

De Minimus Assessment: Self-Certification Template



Department for
Digital, Culture
Media & Sport

Title of regulatory proposal	The Introduction and the Import of Cultural Goods (Revocation) Regulations 2021
Stage	Final
Lead Department/Agency	DCMS
Expected date of implementation	April/May 2021 (exact date depends on legislative calendar)
Origin	Domestic
Date	15/02/21
Lead Departmental Contact	Karl Jagdis, 020 7211 6447
Departmental Triage Assessment	Equivalent Annual Cost to Business (EANDCB: 2020 prices) = £789

Call in criteria checklist

Significant distributional impacts (e.g. significant transfers between different businesses or sectors)	No
Disproportionate burdens on small businesses	Yes
Significant gross effects despite small net impacts	No
Significant wider social, environmental, financial, or economic impacts	No
Significant, novel, or contentious elements	No

BRU (CAT) signoff: *Akash Patel* Date: 23/02/2021

Chief Economist signoff (delegated): *Kobini Ananth* Date: 23/02/2021

Spoke Analyst: Date:

SUMMARY

Rationale for government intervention

The rationale for revoking this EU Regulation is that it would remove any redundant, meaningless or unenforceable provisions in UK law and it would mitigate the risk of confusion or doubt as to whether retained EU law is being properly applied.

Policy options

- *a statutory instrument to revoke the Regulation, including the “general prohibition” provision or*
- *Do nothing.*

The option to revoke the Regulation is the preferred option. The provisions were not judged to have added anything to existing law, and are now redundant or unenforceable following Britain’s exit from the EU. Revoking the Regulation will ensure that there are no redundant, meaningless or unenforceable provisions in the UK statute book.

Summary of business impact

The Equivalent Annual Net Direct Cost to Business (EANDCB) is estimated to be £789. This is the transition costs associated with employees of firms reading guidance revised to reflect the policy change.

Policy Rationale

1. This Impact Assessment considers the impact of Secondary legislation to revoke provisions of EU Regulation 2019/880 on the introduction and the import of cultural goods which became UK law as retained EU law at the end of the transition period.
2. Lawyers have advised that one of these provisions - known as the “general prohibition” (Article 3(1)) - which came into effect on 28 December 2020 is now legally deficient and cannot be enforced for Great Britain. Even if not legally deficient, the provision would not add anything to, or require any changes to, existing UK policy and practices.

3. The other provisions that are proposed to be revoked came into effect when the Regulation came into force in June 2019. However, they are considered to be deficient and/or redundant, as they relate to further provisions of the Regulation which had not come into effect before the end of the transition period and therefore have not become part of UK law as retained EU law and will not apply in the UK.
4. Revocation would ensure that there are no redundant, meaningless or unenforceable provisions in UK law and it would remove any scope there might be for confusion or doubt as to whether retained EU law is being properly applied

Policy background

5. EU regulation 2019/880 on the introduction and the import of cultural goods came into force on 28th June 2019. Some provisions of the Regulation began to apply before the end of the transition period and have therefore become UK law as retained EU law.
6. The key issue in this is the general prohibition provision in the EU Regulation which prohibits the introduction of cultural goods which have been unlawfully exported from the country in which they were created or discovered. This provision is legally deficient, as it relies on a definition of “introduction” in the Regulation which explicitly relates to the EU customs union and cannot be interpreted to refer to the UK customs territory. This makes the provision inoperable and unenforceable for Great Britain¹.
7. It has been previously considered that the “general prohibition” does not add anything, or require any changes, to existing UK policy and procedures at the UK border. HMRC and Border Force are already able to detain cultural goods at the border if there is intelligence or evidence to suggest that they have been unlawfully exported from another country.
8. Given this, we do not think that revoking this provision will have any adverse impact on our ability to protect cultural goods and detect any that have been unlawfully exported from another country.

Policy objective

9. The objective of this policy is to revoke provisions of EU Regulation 2019/880 on the introduction and the import of cultural goods as retained EU law, and through this, to:
10. Remove any scope there might be for confusion or doubt as to whether retained EU law is being properly applied.

¹ The provision can still be applied and enforced in relation to Northern Ireland, which remains within the EU customs union. However, the Regulation also applies directly to Northern Ireland by virtue of having been included in Annex 2 of the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. Revocation of the Regulation as retained EU law does not affect its continued application to Northern Ireland via the Protocol.

11. Provide greater clarity and underline the government's commitment not to implement the import licence and importer statement provisions of the Regulation.
12. Reassure art market stakeholders and alleviate their concerns about the potential impact of this provision.

Options considered

13.

Option 0 – Do nothing

Leave the provisions of the Regulation as they are now in UK law. This would not satisfy UK art market stakeholders who would be likely to campaign in the media and in Parliament for the “general prohibition” provision to be revoked. Although it is legally deficient and cannot be enforced in Great Britain, retaining it in UK law could create doubts and confusion as to whether or not it applies and is being enforced. Retaining other deficient and/or redundant provisions in UK law could also create doubts about the government's future intentions in relation to the Regulation.

It would also not satisfy those who favour stricter controls on imports of cultural goods, once they learn that the “general prohibition” provision is legally deficient and unenforceable in Great Britain.

With this option the transition costs of familiarisation for cultural organisations would not be incurred in theory.

Option 1 (preferred option) – a statutory instrument to revoke the Regulation, including the “general prohibition” provision

Legislate to revoke the Regulation. This option would ensure that there are no redundant, meaningless or unenforceable provisions in UK law and it would remove any scope there might be for confusion or doubt as to whether retained EU law is being properly applied and as to the government's future intentions.

It is likely to be criticised by those who consider that the UK needs to do more to prevent the import into the UK of cultural goods which have been stolen, looted and/or unlawfully exported from other countries. They are likely to argue that we should have fixed the provision to make it operate correctly in UK law. They may also argue that we should retain the other provisions to facilitate the eventual implementation of the whole of the Regulation, including the import licence and importer statement requirements. There could be a

perception that we are watering down our commitment to protect cultural property from illicit trade which we will need to robustly counter.

However, DCMS has always considered that the “general prohibition” does not add anything, or require any changes, to existing UK policy and procedures at the UK border. HMRC and Border Force are already able to detain cultural goods at the border if there is intelligence or evidence to suggest that they have been unlawfully exported from another country. Therefore, we do not think that revoking this provision will have any adverse impact on our ability to protect cultural goods and detect any that have been unlawfully exported from another country, and will be able to counter any such claims if they arise.

Costs and Benefits

Costs

Transition Costs

14. The Regulatory Policy Committee (2019a) provides guidance for calculating costs associated with implementing policies. Of such costs, the ones relevant to this policy will involve experts familiarising themselves with the changes to the guidance, estimated as the number of employees who will read the revised documentation and the time taken.
15. For the number of employees, we do not know the exact amount of cultural organisations who will be affected by this legislation. To gain a best estimate we use DCMS Sector Economic Estimates to ascertain the number of Cultural Sector organisations that engage in importing. The latest number was 9,000 from 2018². Due to the relatively minimal nature of the regulatory change, we assume it will only take 1 employee to read the legislation on behalf of each organisation. Therefore we estimate that 9,000 employees will read the legislation.
16. For the time taken, a document referenced by Regulatory Policy Committee (ibid), BEIS (2017) quotes another document, EFTEC (2013), which estimates a range of 50-100 words per minute to read technical language. A paragraph outlining the new guidance on the government website, will be roughly 229 words³. Using the midpoint

² [*DCMS Sectors Economic Estimates 2018: Business Demographics*](#)

³ [*Exporting or importing objects of cultural interest \(2020\)*](#)

of this range suggests readers of the additional text would take approximately just over 3 minutes to read the new text.

17. Assuming 9000 employees read the updated government guidance, the above figure indicates that approximately 458 hours will be spent in total reading the new parts of the guidance.
18. To estimate the cost of this time, we use an ONS survey that calculates the average gross hourly wage. We use the wage of Archivists and Curators, which we deem to be the most relevant profession from the Standard Occupation codes, which in the UK in 2020 was £14.33.⁴ This gives a total transition cost of approximately £6563. Using the BEIS (2020)⁵ calculator for impact assessments gives an EANDCB of £789 given 2020 prices.
19. In a minority of cases larger organisations may have created their own internal guidance already that they will need to update. This will take slightly longer than the familiarisation time we have used for the text. We cannot gain an accurate estimation for the number of organisations this applies to, but due to the minimal implications of this legislation, and because the 9,000 employees we have used to calculate this is already very much an upper estimate of the number of employees who will read the guidance, the 580 hours remains a prudent estimate.
20. There are no annual costs associated with this change, as the provisions were not deemed to add anything to existing legislation and are now redundant or unenforceable.

Summary

21. **This gives an EANDCB of approximately £789 (2020 prices).**

Risks and unintended consequences

22. It is criticised by those who consider that the UK needs to do more to prevent the import into the UK of cultural goods which have been stolen, looted and/or unlawfully exported from other countries. They are likely to argue that we should have fixed the provision to make it operate correctly in UK law. They may also argue that we should retain the other provisions to facilitate the eventual implementation of the whole of the Regulation, including the import licence and importer statement requirements, in

⁴ [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14, 2020](#)

⁵ [Impact Assessment Calculator, BEIS \(2020\)](#)

due course. There could be a perception that we are watering down our commitment to protect cultural property from illicit trade which we will need to robustly counter.

23. We have always considered that the “general prohibition” does not add anything, or require any changes, to existing UK policy and procedures at the UK border. HMRC and Border Force are already able to detain cultural goods at the border if there is intelligence or evidence to suggest that they have been unlawfully exported from another country. This is in line with our 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. We do not think that revoking this provision will have any adverse impact on our ability to protect cultural goods and detect any that have been unlawfully exported from another country.

Call-in check list explanations

Distributional Impacts

We do not have data on the business demographics for culture sector importers, but business demographics for the culture sector as a whole show that more than a third of culture sector businesses are located in London and the south east, so the transition cost may fall disproportionately on these areas as a result. However, this is unavoidable in achieving the policy objective, and the absolute impact is very small.

Conclusion: there are small distributional impacts to businesses in London.

Small and Micro Business Assessment (SaMBA)

We do not have data on the business demographics for culture sector importers, but business demographics for the culture sector as a whole show that it is largely made up of small and micro businesses.⁶ Given this, the transition cost of the change may fall largely on small businesses. However, the absolute impact is very small and is unavoidable in achieving the policy objective.

Conclusion: there may be disproportionate impacts on small businesses, due to the demographic make-up of the sector affected, but this is unavoidable and low in magnitude.

Gross Effects

⁶ [DCMS Sectors Economic Estimates 2018: Business Demographics](#)

We believe overall impacts are negligible and therefore there are no significant gross effects.

Wider Impacts

We do not identify any significant, negative wider effects.

Significant, Novel, or Contentious

The policy is not deemed to be significant, novel, or contentious.