



department for
**culture, media
and sport**

Export licensing consultation:

Review of the Open General Export Licence (Objects of Cultural Interest) and procedures for dealing with applications for temporary export licences for cultural objects

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

- 1.1 This consultation seeks views on proposals to make changes in two areas relating to the export licensing regime for works of art and other cultural objects. The proposals relate to:
- (i) the Open General Export Licence (Objects of Cultural Interest) dated 1 May 2004; and
 - (ii) the procedures for dealing with applications for temporary licences for cultural objects.

Review of the Open General Export Licence (Objects of Cultural Interest) (OGEL)

- 1.2 Export controls for cultural objects are derived from both United Kingdom (UK) and European Union (EU) legislation and, as far as possible, the UK licensing regime works in tandem with the EU requirements. However, at present, there is an inconsistency with the two regimes in respect of cultural objects which have been brought into the UK from a country outside the EU and which are not in 'free circulation'. Although such objects may be re-exported without the need to obtain an EU licence they currently require a UK licence. This increases the administrative burden on exporters and can cause unnecessary delays. It is particularly burdensome in cases where cultural objects are temporarily brought into the UK for exhibition or sale. In order to reduce this administrative burden and streamline the UK export licensing system with the EU system, we propose to amend the Open General Export Licence (OGEL), to allow cultural objects which are not in free circulation to be exported under the provisions of the OGEL.
- 1.3 We also propose to revise the OGEL so that it includes cultural objects which the Spoliation Advisory Panel¹ has recommended should be returned to the claimant where the recommendation has been approved by the Secretary of State. Again, the aim is to reduce the administrative burden for those seeking to export such objects within the EU, who must, under the current arrangements, apply for an individual UK export licence.
- 1.4 We also propose to amend the OGEL to reflect a more effective procedure, currently being used in practice, with regard to objects relating to: (i) any British historical personage and (ii) articles of clothing, footwear or manufactured textiles.

Review of procedures for dealing with applications for temporary export licences

- 1.5 The Minister has the power to issue temporary licences under the Export of Objects of

¹ The Spoliation Advisory Panel exists to offer advice to claimants and UK institutions on the return of cultural objects lost during the Nazi era (i.e 1933-1945).

Cultural Interest (Control) Order 2003. To date, this has been exercised on an ad hoc basis, with no clear guidance on the period of time for which a temporary licence should be issued. This has resulted in the issue of temporary licences for varying periods and in applications for extensions to temporary licences being repeatedly granted, in effect allowing exporters to use temporary licences to keep cultural objects outside the UK long term or even indefinitely. This is of particular concern in circumstances where an object has been classified as a national treasure by the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA) but nevertheless has been authorised to stay outside the UK for a considerable amount of time through a temporary licence which has been granted for a long period and / or has been granted repeated extensions. This clearly undermines the purpose of the export licensing system, which is to provide an opportunity for the retention in the UK of cultural objects of outstanding national importance.

- 1.6 As a result of these concerns, the RCEWA put forward proposals for standard procedures to be applied when applications for temporary licences are considered. These are set out at Annex A. We are grateful to the RCEWA for the consideration it has given to this issue and agree that standard procedures should be introduced. However, we do not consider that the current scale of the problem justifies the increased administrative burden on exporters and the Export Licensing Unit (ELU) which the RCEWA's proposals would entail. We are proposing a simpler scheme which we believe will deter exporters from attempting to keep cultural objects outside the UK long-term on temporary licences without placing an undue burden on all those who wish to export cultural objects temporarily.
- 1.7 We propose to introduce a policy whereby a temporary licence will be issued for a maximum of three years, with the possibility of only one extension to an existing licence. The extension will not normally exceed three years and the cultural object must be returned to the UK on expiry of the licence.
- 1.8 We also propose to introduce a separate policy for cultural objects for which a permanent licence has been refused, as a result of the owner refusing a valid matching offer from a UK purchaser or indicating their intention to do so. It is important to strike a balance between maintaining the integrity of the current system and respecting the owner's rights to deal freely with their property. It is proposed that in cases where a permanent licence has been refused, a temporary licence may only be issued if the purpose of the export is to enable the object to be publicly displayed, as happens in practice at present. The licence may be issued for a maximum of three years and upon expiry of the licence the object must be returned to the UK. No extension of the licence will be granted and the object must remain in the UK for three years before a further application for a temporary licence can be made.

Section 2: Purpose of this consultation and next steps

- 2.1 This consultation seeks your views on proposals to:
- Amend the Open General Export Licence (OGEL);
 - Introduce new procedures for dealing with temporary licence applications for cultural objects.
- 2.2 A separate, consultation stage Impact Assessment has also been prepared and is available on the DCMS website.
- 2.3 The geographical scope of this consultation is the United Kingdom.
- 2.4 This is a public consultation. We particularly seek views from exporters of cultural objects, expert advisers who scrutinise objects of cultural interest as to national importance and others involved in the export licensing regime for cultural objects, including members of the Advisory Panel to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest.
- 2.5 The consultation period will run for 12 weeks from 9 May 2012 to 1 August 2012.
- 2.6 Please respond before the closing date, by submitting responses to the questions asked and/or comments to exportlicensingreview@culture.gsi.gov.uk². If you do not have access to email, please write to:
- Nicki Fox/Paul Blaker
Joint Heads of Cultural Property
Culture Directorate
2-4 Cockspur Street
London
SW1Y 5DH
- 2.7 For enquiries about the consultation (handling) process only please email enquiries@culture.gsi.gov.uk, heading your communication 'Export licensing consultation: Review of the Open General Export Licence (Objects of Cultural Interest) and procedures for temporary export licences for cultural goods'.
- 2.8 This consultation is intended to be an entirely written exercise. Please contact the International and Cultural Property Unit on 020 7211 6129 if you require any other format e.g. Braille, Large Font or Audio.

² Access the online form at <http://www.culture.gov.uk/consultations/default.aspx>

- 2.9 Copies of responses will be published after the consultation closing date on the Department's website: www.culture.gov.uk.
- 2.10 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 2.11 The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
- 2.12 The consultation is guided by the Government's Code of Practice on Consultation which is available at: <http://www.bis.gov.uk/files/file47158.pdf>
- 2.13 If a revised OGEL is agreed following this consultation, this will be published on the export licensing page of the website of Arts Council England (ACE).
- 2.14 Guidance on any standard procedures for dealing with applications for temporary export licences which result from this consultation will be published on the export licensing page of the website of Arts Council England (ACE).

Section 3: Proposals to amend the Open General Export Licence (Objects of Cultural Interest)

- 3.1 The Open General Export Licence (OGEL) permits the export of specified cultural objects to a destination in another EU state without the need to apply for an individual export licence, so reducing the administrative burden on exporters of those objects. The existing OGEL is dated 1 May 2004 and can be found at http://www.artscouncil.org.uk/media/uploads/pdf/Open_General_Export_Licence_Objects_of_Cultural_Interest.pdf. The proposed revised OGEL is at Section 6 of this consultation document.
- 3.2 As mentioned in the introduction, at present, cultural objects which have been brought into the United Kingdom from a country outside the EU which are not in free circulation may be re-exported without an EU licence, but if the value of the object is over the relevant UK thresholds an individual UK licence will still be required. We propose amending the OGEL so that it will include cultural objects which are not in free circulation, which will remove the need for exporters to apply for an individual UK licence in these circumstances. This will reduce the burden on exporters, particularly overseas dealers who wish to exhibit for sale in the United Kingdom; and will also reduce the administrative burden of the Export Licensing Unit (ELU), which issues individual licences on behalf of the Secretary of State. It will also bring the UK export licensing regime for cultural objects closer in line with the EU export licensing regime.
- 3.3 While wishing to reduce the administrative burden for exporters, we are mindful of the need to ensure that any changes to the existing regime do not jeopardise the preservation of potential objects of national importance. Under the current policy, cultural objects are only usually considered by an expert adviser for national importance if the object has been in the UK for more than 50 years. However, in cases where objects are not in free circulation the object is usually in the UK on a temporary basis, and therefore it would not reach the 50-year threshold for referral to an expert adviser for scrutiny as to its national importance. Therefore, the proposed changes would not compromise the current process of scrutiny.
- 3.4 There are, however, two exceptions. Firstly, objects of potential national importance which were previously in free circulation in the UK and have been exported under a temporary licence may be brought back to the UK and not released into free circulation. Such objects may have been in the UK for more than 50 years before the temporary licence was granted and therefore should be referred to an expert adviser for scrutiny. We therefore propose that the revised OGEL will clearly state that it does not include any object which has been returned to the UK following its temporary export under the authority of a temporary export licence. This will ensure that they will continue to be scrutinised for national importance where they meet the relevant criteria.

Secondly, where cultural objects which are not in free circulation have been imported into the United Kingdom from a jurisdiction which is within the customs territory of the EU but outside the fiscal territory of the EU (eg. the Channel Islands), they will also not be covered by the revised OGEL. This is because such goods are “Community goods” for EU licensing purposes and so still require an EU licence in any event.

Question 1: Do you agree with the proposal to amend the OGEL so that it includes cultural objects which have been brought into the United Kingdom from a country outside the EU which are not in free circulation (excluding those which have been returned to the UK after being exported under a temporary licence or imported from a jurisdiction which is within the customs territory of the EU but outside the fiscal territory of the EU)? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

- 3.5 We also propose to amend the OGEL so that it includes cultural objects which the Spoliation Advisory Panel has recommended should be returned to the claimant, where the recommendation has been approved by the Secretary of State. At present, even though there has been agreement that the item should be returned, the exporter is still required to apply for an individual licence, which is an unnecessary administrative burden on the applicant and causes unnecessary delay. This proposal will enable the object to be exported within the EU without the need to obtain an individual UK licence. However, the proposal will not permit the return of such objects outside the EU unless an EU licence is also granted. It is not intended to amend the OGEL to include objects which are the subject of a private restitution agreement (agreed privately without referral to the Spoliation Advisory Panel and not approved by the Secretary of State) and these will continue to require an individual UK or EU export licence.

Question 2: Do you agree with the proposal to amend the OGEL so that it includes cultural objects which the Spoliation Advisory Panel has recommended should be returned to the claimant, where the recommendation has been approved by the Secretary of State? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

- 3.6 We also propose to update the OGEL to reflect current practice. The most significant proposal is the removal of existing paragraphs 3 and 4 which relate to the conditions of the licence. Paragraph 3 states that those exporting representations of the likeness of any British historical person (made otherwise than by photography and excluding a coin) valued at £10,000 or more but less than £65,000 must present to customs officers a certificate from the Director of the National Portrait Gallery or Keeper of the Scottish National Portrait Gallery (as appropriate) stating that the article is not of national importance in his opinion. Paragraph 4 states that those exporting textiles (excluding carpets and tapestries) valued at £12,000 or more but less than £65,000 must present to customs officers a certificate from the Director of the Victoria and Albert Museum stating that the article is not of national importance in his opinion. We have consulted the relevant institutions and established that, in practice, such certificates are no longer issued and exporters wishing to export such objects apply

for individual export licences.

3.7 As a result of these proposed changes, it will be necessary to make the following consequential amendments to the OGEL:

- paragraph 1(i) will state that the OGEL covers representations of British historical persons (made otherwise than by photography and excluding a coin) the value of which is less than £10,000 (rather than less than £65,000 in the current OGEL); and
- paragraph 1(j) will state that that the OGEL covers textiles (excluding carpets and tapestries) valued at less than £12,000 (rather than less than £65,000 in the current OGEL).

Other minor amendments are proposed to improve the drafting of paragraphs 1(f), (g) and (h) and 2(b).

Question 3: Do you agree with the Government's proposal to amend the OGEL so that it no longer refers to certificates issued by the Director of the National Portrait Gallery, Keeper of the Scottish National Portrait Gallery or Director of the Victoria and Albert Museum? If not please clearly state your reasons and your views on the approach you consider the Government should take.

Section 4: Proposals to introduce new procedures for dealing with applications for temporary export licences for cultural objects.

- 4.1 The purpose of the export licensing control for cultural objects is to give an opportunity for the retention in this country of cultural objects of outstanding national importance. Because of this, the current system provides that when exporters apply to permanently export cultural objects over specified age and financial thresholds which have been in the UK for 50 years or more, such objects are scrutinised to assess whether they are of national importance. The relevant policy is set out in Arts Council England (ACE)'s Guidance to Exporters of Cultural Goods: Procedures and Guidance, which is available on the ACE website at <http://www.artscouncil.org.uk/about-us/museums-and-libraries/cultural-property/export-controls/export-licensing/>
- 4.2 By contrast, cultural objects which are the subject of temporary licence applications are not normally scrutinised for national importance. There is no formal policy or written guidance setting out considerations that will be taken into account when dealing with applications for temporary export licences for cultural objects or grounds for refusing such applications. The position is the same with regard to subsequent applications for objects which have been exported under a temporary licence and returned, and applications to extend temporary licences where the item is currently outside the UK. In practice, the principal consideration is whether the object is physically fit to travel. In addition, the Secretary of State must be satisfied that the applicant and/or owner has offered all the guarantees the Secretary of State considers necessary for the object to be returned at the expiry of the period of temporary export.
- 4.3 The effect of this is that cultural objects exported under temporary licences may remain outside the UK long term or even indefinitely as a result of continuous extensions of the temporary licence, without their having undergone scrutiny as to national importance. This is not the intended purpose of a temporary licence and undermines the purpose of the export licensing system to provide an opportunity for the retention in this country of objects of outstanding national importance.
- 4.4 In some cases, an object exported under a temporary licence has already been found to be of national importance but the applicant, having been refused a permanent licence as a result of the owner refusing to accept a fair matching offer (or making known their intention to do so), has applied for a temporary licence. In either case, the fundamental purpose and spirit of the export licensing system, which is to provide an opportunity for the retention of national treasures in the UK, is undermined by the grant of the temporary licence.
- 4.5 One of the terms of reference of the Reviewing Committee on the Export of Works of

Art and Objects of Cultural Interest (RCEWA) is 'to advise on the principles which should govern the control of the export of objects of cultural interest under the Export Control Act 2002 and on the operation of the export control system generally'. In accordance with this, the RCEWA put forward proposals for new standard procedures for dealing with applications for temporary export licences for cultural objects. Those proposals are set out at Annex A. While agreeing that there is a need for standard procedures for temporary licence applications, we did not consider that the extent of the problem justified the increased administrative burden for exporters and the ELU which would have resulted. There are currently thirteen cases where cultural objects have been outside the UK for more than six years on temporary licences and this includes five cases where the original temporary licence has been extended. The proposals would have required those applying for any temporary licence for a period of more than six months to provide a history of any previous temporary licences issued for the same object during the preceding nine years, and the ELU would have had to check the period during which the cultural objects in question had been outside the UK. These administrative requirements stem from the proposal that cultural objects exported under a temporary licence should be required to remain in the UK for a specified period of time on return. We are therefore proposing the adoption of a simpler procedure which we consider is a more proportionate response to the problem. The considerations whether i) the object is physically fit to travel and ii) the Secretary of State is satisfied that the applicant and/or owner has offered all the guarantees necessary for the object to be returned at the expiry of the period of temporary export will continue to apply and this consultation focuses on the duration of the temporary licence.

Duration of initial temporary licence

- 4.6 We propose maintaining the current position whereby individual temporary licences for cultural objects will not normally be granted for a period of more than three years.

Question 4: Do you agree with the proposal to maintain the current position whereby individual temporary export licences for cultural objects are not normally issued for a period of more than three years? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Extension of temporary licences

- 4.7 We propose introducing a policy whereby only **one** extension to an existing temporary licence will be granted. This extension will not normally exceed three years, irrespective of the period for which the original temporary licence was granted. At the end of the extension, the cultural object must be returned to the UK. Exporters who wish to keep the cultural object outside the UK for longer will have the option, as they do now, of applying for a permanent licence.
- 4.8 The proposals will apply to all applications for individual temporary licences, irrespective of the length of time for which the original licence is requested. We considered the possibility of applying the proposed policy only to applications for temporary licences of a specified period (for example a year and more) but rejected this because it would lead to a loophole whereby an applicant could apply for an export licence for eleven months (for example), then continually apply for extensions of eleven months at a time without having to return the item to the UK.

- 4.9 We also considered the possibility of specifying that no extension would be granted to temporary licences for cultural objects where this would result in the cultural objects remaining outside the UK for longer than six years, as an alternative to specifying that only one extension would be allowed, irrespective of the period of the original licence. We rejected this on the grounds that it would increase the administrative burden for the ELU and cause them practical problems, as it would be more difficult for them to monitor cases where there had been multiple requests for extensions than cases where an extension could be requested only once.
- 4.10 The proposals will mean that an object may be out of the UK on temporary licence for a maximum of six years and then must be returned to the UK and a further export licence application (temporary or permanent) will need to be made in order to take the object back out of the UK. If exporters intend to keep a cultural object out of the UK beyond six years, they have the option of applying for a permanent licence. We believe that the cost and inconvenience of having to bring back objects exported under a temporary licence after six years will encourage them to apply for a permanent licence in the first place (as they can at present) which would provide a more effective mechanism for protecting national treasures in accordance with the purposes of the export licensing system.
- 4.11 We do not propose to amend the Open Individual Export Licence (OIEL) which allows Museums and Galleries to export certain cultural objects temporarily outside the UK as the conditions will remain compatible with the new proposals. Under paragraph 8 of this OIEL, an object exported under its authority must be returned to the UK within three years of the date of export.

Question 5: Do you agree with the proposal that the period of a temporary licence for a cultural object should not normally be capable of being extended more than once? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 6: Do you agree with the proposal that the period by which a temporary licence for a cultural object may be extended will not normally exceed three years? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Policy for cultural objects found to be of national importance for which a permanent licence has been refused

- 4.12 We propose introducing a separate policy for cultural objects found to be of national importance which belong to an owner who has been refused a permanent licence for the object in question because he or she refused a valid matching offer, made known their intention to refuse any possible matching offer (regardless of whether such an offer was made) or withdrew their application for a permanent licence after receiving a valid matching offer (or before if it is reasonably likely that they had knowledge that an offer was imminent). We consider that enabling the long term export of such national treasures under a temporary licence fundamentally undermines the export licensing system. We therefore propose that a temporary licence may only be issued for such objects if the object will be the subject of display in a public institution. This would allow such objects to be displayed abroad for a specified period and then retained in

the UK for a specified period. The temporary licence should not exceed three years and no extension will be granted. The cultural object will have to be returned to the UK when the licence expires and will then have to remain in the UK for a further three years before a further application for a temporary licence can be made. We acknowledge that a balance must be struck between an owner's rights to deal freely with his property and the public interest in saving a national treasure and consider that these proposals strike the correct balance.

- 4.13 An application by, or on behalf of, a person closely connected with the person who was the owner at the time of the permanent application which was refused (for example, the spouse of the previous owner, or a company controlled by the previous owner) will normally be treated in the same way as an application by the previous owner.

Question 7: Do you agree with the proposed policy for cultural objects found to be of national importance for which a permanent licence has been refused as set out in paragraphs 4.12 to 4.13 of the consultation document. If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Breaches of temporary licences

- 4.14 As is the case at present, the requirement to return an object before the expiry of the licence is a condition of the licence, and as such failure to return an object within the specified time is an offence under article 5 of the 2003 Order. The maximum penalty for such an offence is (a) on summary conviction a fine of the prescribed sum; and (b) on conviction on indictment a fine of any amount, or imprisonment for a term not exceeding two years, or both. Such breaches will be referred to the UKBA.
- 4.15 We accept the RCEWA's recommendation that if an applicant has previously failed to return an object exported under a temporary licence within the specified time period, this will be taken into account when considering any further temporary licence applications by the same applicant in respect of any object at any time. The proposal is that the licence will normally be refused in this situation unless the applicant can give a reasonable explanation for their failure to comply with the terms of the previous licence.

Question 8: Do you agree with the proposed policy for cultural objects where the applicant has failed to return an object exported under a temporary licence within the specified time period as set out in paragraph 4.15? If not, please state clearly your reasons and your views on the approach you consider the Government should take.

Transitional provisions

- 4.16 The policy will apply to all existing licences so that where an applicant is seeking an extension of the existing licence the number of previous extensions to that licence will be taken into account. For example, if a licence has already been granted an extension, a further extension will not be granted and the owner will be required to return the object to the UK.

Question 9: Do you agree with the proposed transitional provisions set out in paragraph 4.16 of the consultation document whereby the proposed policy will apply to all existing licences? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Section 5: Impact Assessment.

- 5.1 In order to assess the cost impact and benefits for art dealers of the proposals for temporary licences for cultural goods and the changes to the OGEL we consulted several art dealers of different size. The results are set out in the costs and benefits section on pages 12-14 of the Impact Assessment. There is a section focussing on small firms/micro-organisations on page 16.
- 5.2 The proposed changes to the OGEL would result in a reduction in the administrative burden for exporters and the Export Licensing Unit (ELU). The resulting savings are estimated at £6220 per year for exporters and £4290 per year for the ELU (Page 13). This is based on information that 1529 individual applications in a 12 month period would not require an individual licence if the OGEL is amended as proposed.
- 5.3 The temporary licence proposals could result in additional cases being referred to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA), if applicants decide to apply for a permanent instead of temporary licence and an expert adviser considers the object in question to be of national importance. The percentage of cases referred to RCEWA by expert advisers each year is less than 1%, and so it is not estimated that the proposed policy for temporary licences would lead to many more cases being referred to RCEWA. If one extra case every two years was referred to RCEWA, it is estimated that the additional administrative burden would result in additional costs of £5,500 for exporters, £1,870 for the Reviewing Committee and its secretariat, and £880 for expert advisers. This averages out at approximately £4,000 a year (Page 12). The estimated increase in the administrative burden which would result in more cases being referred to RCEWA is mitigated by the potential adverse effects on the UK's heritage that would result from the loss of national treasures abroad if cultural objects avoid scrutiny as to national importance (as applications for temporary licences are not normally scrutinised for national importance).
- 5.4 Statistics show that the majority of temporary licence applications for cultural goods are made by businesses which employ 50 employees or more. This was the case for 81% of temporary export licence applications for cultural goods made from 1 May 2009 to 30 April 2010 (inclusive). In addition, businesses which employ 50 employees or more are more likely to be applicants for cases referred to RCEWA. This was the case for 80% of cases referred to RCEWA between from 1 May 2009 and 30 April 2010 (inclusive) (Page 16).

Question 10: Do you agree with our assessment of costs and benefits (pages 12-14 of the Impact Assessment) and our assessment of the impact on micro / small businesses (Page 16 of IA)? Please provide details.

Question 11: Is there any other information in connection with costs and benefits generally, and the impact on micro / small businesses specifically, that you think we should be aware of? Please provide details.

Section 6: Summary of Questions

Question 1: Do you agree with the proposal to amend the OGEL so that it covers cultural objects which have been brought into the United Kingdom from a country outside the EU which are not in free circulation (excluding those which have been returned to the UK after being exported under a temporary licence or imported from a customs territory or area within the EU but outside the fiscal territory of the EU)? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 2: Do you agree with the proposal to amend the OGEL so that it covers cultural objects which the Spoliation Advisory Panel has recommended should be returned to the claimant, where the recommendation has been approved by the Secretary of State? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 3: Do you agree with the proposal to amend the OGEL so that it no longer refers to certificates issued by the Director of the National Portrait Gallery, Keeper of the Scottish National Portrait Gallery or Director of the Victoria and Albert Museum? If not please clearly state your reasons and your views on the approach you consider the Government should take.

Question 4: Do you agree with the proposal to maintain the current position whereby individual temporary export licences for cultural objects are not normally issued for a period of more than three years? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 5: Do you agree with the proposal that the period of a temporary licence for a cultural object should not normally be capable of being extended more than once? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 6: Do you agree with the proposal that the period by which a temporary licence for a cultural object may be extended will not normally exceed three years? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 7: Do you agree with the proposed policy for cultural objects found to be of national importance for which a permanent licence has been refused as set out in paragraphs 4.12 to 4.13 of the consultation document? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 8: Do you agree with the proposed policy for cultural objects where the applicant has failed to return an object exported under a temporary licence

within the specified time period as set out in paragraph 4.15? If not, please state clearly your reasons and your views on the approach you consider the Government should take.

Question 9: Do you agree with the proposed transitional provisions set out in paragraph 4.16 of the consultation document whereby the proposed policy will apply to all existing licences? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Question 10: Do you agree with our assessment of costs and benefits (pages 12-14 of the Impact Assessment) and the impact on small firms/micro businesses (Page 16 of IA).

Question 11: Is there any other information in connection with costs and benefits generally and the impact on small businesses you think we should be aware of?

Section 7: Proposed revised OGEL

EXPORT LICENCE

Open General Export Licence (Objects of Cultural Interest) dated [xx] granted by the Secretary of State. The Secretary of State, in exercise of powers conferred by Article 2 of the Export of Objects of Cultural Interest (Control) Order 2003 (“the 2003 Order”), hereby grants the following Open General Export Licence:

Licensed exports

1. Subject to the following provisions of this Licence, the following goods, manufactured or produced more than 50 years before the date of exportation, may be exported from the United Kingdom to any destination except an embargoed destination:

- (a) any musical instrument temporarily exported for a period of less than three months for use in the course of work by a professional musician;
- (b) any musical instrument exported following temporary importation for a period of less than three months, having been imported for use in the course of work by a professional musician;
- (c) any motor vehicle (wherever registered) temporarily exported for a period of less than three months for use for social, domestic or pleasure purposes (including attendance at or participation in a race, rally, or non-commercial exhibition);
- (d) any foreign registered motor vehicle exported following temporary importation for a period of less than three months, having been imported for use for social, domestic or pleasure purposes (including attendance at or participation in a race, rally or non-commercial exhibition);
- (e) any photographic positive or negative or any assemblage of such photographs, the value of which is less than £10,000;
- (f) any firearms manufactured or produced more than 100 years before the date of exportation, and any other arms or armour manufactured or produced more than 50 years before the date of exportation, the value of which is less than £35,000;
- (g) any firearms manufactured or produced more than 50 years but not more than 100 years before the date of exportation, the value of which is less than £65,000;
- (h) any painting in an oil or tempera medium (excluding any portrait of a British historical personage, which would fall within sub-paragraph (i) below), the value of which is less than £180,000;
- (i) any portrait or other article consisting of or including a representation of the likeness of any British historical personage (made otherwise than by photography and excluding a coin), the value of which is less than £10,000;
- (j) any article of clothing or footwear, or any article manufactured from textiles and textiles in the length or piece (excluding any carpet or tapestry), the value of which is less than £12,000;
- (k) any article the value of which is less than £65,000 other than one of a description specified in the Schedule hereto;

(l) any article for which a Community licence has been issued;

(m) any article that is in the United Kingdom following its importation solely for the purpose of transit through the United Kingdom with a view to export;

(n) any article that has been imported into the United Kingdom from a country outside the European Union and is not in free circulation within the European Union. Nothing in this subparagraph shall permit the exportation of (i) any article which has been imported into the United Kingdom from the Channel Islands or any other jurisdiction which is within the customs territory of the European Union but outside the fiscal territory of the European Union or (ii) any article which has been returned to the United Kingdom following its temporary export under the authority of a temporary export licence;

(o) any article that the Secretary of State has approved for return to the claimant following a recommendation to that effect by the Spoliation Advisory Panel.

Conditions

2. In respect of any musical instrument licensed to be exported under paragraph 1(a) above and any motor vehicle licensed to be exported under paragraph 1(c) above this Licence is subject to the following conditions:

(a) that the exporter must return the goods to the United Kingdom within three months of the date of exportation; and

(b) that the goods must not be sold when they are not in the United Kingdom and must at all times remain in the possession of the exporter.

3. In respect of an article falling within paragraph 1(l) above and being exported on the basis that a Community licence for temporary export has been issued, the exporter must return the article to the United Kingdom by the date stated for re-importation on the temporary Community licence and must immediately notify the Export Licensing Unit of its return in writing.

4. In respect of any article falling within paragraph 1(o) above, there must be produced to the proper officer of HM Revenue and Customs/the UK Border Agency at the place of export a copy of the Spoliation Advisory Panel's report relating to the article, together with a letter from the claimant confirming that he/she is content for the article to be exported.

Interpretation

5. Any reference in this Licence to the value of an article shall:

(a) where the goods to be exported consist of a matching set or pair of articles, be construed as a reference to the value of the matching set or pair;

(b) be construed as the value of the article as required to be declared for Customs purposes.

6. In this Licence;

“British historical personage” means any person, living or dead, in respect of whom an entry appears in the Dictionary of National Biography (or any supplement thereto), “Who’s Who” or “Who was Who”;

“tapestry” means a fabric with a non-repetitive pattern woven in during making;

“embargoed destination” means a destination to which an export ban applies by virtue of a prohibition contained in legislation implementing European Union obligations or United Nations sanctions.

7. Unless the context otherwise requires, any other expression used in this Licence shall have the meaning it bears in the Export Control Act 2002 or in the 2003 Order.

Prohibition not affected by this Licence

8. Nothing in this Licence shall affect any prohibition or restriction on the export of any goods other than under the 2003 Order.

Community Licence

9. This Licence does not permit the export of an article that requires a Community Licence unless a Community Licence is also granted.

Entry into force and revocation

10. The Open General Export Licence (Objects of Cultural Interest) dated 1st May 2004 is revoked and for the avoidance of doubt the revocation does not revive The Open General Export Licence (Antiques) dated 1st November 2002.

_____ **Date** _____

Signed on behalf of the Secretary of State for Culture, Olympics, Media and Sport

SCHEDULE (see paragraph 1 (k))

Any document or manuscript (in any case not being printed matter);

Any archive of manuscripts and documents in any medium, created and/or accumulated by an individual, family, corporate body or institution, which has survived or been preserved as evidence of their purpose and activities;

Any architectural, scientific or engineering drawing produced by hand;

Any article which has been recovered at any time from the soil of the United Kingdom or from the bed of any lake, river, stream or other area of water therein or from the bed of the sea within the territorial waters of the United Kingdom other than any article which has been buried or concealed for a period of less than 50 years;

Any photographic positive or negative or any assemblage of such photographs;

Any firearms, arms or armour manufactured or produced more than 50 years but less than 100 years before the date of export;

Any article of clothing or footwear, and any article manufactured from textiles and textiles in length or piece (excluding carpets and textiles);

Any portrait or other article consisting of or including a representation of the likeness of any British historical personage (made otherwise than by photography and excluding a coin).

EXPLANATORY NOTE

(This note is not part of the Licence)

The provisions of this Licence only apply for the purposes of the Export of Objects of Cultural Interest (Control) Order 2003 (S.I. 2003/2759) ("the 2003 Order"). This Licence permits (in some cases subject to certain conditions) the export from the United Kingdom to any destination (except an embargoed destination) of certain goods which were manufactured or produced more than 50 years before exportation. Exporters should note that this Licence does not remove the need for other consents that may be required for the export of particular cultural goods. In particular, where an export licence is also required by Council Regulation EC 116/2009 (which requires a licence for specified cultural goods exported outside the European Customs Union) exporters will also need a Community licence as well as a licence for the purposes of the 2003 Order. In such cases this Licence will not be valid unless a Community licence is also held.

This Licence does not affect any other prohibitions or restrictions on the export of certain types of cultural goods. Details of those types of goods can be obtained by contacting the Export Licensing Unit, which issues export licences for objects of cultural interest on behalf of the Secretary of State.

Annex A: Details of proposals submitted by the RCEWA (we are not consulting on these)Duration

The proposal is for temporary licences normally to be granted for periods of no more than 3 years. This reflects the period of export permitted under the OIEL granted to national institutions.

Extension and subsequent application

We propose that the period of a temporary licence should not normally be capable of being extended more than once, and should be subject to a maximum five-year consecutive period.

Thereafter, the proposal is that the object should return to the UK and that no further temporary licence applications for that object should be considered during a period of five years, unless the applicant can demonstrate that special circumstances apply in any particular case.

Applications for the extension of temporary licences will be dealt with in the following way:

- if the extension period applied for does not exceed the five-year period then the extension will normally be granted;
- if the extension period applied for exceeds or would, if granted, exceed the maximum five-year period, it will be the standard policy not to grant the extension.

Calculating the 5 year Period

In calculating the period by which a licence may be extended (to a maximum of five years), the length of the licence will be the relevant period for consideration not the actual time that the object is out of the country.

Any subsequent licences issued within two years of the expiry of the previous temporary licence will count towards the five year period. For example, if a licence is granted for three years and expires on 31 December 2015, any subsequent licence granted between 1st Jan 2016 and 31st December 2017 could only be granted for a period of two years. No further temporary licence applications would then be considered for five years following the expiry of the subsequent licence. When calculating the two and five year periods fractions of a calendar month will be rounded down to a full month.

Exceptions

The policy will only apply to licences which are issued for a period of six months or more in order to avoid unnecessary administrative inconvenience for exporters.

Administration

Under the new proposals, applications for temporary licences must be accompanied by a history of any temporary licences, including the licence numbers, issued for the same object during the preceding nine-year period. A new cover sheet will be attached to the export licence application for applicants to provide this history. It will be the responsibility of the ELU to check whether the 5 year period will be met in order that a decision can be taken on whether to grant the temporary licence.

If an applicant has previously failed to return an object exported under a temporary licence within the specified time period, this will be taken into account when considering any further temporary licence applications by the same applicant in respect of any object at any time. The general policy will be to refuse a temporary licence in these circumstances unless the applicant can provide a reasonable explanation for failure to comply with the terms of the previous temporary licence.

The Secretary of State may seek advice from the RCEWA on specific individual temporary licence applications if he considers this appropriate.

Referral to Expert Adviser

As at present, applications for individual temporary licences will continue to be referred to expert advisers if the object has been in the UK for more than 50 years. The exceptions relating to EU Licences will still apply (*see 50 year policy rule above*). Expert advisers will be requested specifically to comment on the object's fitness to travel. Applications for extensions to temporary licences will not normally be referred to an expert adviser.

Application of the new proposals to UK OIELS, the UK OGEL and the EU Specific Open Licence

Institutional OIELs are different from other licences issued in the UK in that the subject of the licence is normally the institution rather than a particular object. To achieve the policy objective that objects should not be exported on temporary licence for more than a five year period it is proposed to amend the standard OIEL issued to national institutions at the same time that the new policy is introduced. The amended standard institutional OIEL would include a condition that no individual object exported under the OIEL may remain out of the UK for any period that would be inconsistent with the five-year rule.

The proposals will not affect the operation of the UK OGEL as this does not distinguish between the permanent and temporary export of objects of cultural interest which are under the relevant financial thresholds: there is no requirement to bring such objects back to the UK. It is not considered that the proposals will be relevant to the temporary export for less than three months under the OGEL of musical instruments exported for professional purposes and motor vehicles exported for social, domestic or pleasure purposes.

It is not considered that the proposals will be relevant to applications for EU Specific Open Licences as these are currently issued only to permit the temporary export for periods of less than three months of musical instruments exported for professional purposes and motor vehicles exported for social, domestic or pleasure purposes.

Transitional provisions

The new proposals will take effect on a specific date yet to be agreed (the 'implementation date').

All applications for temporary export licences received on or after the implementation date will be subject to the new policy.

When calculating the period for which an extension may be given (so that the period of the temporary licence may not exceed a total of 5 years), any period before the implementation date will not be taken into account. For example, a temporary licence is granted on 1 July 2009 for three years and the new policy comes into effect on 1 July 2011. For the purposes of calculating the maximum extension period, the period from 1 July 2009 to 31 June 2011 will not be taken into account, and at the expiry of the original three year licence an extension may be granted for a further three years (until 31 June 2015).