



House of Commons  
European Statutory  
Instruments Committee

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**Twenty-First Report of  
Session 2019–21**

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**Documents considered by the Committee  
on 16 March 2021**

*Report, together with  
formal minutes*

*Ordered by the House of Commons  
to be printed 16 March 2021*

## European Statutory Instruments Committee

The European Statutory Instruments Committee is appointed by the House of Commons to examine and report on:

(a) any of the following documents laid before the House of Commons in accordance with paragraph 3(3)(b) or 17(3)(b) of Schedule 7 to the European Union (Withdrawal) Act 2018—

- (i) a draft of an instrument; and
- (ii) a memorandum setting out both a statement made by a Minister of the Crown to the effect that in the Minister's opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament (the negative procedure) and the reasons for that opinion, and

(b) any matter arising from its consideration of such documents.

### Current membership

[Andrew Jones MP](#) (*Conservative, Harrogate and Knaresborough*) (Chair)

[Kirsty Blackman MP](#) (*Scottish National Party, Aberdeen North*)

[Geraint Davies MP](#) (*Labour, Swansea West*)

[Mrs Flick Drummond MP](#) (*Conservative, Meon Valley*)

[Rt Hon Mr Philip Dunne MP](#) (*Conservative, Ludlow*)

[Rt Hon Sir David Evennett MP](#) (*Conservative, Bexleyheath and Crayford*)

[James Grundy MP](#) (*Conservative, Leigh*)

[Mr Richard Holden](#) (*Conservative, North West Durham*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Mary Robinson MP](#) (*Conservative, Cheadle*)

[Jo Stevens MP](#) (*Labour, Cardiff Central*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[Liz Twist MP](#) (*Labour, Blaydon*)

[Craig Williams MP](#) (*Conservative, Montgomeryshire*)

[Jacob Young MP](#) (*Conservative, Redcar*)

### Powers

The Committee's powers are set out under a temporary Standing Order of 3 February 2020.

### Publications

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The reports of the Committee are published in print by Order of the House. All publications of the Committee are available on the Internet from the [committee website](#).

### Committee staff

The current staff of the Committee are Sue Beeby (Committee Assistant), Elektra Garvie-Adams (Second Clerk), Kutumya Kibedi (Committee Assistant), and Apostolos Kostoulas (Committee Assistant), and Luanne Middleton (Clerk). Advisory Counsel: Sarita Arthur-Crowe, Klara Banaszak, Daniel Greenberg and Vanessa MacNair.

All correspondence should be addressed to the Clerk of the European Statutory Instruments Committee, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 7599; the Committee's email address is: [esic@parliament.uk](mailto:esic@parliament.uk).

You can follow the Committee on Twitter using [@CommonsESIC](https://twitter.com/CommonsESIC).



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# Instruments recommended for the affirmative procedure

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At its meeting on 16 March 2021 the Committee considered proposed negative instruments laid by the Government and has recommended that the appropriate procedure for the following instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure).

## 1. The Introduction and the Import of Cultural Goods (Revocation) Regulations 2021

1.1 The purpose of this instrument is to revoke EU Regulation 2019/880 on the introduction and import of cultural goods. Several provisions in the Regulation came into force during the transition period, and so became part of retained UK law on IP completion day (31 December 2020 at 11pm). Article 3(1), prohibiting the introduction of non-EU cultural goods which have been unlawfully removed from the country in which they were created or discovered, came into force on 28 December 2020.

1.2 The explanatory memorandum states at paragraph 2.3 the following rationale for revocation; *“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”*. At paragraph 7.3, the Department justifies the decision to revoke rather than amend the Regulation in the following terms; *“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”*.

1.3 The explanatory memorandum refers to the United Kingdom’s commitments at international law but it does not detail any provisions enforceable in domestic law that are equivalent to Article 3. The Department states in its De Minimis assessment that it has *“always considered that the ‘general prohibition’ does not add anything, or require any changes, to existing policy and procedures at the UK border. HMRC and Border Force are already able to detain cultural goods”* but again it does not identify any legally enforceable obligation or prohibition that is equivalent to Article 3. Although the Department’s response provided a detailed list of international and domestic legislation in this area [full text in the appendix], the Committee remains concerned that the legislation cited may not go as far as the general prohibition in Article 3(1). We have therefore concluded that the effect of the revocation, and whether it creates gaps in domestic legal prohibitions, are a matter for debate.

1.4 The Committee noted that the Department identified in its De Minimis assessment that revoking the general prohibition *“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".* Furthermore, this instrument also revokes provisions intended to lay the groundwork for the eventual coming into force of the substantive import licence regime created by the EU Regulation, on the basis that as the substantive provisions had not come into force before IP completion day, the United Kingdom is under no obligation to implement them and so the groundwork provisions are deficient and redundant. The De Minimis assessment notes that critics "*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*". The decision to revoke rather than amend the regulation is a political decision. The Committee believes that the issue is of sufficient political importance to justify the scrutiny and debate afforded by affirmative resolution.

**1.5 The Committee recommends that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure), on the ground it is of legal and political importance.**

## Instruments recommended for the negative procedure

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**At its meeting on 16 March 2021 the Committee considered proposed negative instruments, none of which were recommended to be subject to the negative procedure.**

## Appendix

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### **Further explanatory information, provided by the Department, regarding the Introduction and the Import of Cultural Goods (Revocation) Regulations 2021**

- 1) The UK 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.
- 2) The UK 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.
- 3) The principal UK legislation relating to the illicit trade in cultural property is the Dealing in Cultural Objects (Offences) Act 2003, which provides for an offence of acquiring, disposing of, importing or exporting unlawfully removed cultural objects, or agreeing or arranging with another person to do so. However, in practice, offences are often investigated and prosecuted under other legislation, such as the Theft Act 1968.
- 4) The Cultural Property (Armed Conflicts) Act 2017 implements the 1954 Hague Convention and its Protocols in the UK. It prohibits dealing in cultural property which has been unlawfully exported from occupied territory, where “dealing” includes importing such property into the UK.
- 5) Separate legislation implements obligations in UN Security Council Resolutions in relation to cultural objects unlawfully removed from Iraq (SI 2020//707 The Iraq (Sanctions) (EU Exit) Regulations 2020) and Syria (SI 2020/1233 The Syria (United Nations Sanctions) (Cultural Property) (EU Exit) Regulations 2020).
- 6) Cultural objects which have been unlawfully removed from EU Member States may be subject to Title I, Chapter 1, Article: GOODS.21 of the UK-EU Trade and Cooperation Agreement, which sets out a cooperation requirement when such objects are believed to have been unlawfully removed from the territory of one party and brought into the territory of the other party.
- 7) Additionally, for Northern Ireland, cultural objects from EU Member States are also subject to EU Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State. This was implemented in UK law by statutory instrument 1994/501 (The Return of Cultural Objects Regulations 1994), as amended by 2015/1926 (The Return of Cultural Objects (Amendment) Regulations 2015 and 2020/1458 (The Return of Cultural Objects (Amendment) (EU Exit) Regulations 2020).
- 8) The Customs and Excise Management Act 1979 deals with matters relating to imports and exports at the UK border. The participation of UK authorities in international

organisations such as Interpol and the World Customs Organisation ensures that they are able to cooperate and share information with their counterparts in other countries in implementing national and international legislation and commitments and tackling the illicit trade in cultural objects.

**Department for Digital, Culture, Media and Sport**

**9 March 2021**

# Formal Minutes

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**Tuesday 16 March 2021**

Members present:

Andrew Jones, in the Chair

Mrs Flick Drummond    Charlotte Nichols

Sir David Evennett     Mary Robinson

James Grundy          Liz Twist

Draft Report (*Twenty-First Report*), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.5 agreed to.

A paper was appended to the Report as an Appendix.

*Ordered*, That the Report be the Twenty-First Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

[Adjourned to a day and time to be fixed by the Chair.]