low level of offences committed under the provisions included within the Bill. This refers not only to offences committed by UK armed forces personnel (for reasons outlined above), but also those offences that relate to dealing in cultural property unlawfully exported from occupied territory and the misuse of the emblem. These assumptions are based on the low number of countries which are currently considered occupied, and the low level of offences committed regarding the misuse of other international humanitarian emblems (e.g. the Red Cross);
- That it will be unlikely that the UK will be in a position of having to pay compensation to a good faith purchaser of an item of cultural property if that property needs to be returned to its country of origin (having been illegally removed). This is because the system being put in place means that the only scenarios where such compensation would be payable as permanent expenditure would be where the UK is the occupying power, which we consider unlikely in the current climate; and where the occupying power is not party to the Convention (as opposed to if it were a "State Party", in which case the UK would pursue recouping the temporary expenditure).