EXPLANATORY MEMORANDUM TO

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

2021 No. 1087

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 Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument revokes EU Regulation 2019/880 on the introduction and the import of cultural goods (EUR 2019/880) ("the Regulation") insofar as it applied on IP completion day 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. Article 3(1) of the Regulation, 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 Joint Committee on Statutory Instruments

3.1 This instrument was submitted to the Sifting Committees on 1 March 2021. The House of Commons European Statutory Instruments Committee and the House of Lords Secondary Legislation Scrutiny Committee both recommended that the instrument should be subject to approval in pursuance of a resolution in both Houses of Parliament. The Minister has accepted this recommendation.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 The Parliamentary Under-Secretary of State, Nigel Huddleston MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Introduction and the Import of Cultural Goods (Revocation) Regulations 2021 are compatible with the Convention rights."

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 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, this instrument revokes them as retained EU law.

6.4 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. The instrument revokes this provision, rather than amending it to remedy the deficiency, as the government considers that existing measures in relation to unlawfully removed cultural goods are sufficient (see paragraphs 7.4–7.5 below) and that the wording of the Regulation will cause uncertainty (see paragraph 7.6 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. Consequently, a different legal regime will apply to imports of cultural goods into Northern Ireland, including from the rest of the United Kingdom. This is expected to have some impact on the movement of cultural goods into 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 Although the government supports the stated aims of the Regulation and recognises the importance of tackling the illicit trade in cultural goods, and in particular preventing the proceeds of that trade from being used to fund terrorism, it has always been sceptical that the Regulation would achieve its aims and is concerned that the potential detrimental effect on the legitimate trade in cultural goods and on art market businesses, museums, collectors, and others who move cultural goods across the United Kingdom's borders, would outweigh any benefits.

7.3 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. The government has always made clear that it would not implement these provisions if it was not obliged by law to do so. 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.

7.4 The deficiency in the general prohibition provision, identified in paragraph 6.4 above, is being remedied by revoking the provision rather than amending it, as the government considers that the requirement for businesses and importers to ensure the legal provenance of cultural goods which they bring into the United Kingdom, as set out, for example, in codes of conduct for art market businesses and museums, and 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, are sufficient. These measures are set out in domestic legislation and in our existing commitments and obligations in international law and as a member of international organisations such as the World Customs Organisation and Interpol (see paragraph 7.5 below). They are also consistent with the Regulation itself, 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".

7.5 The United Kingdom already applies a range of measures in domestic and international law to tackle the illicit trade in cultural goods.

7.5.1 The United Kingdom has been a state party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property since 2002. This Convention requires state parties to have in place measures to tackle the illicit trade in cultural property, including its import into and export from their territory, and to facilitate the identification, location and restitution of illicitly imported cultural property.

7.5.2 The United Kingdom has been a state party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999 since 2017. These require state parties to take measures to ensure the protection of cultural property during armed conflicts and to prohibit the illicit trade in cultural property which has been unlawfully exported from occupied territory.

7.5.3 The principal domestic legislation relating to the illicit trade in cultural property is the Dealing in Cultural Objects (Offences) Act 2003, which provides an offence of acquiring, disposing of, importing or exporting unlawfully removed cultural objects, or agreeing or arranging with another person to do so.

7.5.4 The Cultural Property (Armed Conflicts) Act 2017 implements the 1954 Hague Convention and its Protocols in the United Kingdom. It prohibits dealing in cultural property which has been unlawfully exported from occupied territory, where "dealing" includes importing such property into the United Kingdom.

7.5.5 Separate legislation implements obligations in United Nations Security Council Resolutions in relation to cultural property unlawfully removed from Iraq (The Iraq (Sanctions) (EU Exit) Regulations 2020 (SI 2020/707)) and Syria (The Syria (United Nations Sanctions) (Cultural Property) (EU Exit) Regulations 2020 (SI 2020/1233)).

7.5.6 Offences involving cultural property may also be investigated and prosecuted under section 22 of the Theft Act 1968, which provides an offence of handling stolen goods; it does not matter whether the theft of the goods occurred in the UK or elsewhere or whether it occurred before or after the commencement of the Act.

7.5.7 Cultural property which has been unlawfully removed from EU Member States is subject to Title I, Chapter 1, Article: GOODS.21 of the UK-EU Trade and Cooperation Agreement, which sets out a cooperation requirement when cultural property is believed to have been unlawfully removed from the territory of one party and brought into the territory of the other party.

7.5.8 The Customs and Excise Management Act 1979 deals with matters relating to imports and exports at the United Kingdom border and provides powers and penalties in

relation to the illicit import of goods including cultural goods. In particular, section 170 provides that it is an offence to knowingly acquire, carry, remove, deposit, harbour, keep or conceal goods with respect to the importation of which any prohibition or restriction is in force under or by virtue of any enactment. Section 50 of that Act provides for a penalty for importing goods in contravention of any prohibition or restriction on their import; section 167 provides for offences and penalties in relation to making untrue declarations and statements in connection with the import of goods; and section 168 makes similar provision in relation to using counterfeit documents.

7.5.9 As regards the risk of trade in cultural goods being used to finance terrorism, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) require art dealers and others even tangentially involved in a transaction of €10,000 or more to collect and report information about their customers. This instrument also applies enhanced due diligence requirements to cultural property transactions by providing that, when assessing whether there is a high risk of money laundering or terrorist financing in a particular situation and the extent of the measures which should be taken to manage and mitigate that risk, relevant persons must take account of risk factors including whether there is a transaction related to cultural artefacts, ivory or other items related to protected species, or other items of archaeological, historical, cultural or religious significance or of rare scientific value.

7.5.10 The participation of United Kingdom authorities in international organisations such as Interpol and the World Customs Organisation ensures that they are able to cooperate and share information and intelligence with their counterparts in other countries in implementing national and international legislation and commitments and tackling the illicit trade in cultural goods.

7.6 In addition to the Regulation being deficient for the reason described at paragraph 6.4 above, the prohibition under Article 3(1) also creates uncertainty and complexity for importers, creating a detriment which would outweigh the benefit which the Regulation is seeking to obtain. This arises because it applies to a wide range of cultural goods without regard to their value, age or date of export from the country of creation or discovery, and because the Regulation is silent on who bears the burden of proof of the breach of the laws and regulations of that country, as well as on the evidence which would be required to demonstrate that the cultural goods concerned had been removed illegally. The result of this could be that anyone wishing to import into the United Kingdom cultural goods which originated in a country outside the EU would be deterred from doing so. This could affect, for example, the import of cultural goods for sale in the art market or for exhibition by a museum or gallery in the United Kingdom, or the return of non-EU cultural goods loaned by museums in the United Kingdom for temporary exhibitions abroad.

7.7 In view of the domestic and international legal framework which already applies, and will continue to apply, to the import of and dealing in cultural goods in the United Kingdom, together with the cross-border cooperation and information-sharing in which the United Kingdom authorities participate, the government considers that revoking the general prohibition provision will not adversely affect our ability to prevent unlawfully removed cultural goods being brought into the United Kingdom. In light of the uncertainty and complexity which could be created if the provision

were not legally deficient, revocation is the appropriate means of addressing the deficiency.

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 Regulation is currently legally deficient and cannot be correctly applied in its current form; therefore, there will be no practical change to the current procedures to prevent cultural goods which have been unlawfully removed from another country being brought into the United Kingdom as a result of this instrument revoking the Regulation.

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 because the Regulation is currently legally deficient and cannot be correctly applied in its current form; therefore, there will be no practical change to the current procedures to prevent cultural goods which have been unlawfully removed from another country being brought into the United Kingdom as a result of this instrument revoking the Regulation.

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 Helen Whitehouse, 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 Nigel Huddleston MP, Parliamentary Under-Secretary of State 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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. Appropriateness statement

1.1 The Parliamentary Under-Secretary of State, Nigel Huddleston 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".

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

2. Good reasons

2.1 The Parliamentary Under-Secretary of State, Nigel Huddleston 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".

2.2 These are provided in section 7 of the Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under-Secretary of State, Nigel Huddleston 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".

3.2 The Parliamentary Under-Secretary of State, Nigel Huddleston 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, Nigel Huddleston 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".

4. Explanations

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