EXPLANATORY MEMORANDUM TO

THE RETURN OF CULTURAL OBJECTS (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1458

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.

2. Purpose of the instrument

2.1 This instrument amends the Return of Cultural Objects (Revocation) (EU Exit) Regulations 2018 (SI 2018/1086) ("the 2018 Regulations") and the Return of Cultural Objects Regulations 1994 (SI 1994/501) ("the 1994 Regulations") in relation to Northern Ireland, in order to ensure that the 1994 Regulations continue to apply correctly to Northern Ireland after IP completion day in accordance with the requirements of the revised Protocol on Ireland/Northern Ireland ("the Protocol").

Explanations

What did any relevant EU law do before exit day?

2.2 Since 1993, the EU has had legislation providing for the return of cultural objects that have been unlawfully removed from the territory of one Member State to the territory of another Member State. The current iteration of this legislation is Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) ("the Directive"), which requires Member States to cooperate and promote consultation between their competent authorities in order to look for, identify the possessor or holder of, notify the discovery of, and act as an intermediary to arrange the return of unlawfully removed cultural objects.

2.3 The Directive aims to reconcile the principle of free movement of goods within the EU's internal market with the protection of cultural objects which are considered by a Member State to be national treasures. The Directive is transposed into United Kingdom domestic law by the 1994 Regulations, as amended by the Return of Cultural Objects (Amendment) Regulations 2015 (SI 2015/1926) ("the 2015 Regulations").

Why is it being changed?

2.4 After IP completion day, EU Member States will no longer need to return cultural objects unlawfully exported from the United Kingdom under the framework of the Directive. However, the 1994 Regulations implement the Directive in a way that means that the United Kingdom will still be obliged to use this framework to find and return cultural objects unlawfully exported from EU Member States to the United Kingdom without enjoying reciprocal rights. The 2018 Regulations were therefore drafted to revoke the 1994 Regulations for the whole of the United Kingdom in order to prevent this one-sided arrangement after IP completion day.

2.5 Following the introduction of the 2018 Regulations, the Protocol was published on 17th October 2019. The Protocol provides that the Directive shall continue to apply to Northern Ireland after IP completion day (Article 5(4) and section 47 of Annex 2 of the Protocol). It is therefore necessary to amend the 2018 Regulations so that the revocation of the 1994 Regulations does not apply to Northern Ireland, and an extent provision has been included in the 2018 Regulations to this effect. This instrument also amends terminology in the 1994 Regulations, so that they will continue to apply correctly to Northern Ireland.

What will it now do?

2.6 The 2018 Regulations are amended to include an extent provision which specifies that these regulations extend to England, Wales and Scotland. Therefore the 1994 Regulations, as amended, will be revoked for England, Wales and Scotland, but will continue to apply to Northern Ireland after IP completion day.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments

3.1 None.

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 Protocol provides at Article 5(4) that certain provisions of EU law listed in Annex 2 to the Protocol shall continue to apply to the United Kingdom in respect of Northern Ireland after IP completion day. The Directive is one of the instruments of EU law listed in Annex 2 (section 47).

6.2 Before the Protocol came into existence, the United Kingdom had previously legislated through the 2018 Regulations to revoke the Directive's domestic implementing regulations (the 1994 Regulations) for the whole of the United Kingdom on IP completion day. It was therefore decided, following the publication of the Protocol, that further secondary legislation was required to ensure that the UK is not in breach of its obligations under the Protocol.

6.3 To ensure that the 1994 Regulations continue to apply to Northern Ireland after IP completion day, this instrument amends the 2018 Regulations to include an extent

provision which provides that the 2018 Regulations apply only to England, Wales and Scotland (rather than to the whole of the United Kingdom). The 2018 Regulations therefore will not apply to Northern Ireland, meaning that the 1994 Regulations will continue to apply to Northern Ireland.

6.4 The 1994 Regulations are also amended to reflect the position that these regulations will only apply to Northern Ireland after IP completion day, rather than to the whole of the United Kingdom.

7. Policy background

What is being done and why?

7.1 The Directive is implemented in United Kingdom law by the 1994 Regulations, as amended by the 2015 Regulations. The 2018 Regulations revoke the 1994 Regulations for the whole of the United Kingdom from IP completion day. However, the Protocol provides that the Directive shall continue to apply to Northern Ireland after IP completion day.

7.2 Therefore, this instrument modifies the revocation provision in the 2018 Regulations so that it does not apply to Northern Ireland, and makes further consequential amendments to the 1994 Regulations so that they continue to apply correctly to Northern Ireland after IP completion day. This ensures that United Kingdom law in respect of Northern Ireland will be consistent with the requirements of the Protocol after IP completion day.

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 8C(1)(a) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to implement the Protocol.

9. Consolidation

9.1 The Department has no plans to consolidate the relevant Regulations.

10. Consultation outcome

10.1 No public consultation has been undertaken, as there are no policy questions or policy changes involved.

10.2 The Northern Ireland Executive has been informed about this instrument.

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 relates to the maintenance of existing requirements in respect of Northern Ireland.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (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.