

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

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

Tuesday 14 September 2021

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 18 September 2021

© Parliamentary Copyright House of Commons 2021

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: †STEWART HOSIE

- | | |
|--|--|
| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Everitt, Ben (<i>Milton Keynes North</i>) (Con) |
| † Bhatti, Saqib (<i>Meriden</i>) (Con) | † Garnier, Mark (<i>Wyre Forest</i>) (Con) |
| Bryant, Chris (<i>Rhondda</i>) (Lab) | † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) |
| † Buchan, Felicity (<i>Kensington</i>) (Con) | † McGovern, Alison (<i>Wirral South</i>) (Lab) |
| † Burgon, Richard (<i>Leeds East</i>) (Lab) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Byrne, Liam (<i>Birmingham, Hodge Hill</i>) (Lab) | † Mumby-Croft, Holly (<i>Scunthorpe</i>) (Con) |
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Nici, Lia (<i>Great Grimsby</i>) (Con) |
| Cooper, Rosie (<i>West Lancashire</i>) (Lab) | |
| † Coutinho, Claire (<i>East Surrey</i>) (Con) | Robi Quigley, Ffion Morgan, <i>Committee Clerks</i> |
| † Dinenage, Caroline (<i>Minister for Digital and Culture</i>) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 14 September 2021

[STEWART HOSIE *in the Chair*]

Draft Introduction and the Import of Cultural Goods (Revocation) Regulations 2021

2.30 pm

The Chair: Before we begin, may I encourage Members to wear masks when they are not speaking, which is in line with current Government guidance and that of the House of Commons? Please also give other Members and staff space when seated and when entering and leaving the room. Members, please send your speaking notes by email to hansardnotes@parliament.uk. Similarly, officials in the Gallery should communicate electronically with Ministers.

The Minister for Digital and Culture (Caroline Dinenage): I beg to move,

That the Committee has considered the draft Introduction and the Import of Cultural Goods (Revocation) Regulations 2021.

It is a great pleasure to serve under your chairmanship, Mr Hosie.

This short but important statutory instrument will bring clarity and certainty for the United Kingdom's museums and art market. It will remove from the statute book those provisions of EU regulation on the introduction and the import of cultural goods that became UK law as retained EU law at the end of the transition period, but which are now either redundant or legally deficient. It will not affect existing provisions in UK law to protect cultural goods or our ability to tackle the illicit trade in cultural goods.

To put the instrument in context, EU regulation 2019/880 on the introduction and the import of cultural goods aims to tackle the illicit trade in cultural goods and to prevent the proceeds of that trade from being used to fund terrorism. The regulation came into force on 28 June 2019, but not all of its provisions became applicable on that date. In particular, one provision, known as “general prohibition”, which prohibits entry into the EU customs territory for cultural goods that were unlawfully removed from the country in which they were created or discovered, did not begin to apply until 28 December 2020. Provisions that require importers of certain cultural goods to present an import licence or an importer statement to guarantee the legal provenance of the goods will only become applicable from 28 June 2025 at the latest.

At the end of the transition period on 31 December 2020, only those provisions of EU law that had already become applicable by that date became UK law as retained EU law, that is those provisions which became applicable when the EU regulation came into force together with the “general prohibition” provision.

The provisions requiring import licences and importer statements did not become UK law, and there is therefore no legal obligation for us to implement them. We have always made it clear that we would not implement them if there was no legal obligation to do so. Many of the provisions are redundant, however, because they create obligations in relation to the EU or relate to measures to prepare for the introduction of import licences and importer statements. The “general prohibition” provision has become legally deficient and cannot be enforced in UK law. It relates to the “introduction of cultural goods”, which is defined in the regulation as

“entry into the customs territory of the Union”

and Great Britain is no longer part of the EU customs union, so it cannot be applied to Great Britain. We have therefore decided to address that legal deficiency and at the same time remove the redundant provisions from the statute book by revoking the regulation.

Why revoke the general prohibition for the rest of the UK? Even if the provision were not legally deficient in the manner I have described, it would still raise issues of concern and create complexity and confusion for importers and for our customs and border authorities. That confusion would arise because the provision applies to almost all cultural goods created or discovered in non-EU countries, regardless of their age, value or date of export. It would be possible to address those issues, but we consider that that is not necessary because we already have sufficient legal powers to tackle the illicit trade in cultural goods and the import of cultural goods that have been unlawfully removed from another country. Those powers are set out in existing domestic law and in some cases also derive from our obligations under international law.

The effectiveness of our existing legislation has been demonstrated very clearly. Even this year, in July, we returned to Bulgaria more than 1,000 archaeological finds that had been looted and unlawfully removed from the country. They were found and detained by Border Force at Dover, and the person who attempted to import the goods was given a two-year prison sentence. Earlier this year, we also returned to Libya a statue that had been unlawfully removed from the country. It was found and detained by HMRC at Heathrow. Those are just a couple of recent examples, but in the past few years, thanks to the diligent efforts of our police, customs and border authorities, we have been able to return a significant number of cultural objects to the countries from which they were unlawfully removed. The prosecution of all those cases was possible using our existing law, without the need for the general prohibition in the EU regulation. In view of that, we consider the general prohibition to be unnecessary.

The change we are making today will provide clarity and certainty for those importing cultural goods into Great Britain, and it will ensure that there is no confusion as to the rules and requirements. Primarily, it will not mean that we are any less able to prevent the import of unlawfully removed cultural goods. For that reason, I commend the instrument to the Committee.

2.35 pm

Alison McGovern (Wirral South) (Lab): It is a pleasure to serve under your chairship, Mr Hosie.

I thank the Minister for her opening remarks, which explained the delegated legislation's context. To many, it may seem that this is a niche subject, but the Minister and I believe that despite that, it is very, very important.

We have a global role to play in the protection of our culture and history. As the Minister said, the diligent work of police forces and border authorities makes sure that the illicit trade in cultural artefacts can be stopped, and that is crucial. At the end of day, a visit to a museum tells our story and its artefacts are part of our culture and heritage that we wish to hand on to generations to come. The instrument before us is part of a legal structure that protects those artefacts.

It has been a very challenging year for everyone in the world of culture, so tidying some of the legal loose ends as a means to bring greater clarity is a good thing. Museums, art institutions and those in the art world badly need that clarity and stability. I hope that the instrument will play its part in delivering that.

We should be proactively trying to do better, however, and I wonder whether the Minister and the Department for Digital, Culture, Media and Sport have considered a Law Commission review, given the complexity of all the different regulations and the shift post-Brexit. Its purpose would be to bring together the myriad complex bits of relevant legislation. We ought to consider future legislation to provide a more simple and straightforward system of enforcement.

As I said, some people may consider that this instrument relates to a minor matter, but there is nothing more important than our history and heritage.

2.37 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a great pleasure to serve under your chairmanship, Mr Hosie. I would have been tempted to vote against the regulations, but in the circumstances, I will settle for a short moan.

I agree with the Minister and the shadow spokesperson that the regulations relate to hugely important issues, first because they relate to the protection of valuable and culturally significant items and secondly, because they help to stymie the funding of terrorism and the activities of organised crime. However, the various criticisms of the draft instrument raised when it was debated in June in House of Lords are yet to be addressed. In that debate the process was described as rushed and the word used was “cavalier”, and I tend to agree with that criticism. In fact, we are only getting to debate the SI today because the Joint Committee on Statutory Instruments expressed concern about the use of the negative procedure. I think it is important that we have the opportunity to debate the instrument today.

Ministers are using a power to make technical fixes to retained EU law, but it has been acknowledged that it would have been open to them to make a small tweak to the retained EU regulations rather than repeal them entirely. What is suggested today is way beyond a technical fix—in some respects, it is a full-blown change in policy. Arguably, that change should not be made using such powers, and, indeed, made only after a thorough consultation and scrutiny of alternative proposals. Perhaps that should be conducted by the Law Commission, as the shadow Minister suggested.

I am happy to accept that there may be problems with the way in which the EU regulations operate, but they should be studied and detailed proposals for reform should be suggested, rather than the SI before us. Proper consultation and policy scrutiny would have avoided the various questions and issues raised in the other

place. In fact, it is not even clear exactly how our rules and processes will differ after this SI comes into force, because our domestic laws will revert to depending upon a right hodgepodge of international conventions and different Acts of Parliament. The Minister said that the SI will provide clarity and certainty but actually complexity and confusion will come back into force.

As I understand it, the rules are not always brilliantly enforced in the UK and they require little by way of active checks. That brooks no criticism of those involved in the difficult work of enforcement, but it is a criticism of the hodgepodge of rules with which they have to contend.

Their lordships also highlighted that there will be different rules in different parts of the United Kingdom. Part of that difference is a legitimate function of devolution, but very significantly, part of that is a function of the Northern Ireland protocol, which has yet to be mentioned. It would be helpful to know how different will the respective regimes be in Northern Ireland and the rest of the UK. Is there not a danger that those differences risk providing a back door to certain illegal trade?

Regardless of that lack of clarity, there is a strong suggestion that we will revert to a slightly weaker system. An example provided by Blue Shield UK was cited in the House of Lords debate. It was argued that without the retention of the EU regulation, we will revert to a position where it would not be illegal to import into the UK an Egyptian cultural object on grounds that it was illegally exported from that country, despite Egypt having national legislation to that effect. Under the domestic regime to which we are reverting, one would have to show that that object was stolen for any problem to arise with its importation.

There seems to be a suggestion that we are reverting to rules that are different and weaker, and therefore at risk of damaging our reputation. My simple point is that before we go repealing EU regulations there should be proper consultation on what should replace them, and a consolidation of all domestic and international rules that apply here. In that way we can be clear about what exactly will be different about the new system, and we can scrutinise it properly.

I have had my moan and in the circumstances I will not press the matter to a vote, but I would be interested to hear what the Minister has to say in response to some of those questions and criticisms.

2.42 pm

Caroline Dinéage: I thank both Members for their contributions, in particular the Opposition Front-Bench spokesperson for her support.

As I said in my opening remarks, the Government believe that the statutory instrument will provide clarity and certainty for the UK’s museums and the art market. This has been a difficult 20 months for them, and this change is something that we can do for them. It will allow them and their partners and clients to bring cultural objects into Great Britain without any unnecessary fear that they will be delayed or detained at the border because of any unsupported claim of unlawful removal from another country at some point in the distant past.

Myriad domestic law and international conventions apply, and it is a complex matter and something that the Law Commission may be requested to study at some

[Caroline Dinenage]

point. However, our existing legislation offered robust protection to cultural good before the general prohibition provision came into effect. I cited two examples from just this year to show how that law continues to be effective.

In response to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, revoking the regulation will not mean that we cannot prevent unlawfully removed cultural goods from being imported into the UK. We already have the powers in domestic legislation to bear down on such illicit trade and to take proportionate action where it is necessary, and there is evidence that cultural goods found at our borders or in our country have been unlawfully removed. We feel that the powers are effective and in recent years we have returned a number of cultural goods to countries from which they had been unlawfully removed. There is absolutely no

reason why that practice will not continue. In cases where an object raises concern, we can detain it and deal with it accordingly under existing powers and procedures.

In response to the hon. Gentleman's query about Northern Ireland, the EU regulation will continue to apply directly to Northern Ireland by virtue of having been added to annex 2 of the Ireland/Northern Ireland protocol. The general prohibition already applies to the imports of cultural goods into Northern Ireland, including from Great Britain. The requirement for import licences and importer statements will also apply in due course, but revocation of the EU regulation from UK law will not affect that.

I commend the statutory instrument to the Committee.

Question put and agreed to.

2.45 pm

Committee rose.

