

EXPLANATORY MEMORANDUM TO
THE INTRODUCTION AND THE IMPORT OF CULTURAL GOODS
(REVOCATION) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The instrument revokes EU Regulation 2019/880 on the introduction and the import of cultural goods (“the Regulation”) insofar as it applied at the end of the transition period and therefore became part of the law of the United Kingdom.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Only certain provisions of the Regulation applied before IP completion day and therefore became United Kingdom law as retained EU law (see section 3(1), (3)(a) of the European Union (Withdrawal) Act 2018). A number of provisions applied from when the Regulation came into force on 28 June 2019. These included the definitions on which the Regulation relies, provisions which require the European Commission to adopt implementing acts and to develop and implement an IT system to support the operation of the Regulation, and obligations for Member States to provide information to the European Commission on their arrangements for implementing and operating the Regulation. Another provision (Article 3(1)), which applied from 28 December 2020, prohibits the introduction of non-EU cultural goods which have been unlawfully removed from the country in which they were created or discovered (“the general prohibition”), regardless of the age or value of the goods or when the unlawful export occurred.

Why is it being changed?

- 2.3 The provisions of the Regulation which came into effect on 28 June 2019 are now legally deficient and/or redundant, as they create obligations in relation to the European Union which no longer apply or they relate to further provisions of the Regulation which did not apply before IP completion day and therefore have not become part of United Kingdom law as retained EU law. The general prohibition provision in Article 3(1) of the Regulation has become legally deficient, as it applies to the “introduction of cultural goods” which is defined in Article 2(2) of the Regulation as “entry into the customs territory of the Union”. This refers to the customs territory of the EU, and cannot be interpreted to mean the customs territory of the United Kingdom.

What will it now do?

- 2.4 This instrument will revoke those parts of the Regulation that are retained EU law.

- 2.5 The revocation of the Regulation as retained EU law does not affect its continued application in respect of Northern Ireland in consequence of its inclusion in the Protocol on Ireland/Northern Ireland in the European Union Withdrawal Agreement, which occurs by virtue of section 7A of the European Union (Withdrawal) Act 2018. The Regulation was included in Annex 2 of the Protocol by Decision No. 3/2020 of the Withdrawal Agreement Joint Committee of 17 December 2020 and therefore continues to apply in respect of Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees]

- 3.1 This instrument is being laid for sifting by the Sifting Committees and is subject to the negative procedure, with sifting.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Regulation is being revoked insofar as it has become United Kingdom law as retained EU law.
- 6.2 Provisions of EU Regulations which applied on IP completion day have become United Kingdom law as retained EU law. Those which did not apply have not (this is the case even where the Regulation itself is in force: see section 3(3)(a) of European Union (Withdrawal) Act 2018), and there is no legal obligation to implement and apply them.
- 6.3 We consider that the provisions of the Regulation which applied from 28 June 2019 and have become retained EU law are deficient and redundant, within the meaning of section 8(2) of the European Union (Withdrawal) Act 2018, in particular paragraphs (a), (b), (d) and (g), because they create obligations in relation to the European Union which no longer apply or they relate to other provisions of the Regulation which have not come into effect and therefore have not become retained EU law and will not be implemented and applied in Great Britain (the position for Northern Ireland is set out in paragraph 6.5 below). Therefore, we are revoking them as retained EU law.
- 6.4 We consider that the general prohibition provision in Article 3(1) of the Regulation, which applied from 28 December 2020 and has become retained EU law, is deficient within the meaning of section 8(2) of the European Union (Withdrawal) Act 2018, in

particular paragraphs (a), (d) and (g), as it applies to the “introduction of cultural goods” which is defined in Article 2(2) of the Regulation as “entry into the customs territory of the Union” which cannot be interpreted to mean the customs territory of the United Kingdom. We are revoking this provision rather than amending it to remedy the deficiency, as we consider that it does not add anything new to existing UK measures in relation to unlawfully removed cultural goods (see paragraph 7.3 below).

- 6.5 Revocation of the Regulation as retained EU law does not affect its continued application in respect of Northern Ireland in consequence of its inclusion in the Protocol on Ireland/Northern Ireland in the European Union Withdrawal Agreement, which occurs by virtue of section 7A of the European Union (Withdrawal) Act 2018. The Regulation was included in Annex 2 of the Protocol by Decision No. 3/2020 of the Withdrawal Agreement Joint Committee of 17 December 2020 and therefore continues to apply in respect of Northern Ireland.

7. Policy background

What is being done and why?

- 7.1 The Regulation is being revoked so far as it is retained EU law.
- 7.2 There is no legal obligation to implement and apply those provisions of the Regulation which did not apply on IP completion day and have not become United Kingdom law as retained EU law. Consequently, those provisions which do apply and have become United Kingdom law but which relate to the implementation and application of those which have not are now deficient and redundant and are therefore being revoked.
- 7.3 The deficiency in the general prohibition provision, identified in paragraph 6.3 above, is being remedied by revoking the provision rather than amending it, as we consider that, even if not deficient, this provision would not add anything new to the existing obligations on businesses and importers to ensure the legal provenance of cultural goods which they bring into the United Kingdom, or to the measures already available to the United Kingdom’s border authorities to prevent cultural goods being brought into the United Kingdom when there is information or evidence that they have been unlawfully removed from another country. These measures are in line with our existing commitments and obligations as a member of international organisations such as the World Customs Organisation and Interpol and in international law, including the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. They are also consistent with the Regulation, which states (Recital 3) that the general prohibition “should not entail systematic controls” and that “Member States should be allowed to intervene when receiving intelligence regarding suspicious shipments and to take all appropriate measures to intercept illicitly exported cultural goods”. Therefore, revoking the general prohibition provision will not adversely affect our ability to prevent unlawfully removed cultural goods being brought into the United Kingdom.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom

from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There is no requirement for consolidation.

10. Consultation outcome

10.1 As there is no policy change, no consultation has been undertaken.

11. Guidance

11.1 No guidance is required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the instrument will not change the obligation for importers to ensure the legal provenance of cultural goods brought into the United Kingdom or the measures available to the United Kingdom's border authorities to prevent cultural goods which have been unlawfully removed from another country being brought into the United Kingdom.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The legislation will have no impact on small businesses as it will not change the obligation for businesses to ensure the legal provenance of cultural goods which they bring into the United Kingdom or the way in which the United Kingdom's border authorities deal with cultural goods at the United Kingdom's borders to prevent those which have been unlawfully removed from another country being brought into the United Kingdom.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Karl Jagdis at the Department for Digital, Culture, Media and Sport, Telephone: 07725 219983 or email: karl.jagdis@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Carrie Cooke, Deputy Director for Museums and Cultural Property, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Caroline Dinenage MP, Minister for Digital and Culture, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister for Digital and Culture, Caroline Dinenage MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Introduction and the Import of Cultural Goods (Revocation) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument does not change the policy or procedures in relation to the introduction and import of cultural goods into the United Kingdom. Further information is provided in section 7 of the Explanatory Memorandum.

2. Appropriateness statement

- 2.1 The Minister for Digital and Culture, Caroline Dinenage MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Introduction and the Import of Cultural Goods (Revocation) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because it revokes provisions in retained EU law which are deficient or redundant following the end of the transition period.

3. Good reasons

- 3.1 The Minister for Digital and Culture, Caroline Dinenage MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are provided in section 7 of the Explanatory Memorandum.

4. Equalities

- 4.1 The Minister for Digital and Culture, Caroline Dinenage MP, has made the following statement(s):

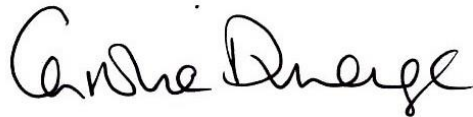
“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Minister for Digital and Culture, Caroline Dinenage MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Caroline Dinenage MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

A handwritten signature in black ink that reads "Caroline Dinenage". The signature is written in a cursive style with a large initial 'C'.

Caroline Dinenage MP
Minister for Digital and Culture
Department for Digital, Culture, Media and Sport