

EXPLANATORY MEMORANDUM TO

THE RETURN OF CULTURAL OBJECTS (REVOCATION) REGULATIONS 2018

2018 No. 1086

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 This instrument is made using powers in the European Union (Withdrawal) Act 2018, in order to address a deficiency in UK law arising from the withdrawal of the United Kingdom from the European Union. It revokes the domestic regulations which implement Directive 2014/60/EU, relating to the return of cultural objects unlawfully removed from the territory of EU Member States. It avoids a one-sided obligation upon the UK to return cultural objects, whilst unable to enjoy reciprocal rights.

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 another Member State. The current iteration of this legislation is Directive 2014/60/EU, which requires Member States to cooperate and promote consultation between competent authorities in order to look for, identify the possessor of, notify the discovery of, and check on a specified cultural object, or to act as an intermediary for its return.
- 2.3 The Directive aims to reconcile the principle of the free movement of goods with the protection of national treasures. It is applicable to the European Economic Area countries. The Directive is transposed into UK national law by The Return of Cultural Objects Regulations 1994 (SI 1994/501, amended by the The Return of Cultural Objects (Amendment) Regulations 2015 (SI 2015/1926)).

Why is it being changed?

- 2.4 When the UK leaves the EU, EU Member States will no longer need to return objects unlawfully exported from the UK under the framework of the Directive. However, the Regulations implement Directive 2014/60/EU in a way that means that even if no longer in the EU, the UK will still have to return objects unlawfully removed from an EU Member State without the UK having reciprocal rights.
- 2.5 This Statutory Instrument is intended to correct such a one-sided policy in the event of 'no-deal'.

What will it now do?

- 2.6 Revocation of the implementing regulations will remove the UK's obligation to cooperate with EU Member States on the return of unlawfully removed cultural objects under Directive 2014/60/EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was considered by the Sifting Committees on 11 September 2018 and cleared to proceed by way of negative resolution procedure. The Minister has considered the decision of the Sifting Committees and has approved and signed the instrument.

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 This instrument addresses a deficiency in UK law arising from the withdrawal of the United Kingdom from the European Union. It revokes the domestic regulations which implement EU Directive 2014/60, relating to the return of cultural objects unlawfully removed from the territory of EU Member States. It avoids a one-sided obligation upon the UK to return cultural objects, whilst unable to enjoy reciprocal rights. The Directive is transposed into UK national law by The Return of Cultural Objects Regulations 1994 (SI 1994/501, amended by the The Return of Cultural Objects (Amendment) Regulations 2015 (SI 2015/1926).
- 6.2 This instrument revokes the Regulations, as amended. It saves them in respect of any application by a Member State for return of a cultural object where that application is received by the Secretary of State before exit day. Regulations 1-5 of the Regulations continue in force in relation to any such application. Where any claim under regulation 6 of the 1994 regulations has been properly filed with the competent court in accordance with the rules of that court and the 1994 Regulations before exit day, regulations 1, 2, 6, 7 and 8 of the 1994 Regulations continue in force in relation to any such claim.

7. Policy background

What is being done and why?

- 7.1 This SI is required to correct a one-sided policy in the event of a ‘no deal’ EU Exit. EU Directive 2014/60 provides for the return of cultural objects that have been unlawfully removed from the territory of another Member State. When the UK leaves the EU the other Member States will no longer need to follow the Directive and return objects unlawfully exported from the UK. However, our regulations implement the Directive in a way that means that even if we are no longer in the EU, the UK will still be required to return objects unlawfully removed from an EU Member State in the way prescribed by the Directive. So, after Exit, the law will be one-sided unless the UK revokes the regulations implementing the Directive, or reaches a new agreement with the EU to preserve the current restitution arrangements.
- 7.2 While our preferred solution is to reach a new agreement with the EU to preserve the current restitution arrangements, this SI provides a fall-back option in the event of a ‘no deal’, by revoking our domestic regulations which implement the Directive.
- 7.3 In the 24 years since this regulation was introduced, the powers have not needed to be used - all concluded cases involving the UK have been resolved without the need to revert to national or EU courts.
- 7.4 In the White Paper published on 12 July 2018 on the ‘Future Relationship Between the United Kingdom and the European Union’, the Government proposes a new UK-EU culture and education accord that supports the restitution of cultural objects where these have been unlawfully removed. The UK proposes continued affiliation with the cultural object restitution regime system, to underpin efforts to prevent the illicit removal and trading of cultural objects.
- 7.5 If we were to reach a situation where no agreement is reached, the default situation would be that the Regulations would remain, unamended, on the UK statute book. The governments of other EU member states would therefore retain the right in UK law to request searches, and the right to take court action against individuals and entities in the UK. However, the UK Government would not enjoy those reciprocal rights in other Member States.
- 7.6 While the aim of negotiations is to remain affiliated to this EU framework for restitution, repeal of this regime in a ‘no deal’ scenario is intended to ensure that there are no adverse impacts on UK citizens resulting from a one-sided obligation after Exit.

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 are no plans for consolidation.

10. Consultation outcome

10.1 As there is no policy change and no questions relating to how to correct the deficiency, no public consultation was 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 A full impact assessment has not been prepared for this instrument because the instrument's impact will be negligible. However, a *de minimis* assessment has been carried out and has concluded that there would be no impact on businesses or the public sector.

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 EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Gaynor Stannard at the Department for Digital, Culture, Media and Sport (telephone: 07710 761329 or email: gaynor.stannard@culture.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Helen Whitehouse, Deputy Director 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 Michael Ellis 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/ESIC
Appropriateness	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	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 13, 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 16, 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 Michael Ellis MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Return of Cultural Objects (Revocation) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure). This is the case because the instrument operates to correct a deficiency in retained in EU law. Further detail is provided in paragraph 7 of the Explanatory Memorandum.

2. Appropriateness statement

- 2.1 Michael Ellis MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Return of Cultural Objects (Revocation) Regulations 2018 do no more than is appropriate. This is the case because if we were to reach a situation where no agreement with the EU is reached, the default situation would be that the Regulations would remain, unamended, on the UK statute book. The governments of other EU member states would therefore retain the right in UK law to request searches, and the right to take court action against individuals and entities in the UK. However, the UK Government would not enjoy those reciprocal rights in other Member States. It is not necessary to take action to address this but it would seem appropriate to do so, because the current system of co-operation between member states is legitimate only because it is reciprocal, and it would be inappropriate to allow EU Exit to create a one-sided obligation on the UK which was not reciprocated by other member States”.

3. Good reasons

- 3.1 Michael Ellis MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These reasons are detailed in paragraph 7 of the explanatory memorandum.”

4. Equalities

- 4.1 Michael Ellis MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport has made the following statement “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 Michael Ellis MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In making this statement, I 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 paragraph 2 of the main body of this explanatory memorandum.

Michael Ellis MP

Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport.