



Department
for Culture
Media & Sport

Government Response and Summary of Responses to the 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

March 2015

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.

Contents

1. Introduction	4
2. Government response – executive summary	7
3. Summary of responses	9
4. Next steps.....	14

1. Introduction

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

- 1.1 Export controls for cultural objects are derived from both United Kingdom¹ and European Union (EU) legislation² 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.
- 1.2 The current arrangements also require an exporter of a cultural object, which the Secretary of State has agreed should be returned to the claimant following a recommendation by the Spoliation Advisory Panel,³ to apply for an individual export licence. This is unnecessary and burdensome when there is already agreement that the object should be returned.
- 1.3 The Department for Culture, Media and Sport (DCMS) ran a 12 week public consultation between 9 May and 4 August 2012 on the proposal to revise the Open General Export Licence (OGEL) to:
 - i. allow cultural objects which are not in free circulation to be re-exported under it;
 - ii. include 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;
 - iii. create a more effective procedure, than that which is currently being used, with regard to objects relating to: (a) any British historical personage and (b) articles of clothing, footwear or manufactured textiles.
- 1.4 The revised OGEL reflects the need to reduce the administrative burden and brings the UK export licensing system closer in line with the EU export licensing system.

¹ The Export of Objects of Cultural Interest (Control) Order 2003 (as amended)

² Regulation 116/2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0116:EN:NOT>

³ 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).

Review of procedures for dealing with applications for temporary export licences

1.5 The Secretary of State has the power to issue temporary licences under the Export of Objects of 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 found to be a national treasure under the Waverley criteria⁴, 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 national treasures.

1.6 DCMS ran a 12 week public consultation between 9 May and 4 August 2012 which sought comments on the proposal to introduce a policy, set out in guidance, whereby:

- i. 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;
- ii. cultural objects found to be a national treasure for which a permanent licence has been refused, as a result of the owner:
 - (a) refusing a valid matching offer from a UK purchaser or indicating their intention to refuse such an offer (regardless of whether such an offer was made); or
 - (b) withdrawing 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)

will normally only be issued with a temporary export licence if the purpose of the export is to enable the object to be publicly displayed. 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

⁴ The RCEWA will designate an object as a 'national treasure' if it considers that its departure from the UK would be a misfortune on one or more of the following grounds, which are known as the Waverley criteria:

<ul style="list-style-type: none"> • History • Is it so closely connected with our history and national life? 	<ul style="list-style-type: none"> • Aesthetics • Is it of outstanding aesthetic importance? 	<ul style="list-style-type: none"> • Scholarship • Is it of outstanding significance for the study of some particular branch of art, learning or history?
<ul style="list-style-type: none"> • <i>Waverley 1</i> 	<ul style="list-style-type: none"> • <i>Waverley 2</i> 	<ul style="list-style-type: none"> • <i>Waverley 3</i>

object must remain in the UK for three years before a further application for a temporary licence can be made.

2. Government response – executive summary

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

- 2.1 The Government would like to thank all those who responded to the public consultation. We received sixteen responses to the consultation – a list of respondents is available at Annex A and the full responses can be found on the DCMS website.
- 2.2 The consultation responses provided full support for the proposed changes to the Open General Export Licence (Objects of Cultural Interest) (OGEL) and the temporary licence policy but not all respondents supported the separate policy for objects found to be national treasures. Ten respondents commented on the impact on businesses, agreeing with the assessment of the costs and benefits made in the consultation stage impact assessment. The remaining six respondents did not comment on the assessment of costs and benefits. Some comments received fell outside the matters being considered by this consultation exercise and will be considered separately from this Government response to the consultation.
- 2.3 The main issues raised in consultation responses related to:
- i. the scope of temporary export licence policy, and
 - ii. the separate temporary export licence policy for objects found to be national treasures.
- 2.4 We consider that the proposed temporary licence requirements are proportionate and that there is insufficient reason to treat one particular category of cultural objects differently from other objects as a matter of general policy (see paragraph 3.6).
- 2.5 We note the arguments made against the proposal only to allow the temporary export of objects found to be national treasures for public display purposes (see paragraph 3.14), but we consider that the approach proposed is a justified and proportionate response in keeping with the purpose of the export control which provides an opportunity for the retention of cultural objects considered to be national treasures.
- 2.6 The Government response to each aspect of the consultation is set out in bold text alongside the summary of responses to the consultation in section 3 below. In summary, we intend to proceed with the proposed revisions to the OGEL and to set out in guidance the proposed policy for temporary export licences.

- 2.7 The Government also intends to implement two additional minor changes to the export licensing policy relating to the maximum duration of temporary exports for musical instruments and motor vehicles:
- i. Increasing the maximum duration of a temporary export under the OGEL for motor vehicles and musical instruments from three months to six months
 - ii. Increasing the maximum duration of a temporary export under EU specific open licences for motor vehicles and musical instruments from three months to six months
- 2.8 The rationale for these changes is that a maximum duration of six months would be more suitable given the logistics and timeframes for transporting objects a long distance under temporary export e.g. to and from Australia and New Zealand. These changes would have a small deregulatory impact as it would lessen the time constraints for exporters in temporarily exporting these objects under the relevant licences. Arts Council England (ACE) has consulted the main stakeholders for exporting musical instruments and motor vehicles and these additional proposals were welcomed.

3. Summary of responses

- 3.1 We received sixteen responses to the consultation – seven from museums, five from trade organisations and bodies, two from national bodies and two from government organisations. A list of respondents is available in Annex A and the full responses can be found on the DCMS website.

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.

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.

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.

- 3.2 All respondents agreed with the proposals in questions 1-3.

- 3.3 **Government response: we intend to amend the Open General Export Licence (Objects of Cultural Interest) (OGEL) as proposed.**

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.

- 3.4 There was general agreement with this proposal. One museum asked for clarification as to why three years had been proposed as the length of temporary licences. Three years is proposed as the length of temporary licences as we consider that this strikes an appropriate balance between the rights of owners and the public interest in controlling exports. It is also consistent with existing practice and the arrangements for Open Individual Export Licences.

- 3.5 Two museums had concerns about the effect of the limitation of the export period on touring exhibitions. Museums are issued with an Open Individual Export Licence (OIEL) to enable them to export items from their collection abroad (intra EU) without the need to obtain an individual licence. We will discuss separately with the museums the arrangements for export of objects on touring exhibitions.
- 3.6 One of the national bodies had concerns about the proposed timeframe for temporary licences potentially impeding the free passage of historic ships (which for example may still undertake commercial trade between the UK and other countries) and reducing the economic viability of historic yachts where they are based abroad for certain types of racing events. We consider that there is insufficient reason to treat one particular category of cultural objects, such as historic ships, differently from other objects as a matter of general policy, because there is discretion to depart from the general policy if there are exceptional circumstances in a particular case.
- 3.7 **Government response: we intend to formalise a policy whereby temporary licences will normally be issued for a maximum of three years. This will be set out in Guidance for exporters.**

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.

- 3.8 Most respondents agreed or did not comment. Two museums (the same two which raised concerns in their response to question 4 above) had concerns about the effect of the limitation of the export period on touring exhibitions. As stated above we will discuss separately with the museums the arrangements for the export of objects on touring exhibitions.
- 3.9 **Government response: We intend to put in place a policy whereby the period of a temporary licence for a cultural object will normally only be extended once. This will be set out in Guidance for exporters.**

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.

- 3.10 Most respondents agreed or did not comment. One respondent questioned whether the objects should be returned before any extension to the three year temporary export period, but we consider such an approach would be unnecessarily onerous.
- 3.11 Two museums (the same two which raised concerns in their response to question 4 above) had concerns about the effect of the limitation of the export period on touring exhibitions. As stated above we will discuss separately with the museums the arrangements for the export of objects on touring exhibitions. One of those museums suggested that in question 6 the words 'will not normally' should be replaced by 'will only in very exceptional circumstances'. However, we consider the former wording to be more appropriate and do not propose to change it.

3.12 Government response: We intend to put in place a policy whereby the period by which a temporary licence for a cultural object may be extended will not normally exceed three years. This will be set out in Guidance for exporters.

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.

- 3.13 All respondents from museums, national bodies and government organisations agreed with the proposal or did not comment. One pointed out that while the proposed approach enables public display of the objects when abroad, there was no such requirement for public display whilst objects remained in the UK.
- 3.14 Five respondents from the art trade considered the proposal only to allow the temporary export of objects found to be national treasures for the purposes of public display to be unfairly discriminatory. Some were against both the limitation to temporary export only where it is for public display, and the three year time period, whilst others agreed with, or were silent on, the limitation of export to one period of three years but considered the policy of only allowing export for public display would penalise owners who are resident abroad and wished to enjoy their personal property for short periods of time, whilst keeping the object primarily in the UK.
- 3.15 We gave careful consideration to the responses in relation to the policy for temporary licences for cultural objects found to be national treasures, but remain of the view that the proposed policy of limiting the temporary export of such objects for public display purposes and for three years only, should be adopted for the following reasons:
- i. Once an object has been identified as a national treasure, it is considered that temporary licences should only be available in limited circumstances where there is a clear public benefit.
 - ii. There is a public benefit in allowing temporary export for a short period for the purpose of display in a public institution, giving the public (both UK and international) the opportunity to view national treasures from the UK which might not otherwise be on display at all. There would generally be no such benefit in permitting export for private purposes.
 - iii. An owner who wishes to export their property for personal reasons is not prevented from doing so, as they still have the opportunity of applying for a permanent licence.
 - iv. In view of the importance of the objects which have been found to be national treasures the Secretary of State requires a particularly high level of assurance that they will be returned at the expiry of the period of temporary export. It is considered that, in general, this will only be provided where an object is on display in a public institution.
 - v. The number of objects found to be national treasures by the RCEWA is

extremely small. In 2012-13 only 19 objects were found to be national treasures compared to 33,842 objects which were issued with export licences after they had been referred to expert advisers.

- vi. It is intended that the policy of limiting temporary export for public display purposes and to three years will normally be applied to cultural objects found to be national treasures. If there are exceptional circumstances then the Secretary of State may be persuaded to depart from normal policy.
 - vii. The requirement that the purpose of the licence is for public display reflects existing practice, so formalising this requirement will not have any adverse impact on expectations within the trade.
- 3.16 The policy for temporary licences for cultural objects found to be national treasures is intended to cover all objects that are national treasures and this should include all objects found by the RCEWA to meet one or more of the Waverley criteria. It has come to our attention that the proposal as drafted in the consultation did not cover all the relevant circumstances (e.g. it would not have covered the situation where the applicant withdraws the licence application after the Committee's finding but before the recommendation is made to the Secretary of State). We therefore intend to amend the proposed policy to cover such situations.
- 3.17 **Government response: We intend to introduce a separate policy for cultural objects found by the RCEWA to meet one or more of the Waverley criteria. We propose that a temporary licence will normally only be issued for such objects if the object will be the subject of display in a public institution. The temporary licence also 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. This will be set out in Guidance for exporters.**

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 of the consultation document? If not, please state clearly your reasons and your views on the approach you consider the Government should take.

- 3.18 All respondents agreed, apart from one who did not comment.
- 3.19 **Government response: We intend to introduce a policy whereby 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. In this situation the licence will normally be refused unless the applicant can give a reasonable explanation for their failure to comply with the terms of the previous licence. This will be set out in Guidance for exporters.**

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.

3.20 All respondents agreed, apart from one who did not comment.

3.21 Government response: 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. This will be set out in Guidance for exporters.

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.

3.22 All respondents agreed or did not comment on the assessment of costs and benefits and the assessment of the impact on micro/small businesses set out in the impact assessment.

3.23 No further information was provided in connection with costs and benefits or the impact on micro/small businesses.

3.24 The following additional general points were made by respondents:

- The definition of 'cultural object' from the natural history perspective is unclear (this falls outside the remit of this consultation and will be discussed separately with the respondent).
- A glossary of terms should be included in future publications and clarification of what is meant by objects being 'in free circulation'⁵ was sought (terms will be defined in future publications).
- The Schedule to the draft revised OGEL should read 'excluding carpets and tapestries' to be consistent with the main part of the OGEL (this was a typographical error which has now been amended).

⁵ Article 29 of the Treaty of the Functioning of the European Union states that products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

4. Next steps

- 4.1 In line with the action points set out in section 3 above, a revised Open General Export Licence will be published and made available on the Arts Council England website.
- 4.2 Arts Council England will include updated information on the procedure for temporary export licences in its publication UK Export Licensing for Cultural Goods: Procedures and guidance for exporters of works of art and other cultural goods http://www.artscouncil.org.uk/media/uploads/Guidance_for_Exporters_Issue__2014.doc. We will also update the Statutory Guidance on the criteria to be taken into consideration when making a decision about whether or not to grant an export licence http://www.culture.gov.uk/images/publications/Export_Controls_on_Objects_of_Cultural_Interest_Statutory_Guidance_Nov05.pdf

Annex A - List of respondents to the consultation

Below is an alphabetical list of the respondents to the 2012 consultation on export licensing: review of the Open General Export Licence (Objects of Cultural Interest) and procedures for dealing with applications for temporary export licences for cultural objects:

1. British Antiques Dealers' Association (BADA)
2. British Art Market Federation (BAMF)
3. British Library
4. Christie's
5. CyMAL: Museums Archives and Libraries Wales
6. Leeds Museums and Galleries
7. National Archives
8. National Galleries Scotland
9. National Historic Ships UK
10. National Maritime Museum
11. National Museum Directors Conference (NMDC) and the Art Fund
12. Natural History Museum
13. Society of London Art Dealers
14. Sotheby's
15. Tate
16. Victoria and Albert Museum



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