

Title: Export Licensing of Cultural Goods IA No: DCMS047 Lead department or agency: Department for Culture, Media & Sport Other departments or agencies:	Impact Assessment (IA)
	Date: 16/04/2012
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Other
	Contact for enquiries: Nicki Fox 0207 211 6129

Summary: Intervention and Options **RPC: AMBER**

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
£0.05m	£0.02m	-£0.0052m	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

i) The absence of a policy on how to deal with applications and reapplications for temporary licences risks inconsistency in practice and creates a loophole whereby applicants can use temporary licences to keep cultural goods outside the UK long-term or indefinitely, even where the cultural goods have been determined of 'outstanding national importance' and a permanent licence has been refused. A clear written policy and guidance is needed to rectify this.

ii) Existing UK provisions under the Open General Export Licence (the OGEL, SI 2003/2795) are inconsistent with the EU export licensing regime and place unnecessary administrative burden on exporters. We propose to amend the OGEL which is granted by the Secretary of State, to rectify this.

What are the policy objectives and the intended effects?

(i) To prevent applicants circumventing the system by using temporary licences to keep objects of potential national importance outside the UK long-term or indefinitely. Temporary licences should not be extended more than once. Extensions to temporary licences for objects of national importance for which the owner has refused a matching offer from a UK purchaser will normally be refused. (ii) To amend the OGEL to bring consistency with EU licensing and reduce administrative burdens. Exporters would no longer need to obtain individual licences for cultural goods brought in temporarily but not released into free circulation, or spoliated goods which the Secretary of State has agreed should be returned and to remove obsolete references to practice no longer followed.

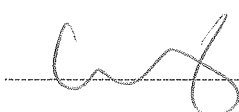
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Five combinations of revised temporary licenses and OGEL amendment have been considered in addition to doing nothing (which would incur no new costs or benefits):

- Preferred: Amend OGEL; and change temporary licences in preferred way (without requirement for history of previous applications for temporary licenses)
- Amend OGEL; and change temporary licences with the maximum of 5 years limit (requiring history of previous applications for temporary licences)
- Amend OGEL; but no change to temporary licences
- No change to OGEL; and change temporary licence in preferred way
- No change to OGEL; and change temporary licence with maximum of 5 years limit.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2017					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 18/4/12

Summary: Analysis & Evidence

Policy Option 1

Description: Preferred option: Amend OGEL; and (i) temporary export licences for cultural goods may not be extended more than once and must then be returned to the UK and (ii) temporary licences for items of national importance which have been refused a permanent licence will not be granted unless the object is being loaned for display to a public institution.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.049

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			-0.031

Description and scale of key monetised costs by 'main affected groups'

As a result of the proposed temporary export licence policy, some exporters may be persuaded to apply for permanent rather than temporary licence in some cases. Export licences are free and the administrative requirements of applying for permanent licences are no greater than for temporary licences. A minority of applications may be referred to RCEWA, if applicants decide to apply for a permanent instead of temporary licence, which would increase the cost to exporters, Arts Council England (ACE) and expert advisers (overall estimated cost £4,000 per annum).

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0.080

Description and scale of key monetised benefits by 'main affected groups'

The estimated savings that would result from a reduced administrative burden caused by amending the OGEL is £6220 per annum for exporters and £4290 per annum for ACE - a total of £10,510 p.a.

Other key non-monetised benefits by 'main affected groups'

The proposed temporary licence policy would avoid the loss of national treasures abroad and could lead to national treasures being purchased by UK institutions, instead of being loaned abroad, leading to a positive impact on local communities and tourism. The likelihood of challenge due to inconsistency as a result of having no formal published policy will be reduced. Amending the OGEL will bring the UK export licensing regime for cultural goods closer in line with the EU licensing regime

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Estimated cost (administrative burden) of cases going to RCEWA (Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest) as a result of the proposed temporary licence policy is £5,500 for exporters, £1870 for ACE and £880 for the expert adviser. It is unlikely more than one additional case every two years would go to RCEWA, as the percentage of cases referred to RCEWA by export advisers is less than 1%.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: -0.0052	Net: -0.0052	Yes	OUT

Summary: Analysis & Evidence

Policy Option 2

Description: Amend OGEL; and Temporary licences may not be extended more than once, shall be subject to a maximum five year period and the object must then return to the UK for five years. Exporters would need to provide a history of previous applications for temporary licences.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.046

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0.034

Description and scale of key monetised costs by 'main affected groups'

This option would increase the administrative burden for i) exporters (due to need to provide a history of previous temporary licences over the past nine years for objects) but it has not been possible to cost this as exporters do not know themselves and ii) staff in the Export Licensing Unit (ELU), who would have to make additional checks on the import history in cases where the documentation provided by exporters was unclear. The additional costs for ELU have been estimated at £317 a year. As with option 1 a minority of applications may be referred to RCEWA, which would increase the cost to exporters, ACE and expert advisers (overall estimated cost £4,000 per annum).

Other key non-monetised costs by 'main affected groups'

Increase in administrative costs to exporters from the need to provide a history of previous temporary licenses.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0.080

Description and scale of key monetised benefits by 'main affected groups'

The estimated savings that would result from a reduced administrative burden caused by amending the OGEL is £6220 per annum for exporters and £4290 per annum for ACE - a total of £10,510 p.a.

Other key non-monetised benefits by 'main affected groups'

The proposed temporary licence policy would avoid the loss of national treasures abroad and could lead to national treasures being purchased by UK institutions, instead of being loaned abroad, leading to a positive impact on local communities and tourism. The likelihood of challenge due to inconsistency as a result of having no formal published policy will be reduced. Amending the OGEL will bring the UK export licensing regime for cultural goods closer in line with the EU licensing regime.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Estimated cost (administrative burden) of extra checks by Export Licensing Unit is £317 per annum but it has not been possible to cost the need for exporters to provide this additional information as they have been unable to provide this cost information. Estimated cost of extra cases going to RCEWA as a result of the proposed temporary licence policy is £5,500 for exporters, £1870 for ACE and £880 for the expert adviser. It is unlikely more than one additional case every two years would go to RCEWA, as the percentage of cases referred to RCEWA by export advisers is less than 1%.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: -0.0052	Net: -0.0052	Yes	OUT

Summary: Analysis & Evidence

Policy Option 3

Description: Amend OGEL; but no change to temporary licences

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.080

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			Nil

Description and scale of key monetised costs by 'main affected groups'
No monetised costs.

Other key non-monetised costs by 'main affected groups'
There would continue to be no clear guidance or policy on the period of time for which a temporary licence should be issued. This has resulted in some applications for extensions to temporary licences being granted repeatedly, allowing exporters to allow temporary licences outside the UK long term or even indefinitely.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0.080

Description and scale of key monetised benefits by 'main affected groups'
The estimated savings that would result from a reduced administrative burden caused by amending the OGEL is £6220 per annum for exporters and £4290 per annum for ACE - a total of £10,510 p.a.

Other key non-monetised benefits by 'main affected groups'
Amending the OGEL will bring the UK export licensing regime for cultural goods closer in line with the EU licensing regime.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
The loophole whereby applicants can use temporary licences to keep cultural goods outside the UK long-term, even when the cultural goods have been determined of 'outstanding national importance' and a permanent licence has been refused, would remain. The likelihood of challenge due to inconsistency as a result of having no formal published policy will remain.		

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: -0.0052	Net: -0.0052	Yes	OUT

Summary: Analysis & Evidence

Policy Option 4

Description: No change to OGEL; and (i) temporary export licences for cultural goods may not be extended more than once and must then be returned to the UK and (ii) temporary licences for items of national importance which have been refused a permanent licence will not be granted unless the object is being loaned for display to a public institution.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.031

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0.031

Description and scale of key monetised costs by 'main affected groups'

As a result of the proposed temporary export licence policy, some exporters may be persuaded to apply for permanent rather than temporary licence in some cases. Export licences are free and the administrative requirements of applying for permanent licences are no greater than for temporary licences. A minority of applications may be referred to RCEWA, if applicants decide to apply for a permanent instead of temporary licence, which would increase the cost to exporters, ACE and expert advisers (overall estimated cost £4,000 per annum - see evidence base).

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			nil

Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits.

Other key non-monetised benefits by 'main affected groups'

The proposed temporary licence policy would avoid the loss of national treasures abroad and could lead to national treasures being purchased by UK institutions, instead of being loaned abroad, leading to a positive impact on local communities and tourism. The likelihood of challenge due to inconsistency as a result of having no formal published policy will be reduced.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Estimated cost (administrative burden) of cases going to RCEWA as a result of the proposed temporary licence policy is £5,500 for exporters, £1870 for ACE and £880 for the expert adviser. It is unlikely more than one additional case every two years would go to RCEWA, as the percentage of cases referred to RCEWA by export advisers is less than 1%. The UK export licensing regime will continue to be out of line with the EU regime.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 5

Description: No change to OGEL; and Temporary licences may not be extended more than once, shall be subject to a maximum five year period and the object must then return to the UK for five years. Exporters would need to provide a history of previous applications for temporary licences.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.034

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0.034

Description and scale of key monetised costs by 'main affected groups'

This option would increase the administrative burden for i) exporters (due to need to provide a history of previous temporary licences over the past nine years for objects) but it has not been possible to cost this as exporters do not know themselves and ii) staff in the Export Licensing Unit (ELU), who would have to make additional checks on the import history in cases where the documentation provided by exporters was unclear. The additional costs for ELU have been estimated at £317 a year. As with option 1 a minority of applications may be referred to RCEWA, which would increase the cost to exporters, ACE and expert advisers (overall estimated cost £4,000 per annum).

Other key non-monetised costs by 'main affected groups'

Increase in administrative costs to exporters from the need to provide a history of previous temporary licenses.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			nil

Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits.

Other key non-monetised benefits by 'main affected groups'

The proposed temporary licence policy would avoid the loss of national treasures abroad and could lead to national treasures being purchased by UK institutions, instead of being loaned abroad, leading to a positive impact on local communities and tourism. The likelihood of challenge due to inconsistency as a result of having no formal published policy will be reduced.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Estimated cost (administrative burden) of extra checks by Export Licensing Unit is £317 per annum but it has not been possible to cost the need for exporters to provide this additional information as they have been unable to provide this cost information. Estimated cost of extra cases going to RCEWA as a result of the proposed temporary licence policy is £5,500 for exporters, £1870 for ACE and £880 for the expert adviser. It is unlikely more than one additional case every two years would go to RCEWA, as the percentage of cases referred to RCEWA by export advisers is less than 1%. The UK export licensing regime will continue to be out of line with the EU regime.

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Evidence Base (for summary sheets)

The evidence base first sets out the background and impacts of possible changes for amending temporary licenses and the Open General Export License (OGEL). The combinations of these changes are then summarised to give five policy options in addition to doing nothing.

Background

Review of procedures for dealing with applications for temporary export licences

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 export licensing 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 by an expert adviser 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. Applications for export licences for cultural goods are issued by the Export Licensing Unit (ELU), based at Arts Council England, on behalf of the Secretary of State.

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.

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.

Objects of national importance

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. Export licence applications are referred to an expert adviser who considers whether the object meets one of the Waverley criteria¹ which are used to assess national importance. If the expert adviser considers that the object meets one of the criteria the application is referred to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA) which is an advisory body set up to make recommendations to the Secretary of State on the export of objects of national importance. If the Secretary of State accepts the RCEWA's recommendation that the object is of national importance the export licence application will be deferred to allow a UK institution or individual (where certain conditions, including the public display of the object, are met) to make a matching offer to purchase the object and keep it in the UK. A matching offer means offering to pay the value recommended by the RCEWA which is based in evidence (such as a recent sale price) submitted to it by the export licence applicant.

Currently, in some cases, an object which is the subject of a temporary export licence application has already been found to be of national importance but the applicant, having been refused a permanent

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History	Aesthetics	Scholarship
Is it so closely connected with our history and national life that its departure would be a misfortune?	Is it of outstanding aesthetic importance?	Is it of outstanding significance for the study of some particular branch of art, learning or history?
<i>Waverley 1</i>	<i>Waverley 2</i>	<i>Waverley 3</i>

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. 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.

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

Cultural objects not in free circulation²

Export controls for cultural objects are derived from both UK and EU legislation and, as far as possible, the UK licensing regime works in tandem with the EU requirements. 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.

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 consider this to be an unnecessary burden on exporters and to be inconsistent with EU requirements and therefore propose amending the OGEL so that it will include cultural objects which are not in free circulation, thus removing 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), based at Arts Council England, which issues individual export licences for cultural goods 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.

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.

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.

Spoliated cultural objects where their return has been approved by the Secretary of State

The Spoliation Advisory Panel (SAP) was established by the government in 2000 to resolve claims from people, or their heirs, who lost property during the Nazi era, which is now held in UK national collections. Recommendations made by the SAP are submitted to the Secretary of State for approval. Its proceedings are an alternative to litigation, and its recommendations are not legally binding on any parties. However, if a claimant accepts the recommendation of the Panel, and the recommendation is implemented, the claimant is expected to accept this as full and final settlement of the claim.

² Article 23 EC Treaty stipulates free circulation for Community goods throughout the European Community (EC). This principle applies not only to goods made in the Community but also to imported goods which have been released for free circulation after payment of the import duties to which they are liable.

At present, even though there has been agreement that the item should be returned, the exporter is still required to apply for an individual export 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 using the Spoliation Advisory Panel and not seen by the Secretary of State) and these will continue to require an individual UK or EU export licence.

Changes to OGEL to reflect current practice

Paragraph 3 of the OGEL 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. We therefore propose to update the OGEL to reflect this current practice.

Problem under consideration

Applications and re-applications for temporary licenses

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 undertaken on his behalf on an ad hoc basis, with no clear guidance on the period of time for which a temporary licence should be issued or the number of times a temporary licence may be extended. This has resulted in some applications for extensions to temporary licences being granted repeatedly because there are currently insufficient grounds to refuse them in the absence of written guidance or policy. In effect this allows 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 repeated extensions to a temporary licence. In some cases, an object 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. The absence of written guidance or policy under existing arrangements again means there are insufficient grounds to refuse such applications. The examples above undermine 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. The absence of a proper published policy on temporary licences also means that those deciding whether to grant applications for temporary licences risk acting inconsistently.

Amendment to the Open General Export Licence (OGEL)

Export controls for cultural objects are derived from both UK and 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 United Kingdom 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 will still 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.

Rationale for intervention and policy objective

Applications and re-applications for temporary licenses

The current absence of policy or written guidance for temporary licenses creates a loophole whereby applicants can use temporary licences to keep cultural goods outside the UK long-term or indefinitely, even where the cultural goods have been determined of 'outstanding national importance' and a

permanent licence has been refused. Such cultural goods can be deemed as exhibiting positive spillover effects when being retained with public access in the UK through their cultural, historic and scholarly significance. A policy is therefore needed on how to deal with applications and reapplications for temporary licences, in the interests of good practice, consistency and to reduce legal risk; and to close the loophole that leads to the long-term or indefinite loss to the UK of cultural goods of 'outstanding national importance'.

Amendment to the Open General Export Licence (OGEL)

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. It 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.

Description of options considered (including do nothing)

Five intervention options have been considered in addition to doing nothing. These options consist of two possible interventions for applications and re-applications of temporary licenses; and one for the Open General Export License. The five policy intervention options are summarised in the table below.

Table 1: Summary of Options and Net Present Values

Option	Description	NPV³
1	<u>Preferred</u> : Amend OGEL; and change temporary licences in preferred way (without requirement for history of previous applications for temporary licences)	49,000
2	Amend OGEL; and change temporary licences with the maximum of 5 years limit (requiring history of previous applications for temporary licences)	46,000
3	Amend OGEL; but no change to temporary licences	80,000
4	No change to OGEL; and change temporary licence in preferred way (without requirement for history of previous applications for temporary licences)	-31,000
5	No change to OGEL; and change temporary licence with maximum of 5 years limit (requiring history of previous applications for temporary licences)	-34,000

Option 0: Do nothing

No change to the OGEL or to applications and re-applications of temporary licenses.

Option 1

Amend OGEL:

Amend the OGEL so that the following items may be exported under it:

- i) cultural objects which are not in free circulation;
- ii) 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.

It is also proposed that the OGEL be updated to reflect current practice by the removal of existing paragraphs 3 and 4 which relate to the conditions of the licence and are obsolete. 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

³ Net Present Value gives the current value from today's perspective of a series of cash flows that are spread over time.

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 items apply for individual export licences.

Change temporary licenses in preferred way:

Introduce a policy whereby the maximum period for which a temporary licence is normally granted will be three years, as at present. The licence will not normally be extended more than once. The extension will not normally exceed three years⁴, 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. The proposals will apply to all applications for individual temporary licences, irrespective of the length of time for which the original licence is requested.

Also introduce a separate policy for cultural objects which have been found to be of national importance which belong to an owner who has been refused a permanent licence for the object because he or she refused a valid matching offer, or made known his/her intention to refuse any possible matching offer (regardless of whether such an offer was made), or withdrew his/her application for a permanent licence after receiving a valid matching offer (or before if it is reasonably likely that he/she had knowledge that an offer was imminent). A temporary licence may only be issued for such objects if they will be the subject of display in a public institution. The temporary licence will 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.

The proposed policy will be set out in the existing guidance for exporters.

Option 2

Amend OGEL: The OGEL will be amended as described under option 1 above.

Change temporary licenses with maximum of 5 years limit:

Introduce a policy whereby the maximum period for which a temporary licence is normally granted will be three years, as at present. The licence will not normally be extended more than once, and will be subject to a maximum five-year consecutive period. After this, the object must be returned to the UK and no further temporary licence applications for that object will 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.

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.

⁴ Three years is appropriate as this is consistent with the Open Individual Export Licence (OIEL) which allows Museums and galleries to export certain cultural objects temporarily outside the UK for up to three years

Option 3

Amend OGEL: The OGEL will be amended under options 1 and 2 above.

No change to temporary licenses.

Option 4

No change to OGEL.

Change temporary licenses in preferred way:

Introduce a policy for temporary licenses as described under option 1 above. The licence will not normally be extended more than once. The extension will not normally exceed three years, irrespective of the period for which the original temporary licence was granted.

Option 5

No change to OGEL.

Change temporary licenses with maximum of 5 years limit:

Introduce a policy for temporary licenses as described under option 2 above. The licence will not normally be extended more than once, and will be subject to a maximum five-year consecutive period.

Costs and benefits of each option (including administrative burden)

Option 0: do nothing

Doing nothing does not result in any new costs or benefits

Option 1

Amend OGEL:

This will result in a reduction in the administrative burden for exporters and the Export Licensing Unit at ACE. The resulting savings are estimated as £6220 a year for exporters and £4290 a year for the Export Licensing Unit.

Change temporary licenses in preferred way:

This option could result in additional cases being referred to RCEWA, if applicants decide to apply for a permanent instead of temporary licence. If additional cases are referred to RCEWA, there will be an increased administrative burden for exporters, the Reviewing Committee and its secretariat, and the expert advisers who prepare submissions for RCEWA. However, cases are only referred to RCEWA where expert advisers consider the objects on question are of national importance. On latest estimates there were 17 cases considered by RCEWA in 2010-11. 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.

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. Unlike the alternative change to temporary licenses, this option would not result in an increased administrative burden for the majority of exporters applying for temporary licences, because it is not proposed that they would have to provide a history of previous temporary licences for objects for which a temporary licence is requested.

The proposed policy will be set out in the existing guidance for exporters.

Option 2

Amend OGEL:

This will result in a reduction in the administrative burden for exporters and the Export Licensing Unit at ACE. The resulting savings are estimated as £6220 a year for exporters and £4290 a year for the Export Licensing Unit.

Change temporary licenses with maximum of 5 years limit:

As under option 1, this option could result in additional cases being referred to RCEWA leading to additional administrative costs. The increased administrative burden could result in additional costs of £4,000 a year split between exporters, the RCEWA and its secretariat, and expert advisers.

This option would also increase the administrative burden for exporters, who would be required to provide a history of previous temporary licences over the past nine years for objects for which a temporary licence was requested (in order to establish how long the object had been out of the UK on a temporary licence in the past). It has not been possible to cost this (because exporters do not know themselves), but exporters have confirmed that it would be administratively very burdensome.

It would also increase the administrative burden of staff in the Export Licensing Unit, which issues export licenses for cultural goods on behalf of the Secretary of State. Staff would have to make additional checks on the import history in cases where the documentation provided by exporters was unclear. The additional costs for ELU have been estimated at £317 a year.

As under option 1, this change would mitigate 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.

Option 3

Amend OGEL:

This will result in a reduction in the administrative burden for exporters and the Export Licensing Unit at ACE. The resulting savings are estimated as £6220 a year for exporters and £4290 a year for the Export Licensing Unit.

No change to temporary licenses:

There are no new costs or benefits from temporary licenses under this option.

Option 4

No change to OGEL:

There are no new costs or benefits from the OGEL under this option.

Change temporary licenses in preferred way:

The costs and benefits with respect to temporary licenses are the same as under option 1. It could result in additional cases being referred to RCEWA, if applicants decide to apply for a permanent instead of temporary licence, leading to additional administrative costs of £4,000 a year split between exporters, the RCEWA and its secretariat, and expert advisers.

This change would mitigate 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.

The proposed policy will be set out in the existing guidance for exporters.

Option 5

No change to OGEL:

There are no new costs or benefits from the OGEL under this option.

Change temporary licenses with maximum of 5 years limit:

The costs and benefits with respect to temporary licenses are the same as under option 2. It could result in additional cases being referred to RCEWA leading to additional administrative costs of £4,000 a year

split between exporters, the RCEWA and its secretariat, and expert advisers. It would also increase the administrative burden for exporters, who would be required to provide a history of previous temporary licences. Staff at ELU would have to make additional checks on the import history in cases where the documentation provided by exporters was unclear. The additional costs for ELU have been estimated at £317 a year. This change would mitigate 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.

Non-monetised Impacts

Applications and re-applications for temporary licenses:

Either of the proposed temporary licence policies (as under options 1,2, 3 and 5) would avoid the loss of national treasures abroad and could lead to national treasures being purchased by UK institutions, instead of being loaned abroad, leading to a positive impact on local communities and tourism. The likelihood of challenge due to inconsistency as a result of having no formal published policy will be reduced. In addition, the current absence of clear guidance or policy leads to time spent considering individual temporary license applications for DCMS and ACE. It is likely that fewer cases would require this consideration as the guidance would provide greater clarity for assessing applications. However the size of these benefits are uncertain and will vary from case to case; and so cannot be robustly quantified.

Whilst the benefits cannot be monetised robustly, the additional costs that could result from a few more cases being referred to RCEWA (approximately one every two years on average) is considered easily justified in order to ensure that objects of national importance are properly scrutinised before being allowed to leave the country permanently. Any such increase in these costs 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.

The proposed policy will be set out in the existing guidance for exporters.

Amendment to the Open General Export Licence (OGEL):

Amending the OGEL will bring the UK export licensing regime for cultural goods closer in line with the EU licensing regime.

Risks and assumptions

Applications and re-applications for temporary licenses

The number of temporary licence applications where exporters would have to provide a history of previous temporary licences for objects under options 2 and 5 has been estimated as 242 a year, using figures provided by ELU.

The additional costs incurred by ELU as a result of options 2 and 5 are based on the assumption that a member of staff in the ELU would need to carry out 30 minute checks for 20% of the estimated 242 cases a year referred to ELU where exporters had provided a history of previous temporary licences (based on information provided by ELU that checks would need to be made by a Grade C on approximately 20% of cases and each check would take 30 minute. Grade C hourly rate (mid-range) is £13.09).

The additional costs (in terms of the administrative burden) for more cases going to RCEWA as a result of each of the options for which applications and re-applications for temporary licenses are changed (options 1, 2, 4 and 5) are based on the following:

- The average cost of each case that goes to RCEWA has been estimated at £1870 for the Reviewing Committee and its Secretariat on the basis of travel and subsistence and staff costs (based on estimates from the RCEWA Secretariat).
- The average cost of each case that goes to RCEWA has been estimated as £5,500 for exporters (based on varying costs provided by exporters). This covers staff time, the cost of transporting the object to and from RCEWA meetings and, in some cases, the insurance costs of taking items to RCEWA meetings (although some exporters have worldwide insurance, so do not need to purchase additional insurance).

- The average cost of each case that goes to RCEWA has been estimated as £880 for expert advisers (based on various estimates from current expert advisers of the additional time they spend preparing such cases multiplied by estimated staff costs (which will vary)).

It is unlikely more than one additional case every two years would go to RCEWA as a result of the temporary license proposals (applicants may decide to apply for a permanent instead of temporary licence) - probably fewer, as the percentage of cases referred to RCEWA by expert advisers is less than 1%.

The annual costs are projected forward for ten years to give a net present value (see table 1) on the assumption that the number of temporary licenses and the associated costs stay constant (in real terms) going forward. Whilst this is based on the best available evidence, in reality there may be some deviation in the number of temporary licenses in individual years. Implementation is assumed to be in 2013.

The proposed policy will be set out in the existing guidance for exporters.

Amendment to the Open General Export Licence (OGEL)

The estimates for the OGEL amendment are based on figures provided by the ELU which show that from September 2010 to August 2011 it issued licences for 1529 cultural objects which had not been released into free circulation.

In order to work out the estimated savings to the ELU, the estimated number of cases that ELU will no longer need to process (1529) has been multiplied by the amount of time spent checking them and this has then been multiplied by the hourly rate of the staff responsible for this task (see below).

Estimate of reduced administrative burden foreseen as a result of proposed amendments to the OGEL:

1) For the ELU

The ELU has provided statistics showing that from Sep 2010 to August 2011 it issued licences for 1529 cases which require this at present, but will not if the OGEL is amended as proposed (i.e. applications for non-community goods that require a UK licence to be exported outside the EU because they are valued above the EU threshold).

It currently takes a Grade D and a Grade C seven minutes each to check these. Scaling this up for the 1529 annual cases and multiplying by the mid-range wages of Grade D and Grade C staff (£10.97 and £13.09 per hour respectively) yields a total cost saving for the ELU of £4290 per year.

2) For exporters

In order to work out the estimated savings to exporters, the estimated 1529 number of cases for which they will no longer need to submit export licence applications has been multiplied by the amount of time spent by exporters in submitting applications at present. This has then been multiplied by the estimated hourly rate of the staff in question from exporter sources. (Different firms may pay different rates for the work in question, so there is no standard hourly rate for staff carrying out this task.). Exporter sources estimate it takes 15 minutes to research and apply for a licence for a 'non-community' good. Combining this with the hourly wage rate for the relevant staff yields a total cost saving of £6220 per year.

The administrative cost savings for both the ELU and exporters are trended forward for ten years to give a net present value (see table 1), on the assumption that the number of cases and the staff costs remain constant (in real terms) over time. The number of cases is taken from one year's information as this is the best data available, but it is possible that there may be some deviation in the number in individual years going forward. Implementation is assumed to be in 2013.

Summary of preferred option and implementation plan

The options are summarised in table 1 which also gives the associated costs and benefits (in net present value terms), when the annual estimates are trended forward for ten years. Option 1 is the preferred option. The proposed temporary licence policy would avoid the loss of national treasures abroad while avoiding introducing costs from requiring historic records of temporary licenses. Amending the OGEL would reduce the administrative burden of both exporters and the export licensing unit and would bring the UK export licensing regime closer in line with the EU export licensing system.

It is proposed that the consultation should take place in the summer of 2012 and that revised guidance on temporary licences and a revised Open General Export Licence will be published in the autumn of 2012.

Competition Assessment, Small Firms Impact Test and Micro Organisations

The proposed policies are not expected to have a substantive impact on competition. Those businesses that have license applications referred to the RCEWA would incur small additional costs, but any impact on wider competition would be negligible.

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).

The proposals to amend the OGEL so that exporters no longer need to obtain individual licences for cultural goods brought in temporarily but not released into free circulation, or spoliated goods which the Secretary of State has agreed should be returned, will benefit those businesses affected, as it will reduce their administrative burden. Hence it is not proposed to exclude micro organisations from this change. It is also not proposed that micro organisations should be exempted from the proposals to introduce a formal policy for dealing with applications for temporary licences. To do so would open up a loophole by allowing those wishing to avoid having their cultural goods scrutinised for national importance to achieve this by getting smaller organisations to apply for temporary export licences.

Statutory Equality Impact Tests

We have also considered the potential effects of both proposals on protected groups under the Equality Act 2010 (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation). After initial screening it has been deemed that no significant impact is anticipated.

Other specific impact tests

Other specific impact tests have been considered including Justice, Sustainable Development, Carbon Assessment, Environment, and Rural Proofing. After initial screening it has been deemed that no significant impact is anticipated in any case.

Direct costs and benefits to business calculations (following OIOO methodology)

The Effective Annual Net Cost to Business (EANCB) from the policy options are summarised below. In line with 'one-in, one-out' (OIOO) methodology, the costs and benefits are evaluated over ten years from implementation. The preferred option, option 1, is an 'OUT' with an EANCB of -5,200. This 'OUT' results from the amendments to the OGEL which is the same under options 1, 2 and 3. The changes to temporary licenses are out-of-scope of OIOO because they are issued through guidance and do not have statutory backing. Therefore the costs to businesses from either change to temporary licenses are not included in the EANCB estimates for options 1, 2 and 3; and the EANCB is non-applicable for options 4 and 5 which only consider the temporary license changes.

Table 2: Summary of EANCB

Option	Description	EANCB
1	Amend OGEL; and change temporary licences in preferred way (without requirement for history of previous applications for temporary licences)	-5,200
2	Amend OGEL; and change temporary licences with the maximum of 5 years limit (requiring history of previous applications for temporary licences)	-5,200
3	Amend OGEL; but no change to temporary licences	-5,200
4	No change to OGEL; and change temporary licence in preferred way (without requirement for history of previous applications for temporary licences)	N/A
5	No change to OGEL; and change temporary licence with maximum of 5 years limit (requiring history of previous applications for temporary licences)	N/A

