

# POLICY BRIEF



Following the UK's Repeal of the EU Import Regulation in Great Britain, will Northern Ireland become a gateway to Europe for illicit cultural property?

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Recommendations for the UK to mitigate this risk and seize the opportunity to strike the right balance.

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## ABOUT THE AUTHOR



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Rogers has consistently been recognized as a leader in the field of cultural property, referred to as the “first port of call for advice on cultural heritage issues” and praised for her “encyclopedic” and “phenomenal” knowledge of cultural property and heritage matters and her expertise in the Middle East. Rogers is a prominent advisor in international regulation and policy, and is regularly consulted on international legislation, advice on amendments and drafting, the wider impact on law enforcement and the art market, and consistency and compliance with international best practice.

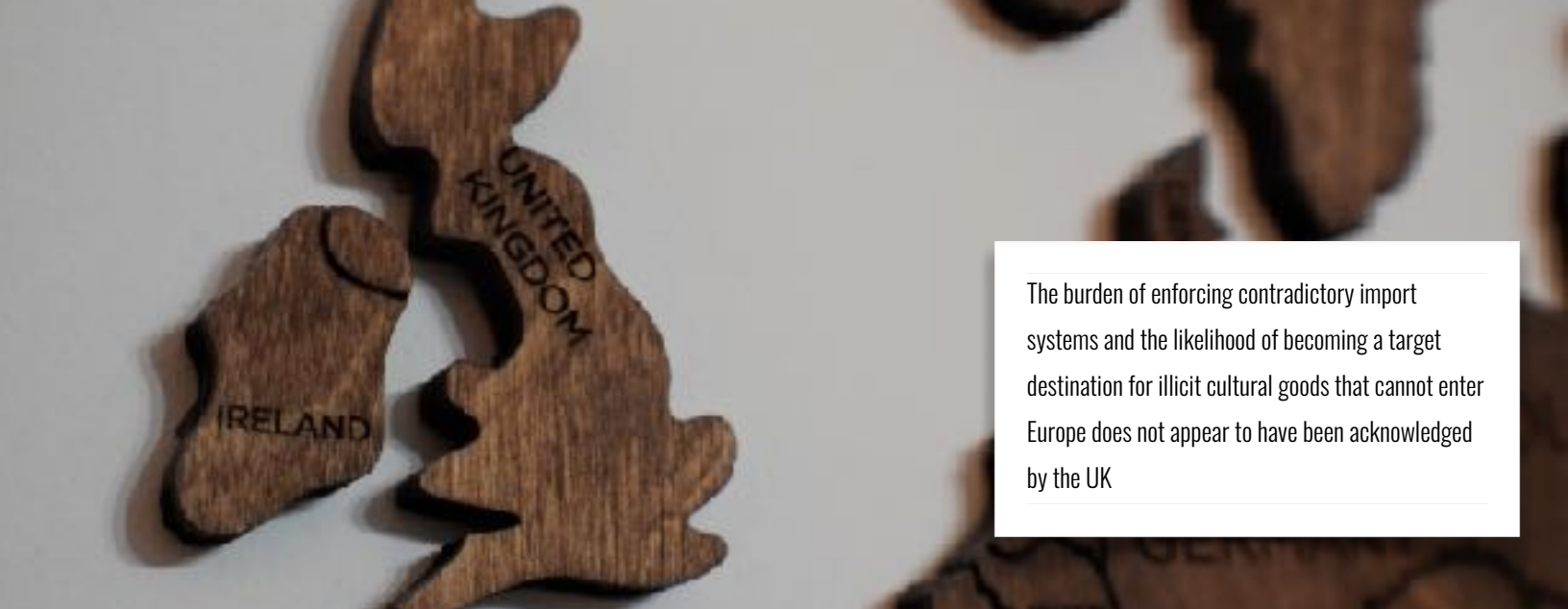
For the past 10 years, Rogers has advised on all aspects of cultural property matters, advising the art market on due diligence, compliance and moving cultural goods across borders, supporting countries of origin on recoveries of looted cultural property (in particular during conflict), and working with Government bodies around the world on strengthening legislation and measures to combat illicit trafficking of cultural property and ensure compliance with international commitments.

## ABOUT THE THINK TANK

The Antiquities Coalition unites a diverse group of experts in the global fight against cultural racketeering: the illicit trade in art and antiquities. This plunder for profit funds crime, armed conflict, and violent extremist organizations around the world—erasing our past and threatening our future. Through innovative and practical solutions, we tackle this challenge head on, empowering communities and countries in crisis.

In 2016, as part of this mission, we launched the Antiquities Coalition Think Tank, joining forces with international experts, including leaders in the fields of preservation, business, law, security, and technology. Together, we are bringing high-quality and results-oriented research to the world's decision makers, especially those in the government and private sectors. Our goal is to strengthen policymakers' understanding of the challenges facing our shared heritage and more importantly, help them develop better solutions to protect it. However, the views expressed in these policy briefs are the author's own, and do not necessarily reflect those of the Antiquities Coalition.

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## Executive Summary

Despite international efforts to shine a spotlight on the deliberate destruction and looting of cultural property during conflict and the international community's commitment to stopping the industrial trafficking believed to be contributing to the financing of terrorist groups such as Daesh, Al Qaeda and others, illicit trafficking continues in plain sight, seamlessly integrating with the legitimate antiquities market. As long as market countries continue to facilitate the ability for illicit cultural goods to integrate with the legitimate trade, industrial and systematic excavations licensed by terrorist groups, looting and pillaging will continue.

The EU has sought to address this problem by streamlining import rules and preventing import without proof of legal export from the country of origin, a dramatic move which could significantly hinder the import of illicit, but also legitimate, cultural goods into Europe. The UK has taken a seemingly opposite approach, quietly revoking the EU *Regulation on the Introduction and the Import of Cultural Goods* (EU 2019/880) in Great Britain, while adopting it in Northern Ireland, yet failing to recognize the magnitude of its decision. The burden of enforcing contradictory import systems and the likelihood of becoming a target destination for illicit cultural goods that cannot enter Europe does not appear to have been acknowledged by the UK, and during the repeal process was downplayed significantly, sending yet another worrying signal as to the UK's attitude toward cultural property protection.

This paper examines the reasoning behind the UK's decision to repeal the Regulation (and failure to replace it) and critiques the assurances given as to the effectiveness of the UK's current measures. Next, this paper recognizes the UK's unique opportunity to adopt bespoke practices, which are more targeted and workable than those required by the EU Regulation, under its existing legislation while still meeting the objective. This paper makes a series of recommendations to encourage the UK to balance competing interests, meet its international commitments and take the role as a leading example for other art market countries in cultural heritage protection.





## Introduction

In April 2019, the EU adopted the Regulation on the Introduction and the Import of Cultural Goods (EU 2019/880) (hereafter the “Regulation”),<sup>1</sup> which aims to prevent the import and storage of cultural goods illicitly exported from non-EU countries, reduce trafficking in cultural goods, combat terrorism financing, and protect cultural heritage. While the Regulation becomes operational in stages (anticipated to fully enter into force by June 2025 on completion of the necessary import licensing database), part of the Regulation came into effect in December 2020, requiring Member States to prevent the import of unlawfully exported cultural goods from that date onwards. As the Brexit transition period was ongoing when this Article came into force (albeit for three more days), Article 3(1) became *retained EU law* automatically, by virtue of the Withdrawal Agreement.<sup>2</sup>

The UK Government may have been somewhat unprepared, given it had hoped the Brexit transition period would end in March 2020, prior to any part of the Regulation actually becoming binding in the UK. In December 2020, the UK Government confirmed that the Regulation would apply in full in Northern Ireland, as it was included in Annex 2 of the Northern Ireland Protocol EU Agreement (hereafter the “Protocol”). However, no decision was made regarding the rest of the UK until early 2021 when the Government decided to revoke the Regulation in Great Britain only as a legislative tidy-up of so-called “legally deficient and/or redundant” post-Brexit legislation.

The Regulation will, therefore, apply in full in Northern Ireland and not at all in Great Britain, but the UK’s current position<sup>3</sup> is that **the UK will not change the way in which it handles cultural goods entering either jurisdiction**. Unless the Government alters its approach, Northern Ireland will eventually be in violation of the Regulation, as the import checks currently carried out in the UK are insufficient to comply with the Regulation as it gradually comes into effect, and to meet the Regulation’s objectives.

During the repeal of the Regulation, a number of assurances were made as to the effectiveness of existing UK legislation in tackling illicit trafficking, the impact of new legislation such as the Anti-Money Laundering Regulations, and the UK’s commitment to cultural heritage protection. This paper critiques some of these assertions and seeks to correct their inaccuracies, and as a result, examines what is required to enable the UK, without enacting new legislation, to meet the same objectives as the Regulation; namely, to combat terrorist financing and reduce trafficking in cultural goods.

## The Problem: The Regulation

The objectives of the Regulation are both urgent and necessary, namely to safeguard humanity’s cultural heritage and prevent the illicit trade in cultural goods, particularly where such illicit trade could contribute to terrorist financing.

The Regulation seeks to achieve these goals (primarily) by:

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- Introducing an import licensing system for certain categories of cultural goods imported into the EU that were created or discovered outside it, via introduction of an EU-wide electronic licensing database through which applications will be submitted and tracked, effectively creating a passport for such cultural goods.
- Requiring importers to either apply for an import license (for the most “at risk” objects) or submit an importer statement (both via an electronic database) when importing certain types of cultural goods.
- Requiring importers to confirm (and in some cases provide documentary evidence) that:
  - the cultural goods in question have been exported from the country where they were created or discovered in accordance with the laws and regulations of that country; or
  - there was an absence of such laws and regulations at the time they were taken out of its territory.

While illegally exported cultural objects in collections, museums, and the trade may raise legal and moral questions over ownership, not all such objects contribute to terrorist financing or other criminal activity.

There are different rules and derogations when the country of origin cannot be reasonably determined or the export took place prior to 24 April 1972, and the Regulation also contains exemptions for museum exhibitions, conservation, research, study and temporary exhibition at art fairs.

Despite multiple exemptions, the solution proposed by the EU in the Regulation has been subject to criticism.<sup>4</sup> The Regulation goes far beyond what is required to prevent the funding of terrorism. The wide net captures cultural goods that may have been in collections for many decades and whose import would not contribute to terrorist financing. While illegally exported cultural objects in collections, museums, and the trade may raise legal and moral questions over ownership, not all such objects contribute to terrorist financing or other criminal activity. Further, while foreseeable, the wide scope of objects, including stamps and cinematic archives for example, does not correlate to the cultural goods most at risk of industrial and systematic looting during current conflicts to fund terrorist activities (although this author acknowledges that such inclusions are aligned with the objective of “safeguarding humanity’s cultural heritage and preventing the illicit trade in cultural goods” in the future).

## The UK’s Approach: Great Britain and Northern Ireland

The UK has adopted an approach at the other end of the spectrum, by choosing to revoke the Regulation. The UK had previously stated that it would not adopt the EU’s licensing system post-Brexit, on the grounds it was too onerous. However, this logic is now called into question, as the Regulation will apply in full in Northern Ireland and it has been confirmed that checks on goods from Great Britain to Northern Ireland (including for onward transit to the EU) are to be carried out in England. Despite hoping to avoid additional database and license checks, customs officers in Great Britain will now need to implement them, in any event, because of their application in Northern Ireland. If the Government wishes to minimize the checks on goods between Great Britain and Northern Ireland, then presumably it would require a similar system for cultural goods on import into Great Britain,



rather than two distinct systems, as a result of its decision to implement the Regulation in Northern Ireland and repeal it in Great Britain. Northern Ireland will also need to adopt its own measures for cultural goods imported from outside the EU and Great Britain, which are likely to increase for the reasons explained in this paper.

## Rationale for the UK's Approach

The UK already had two differing import rules within the UK (i.e. England/Wales and Scotland), and now intends to add a third (i.e. Northern Ireland), requiring a significant change in import procedures, something the UK is currently reluctant to acknowledge.

During the repeal process, a strong focus was placed on existing UK legislation, suggesting that it was sufficient to combat the import of illicit trafficking into the UK. It seems that Scotland was forgotten in this discussion, as the Dealing in Cultural Objects Offences Act 2003, which was heavily cited, does not in fact apply in Scotland. The UK already had two differing import rules within the UK (i.e. England/Wales and Scotland), and now intends to add a third (i.e. Northern Ireland), requiring a significant change in import procedures, something the UK is currently reluctant to acknowledge.

The UK must accept and implement measures catering to its three distinct import systems for cultural goods across the UK, and recognize that there are now three alternative meanings of “unlawfully removed cultural goods,” depending on the country of import, making enforcement extremely challenging. If it does not recognize and address this inconsistency, the UK faces a problem. Traffickers may well take advantage of the UK’s very public desire to minimize checks between the UK nations, and its reluctance to adhere to separate procedures in Northern Ireland, making this an easy entry point to the EU. Cultural goods may be imported via Scotland (as the weakest in terms of legislative measures, followed by England/Wales) and move freely across Great Britain and onwards to Northern Ireland (and ultimately the EU), without the sufficient checks that satisfy the distinct legal requirements applicable in each country. As a result, Great Britain may become a destination for illicit cultural goods that cannot be legally imported elsewhere, as countries around the world continue to strengthen import measures for cultural goods, and Northern Ireland risks becoming a gateway to the EU for cultural goods that cannot obtain a license to enter the EU.

With Culture (and indeed illicit trafficking) added to the agenda for the 2021 G20 summit, the UK’s laissez-faire approach to cultural property protection is likely to come under scrutiny internationally and jeopardize the UK’s credibility to uphold its multiple international commitments concerning the protection of cultural property and prevention of illicit trafficking. While the UK believes it can counter such scrutiny by pointing to existing practices, in reality, can the UK truly demonstrate effective enforcement, compared to the rest of the world?

## Challenging the UK's Positions in Repealing the Regulation

There are several difficulties with the UK’s current approach, which suggests that the UK does not have adequate implementation of its existing laws or fully acknowledges the risks posed by illicit trafficking networks. The statements in bold below are examples of the UK Government’s position, or reasons in support of the repeal, which this paper now examines and critiques in more detail.





- **Position no.1:** *Revocation was necessary to remove “redundant, meaningless or unenforceable provisions” in UK law.*<sup>5</sup> There is a power to amend statutory instruments to remedy any failure of Retained EU Law to operate effectively or to cure any deficiency in Retained EU Law (see Section 8 of the EU (Withdrawal) Agreement Act 2018). The explanatory note to the 2018 Act says that the deficiency is intended to cover circumstances where Retained EU Law does not function appropriately, or even sensibly. It further explains that, where the resulting provision has no practical application or makes provision for reciprocal arrangements or rights which no longer exist or are no longer appropriate, once the UK has left the EU, statutory instruments can be brought forward to repeal or amend the provisions. However, section 8 was intended for technical fixes, not to make major policy amendments. Had the UK retained the Regulation, as it has done in Northern Ireland, it could have cured any deficiencies using the wide powers under the EU Withdrawal Agreement Act 2018.
- **Position no. 2:** *Article 3(1) does not add anything to, or require any changes to existing UK policy and procedures at the UK border.*<sup>6</sup> This statement is inaccurate, as while the Regulation does not yet require the prescribed import controls, currently Her Majesty's Revenue and Customs (HMRC) will only seize an object if it is considered illegal in the UK, and Part A goods in the Regulation go far beyond that. An example to illustrate the difference is set out below (as presented by Lord German to the House of Lords during the debate):

**Example:**

- **Prior to Article 3(1):** Prior to the Regulation coming into force, it would not be illegal to import to the UK an Egyptian cultural object simply because it had been illegally exported (but not necessarily stolen) from Egypt in 2000, despite Egypt having enacted national legislation banning such exports without a license in 1983.<sup>7</sup> This is because the UK (including Northern Ireland) does not directly enforce foreign export laws. This general rule applies, provided the object is not a recent Iraqi or Syrian export subject to import restrictions in the UK or meets the strict criteria of a “tainted object” (only after 2003), as required by the Dealing in Cultural Objects Offences Act 2003.

- **Impact of Article 3(1):** However, the Regulation requires that customs authorities only permit the import of this Egyptian object if it was legally exported from Egypt post-1983 or where the importer can demonstrate that it was exported prior to the Egyptian law banning its export. Legal export post-1983 would require an export license. This will soon include objects coming from Great Britain to Northern Ireland, as it will be considered an import from outside the EU and the Regulation will apply in Northern Ireland.

There is no legal obligation to demonstrate the origin of a cultural good on import, and it is market practice (particularly if origin is uncertain) to state an ancient civilization, wide geographic region, or the country of recent export, none of which are subject to scrutiny or enquiry.

- **Position no.3:** *HMRC and Border Force are already able to detain cultural goods at the border if there is intelligence or evidence to suggest that they have been unlawfully exported from another country.*<sup>8</sup> While this assertion is correct and such powers do exist, the lack of enforcement and heavy reliance on evidence of unlawful export is far too high a bar to achieve the objective of the Regulation. Further, as described above, reference to “unlawful export” now has three different meanings across the UK, depending on which country the cultural object is imported into. There is no legal obligation to demonstrate the origin of a



cultural good on import, and it is market practice (particularly if origin is uncertain) to state an ancient civilization, wide geographic region, or the country of recent export, none of which are subject to scrutiny or enquiry.

- **Position no. 4:** *Existing measures in the UK are sufficient to tackle unlawfully removed cultural goods.*<sup>9</sup> This assertion is made without acknowledgement that there will be three distinct meanings of what unlawfully exported cultural goods are, depending on whether the cultural good in question is being imported into Scotland, England and Wales, or Northern Ireland. The Egyptian antiquity in the example above would be an unlawfully exported cultural good in Northern Ireland, but not in Great Britain. This assertion, like several others, appears to derive from an English law perspective only, and accordingly, fails to recognize the risks and complexities in enforcing multiple and inconsistent rules.
- **Position no. 5:** *Anti-Money Laundering Regulations provide sufficient protection for antiquities.* While new Anti-Money Laundering Regulations have come into force in the UK, they apply only to sales of “Works of Art” as defined by the Value Added Tax Act 1994 and crucially omit antiques, coins, ethnographic items and other collectors’ items.<sup>10</sup> While the repeal process of the Regulation identified the enhanced due diligence requirements for certain cultural goods, this only applies to those categorized as “Art Market Participants,” therefore catching art galleries and auction houses, but not those dealing exclusively in exempt objects, such as coins and certain archaeological objects. The latest consultation to amend the Anti-Money Laundering Regulations and expand the definition of “works of art” to digital, makes no mention of expanding the definition to include all relevant cultural goods, such as coins.
- **Position no. 6:** *Trafficking networks will not use Northern Ireland for transshipment of illicit cultural property.*<sup>11</sup> It was suggested by Government representatives during the repeal process that re-routing cultural goods via Northern Ireland would be an unduly expensive and time-consuming exercise for cultural property traffickers. This demonstrates a lack of understanding of trafficking networks, which deliberately exploit less strict borders to create a legitimate paper trail, as well as the significant margins for antiquities once in the destination country.<sup>12</sup> Without any data or evidence to support this assurance, such a view of the illicit antiquities market from the UK is concerning.<sup>13</sup>

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## Policy Recommendations

The objective of the UK should be to strike a balance between prevention of illicit trafficking and maintaining a legitimate art market, while trying to streamline requirements, procedures, and practices across the UK as much as possible, when it comes to import.

**Adoption of the Regulation wholesale will not solve the problem of illicit trafficking** without a significant change of direction for the antiquities market in the UK. Determined traffickers will still produce false documentation and declarations, and without the necessary political will and resources requiring customs officers to verify such documentation or declarations, the Regulation is likely to hinder the legitimate art trade dramatically, while having a minimal impact on the illegal import of cultural goods.

However, the answer is not to adopt new cultural property legislation in the UK. *If properly enforced, the UK’s existing legislation ought to be sufficient to prevent the import of the most at-risk objects, which contribute to terrorist financing.* The objective of the UK should be to strike a balance between prevention of illicit





trafficking and maintaining a legitimate art market, while trying to streamline requirements, procedures, and practices across the UK as much as possible, when it comes to import. With too much focus on burdening dealers and auctioneers (the majority of whom are well aware of their legal requirements) and not enough focus on the risks of imports feeding the private and online markets, the UK has lost its balance and now risks losing its reputation and credibility as a country that is committed to cultural property protection and combating terrorist financing.

The recommendations set out below are intended to be workable solutions, easily adopted by the art market but deliberately more onerous for the opaque private market and low-end online non-specialist platforms such as eBay and social media marketplaces. They require no new legislation, only amendments of implementing regulations and HMRC protocols. The goals of these recommendations are to promote awareness of the law and act as a deterrent and cost for low-value, unprovenanced antiquities, which do not contribute to the UK economy. The recommendations intend to mirror some of the more practical operational aspects of the Regulation, so as to allow a streamlined approach when moving cultural goods across borders, and to facilitate consistent training across customs and law enforcement in the different nations within the UK.

### **1. Dedicated points of entry for antiquities**

By having a small number of dedicated ports of entry for antiquities and cultural goods, the UK could appoint specially trained staff at such ports to implement more robust checks on the import of antiquities than are currently carried out and be better able to identify illicit objects. There is recent precedent for dedicated ports in the UK for CITES listed objects, such as ivory.<sup>14</sup> Limiting points of entry would not hinder the art market, which often uses a limited number of entry points, in any event, due to bonded warehouses and the need for facilities suitable for handling high-value and fragile objects. However, it would ensure that objects imported via the private market were more likely to be seen by trained staff, increasing the likelihood of compliance from the private market. Antiquities and cultural goods not imported through one of the dedicated ports could be seized or detained.<sup>15</sup>

### **2. Information required on import**

Senders should be required to state certain information on the import of a cultural good, to the best of their knowledge and belief, as the UK has criminal penalties for knowingly or recklessly providing untrue information on import and counterfeiting documents.<sup>16</sup> One of the fundamental problems with enforcement of the UK's existing cultural property legislation is that, save for a slightly more balanced burden of proof for objects coming from Iraq and Syria,<sup>17</sup> it requires dishonesty and knowledge of the crime. This is a very high threshold when no questions as to the knowledge or belief of the importer/sender are ever asked at the time, making prosecutions almost always unfeasible. Equally, when dealers or collectors are accused of being complicit in antiquities trafficking, should their object later be found to have been looted historically without their knowledge (for example, they were provided with false provenance), it is extremely difficult to demonstrate their knowledge at the time of import, which may arise many years and many pieces later.<sup>18</sup>

The information required on import may include:

One of the fundamental problems with enforcement of the UK's existing cultural property legislation is that, save for a slightly more balanced burden of proof for objects coming from Iraq and Syria, it requires dishonesty and knowledge of the crime.



For the UK (other than Northern Ireland), there will be no obligation to prove that the object has not been illegally exported from its country of origin.

A. *Believed origin:* It is often difficult to know the exact modern-day country of origin of objects, but specialist collectors and dealers will certainly have a well-founded opinion as to a group of possible countries (particularly when the Ancient Civilization is known), and the majority of sellers on eBay and other online platforms list an origin or civilization. Indeed, this is a key factor in the value of the object and is rarely omitted. If the origin is entirely unknown, there could be a requirement to provide documentation pre-dating 2003 (referring to the Dealing in Cultural Objects Offences Act 2003) or 1990 (if the piece could potentially be Iraqi<sup>19</sup>). An alternative option is for the importer to pay for an opinion from a specialist from a list of recognized experts, deterring those importing low-value unprovenanced objects from even attempting to import. At present, origin is asked on import, but this is often completed as the Ancient Civilization (without opinion as to the likely country) or the latest country of export, which may be a transit country. The objective is to ensure that the country of origin declared on import is consistent with the origin marketed to potential buyers.

B. *Declaration:* For the UK (other than Northern Ireland), there will be no obligation to prove that the object has not been illegally exported from its country of origin. Evidence is often impossible to obtain, as it was not previously required, and records may have been destroyed or lost over the years. However, the importer should be required to state why it does not believe that it is importing an object that has been illegally exported,<sup>20</sup> based on the information it is aware of. This may include stating the provenance provided, or referring to available documents (even if not an export license). An example may include:

“Invoice from 1995 provided by previous owner. Acquired from a reputable auction house in X country, previously exhibited at X art fair in 2001.”

C. *Provenance:* Provenance, where available, should be supplied on import. Again, it is very unlikely knowledgeable collectors, dealers, or museums would acquire antiquities without any provenance. While it is in the commercial interests of dealers/auctioneers to keep some details of provenance confidential, this information provided to customs on import would not be publicly available or provided to a subsequent owner. It would only be used if an object was later suspected or found to have been illegally imported or otherwise the subject of criminal activity. While customs authorities would not be in a position to make judgements on the sufficiency of provenance, the likelihood of provenance being accurate, or the validity of foreign export laws (nor should it be their place to do so as non-specialists), if no provenance was provided, it would be difficult for the importer to answer the previous question, which would be a requirement for import.

While it is in the commercial interests of dealers/auctioneers to keep some details of provenance confidential, this information provided to customs on import would not be publicly available or provided to a subsequent owner.

D. *Updates:* To further strengthen the effectiveness of these import requirements, there would also be an obligation on the importer, while in possession of the object, to update the customs record if material information provided on import changed, such as if the country of origin or provenance was found to be false, altering the contents of the Declaration.



This would ensure that objects were not imported with one origin and provenance, and subsequently sold with another to attract a higher price. A material change could occur for genuine reasons, such as further research or comparables coming to light, but could also be used as a cover for trafficking, such as declaring on import “origin Tajikistan” and subsequently selling it as definitively Afghan. At present, there is no obligation to update customs on the origin of an object, allowing pieces to be imported under false “low-risk” neighboring countries of origin, to be sold later on the private market as legally imported goods from high-risk countries, increasing their rarity and price tag. The ability to demonstrate legal import to an art market country (particularly one that purports to have robust measures in place) can be used to persuade a buyer as to the legitimacy of an object.

### **3. Ensure antiquities are clearly included in Anti Money Laundering Regulations**

The objects at highest risk of contributing to terrorism should be added to the definition of “Works of Art” for the purposes of anti-money laundering, in particular coins and archaeological/ethnographic objects, and dealers exclusively dealing in such objects should be classed as Art Market Participants.

### **4. Categorize highest-risk objects**

In order to assess the most at-risk groups of objects, and to guard against future conflicts, the definition of cultural goods requiring import declarations should be wide; but the UK may decide to adopt a risk-based approach and require enhanced checks on certain categories of objects at certain times, based on the advice of experts or intelligence. This could operate in the same way as objects under CITES, with three categories of risk, and the highest and most endangered risk group requiring heightened scrutiny on import. This would allow customs authorities to “switch on” emergency measures without the need for further legislation. An alternative means of assessing the most at-risk groups could be to align with the ICOM emergency red lists.

The UK further underestimates the consequences of adopting less robust import restrictions, particularly in Northern Ireland, which could potentially risk becoming a transshipment hub for illicit antiquities.

## **Conclusion**

The UK is bucking the trend of other countries, who are taking significant steps to try to clamp down on illicit trafficking, albeit with varying levels of success. Consistently in the top three countries with the largest art market,<sup>21</sup> the UK is naturally keen to adopt a balanced approach, but regretfully, and perhaps due to a lack of data on the private antiquities market or the online market, it has overstated the effectiveness of its current measures and underestimated the significant risk to terrorist financing caused by illicit trafficking of cultural goods that may be entering the UK. The UK further underestimates the consequences of adopting less robust import restrictions, particularly in Northern Ireland, which could potentially risk becoming a transshipment hub for illicit antiquities. It has been argued that transshipment through Northern Ireland would be a costly and time consuming detour, which further illustrates the Government’s lack of knowledge of the high prices commanded for certain cultural goods or the operations of traffickers well-versed in exploiting weaker borders to create a legitimate paper trail.





Post-Brexit, the UK has an opportunity to adopt bespoke practices under its existing legislation to tackle the illegal import of cultural goods, which are more targeted and workable than those in the Regulation, while still meeting the latter's objective. The recommendations summarized below will enable the UK to strike a balance, meet its international commitments and set an example for cultural heritage protection for other art market countries:

- Limiting import of cultural goods to certain ports, allowing the UK to appoint specialist staff and implement more robust procedures.
- Requiring certain information to be stated on import (much of which is readily available to the art market), creating a record of the importer's knowledge at the time of import for their benefit as well as law enforcement's. The greater impact of this recommendation is likely to be on the lower-end private market, such as eBay and other online platforms, and will educate buyers and sellers to request and supply this information as standard practice.
- Widening Anti-Money Laundering Regulations to expressly include antiquities will clear up the current confusion over what falls within the definition of Work of Art and when a seller must carry out enhanced due diligence.
- Categorizing high risk objects will allow the UK to be responsive to conflicts and events around the world, acting swiftly on intelligence to prevent illegal import without the need for new legislation.

This paper makes a series of recommendations to encourage the UK to balance competing interests, meet its international commitments and take the role as a leading example for other art market countries in cultural heritage protection.





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## Endnotes

<sup>1</sup> Pursuant to the European Council Conclusions of 12 February 2016 on the fight against the financing of terrorism, the Communication from the Commission to the European Parliament and the Council of 2 February 2016 on an Action Plan for strengthening the fight against terrorist financing and Directive (EU) 2017/541 of the European Parliament and of the Council, and echoing a number of UN Security Resolutions, 1373 (2001), 1483 (2003), 2199 (2015), 2253 (2015), 2347 (2017), 2368 (2017).

<sup>2</sup> Sec. 3(1) of the European Union (Withdrawal) Act 2018 provides that direct EU legislation operative before exit day (31 December 2020) forms part of UK domestic law on and after that date. This is known as retained EU law. For EU regulations with staggered application, the part covered by an application date falling after the end of the transition period does not become retained EU law, while the part that is covered by an application date before the end of the transition period is retained. Retained EU law cannot be modified except by an Act of Parliament or primary or subordinate legislation if it has the power to make such a modification.

<sup>3</sup> UK Government website currently states that the prohibition will be implemented by the UK border authorities for Northern Ireland on the basis of intelligence, and there will be no changes to the way in which cultural goods are handled when they are lawfully brought into Northern Ireland, which is a violation of the requirements of the Regulation and thus of the Protocol: DCMS. Exporting or importing objects of cultural interest guidance. Published 31 December 2020. Last updated 15 October 2021. Last accessed: 20 October 2021. <https://www.gov.uk/guidance/exporting-or-importing-objects-of-cultural-interest>. This approach is further confirmed in the House of Lords Debate on 30 June 2021: House of Lords. Volume 813. Debated on Wednesday 30 June 2021. Last Accessed 27 July 2021. [https://hansard.parliament.uk/Lords/2021-06-30/debates/CD09C85A-81D1-4CB7-8239-C8F4C755ADA4/IntroductionAndTheImportOfCulturalGoods\(Revocation\)Regulations2021](https://hansard.parliament.uk/Lords/2021-06-30/debates/CD09C85A-81D1-4CB7-8239-C8F4C755ADA4/IntroductionAndTheImportOfCulturalGoods(Revocation)Regulations2021).

<sup>4</sup> Martin Bailey and Anna Brady. Art dealers slam proposed European Union licence regulations. *The Art Newspaper*. 15 June 2018. Last accessed: 12 October 2021. <https://www.theartnewspaper.com/2018/06/15/art-dealers-slam-proposed-european-union-licence-regulations>; Neil Brodie. Heart of confusion? EU Regulation 2019/880 on the import of cultural goods and the fight against terrorism. *Market of Mass Destruction*. 17th January 2020. Last accessed: 12 October 2021. <https://marketmassdestruction.com/heart-of-confusion-eu-regulation-2019-880-on-the-import-of-cultural-goods-and-the-fight-against-terrorism/>.

<sup>5</sup> DCMS. Self-assessment to accompany the Repeal of the Regulation in Great Britain: De Minimis Assessment: Self-Certification Template. UK. 2021. Last accessed 29 June 2021. [https://assets.publishing.service.gov.uk/media/603ceb1a8fa8f5049645deb3/The\\_Introduction\\_and\\_the\\_Import\\_of\\_Cultural\\_Goods\\_\\_Relocation\\_\\_Regulations\\_2021\\_-\\_IA.pdf](https://assets.publishing.service.gov.uk/media/603ceb1a8fa8f5049645deb3/The_Introduction_and_the_Import_of_Cultural_Goods__Relocation__Regulations_2021_-_IA.pdf).

<sup>6</sup> *Ibid.*

<sup>7</sup> Egypt's Ministry of Culture. Law Promulgating the Antiquities' Protection Law. No. 117. Egypt. 1983. Last accessed 29 June 2021. [https://en.unesco.org/sites/default/files/egypt\\_law3\\_2010\\_entof.pdf](https://en.unesco.org/sites/default/files/egypt_law3_2010_entof.pdf). Whilst Egypt had earlier cultural patrimony legislation, the 1983 legislation is known to have been tested and upheld by foreign courts (US v. Schultz, 333 F.3d 393 (2d Cir. 2003), and is often cited as a key date after which export licenses were required.

<sup>8</sup> DCMS. Self-assessment.

<sup>9</sup> Explanatory Memorandum to the Introduction and the Import of Cultural Goods (Revocation) Regulations 2021 sought to reassure the Government that cultural goods were covered by the new Anti-Money Laundering Regulations, which was incorrect. This has since been removed from the Explanatory Memorandum but no further debate took place on whether this affected the risk posed or the sufficiency of existing legislation in the UK. The previous version is available here: [https://www.legislation.gov.uk/ukdsi/2021/9780348223491/pdfs/ukdsiem\\_9780348223491\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2021/9780348223491/pdfs/ukdsiem_9780348223491_en.pdf) The current version is available here: [https://assets.publishing.service.gov.uk/media/603cea788fa8f5049ba9526a/The\\_Introduction\\_and\\_the\\_Import\\_of\\_Cultural\\_Goods\\_\\_Relocation\\_\\_Regulations\\_2021\\_-\\_EM.pdf](https://assets.publishing.service.gov.uk/media/603cea788fa8f5049ba9526a/The_Introduction_and_the_Import_of_Cultural_Goods__Relocation__Regulations_2021_-_EM.pdf).

<sup>10</sup> Antiques (such as furniture, early automobiles etc.) and collectors' items (such as coins, ethnographic items and stamp collections) are expressly confirmed to be outside the definition of Works of Art for AML purposes. Therefore, numerous dealers in archaeological objects and other types of cultural property that fall outside the definition of a "work of art" (but many of which fall within Part A Goods of the EU Regulation as high-risk objects) do not consider themselves caught by the legislation.



<sup>11</sup> Lord Parkinson in the House of Lords debate: Introduction and the Import of Cultural Goods (Revocation) Regulations 2021. House of Lords. Volume 813. Debated on Wednesday 30 June 2021. Last Accessed 27 July 2021. [https://hansard.parliament.uk/Lords/2021-06-30/debates/CD09C85A-81D1-4CB7-8239-C8F4C755ADA4/IntroductionAndTheImportOfCulturalGoods\(Revocation\)Regulations2021](https://hansard.parliament.uk/Lords/2021-06-30/debates/CD09C85A-81D1-4CB7-8239-C8F4C755ADA4/IntroductionAndTheImportOfCulturalGoods(Revocation)Regulations2021).

<sup>12</sup> Fanusie, Yaya J. and Joff, Alexander. “Monumental Fight Countering the Islamic State’s Antiquities Trafficking”. Foundation for Defense of Democracies. November 2015. Last accessed 29 June 2021. Key findings: The Islamic State (IS) is deeply involved in antiquities looting and trafficking in the Middle East. This represents a significant funding source ranging from the tens of millions of dollars to as high as \$100 million annually. The importance of the antiquities trade is not only financial, but strategic and operational as well. It represents a stable, low-cost and high-yield activity. Antiquities are highly profitable; they can be sold for many times the price paid to finders or middlemen and items bought for a few hundred dollars may fetch tens or hundreds of thousands of dollars in the final transaction. IS also derives revenue from licensing excavation permits and taxing recovered goods. Rates typically range from 20-60% of the item’s value. In 2015, a middleman from Turkey claimed to have sold a single item for \$1.1 million; this would represent \$220,000 in passive revenue for IS. According to the U.S. International Trade Commission, U.S. imports of art, collector’s items and antiques from Iraq increased by 412% from 2010-2014. While this includes legal imports, it is likely that importers manipulated customs procedures to smuggle illicit materials.

<sup>13</sup> Chappell, Duncan and Hufnagel, Saskia. The Palgrave Handbook on Art Crime. (London: Springer, 2019). In 2013, HMRC seized an antique statue from storage facilities at Heathrow airport following an investigation into a UAE-based antiquities dealer (Hassan Fazeli) who had imported the object on bond into the UK in 2011. Fazeli made false customs declarations, listing the statue’s country of origin as Turkey and its value as \$110,000. In fact, the statue originated in Libya (specifically the former Greek colony of Cyrene) and its estimated value was actually £1,500,000-2,000,000 according to an expert at the British Museum.

<sup>14</sup> UK Government. Trading or moving CITES-listed specimens through UK ports and airports. 31 December 2020. Last accessed: 27 July 2021. <https://www.gov.uk/guidance/trading-cites-listed-specimens-through-uk-ports-and-airports>; Under the Customs and Excise Management Act 1979 (CEMA 1979), HMRC’s Commissioners may designate ports without enacting new primary legislation (Section 19(1) of the Customs and Excise Management Act. 1979 c. 2). <https://www.legislation.gov.uk/ukpga/1979/2>.

<sup>15</sup> Section 139 of CEMA 1979.

<sup>16</sup> Section 167 and 168 of CEMA 1979.

<sup>17</sup> In the Export Control (Syria Sanctions) (Amendment) Order 2014 the burden is whether “there are reasonable grounds to suspect that the goods have been removed from Syria without the consent of the legitimate owner or in breach of Syrian or international law”) and whether the party acted “with intent to evade the prohibitions in Article 11c of the Syria Regulation.” <https://www.legislation.gov.uk/uksi/2014/1896/made>.

<sup>18</sup> We have seen a practice in New York of dealers and collectors being threatened with criminal prosecution due to a lack of evidence to the contrary, and therefore being mandated to state their belief as to certain information on import could in fact assist the legitimate art market, and seek to preserve evidence of trafficking at a later date.

<sup>19</sup> Whilst there are similar trade controls on cultural property exported from Syria post March 2011, these would be caught by the 2003 threshold date and can, therefore, be distinguished from cultural goods exported from Iraq.

<sup>20</sup> Dates will differ from GB and NI and Scotland.

<sup>21</sup> UBS Contemporary Art. The Art Basel and UBS Global Art Market Report 2021. Last Accessed: 27 July 2021. <https://www.ubs.com/global/en/our-firm/art/collecting/art-market-report.html>. The UK currently ranks in second place alongside China, accounting for 20% of global art sales according to the 2021 Art Basel & UBS Art Market Report.