

Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest

Triennial Review

Stage Two

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Section 1: Introduction

The terms of reference of this Triennial Review of the Reviewing Committee on the Export of Works of Art (“RCEWA” or “the Committee”) are:

- i. To provide robust evidence on the continuing need for the RCEWA in term of its functions and form and
- ii. To review its governance and control arrangements to ensure compliance with the corporate governance principles contained in the Cabinet Office Triennial Review Guidance.

Stage One of the review set out the background to the RCEWA and looked at its key functions.

Stage One made a number of recommendations:

Recommendation 1: The key functions of the RCEWA continue to be appropriate in terms of delivering the Government’s objectives.

Recommendation 2: The RCEWA’s functions are most effectively and cost-efficiently provided at arm’s length from Government through an advisory non-departmental public body.

Recommendation 3: Stage Two of the Triennial Review should consider whether and how the transparency of the RCEWA might be enhanced.

Recommendation 4: The RCEWA’s functions are most effectively and cost-efficiently provided at arm’s length from government through an advisory NDPB with administrative support from the AELC Unit at Arts Council England.

Stage Two of the review looks at whether the RCEWA operates in accordance with the recognised principles of corporate governance including by being open, transparent and accountable.

The review was led by the Department for Culture, Media and Sport (DCMS) and was overseen by a Review Group, with members drawn from key stakeholders in the

process of export licensing for cultural objects. The Lead Reviewer was Hillary Bauer, Head of the International and Cultural Property Unit, DCMS. The Review Group was made up of:

- **Sophie Marment**, Public Bodies Reform Team, DCMS
- **Anthony Browne**, Chairman, British Art Market Federation
- **Karen Brookfield**, Deputy Director of Strategy and Business Development, Heritage Lottery Fund/National Heritage Memorial Fund (NHMF)
- **Dawson Carr**, Curator of Italian and Spanish Painting 1600–1800, National Gallery, and expert adviser to the RCEWA

The Review Group agreed the Terms of Reference for the Review and has been consulted at each point.

The review was first announced in Parliament on 15 December 2011. Further details of the review were published on the DCMS website on 13 January 2012 and stakeholders were invited to contribute views on the key questions for Stage One.

Stage Two of the review considers the RCEWA against the requirements in the Cabinet Office's guidance on the principles of good corporate governance for Advisory Non-Departmental Public Bodies. These requirements are set out in detail in the sections below. The presumption has been that the RCEWA will comply with these requirements: any areas of non-compliance are noted, together with reasons and/or any alternative approaches taken.

Stages One and Two of the review were submitted in December to the Culture Minister, Ed Vaizey. They will be deposited in Parliament and published on the DCMS website.

Section 2 – Accountability

The Cabinet Office principle is that the Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.

The review finds that the following Cabinet Office requirements are met with regard to the RCEWA:

- The Minister and DCMS exercise appropriate scrutiny and oversight of the RCEWA.
- Appointments to the Committee are made in line with the *Code of Practice* issued by the Commissioner for Public Appointments.
- The Minister appoints the Chair and all non-executive Committee members of the RCEWA and is able to remove individuals whose performance or conduct is unsatisfactory.
- The RCEWA is compliant with Data Protection legislation.
- The RCEWA is compliant with the Public Records Acts 1958 and 1967.

The following Cabinet Office requirements are not met with regard to the RCEWA:

- The Minister is not consulted on the appointment of the Chief Executive because the RCEWA is an advisory committee and it does not have a chief executive, the Secretariat being provided by the Acquisitions, Exports Loans and Collections Unit (AELCU) at Arts Council England.
- The Minister does not meet the Chair on a regular basis. Meetings may take place from time to time as appropriate to discuss export licensing policy in general or specific concerns the Committee may have. It is not necessary, however, to have regular meetings to discuss the work of the RCEWA because the Committee's functions are straightforward: its work programme consists of making recommendations to the Secretary of State on whether a cultural object referred to them under export licensing requirements meets the

“Waverley” criteria¹; whether its export licence should be deferred; if so for how long and at what value in order to enable a matching offer to be made to keep the object in the UK.² The Committee’s remit however also includes advising on the principles which should govern the control of export of objects of cultural interest under the Export Control Act 2002 and on the operation of the export control system generally.

- There is no requirement for the RCEWA to consult the Minister on its corporate plan because, as its functions are so straightforward, it does not need to have one.
- There is no requirement for the exercise of particular functions of the RCEWA to be subject to guidance or approval from the Minister and there is no general or specific power of Ministerial direction over the Committee. This is because the RCEWA only makes recommendations. Ministers remain responsible for making decisions about any export deferrals recommended by the Committee. Nevertheless, the RCEWA seeks guidance from DCMS from time to time, in particular on legal issues
- There is no requirement for the Minister to be consulted by the public body on key financial decisions because the Committee does not make any financial decisions. However, the Committee is required to offer a recommendation as to the valuation of an object where the export licence may be deferred, in order to allow a UK purchaser to match the asking price. This may occur where there has been no recent sale of the object in question, in order to establish its fair market price. Occasionally the RCEWA may recommend to the Minister that he seek an independent valuation of an object (for example where the parties are unable to agree on such a price) and then the Minister may commission a separate valuation from an external expert.

¹ The Waverley" criteria are:

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?
Waverley 1	Waverley 2	Waverley 3

² The Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest was established, to consider all cases where deferral of an export licence for a cultural object is suggested on grounds of national importance and to advise the Secretary of State.

The review has also considered whether DCMS officials need to observe meetings of the RCEWA. There is no specific reference to this in the Agreement between DCMS and Arts Council England which was drawn up on the basis of confidence in the secretariat support (formerly provided by Acquisitions, Export and Loans Unit at the Museums Libraries and Archives Council). It was therefore agreed that, as the members of the Unit were transferring to the Arts Council and all arrangements were expected to be maintained, DCMS officials would still therefore only need to attend when a particular policy issue might require their presence, for example when a particularly unusual or complex case is to be discussed.

The review does not consider the fact that DCMS officials do not always attend RCEWA meetings to be any cause for concern. DCMS receives copies of papers in advance of Committee meetings and copies of the draft minutes, as well as the recommendations addressed to the Minister, which are in practice determined by officials on the Minister's behalf and immediately notified to him and others within the Department and to Arts Council England. Attendance at every meeting would in any case be a significant commitment of resources at a time when DCMS' administration budget is being reduced by 50%. The Agreement between DCMS and the Arts Council provides for a review within the first year and thereafter every two years and this should be enforced in order to take account of any changes in practice.

Recommendation 1: the inclusion in the Agreement between DCMS and the Arts Council England for the provision of services in relation to cultural objects that the Agreement should be reviewed in the first year of its operation, and thereafter every two years, should be adhered to in order to reflect any changes to process that have occurred in practice.

Finally, the review considered the Cabinet Office requirement that Parliament should be informed of the activities of the public body through the publication of an annual report.

The Reviewing Committee has prepared an annual report since it was first established in 1952 and the Agreement between DCMS and the Arts Council³ specifies that the AELCU will draft the RCEWA Annual Report in consultation with DCMS, RCEWA members, the Advisory Council, expert advisers and applicants, and other interested parties (such as funding bodies, or the Department for Business, Innovation and Skills, as appropriate). It further specifies that the Secretariat will seek the Minister's agreement to the policy section of the Report, and publication of the Report, and will liaise with DCMS Publications team to arrange

³ See Note 1. above.

publication. The RCEWA Annual Report, together with the Secretary of State's response and the annual report that the Secretary of State is required to submit to Parliament under section 10(1)(a) of the Export Control Act 2002 are published as a single report by DCMS. The Arts Council is also required to provide DCMS with statistical information for inclusion in its annual publication, *The Export of Objects of Cultural Interest Statistical Release*, in accordance with the standards set by the Statistics and Registration Service Act 2007, by 30 September in each year.⁴

⁴ Agreement of 27 September 2011, para 7.14.

Section 3 – Roles and responsibilities

Role of the Sponsoring Department

The Cabinet Office principle is that the departmental board ensures that there are appropriate governance arrangements in place within the public body. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the advisory NDPB

The review finds that the following Cabinet Office requirements are met with regard to the RCEWA:

- The departmental board looks at the performance of its public bodies, in which RCEWA is included, every quarter.
- The RCEWA has terms of reference which are regularly reviewed and updated. The terms of reference can be accessed on the Arts Council England website.⁵
- There is a dedicated sponsor for RCEWA within DCMS as well as a dedicated ALB team who provide support on cross-cutting ALB issues. There is regular and ongoing dialogue between the sponsoring department and the RCEWA on the work of the committee.

The review finds that the following Cabinet Office requirements are not met with regard to the RCEWA:

- There is not an annual evaluation of the performance of the Chair and individual board members. The Chair provides written comments when a member comes up for reappointment and is able to raise any concerns about the performance of committee members. However it would be unnecessarily burdensome to do this every year given the light nature of the Committee's duties.

Role of the Chair

⁵ <http://www.artscouncil.org.uk/what-we-do/supporting-museums/cultural-property/export-controls/reviewing-committee/>

The Cabinet Office principle is that the Chair is responsible for leadership of the board and for ensuring its overall effectiveness.

The review finds that the following Cabinet Office requirements are met with regard to the RCEWA:

- The RCEWA is led by a non-executive Chair.
- There is a formal, rigorous and transparent process for the appointment of the Chair which is compliant with the *Code of Practice* issued by the Commissioner for Public Appointments. When there is a vacancy, it is publicised on the DCMS and Cabinet Office websites with a role description and a deadline for applications. A selection panel is formed, made up of the DCMS official responsible for the Reviewing Committee, a senior employee of the Arts Council, an independent adviser, such as the Chair or former member of the Committee and an independent public appointments assessor. The selection panel recommends a shortlist, which is then agreed by the Minister. The panel interviews shortlisted candidates and advises the Minister on those who have met the selection criteria most comprehensively, from amongst whom the Minister makes an appointment.
- The Chair has a clearly defined role in the appointment of members. He sits on the selection panel for new member appointments, alongside the DCMS official responsible for the Reviewing Committee policy, the Senior Adviser in the Acquisitions, Exports Loans and Collections Unit at the Arts Council England and an independent public appointments assessor.
- The duties, role and responsibilities and terms of office of the Chair have not been set out clearly and formally defined in writing, although they were set out in the recruitment advertisement and all the terms and conditions are in line with Cabinet Office guidance.

The responsibilities of the Chair include:

- representing the RCEWA in discussions with Ministers. In practice, however, this happens infrequently, given the limited and straightforward nature of the Committee's functions
- advising DCMS and Ministers about Committee appointments and the performance of individual Committee members. As mentioned above, the

Chair is a member of the selection panel for new Committee member appointments. When reappointments come up, the Chair is asked to provide written assessment of past performance, which is put to the Minister as part of the reappointment submission.

- ensuring that members of the RCEWA have a proper knowledge and understanding of their corporate role and responsibilities. In practice, this responsibility is mostly undertaken by DCMS officials. When new members are appointed, they are provided with the Cabinet Office publication *Code of Conduct for Board Members of Public Bodies* and specific reference is made to this. The Chairman also makes it his business to give new members an informal introduction to the Committee's work and methods of proceeding.
- ensuring that the Committee, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers.
- ensuring that the Committee carries out its business efficiently and effectively.
- representing the views of the Committee to the general public. In practice, however, this happens rarely because it is not the role of the RCEWA to develop or implement policy, although the RCEWA's Terms of Reference⁶ include advising on the principles which should govern the control of export of objects of cultural interest and the operation of the export control system generally. This is considered further in Section 4 (Communications) below.
- developing an effective working relationship with senior staff. The RCEWA does not employ senior staff, but the Chair is responsible for developing and maintaining effective working relationship with staff at the Arts Council, who provide secretariat support to the Committee and in practice he has always had a good relationship with both the Secretariat and the key sponsoring official at DCMS.

The following Cabinet Office requirements are not met with regard to the RCEWA:

⁶ (a) to advise on the principles which should govern the control of export of objects of cultural interest under the Export Control Act 2002 and on the operation of the export control system generally;
(b) to advise the Secretary of State on all cases where refusal of an export licence for an object of cultural interest is suggested on grounds of national importance;
(c) to advise in cases where a special Exchequer grant is needed towards the purchase of an object that would otherwise be exported.

- The Chair is not asked to undertake an annual assessment of members. As mentioned above, the Chair provides written comments when a member comes up for reappointment and is able to raise concerns should they have any concerns about the performance of committee members, but it would be unnecessarily burdensome to do this every year given the light nature of the Committee's duties.
- Finally, the Cabinet Office requirement that the roles of Chair and Chief Executive should be held by different individuals is not relevant to the RCEWA because it does not have a Chief Executive

Recommendation 2: the Chairman's duties, role and responsibilities should be set out clearly and formally defined in writing.

The Role of Board Members

The Cabinet Office principle is that Board members should provide independent, expert advice.

This review finds that the following provisions are met in relation to the RCEWA:

- There is a formal, rigorous and transparent process for the appointment of non-executive members of the board. This is compliant with the *Code of Practice* issued by the Commissioner for Public Appointments.⁷
- Committee members are properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity).
- Committee members are drawn from a wide range of diverse backgrounds. The committee as a whole has the appropriate balance of skills, experience, independence and knowledge to carry out the specialist functions of the RCEWA.
- The terms of office and remuneration of board members are set out clearly and formally defined in writing on appointment to the RCEWA. Terms and

⁷ <http://www.publicappointmentscommissioner.org/>

conditions are in line with Cabinet Office guidance⁸ and with statutory requirements.

- Board members allocate sufficient time to the board to discharge their responsibilities effectively. The Board meets on a monthly basis to discuss business.
- Board members uphold high standards of corporate governance ensuring that the public body operates in an open, accountable and responsive way. This is in line with their terms and conditions which states that ‘You are... expected to comply with the guidance set out in the Cabinet Office’s booklet *Guidance on Codes of Practice for Board Members of Public Bodies*.’
- Board members receive an induction from the Chair and DCMS staff, as set out in the section on ‘The Role of the Chair’ above. Board members are able to discuss performance and development needs with the Chair.

The review finds that the following requirements are not met with regard to the RCEWA:

- The role and responsibilities of board members are not set out in writing although the terms of appointment do state that ‘General issues of responsibility and accountability, and a Code of Conduct for board members, is described in the Cabinet Office *Guidance on Codes of Practice for Board Members of Public Bodies*.’

Recommendation 3: Board members duties, role and responsibilities should be set out clearly and formally defined in writing.

⁸ “Making and Managing Public Appointments”, Cabinet Office, 2006

Section 4 – Communications

The Cabinet Office principle is that the public body should be open, transparent, accountable and responsive.

The review notes that the RCEWA has an advisory role in relation to policy on the export licensing process (see Section 3 above). However, DCMS remains responsible overall for policy relating to cultural property, the legislative framework and its effective management. The Committee's main function, which takes up the body of the monthly meetings, is to provide advice to the Secretary of State on whether a cultural object (or objects) for which an export licence has been sought meets the Waverley criteria and whether, therefore, that licence should be deferred to allow an institution or private individual in the UK to raise matching funds for the purchase price in order to keep it in this country. This means that the Committee has a clear responsibility to respect the commercially confidential details of the parties involved in each case. Nevertheless, the RCEWA needs to balance that with the principle of openness, transparency and accountability.

The review finds that the following Cabinet Office requirements are met with regard to the RCEWA:

- The RCEWA has identified its key stakeholders and it has established clear and effective channels of communication with them. The Committee's key stakeholders are: national museums and galleries; the main players in the art market; individuals purchasing cultural objects and their representatives (for example lawyers); and DCMS. Communication is managed by the secretariat within the AELCU at the Arts Council. Communications are clear and effective. In each case referred to the Committee by expert advisers, the secretariat copy all necessary communications to each stakeholder for a case hearing and also provide time for stakeholders to respond within published timescales. Opportunities are also provided during the hearing for each party to respond to the points raised by the other. These are minuted and included in the Notes of Case Hearing. These procedures are as laid down in Schedule 2 of the Agreement between DCMS and the Arts Council for the Provision of Services in Relation to Cultural Objects.

- The Agreement between DCMS and the Arts Council England for the provision of services in relation to cultural objects⁹ contains a specific provision requiring the provision of all such information to DCMS as requested by it¹⁰ but has no specific reference to the handling of FOI requests which will be handled in accordance with the Arts Council's own FOI policy.¹¹ However, the RCEWA is listed as a separate body under Schedule 1 of the Freedom of Information Act 2000 and could therefore potentially be expected to have its own FOI policy.

Recommendation 4: consideration should be given to whether the RCEWA should develop its own Freedom of Information policy, independent of that of the Arts Council.

- The RCEWA is committed to openness in all its activities. As was noted in Part One of this Review, for the export licensing regime to be effective, it is important that all stakeholders have trust and confidence in it and that it is seen to be fair, thorough, independent and transparent. The Arts Council is fully committed to providing, via its website, all the necessary information and guidance for those participating in the process. This includes; full information about the UK and EU export licensing regimes, the role and membership of the RCEWA and its procedures, together with contact details for the Committee Secretariat in the AELCU at Arts Council England¹². Given, however, that the RCEWA is dealing with cases involving private individuals, where the details are commercially confidential, the Committee must balance openness and transparency with the legitimate requirements to protect individuals' privacy and commercial interests. Previous cases are reported in each year's Annual Report and for the most recent cases (those for the last two years) the Independent Assessor's statement, applicant's statement and Note of Case Hearing are on the Arts Council's website. Those for earlier cases can be made available on request.
- Because the Committee itself provides a hearing for the parties to any case, after which a recommendation is made to the Secretary of State, there is no subsequent avenue of appeal against the Committee's recommendation,

⁹ Agreement for the Provision of Services in Relation to Cultural Objects of 27/9/11 – at Annex.

¹⁰ **PROVISION OF INFORMATION AND BRIEFING**

1.1. ACE shall provide all such information to DCMS as requested by it in connection with the discharge of the Services delivered by ACE under the terms of this Agreement.

¹¹ http://www.artscouncil.org.uk/media/uploads/publications/making_a_complaint_dec_2011.pdf

¹² http://www.artscouncil.org.uk/media/uploads/doc/Guidance_for_Exporters_Issue_1_2011_ACE_web_version-1a_.doc

which is only advisory. If the stakeholder is not satisfied, it is open to them to make representations to the Minister or ultimately to seek Judicial Review but this could only be of the Minister's handling of the Committee's recommendation, rather than of the Committee's own hearing or any of the recommendations they may make. There has never been such an application since the Committee was established. It would also be open to anyone to make a complaint to the Arts Council which would be handled in accordance with that organisations own complaints procedures.¹³ However consideration could be given to whether a separate procedure is required.

Recommendation 5: Consideration should be given as to whether the RCEWA should develop its own complaints procedure, independent of that of the Arts Council

- The RCEWA itself does not undertake any publicity or advertising. The review understands that the Arts Council complies with government conventions on publicity and advertising, but this is more properly an issue to be addressed in a future Triennial Review of the Arts Council.
- The terms and conditions of appointment to the RCEWA ensure that the Committee is not, and is not perceived to be, engaging in political lobbying. Members are not allowed to accept a paid or prominent position in any political party. They are free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise a proper discretion.¹⁴ Although there is no formal system in place to police this, members of the RCEWA do not attend Party Conferences in a professional capacity (this is considered further in Section 5 – Conduct and Behaviour below). Members are also required to complete a register of interests annually according to the terms and conditions of their appointment.

The following Cabinet Office requirements are not met with regard to the RCEWA:

- The RCEWA does not monitor and report on its performance in handling correspondence. Neither does DCMS formally monitor performance by the Secretariat at the Arts Council in handling correspondence on RCEWA cases because these are relatively few in number (between 20 and 40 per year) and these are consistently handled with efficiency. It would be an unnecessary

¹³ http://www.artscouncil.org.uk/media/uploads/publications/making_a_complaint_dec_2011.pdf

¹⁴ The present Chair is a hereditary and elected member of the House of Lords, Chair of the Select Committee on Communications and a former Minister at the Department of National Heritage.

resource burden to set up and manage a formal reporting system. DCMS monitors and reports on its performance in handling general correspondence to Ministers and occasional correspondence about reviewing committee procedures and cases is included within these figures.

- The RCEWA does not publish performance data about its work. Full details of each of the cases that the Committee deals with are provided in the Committee's Annual Report, which is published jointly by the Arts Council and DCMS and placed on the websites of both organisations. It is publicised by means of a joint press release. Data is not formally collected on the time that is taken for the RCEWA to make a recommendation because this particular part of the process is handled without delay following the meeting at which the Committee has decided on its recommendation to the Minister.
- The RCEWA does not publish any spend data over £500 because the Committee does not undertake any expenditure.
- The RCEWA does not engage and consult with the public on issues of major public interest or concern. This is because the Committee has only a limited policy function in relation to export licensing for cultural goods. Any changes to export licensing policy are reserved to DCMS at national government level.
- The RCEWA has not considered holding open Committee meetings or an annual open meeting. This is for two main reasons: (i) the RCEWA does not have a general policy function and (ii) Committee meetings are spent discussing individual cases which are commercially confidential. However, the Committee holds an annual Advisory Council Meeting with stakeholders, at which any of them is free to raise any issue of concern and the minutes of the Council Meetings are published on the Arts Council's website as soon as they have been approved. A list of the members of the Advisory Council is annexed.
- The RCEWA does not proactively publish agendas and minutes of Committee meetings due to the confidential nature of the proceedings. Brief minutes of Committee meetings are however published shortly after meetings, on the Arts Council's website.
- The RCEWA does not have rules and restrictions limiting the use of marketing and PR consultants because it does not use them at all or make any other kinds of expenditure of its own.

Section 5 – Conduct and Behaviour

The Cabinet Office principle is that the board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.

The review considered the role of Board Members as set out in the Cabinet Office Guidance in relation to the members of the Committee (who do not constitute a board as such) and finds that the following Cabinet Office requirements are met with regard to the RCEWA:

- A Code of Conduct forms part of the terms and conditions of appointment to the RCEWA, setting out the standards of personal and professional behaviour expected of all Committee members. The Cabinet Office booklet *Code of Conduct for Board Members of Public Bodies* is drawn to the attention of potential applicants for membership of the Committee and provided to all new members of the Committee on appointment.
- There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for Committee members, which is updated annually and available on the Arts Council's website. The Committee does not employ staff.
- The RCEWA follows the Art Council's policy on expenses which is clearly documented. Members' terms and conditions state that, 'You will be reimbursed for all reasonable and properly documented expenses you incur in performing the duties of your office in accordance with the Committee's expenses policy.' The Art's Council's expenses policy is not published but is made available to relevant individuals when requested.
- As mentioned in Section 3 (above), the terms and conditions of appointment to the RCEWA cover political activity. Members of the Committee must inform the Secretary of State if they intend to accept a paid or prominent position in any political party and their appointment may be terminated early if it is felt that the positions are incompatible. If a member of the RCEWA accepts a nomination for election to the House of Commons, then they must resign from the Committee. Members of the House of Lords are guided in their conduct by the statement in the House of Lords made by Lord Addison on 21 March

1951, as amended by the Second Report from the Select Committee on Procedure of the House, 3 February 1971.

- The RCEWA does not have its own rules for board members on the acceptance of appointments or employment after resignation or retirement. Given the fact that the Committee's limited functions are relatively straightforward and are exercised on a case by case basis, the review does not consider it is necessary for a separate policy to be developed to cover this. Members of the RCEWA are specialists who often hold positions in their profession whilst holding membership of the RCEWA. To restrict members' ability to take up other employment after resignation or retirement would make membership of the RCEWA unappealing to potential candidates for appointment.
- The RCEWA has a Register of Interests for board members, which is regularly updated and is available to the public on the Arts Council England website.¹⁵

Board members should show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct.

- As stated above, the Board had not hitherto had a Code of Conduct in view of its limited role but this should now be prepared for both the Chair and the members should be considered.

Recommendation 6: A Code of Conduct for the Chair and Members of the Committee should now be prepared.

The following Cabinet Office requirements are not met with regard to the RCEWA:

- The RCEWA has not adopted a Code of Conduct for staff because it does not employ staff. The issue of a Code of Conduct for AELCU staff, who provide the Committee Secretariat, is for a future Triennial Review of the Arts Council England to address.
- It does not keep a Register of Gifts and Hospitality. It is likely that the RCEWA has not paid a great deal of attention to these issues because it is so rare for members to have a conflict of interest or to receive gifts or hospitality.

¹⁵ <http://www.artscouncil.org.uk/what-we-do/supporting-museums/cultural-property/export-controls/reviewing-committee/>

Nevertheless, it is important for public confidence that the RCEWA is seen to comply with the highest standards of transparency. The RCEWA should establish and regularly review a Register of Gifts and Hospitality, this could be included in its Register of Interests. The Register(s) should be available to the public on request, and this fact should be publicised, including on the Arts Council website with contact details.

Recommendation 7: The RCEWA should establish and regularly review a Register of Gifts and Hospitality. The Register should be available to the public on request, and this should be publicised.

Section 6 – Conclusion

Recommendations

- 1. Recommendation: That the provision within the Agreement between the Department for Culture Media and Sport and Arts Council England for the provision of services in relation to cultural property for that Agreement to be reviewed one year after its entry into force and thereafter every two years should be enforced.**
 - 2. Recommendation: The Chairman's duties, role and responsibilities should be set out clearly and formally defined in writing.**
 - 3. Recommendation: Board members duties, role and responsibilities should be set out clearly and formally defined in writing.**
 - 4. Recommendation: Consideration should be given to whether the RCEWA should develop its own Freedom of Information policy, independent of that of the Arts Council.**
 - 5. Recommendation: Consideration should be given to whether the RCEWA should develop its own complaints procedure, independent of that of the Arts Council.**
 - 6. Recommendation: A Code of Conduct for the Chair and Members of the Committee should now be prepared.**
 - 7. Recommendation 7: The RCEWA should establish and regularly review a Register of Gifts and Hospitality. The Register should be available to the public on request, and this should be publicised.**
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ANNEX A

MEMBERSHIP OF THE ADVISORY COUNCIL TO THE REVIEWING COMMITTEE ON THE EXPORT OF WORKS OF ART AND OBJECTS OF CULTURAL INTEREST

The Chairman of the Reviewing Committee is the Chairman of the Advisory Council and the membership is as follows:

- (i) the independent members of the Reviewing Committee ex officio;
- (ii) the departmental assessors on the Reviewing Committee (that is representatives of the Department for Culture, Media and Sport; Department for Business, Innovation and Skills; HM Treasury; Foreign and Commonwealth Office; HM Revenue and Customs; Scottish Government Department for Culture; National Assembly for Wales Department for Culture and Northern Ireland Department for Culture);
- (iii) the Directors of the English and Scottish national collections; the National Museum Wales; the National Museums Northern Ireland and the Librarians of the National Libraries of Wales and Scotland;
- (iv) the expert advisers to the Department for Culture, Media and Sport, to whom applications for export licences are referred, other than those who are members by virtue of (iii) above;
- (v) eight representatives of non-grant-aided museums and galleries in England, Scotland, Wales and Northern Ireland, nominated by the Museums Association;
- (vi) representatives of: Arts Council England; Arts Council of Northern Ireland; Arts Council of Wales; Association of Independent Museums; National Museum Directors' Conference; Friends of the National Libraries; Heritage Lottery Fund; The National Archives; National Archives of Scotland; The Art Fund; National Fund for Acquisitions; National Heritage Memorial Fund; National Trust; National Trust for Scotland; Pilgrim Trust; MLA/Victoria & Albert Museum Purchase Grant Fund; the MLA PRISM Grant Fund for the Preservation of Scientific and Industrial Material;
- (vii) representatives of:
 - a. British Academy;
 - b. British Records Association;
 - c. Canadian Cultural Property Export Review Board (*observer status*);
 - d. Chartered Institute of Library and Information Professionals (CILIP);
 - e. Council for British Archaeology; Historic Houses Association;
 - f. Historical Manuscripts Commission;

- g. Royal Academy of Arts;
 - h. Royal Historical Society;
 - i. Royal Scottish Academy;
 - j. Scottish Records Association;
 - k. Society of Antiquaries of London;
 - l. Society of Archivists;
 - m. Society of College, National and University Libraries;
- (viii) representatives of the trade nominated by the: Antiquarian Booksellers' Association (*two*); Antiquities Dealers' Association (*two*); Association of Art and Antique Dealers (*two*); Bonham's; British Antique Dealers' Association (*three*); British Art Market Federation; British Numismatic Trade Association (*two*); Christie's; Fine Art Trade Guild; Society of London Art Dealers (*two*); Society of Fine Art Auctioneers; Sotheby's.

ANNEX B

AGREEMENT FOR THE PROVISION OF SERVICES IN RELATION TO CULTURAL OBJECTS

THIS AGREEMENT is made between:

(1) The Secretary of State for Culture, Olympics, Media and Sport (“the Secretary of State”)

and

(2) Arts Council England (“ACE”)

together referred to as “the Parties”.

WHEREAS the Secretary of State has functions in relation to the acceptance of property in satisfaction or part satisfaction of tax, the government indemnity scheme and the grant of export licences for objects of cultural interest under the Inheritance Tax Act 1984, the National Heritage Act 1980 and the Export of Objects of Cultural Interest (Control) Order 2003;

WHEREAS the Secretary of State has provided for these functions to be exercised by an authorised person by virtue of the 2005 Order made under section 69 of the Deregulation and Contracting Out Act 1994;

WHEREAS the Secretary of State authorised the Museums, Libraries and Archives Council (“MLA”) to exercise these functions from 1 April 2005 pursuant to an agreement between the Secretary of State and MLA for the provision of services in relation to cultural objects. On 26 July 2010 the Secretary of State announced that the MLA would be wound up and its functions and responsibilities transferred to other organisations. In November 2010, the Minister for Culture announced that responsibility for regional museums, libraries and cultural property would transfer to ACE. This was subsequently endorsed by the ACE National Council in December 2010;

WHEREAS following the amendments to be made to the Royal Charter by way of a Supplementary Charter the objects of the ACE National Council will be amended to include the additional object to advance, for public benefit, the education of the public and to further any other purpose which relates to the establishment, maintenance and operation of museums and libraries (which are either public or from which the public may benefit) and to the protection of cultural property; and

WHEREAS the agreement between the Secretary of State and MLA will terminate with effect from such date as the Privy Council approves the Supplementary Charter and ACE is authorised to exercise the functions set out in the 2005 Order under and in accordance with the provisions of this Agreement.

IT IS AGREED THAT:

1. INTERPRETATION

In this Agreement, the following expressions have the following meanings:

“Acceptance in Lieu Scheme” means the scheme for the acceptance of property under section 230 of the Inheritance Tax Act 1984 in lieu of tax or interest payable to H M Revenue & Customs (“HMRC”) and under the corresponding provisions of earlier legislation in relation to estate duty;

“Advisory Council” means the Advisory Council on the Export of Works of Art and Objects of Cultural Interest;

“AILP” means the Acceptance in Lieu Panel set up to advise the Secretary of State in relation to objects offered under the Acceptance in Lieu Scheme;

“Authorised Representative” means, in relation to DCMS Hillary Bauer (or such other person as may be notified in writing to ACE in accordance with the provisions of clause 11), and in relation to ACE, the Chief Executive (or such other person as may be notified in writing to DCMS in accordance with the provisions of clause 11);

“Commencement Date” means on or before 1st October 2011

“Community Licence” means a licence granted under the EU Council Regulation

“cultural objects” includes cultural property, objects of cultural interest and cultural goods, as the context may require;

“DCMS” means the Department for Culture, Media and Sport;

“Embargoed Destination” means a country to which the supply or delivery of cultural objects has been prohibited by:

- (a) any enactment made in the United Kingdom (“UK”), or
- (b) any regulation, directive or resolution made by the European Union (“EU”), or
- (c) any resolution made by the Security Council of the United Nations;

“EU Council Regulation” means EU Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods or any amendment or re-codification thereof;

“Environmental Adviser” means the independent adviser appointed as a consultant by MLA until 31 March 2012. The contract will be novated to ACE on 1st October 2011, whereafter they will be appointed as a consultant to ACE to provide advice relating to the environmental conditions appropriate to approved exhibition venues;

“Event of Default” means one of the events described in clause 15 of this Agreement;

“Government Indemnity Scheme” means the scheme for providing government indemnities for objects on loan to museums, art galleries and other institutions in the UK under section 16 of the National Heritage Act 1980;

“MLA” means the Museums, Libraries and Archives Council. The MLA is an arm's length body sponsored by DCMS and prior to ACE was the authorised person for the purposes of the Contracting out (Functions in Relation to Cultural Objects) Order 2005. The MLA is due to be wound up in 2011/12;

“Museums Security Adviser” means the official appointed to the role of National Security Adviser within ACE;

“RCEWA” means the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest set up, inter alia, to consider all cases where deferral of an export licence for a cultural object is suggested on grounds of national importance and to advise the Secretary of State;

“Services” means the services set out in Schedule 1;

“Statutory Functions” means the functions now vested in the Secretary of State under the following provisions—

- (a) section 230 of the Inheritance Tax Act 1984;
- (b) sections 9, 10, 12, 16 and 16A of the National Heritage Act 1980; and
- (c) articles 2 and 3 of the Export of Objects of Cultural Interest (Control) Order 2003;

“STELA” means the System for Tracking Export Licence Applications database;

“2005 Order” means the Contracting Out (Functions in Relation to Cultural Objects) Order 2005;

“UK Licence” means a licence granted under the Export of Objects of Cultural Interest (Control) Order 2003 S.I. 2003/2759 (as amended by SI2009/ 2164)

“Waverley criteria” are the criteria used to determine whether a cultural object which is the subject of an export licence application is of national importance, as set out in Schedule 8

References to the export or import of objects shall include references to the dispatch of objects from one Member State of the EU to another, and the term “illegal export” shall be construed accordingly.

The singular shall include the plural and vice versa. The masculine shall include the feminine and vice versa. Terms defined in the Interpretation Act 1978 shall have the meaning given in that Act.

2. DURATION

This Agreement shall take effect on the Commencement Date and shall continue until such time as it is terminated under the terms of this Agreement or by operation of law.

3. SERVICES TO BE PROVIDED

ACE is hereby authorised under article 3 of the 2005 Order by the Secretary of State to exercise the Statutory Functions to the extent necessary to enable it to perform the Services, subject to the terms and conditions of this Agreement.

4. STANDARD OF SERVICES

ACE shall exercise all reasonable care, skill and diligence in performing the Services, and in particular shall meet the requirements set out in Schedule 2.

5. FUNDING, FINANCIAL MEMORANDUM AND MANAGEMENT STATEMENT

5.1. The Secretary of State provides to ACE an annual amount of grant-in-aid funding pursuant to the terms of a Funding Agreement between ACE and DCMS. In consideration of ACE providing the Services in accordance with the terms of this Agreement, DCMS agrees that ACE shall access the grant-in-aid funding to perform the Services.

5.2. ACE agrees to observe the provisions of the Funding Agreement, Financial Memorandum and Management Statement agreed between ACE and the Secretary of State.

6. DCMS OBLIGATIONS AND FACILITIES TO BE MADE AVAILABLE

6.1. DCMS will retain responsibility for those matters set out in Schedule 3.

6.2. DCMS shall provide to ACE the facilities set out in Schedule 4.

7. PROVISION OF INFORMATION AND BRIEFING

7.1. ACE shall provide all such information to DCMS as requested by it in connection with the discharge of the Services delivered by ACE under the terms of this Agreement.

8. CONTACTS WITH THE MEDIA

8.1. ACE shall be responsible for all communications with the media connected to, or deriving from its role in the operation of the Acceptance in Lieu Scheme, and/or the Government Indemnity Scheme. This will include routine announcements of cases, publication and promotion of the Acceptance in Lieu Annual Report and any general work promoting and explaining the Acceptance in Lieu and the Government Indemnity Schemes. ACE will provide spokespersons for contacts with the media. Any such spokesperson will be clearly identified as representing ACE, not the Government. When, from time to time, media work arises from ministerial activity (in a Parliamentary context, for example), DCMS and ACE shall work together, making clear to the media that operational responsibility for the Acceptance in Lieu Scheme, insofar as it would otherwise fall on DCMS, and the Government Indemnity Scheme lies with ACE.

8.2. DCMS shall be responsible for any media announcements made in the name of the Culture Minister on individual export licence deferrals and, when appropriate, their outcome. ACE shall prepare such announcements and consult DCMS on the final text and date of issue of any such announcement.

8.3. ACE shall be the first point of contact for representatives of the media in relation to the RCEWA, and shall be responsible for responding to any media queries about the RCEWA, its work, and the activities of the members of the RCEWA, and for promoting the Annual Report of the RCEWA.

- 8.4. The communications teams at DCMS and ACE shall provide the other with drafts of any proposed announcement (in so far as it relates to the Statutory Functions or Services) to the media in sufficient time to enable them to comment on the draft.
- 8.5. The arrangements for dealing with the media set out in this clause shall be reviewed by DCMS and ACE at the request of either party.

9. CONFIDENTIALITY

9.1. Subject to clause 9.2, each party—

- 9.1(a) Shall treat as confidential all information obtained from the other party under or in connection with this Agreement;
- 9.1(b) Shall not disclose any of that information to any third party without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Agreement; and
- 9.1(c) Shall not use any of that information otherwise than for the purposes of this Agreement.

9.2. Clause 9.1 shall not apply where either party to this Agreement is obliged to make information available for the purposes of Parliamentary scrutiny or by law.

9.3. Each party shall treat as confidential all information obtained from HMRC in connection with the AIL Scheme.

10. TRANSFER AND SUB-CONTRACTING

10.1. The Services shall be performed by ACE or its employees. ACE shall not assign, sub-contract or in any other way dispose of this Agreement or any part of it without the written consent of the Secretary of State.

11. SERVICE OF NOTICE AND COMMUNICATIONS

11.1. Except as otherwise expressly provided within this Agreement no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the party concerned, by the Authorised Representative.

11.2. Any notice or other communication which is to be given by the Secretary of State to ACE or by ACE to the Secretary of State shall be given by electronic mail or by facsimile or by letter.

11.3. For the purposes of Clause 11.2 the addresses of the Parties shall be:

11.3(a) For the Secretary of State:

Department for Culture Media and Sport
2-4 Cockspur Street,
London SW1Y 5DH

Tel: 020 7211 6000
Fax: 020 7211 2006

11.3(b) For ACE:
14 Great Peter Street, London SW1 2NQ

11.4. Either Party may change its address for service, or notify the other Party of a change in the identity of its Authorised Representative, by notice given in accordance with this clause.

12. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

13. WAIVER

- 13.1. The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 13.2. No waiver shall be effective unless it is communicated to the other Party in writing.
- 13.3. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

14. VARIATION

This Agreement shall not be varied unless such Variation is in writing and signed by the Parties. This Agreement shall remain effective and unaltered except as amended by such Variation and words and expressions in any Variation shall have the meanings given to them in this Agreement.

15. EVENTS OF DEFAULT

- 14.1. The following shall constitute Events of Default:
 - 14.1(a) unauthorised assignment or transfer of this Agreement by ACE;
 - 14.1(b) failure to observe the terms of the Funding Agreement, Financial Memorandum or Management Statement as required by Clause [5] of this Agreement;
 - 14.1(c) any material or fundamental breach of contract.

15. INTERMEDIATE REMEDIES

If in the opinion of DCMS an Event of Default has occurred which it further believes is capable of remedy it must notify ACE and it may request ACE in writing to remedy the defect within one month of notification from the Secretary of State.

16. TERMINATION

- 16.1. The Secretary of State may terminate this Agreement or terminate the

provision of any part of the Services, by written notice to ACE with immediate effect if an Event of Default has occurred and:

- 16.1(a) the Event of Default has not been remedied in accordance with Clause 15 of this Agreement; or
 - 16.1(b) the Event of Default is not capable of remedy; or
 - 16.1(c) the Event of Default is a material or fundamental breach of this Agreement.
- 16.2. ACE or the Secretary of State may terminate this Agreement by giving six months' notice to the other Party of its intention to do so.
- 16.3. On termination of this Agreement the responsibilities of ACE under this Agreement together with the liabilities and contractual obligations entered into in the proper execution of the provisions of this Agreement existing at the time of termination shall revert to the Secretary of State.

17. RE-NEGOTIATION

This Agreement or parts of it may be re-negotiated at any time at the request of the Secretary of State or ACE and by the agreement of the Parties. This Agreement shall in any event be jointly reviewed by the Parties within the first year of this Agreement and thereafter at intervals of two years unless the Parties agree otherwise.

18. DISPUTE RESOLUTION

The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement. If this is not possible, any dispute or difference arising out of, or in connection with, this Agreement may be referred to the decision of a single arbitrator to be agreed between ACE and DCMS or in default of agreement to be appointed on the application of either party by the President for the time being of the Law Society.

19. LAW AND JURISDICTION

This Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Signed by:
For the Secretary of State

Signed by:
For Arts Council England

SCHEDULE 1: THE SERVICES

SECTION A: ACCEPTANCE IN LIEU SCHEME

1. Section A of this Schedule shall not apply to any services provided in relation to the exercise of the functions of the Secretary of State under section 9 of the National Heritage Act 1980 in or as regards Scotland, Wales or Northern Ireland.
2. ACE will continue to provide administrative support to the AILP.
3. Where the AILP has recommended:
 - 3.1. that an offered object, collection or group of objects is or are either pre-eminent under the criteria laid down in section 230 (4) of the Inheritance Tax Act 1984 or is or are associated or have been kept in a building as defined in section 230 (3) and it is desirable that the object remains associated with the building (whether those criteria are applied in relation to property accepted in lieu of inheritance tax or in lieu of estate duty),
 - 3.2. that it is offered at a value which is reasonably believed to be a fair reflection of its open market value at the date of the offer,
 - 3.3. that it is in acceptable physical condition, and
 - 3.4. where the offer of that object is conditional upon allocation to a specific institution, that it should be accepted on those terms,

the Chief Executive or an officer acting on his/her behalf will decide whether agreement is to be given for that object to be accepted by HMRC in whole or part satisfaction of tax and ACE will communicate that decision to HMRC, and the person making the offer or to the offeror's appointed agent.
4. Upon notification by HMRC of exchange of memoranda of acceptance (showing the offeror, the material offered, the maximum tax settlement figure, any associated conditions and acceptance of the offer) ACE will as soon as is reasonably possible make a Direction under either section 9(2) of the National Heritage Act 1980 if the offer is made with a condition regarding allocation or 9(4) if the offer is made without condition as to allocation. The Direction will be copied to HMRC, the body to whom the accepted material has become allocated and to the person who has custody of the object.
5. Where the offer of an object is not conditional upon allocation to a specific institution, and the offer has been accepted, ACE will invite institutions to apply for the allocation of the object, seeking, in the case of manuscripts or archives, the advice of The National Archives (Historic Manuscripts Commission) on allocation. ACE will only allocate manuscripts or archives to institutions that have been inspected and approved by The National Archives.
6. Having considered the advice of the AILP, any applications made under paragraph 5 above, and any wishes expressed by the donor, the Chief Executive of ACE or an officer acting on his/her behalf will give Directions on the transfer of the object to the chosen institution under section 9 of the National Heritage Act 1980, and ACE will inform the parties accordingly.
7. Where the AILP has recommended that an object or collection or group of objects has a significant association with a particular place (and that place is not already in public ownership), and ACE considers that it is appropriate for the object or objects to be kept in that place (i.e. "in situ"), it will submit this recommendation to DCMS. If DCMS accepts

the recommendation, it will make the Direction under section 9 of the National Heritage Act 1980 and also negotiate the terms of an agreement (known as an “in situ agreement”) that will provide for the object or objects to be loaned by the institution to which it is transferred by the Secretary of State pursuant to the Direction under section 9 of the National Heritage Act 1980 to the borrower. The terms of that in situ agreement will be based on the model in situ agreement, prepared (and updated from time to time) by DCMS.

8. ACE will prepare an annual report on the work of the AILP. In addition, it shall, at the end of each financial year prepare a statement giving particulars of all disposals or transfers made in that year in pursuance of Directions given under section 9 of the National Heritage Act 1980, in accordance with section 9(6) of that Act. That statement shall be provided to the DCMS within six weeks of the end of the financial year.
9. ACE shall report to HM Treasury on a monthly basis the amount of tax satisfied by objects accepted under section 230 of the Inheritance Tax Act 1984, providing the following details:
 - 9.1. the amount of tax satisfied since the beginning of the financial year for each quarter;
 - 9.2. the value of offers which have been approved, but not yet accepted and hence no tax has yet been satisfied;
 - 9.3. the value of offers with Ministers which have not been approved at the date of the return;
 - 9.4. the value of offers under consideration by the AILP; and
 - 9.5. the value of offers which have been withdrawn, or rejected, in the current financial year.
10. ACE shall continue to recommend a list of possible candidates for appointment to the position of Chair of the AILP, and to make appointments to fill other vacancies on the AILP, taking into account in each case Cabinet Office guidance on public appointments. The Chair of the AILP will be appointed by the Chair of ACE in consultation with the Secretary of State.
11. ACE shall prepare or revise, as necessary, guidance on the operation of the Acceptance in Lieu Scheme in consultation with HMRC. The content of any guidance in relation to in situ agreements (see also paragraph 7 above) shall be agreed with DCMS before it is published.

SECTION B: GOVERNMENT INDEMNITY SCHEME

12. ACE shall consider all applications for indemnities to the Secretary of State under section 16 of the National Heritage Act 1980 from national institutions in England and non-national institutions in the UK, reviewing:
 - 12.1. the extent to which the loan facilitates public access to the object in question or contributes materially to public understanding or appreciation of it;
 - 12.2. the arrangements made for the transport of the object to the place where it is to be exhibited, the safety of the object while on loan, and the environmental control provisions and security arrangements to which it will be subject; and
 - 12.3. the valuation of the object for which the indemnity is requested, and

- 12.4. consulting the Environmental Adviser and the Museums Security Adviser and other expert advisers as necessary.
13. ACE shall only grant an indemnity under section 16 of the National Heritage Act 1980 where:
 - 13.1. the grant of that indemnity will not cause the institution in question to exceed either:
 - 13.1(a) in the case of national institutions, the annual limit for indemnities set for that institution by HM Treasury, or any extension over that limit which has been agreed between ACE and HM Treasury; or
 - 13.1(b) in the case of other institutions, any limit on the grant of indemnities to non-national institutions which has been agreed between ACE and HM Treasury; and
 - 13.2. the Chief Executive, or an officer acting on his behalf, is of the view that, taking the factors set out in paragraph 12 into account, it is appropriate for an indemnity to be granted under the Government Indemnity Scheme.
14. Where the Chief Executive, or an officer acting on his/her behalf, has determined that an application for an indemnity should be approved, ACE shall negotiate the terms on which an indemnity is to be given, in accordance with the following provisions:
 - 14.1. The standard indemnity set out in Schedule 5] to this Agreement will form the basis of negotiations, and any departure from the terms of the standard indemnity must be clearly justified;
 - 14.2. ACE may not agree any change to the terms of the standard indemnity which increases the Government's contingent liability under the indemnity, unless that change has been approved in advance by DCMS;
 - 14.3. If any variation has been proposed to the terms of the standard indemnity, the terms of the proposed variation must be submitted to DCMS for final approval before the indemnity is granted and DCMS will comment on any such proposals within 10 working days;
 - 14.4. No approval need be sought from the Secretary of State if the terms of the standard indemnity have not been altered.
15. ACE shall be responsible for issuing indemnities under the Government Indemnity Scheme once the terms of the indemnity have, where applicable, been approved in accordance with paragraph 14 above. Indemnities for amounts less than £1 million must be signed by an employee of ACE having a position which is equivalent to, or higher than, a grade C civil servant with DCMS. Indemnities for amounts equal to or greater than £1 million must be signed by an employee of ACE having a position which is equivalent to, or higher than, a grade B civil servant with DCMS.
16. Subject to paragraphs 17 and 18, ACE shall be responsible for administering any claims made under an indemnity granted under section 16 of the National Heritage Act 1980.
17. ACE shall inform DCMS immediately on becoming aware of a potential claim under an indemnity. ACE shall investigate the merits of the potential claim and keep DCMS informed. Following such investigation, if ACE considers that the indemnified person or body has sufficient grounds to make a claim under the indemnity, ACE will seek DCMS approval before admitting the claim.

18. If DCMS approves the claim then ACE will admit the claim and provide sufficient information to DCMS to enable it to make timely payment to the indemnified person or body.
19. ACE shall be responsible for approving bodies or persons under section 16(2) (e) of the National Heritage Act 1980 as being eligible for indemnities under the Government Indemnity Scheme.
20. ACE shall not approve any such body or person as being eligible unless ACE is satisfied that it meets the requirements imposed on borrowers under the Government Indemnity Scheme, including the requirements that appropriate security and environmental conditions should be maintained for any object for which an indemnity has been granted; and has sufficient financial resources to continue doing so and meets the advice given by the National Security Adviser.
21. In making this determination, ACE must ensure that the Reports and Financial Statements of the applicant body or person have been reviewed by its Head of Finance.
22. ACE shall carry out inspections of the security arrangements of any borrower which holds an object which has been indemnified under the Government Indemnity Scheme
 - 22.1 once every three years; and
 - 22.2 before an indemnity with a value greater than £100 million is issued to any borrower, to ensure that the borrower is meeting the security requirements imposed on borrowers under the Government Indemnity Scheme.
23. ACE shall, where appropriate, require the applicant as a condition of the indemnity, to monitor any object in respect of which an indemnity has been granted, collecting data from the borrower as to the conditions in which the object is being kept, including information as to the relative humidity, temperature and light level to which the object is subject, and providing that information to the Environmental Adviser. ACE shall act on advice given by the Environmental Adviser on the appropriate action as a consequence of this information.
24. ACE shall prepare a report to Parliament for each successive period of six months ending 31 March and 30 September in each year specifying:
 - 24.1 the number of undertakings given under section 16 of the National Heritage Act 1980 during that period; and
 - 24.2 the amount or value, expressed in sterling, of any contingent liabilities as at the end of that period in respect of such of the undertakings as remain outstanding at the end of that period.
25. That report shall be delivered to DCMS not later than one month after the end of the period to which it relates. If it becomes necessary to correct that report, ACE shall prepare a further note for Parliament and deliver that note, with an explanation of the circumstances, to DCMS as soon as possible.
26. ACE shall obtain from the national museums and galleries funded by DCMS month-by-month estimates of their anticipated future contingent liabilities in relation to the Government Indemnity Scheme and shall provide DCMS with a report of the estimates by the last working day in February of each year. If DCMS should require any further information on existing or future contingent liabilities from time to time, ACE shall request it from the national museums and galleries and provide it to DCMS.

27. ACE shall discuss with DCMS how to respond to any report by the National Audit Office (or any other Government Department, Office or Committee) on the Government Indemnity Scheme, and how to adopt any additional procedures or take further action to meet recommendations made by the National Audit Office (or other body) as may reasonably be required by DCMS.
28. In consultation with DCMS, ACE shall keep procedures and guidance for the Government Indemnity Scheme under review, and publish revised guidance, as approved by DCMS.

SECTION C: IMMUNITY FROM SEIZURE

29. Part 6 of the Tribunals, Courts and Enforcement Act 2007 provides immunity from seizure for cultural objects on loan from abroad in temporary exhibitions in UK museums and galleries.
30. ACE will ensure that the AILP will be responsible for monitoring the performance of museums that have been approved under section 136 of the above Act. The monitoring arrangements will be for the AILP, working with the ACE Secretariat, to determine.
31. The AILP will produce an annual statement of its monitoring activity of approved institutions for inclusion in its annual report a copy of which will be sent to DCMS.
32. If the AILP or ACE becomes aware, through its monitoring activity, that an approved museum is failing to maintain the high standards of due diligence under which it received approval, either in relation to a specific case or more generally, ACE will notify DCMS immediately.
33. ACE will provide a link on its website to the websites of museums and galleries with forthcoming public exhibitions which will include protected objects.

SECTION D: EXPORT LICENSING

34. ACE shall be responsible for processing applications for licences under the Export of Objects of Cultural Interest (Control) Order 2003 in accordance with the following provisions.
35. When an application for a licence is received, it shall be reviewed to ensure that all the necessary information has been provided. Where necessary, ACE shall liaise with the applicant to explain the procedures involved, and to seek further information.
36. ACE shall issue an export licence in response to an application provided that:
 - 36.1 the conditions set out in paragraphs 43 to 59 are satisfied;
 - 36.2 the destination to which the object in question is being exported is not an Embargoed Destination;
 - 36.3 it does not appear that the object in question has been illegally exported from a Member State of the EU or illegally exported from a country or territory outside the EU; and
 - 36.4 it does not appear that the object in question has been illegally removed from Iraq and the export would not be forbidden under the Iraq (United Nations Sanctions Order) 2003.

37. Export licences must be signed by an employee of ACE having a position which is equivalent to, or higher than, a grade C civil servant with DCMS.
38. ACE shall refer to DCMS:
 - 38.1 any application for export of a cultural object to an Embargoed Destination;
 - 38.2 any application for export of a cultural object which may have been illegally exported from a Member State of the EU or illegally exported from a country or territory outside the EU, and
 - 38.3 any application for export of a cultural object which may have been illegally removed from Iraq and the export would not be forbidden under the Iraq (United Nations Sanctions Order) 2003.
39. ACE shall agree with DCMS a form of words which makes it clear that UK licences are not to be construed as guarantees of value, authenticity or title and as soon as possible thereafter all UK licences will incorporate such an endorsement.
40. ACE shall:
 - 40.1. undertake any further checks into applications for the export of a cultural object, and
 - 40.2 adopt any additional procedural requirements to be met by applicants before a licence is granted which may be required by DCMS in future in addition to those set out in this Agreement, where the relevant checks or procedural requirements have been notified to ACE in writing 3 months in advance of the date on which they are due to take effect.
41. Where an application has been made for an export licence for a cultural object which is subject to additional export licensing requirements under any legislation other than the 2003 Order referred to in paragraph 34, ACE shall inform the applicant of the additional requirements, and liaise with the appropriate government department.
42. ACE shall inform DCMS immediately it becomes aware that any object has been illegally exported from the UK.

Application following the grant of a previous export licence

43. Where an application for a Community Licence relates to an object that has had a previous permanent Community Licence within the period of fifty years before the date of the application, and sufficient information is provided to enable the identification of the earlier licence, no further information is required before the licence may be issued.

Application relating to an object which has been in the UK for less than 50 years

44. Where the application relates to an object which has been imported into the UK within the fifty years preceding the application, an export licence may be issued provided that the applicant has provided ACE with satisfactory proof of the following matters:
 - 44.1 where the object in question has been imported into the UK from a Member State of the EU on or after 1 January 1993, proof that the export from that Member State was legal;

44.2 where the object in question was imported into the UK from a country which is not a Member State of the EU, shipping documents, invoice, or other documents proving the origin of the object, or in the absence of such documents of origin, an affidavit; or

44.3 where the object in question has been imported from Iraq, details of its provenance from at least 6 August 1990 to the present day.

Application for a temporary Community Licence

45. A temporary Community Licence may be granted if any of the following conditions apply:

45.1 the application relates to an object owned by one of the Museums, Galleries or Libraries which holds an Open Individual Export Licence and the object falls within the terms of that licence; or

45.2 the object has not been imported into the UK within the last 50 years and falls within one of the categories described in paragraph 1 of the Open General Export Licence issued by the Secretary of State on 1 May 2004, but has a value which is less than the value specified in that paragraph in relation to the relevant category and is being exported for exhibition purposes only; or

45.3 the object is a musical instrument temporarily exported for a period of less than three months for use in the course of work by a professional musician; or

45.4 the object is a musical instrument exported following importation into the UK for a period of less than three months for use in the course of work by a professional musician; or

45.5 the object is a motor vehicle (wherever registered), which:

45.5(a) is not subject to export restrictions under legislation other than the Export of Objects of Cultural Interest (Control) Order 2003, and

45.5(b) is exported temporarily for a period of less than three months for social, domestic or pleasure purposes (including attendance at or participation in a race, rally or non-commercial exhibition); or

45.6 the object is a foreign registered motor vehicle (which is not subject to export restrictions under legislation other than the Export of Objects of Cultural Interest (Control) Order 2003) exported following importation into the UK for less than three months for one or more of the purposes set out in paragraph 45.5; or

45.6.1. the object forms part of Her Majesty's Collections; or

45.6.2 the object is owned by a Government Department.

Application for a Community Licence which does not need to be referred to an Expert Adviser

46. Where an application for a Community Licence relates to a cultural object which:

46.1 has been in the UK for over 50 years, and

46.2 falls within one of the categories described in paragraph 1 of the Open General Export Licence issued by the Secretary of State on 1 May 2004, but has a value which is less than the value specified in that paragraph in relation to the relevant category an export licence may be issued if the applicant has supplied details of the provenance of the object in question since 1 January 1993, and, in the case of archaeological items, confirmation of where the object has been excavated.

47. Where an application for a Community Licence relates to an excavated coin with a value of less than £500, or a manuscript with a value of less than £1,500, an export licence may be issued if the applicant provides a declaration that they have an Open Individual Export Licence and the object in question falls within the terms of that licence.

Applications requiring referral to Expert Advisers

48. Where the application for a permanent or temporary, Community Licence or a UK Licence relates to a cultural object:

48.1 which has been in the UK for over 50 years, and

48.2 falls within one of the categories described in paragraph 1 of the Open General Export Licence issued by the Secretary of State on 1 May 2004, but has a value greater than or equal to the values specified in that paragraph in relation to the relevant category

ACE shall refer the application to the appropriate Expert Adviser unless the application in question is submitted with a report from a local expert adviser (who has been approved by an Expert Adviser working with a National Museum or Gallery) approving the object for export.

Referrals to the Expert Adviser

49. The Expert Adviser shall be provided with all the information supplied with the licence application, and any further information supplied by the applicants at ACE's request.

50. Material provided to the Expert Adviser must (unless the Expert Adviser has agreed otherwise) in every case include a photograph of the object in question, and where appropriate the information set out in the following paragraphs:

50.1 in the case of clocks and watches, a photograph of the outside and inner workings of the object;

50.2 in the case of vehicles, a copy of the logbook or equivalent document (where available), information on the history of the vehicle (including race details where applicable), the engine and chassis number and a clear photograph of the front and side view of the car (the front view to include its number plates);

50.3 in the case of metal detecting finds, a photograph showing each individual object (which may be a group photograph) that is to be exported;

50.4 in the case of manuscripts, a reproduction of the manuscript in question, where such a reproduction is provided with the application;

50.5 in the case of archives, a list of the papers included in the archive, and

50.6 any further information requested by the Expert Adviser.

51. Where the Expert Adviser objects to the issue of an export licence, the application must be referred to the secretariat of the Reviewing Committee on the Export of Works of Art, so that it may be considered by the Reviewing Committee.
52. Where the Expert Adviser approves the export of the object in question, or the Reviewing Committee finds that the object does not meet the Waverley criteria, ACE shall issue the appropriate licence.

Conditions on licences

53. ACE shall impose the conditions set out in Schedule 6 on the grant of any temporary licence or extension thereof which has been referred to an Expert Adviser in the following circumstances:
 - 53.1 where the application concerns an object which has previously been referred to the RCEWA in relation to an earlier application for an export licence which was refused or withdrawn, and
 - 53.2 the Expert Adviser informs ACE that, though he has no objection to the grant of a temporary export licence, he would object to the grant of a permanent export licence.

Then any proposal to amend those conditions must be agreed with DCMS. All licences for temporary export must have a date by which the object has to be returned.

Monitoring and extending temporary export licences

54. Once the date for return of any object for which a temporary export licence has been issued has passed, but the exporter has failed to confirm to ACE that the object has been returned, ACE shall ask the exporter whether the object has been returned to the UK.
55. ACE shall consider, and as appropriate, grant applications for the extension of the period for which a temporary export licence has been granted, provided that:
 - 55.1 the object would, at the date of the application, still qualify for a temporary export licence, and
 - 55.2 there is no reason to doubt that the object will be returned to the UK at the expiry of the extended period.
56. Where the initial application for a temporary export licence was referred to an Expert Adviser, ACE shall similarly refer any application for an extension of that licence to the relevant Expert Adviser.

Other export licences

57. ACE shall issue or renew Open Individual Export Licences to those persons or bodies to whom DCMS has agreed such licences should be issued and where the wording has been agreed with DCMS.
58. ACE shall issue Open General Export Licences as directed by DCMS.
59. Procedures for the issue of any other export licence, such as European Specific Licences shall be agreed with DCMS.

The STELA database

60. ACE shall ensure that the STELA database maintains an accurate record of all export licence applications, and that it is kept up-to-date, entering details of all licence applications received, and recording each subsequent stage in the procedure up to, and including, the grant or refusal of an export licence, on that database. DCMS will be given access to the STELA database at ACE as required.
61. ACE, in consultation with DCMS, may continue developing and piloting an online electronic licence application system (OELAS) for UK Licences and Community Licences. DCMS and ACE agree that the aim of developing and providing an OELAS is to find a cost effective way to:
 - 61.1.1 make UK and EU forms electronically available for completion online by all exporters;
 - 61.1.2 allow for the completed UK and EU forms to be capable of being submitted for processing to ACE electronically and for data taken from applications to be entered automatically onto the STELA database; and
 - 61.1.3 ensure that the security of the OELAS system meets and maintains such standards as have been agreed between DCMS and ACE.
62. On completion of the pilot project, if DCMS and ACE agree, ACE will provide a business case to DCMS for Ministerial approval to proceed to develop and provide a permanent OELAS.
63. During the development of OELAS, ACE shall liaise with other relevant government departments, as necessary.

Supplementary export licensing matters

64. ACE shall monitor the operation of the Memorandum of Understanding between the Government of the UK and the Government of the Isle of Man in relation to the export of cultural objects, and any Memorandum of Understanding agreed in future with the Government of any part of the British Islands or British Overseas Territory the details of which have been notified to ACE by DCMS. Details of any potential breaches of a Memorandum of Understanding shall be referred to DCMS.
65. ACE shall provide training and information in relation to the export licensing system in relation to cultural objects as follows:
 - 65.1 ACE shall provide training sessions to applicants for export licences when requested by DCMS or potential applicants for export licences to enable applicants to become familiar with the requirements for an export licence for a cultural object;
 - 65.2 ACE shall arrange visits to representatives of HMRC and the UK Border Agency at ports and airports to explain why export controls are imposed on cultural objects, the range of objects subject to control, and why it is important to prevent and detect illegal exports from the UK; and
 - 65.3 ACE shall receive foreign delegations who wish to know more about UK and EU legislation applicable to the export of cultural objects.
66. ACE shall provide briefing in relation to the operation of the export licensing system for cultural objects at the request of DCMS for meetings at the European Commission and, where necessary, provide a representative to attend the meeting.

67. ACE shall monitor auction and dealer catalogues offering archaeological objects for sale, and refer them to the appropriate Expert Adviser to enable them to identify objects which would be considered to be of more than limited interest under the EU Regulation. Where appropriate, ACE shall write to the relevant auction house or dealer informing them about the objects which will require an export licence under EU law, or confirming that no licence is required.
68. In consultation with DCMS, ACE shall keep procedures and guidance for exporters of works of art and other cultural objects under review, and publish revised guidance, as approved by DCMS, as necessary both for applicants and for Expert Advisers. DCMS shall prepare, in consultation with ACE, statutory guidance under section 9 of the Export Control Act 2002 on the criteria to be taken into consideration when making a decision about whether or not to grant an export licence.
69. ACE must identify and record risks which may affect the work of the Export Licensing Unit, and maintain a risk management register in relation to this.
70. ACE shall give DCMS access on request to information which it receives in connection with applications for export licences.

SECTION D: SECRETARIAT TO THE REVIEWING COMMITTEE FOR THE EXPORT OF WORKS OF ART AND OTHER CULTURAL OBJECTS (“RCEWA”)

71. ACE shall provide the Secretariat to the RCEWA, providing administrative support to the RCEWA. The Secretariat shall:
 - 71.1 arrange at least eleven meetings of the RCEWA per annum, so that there is one meeting a month except in August (unless otherwise agreed with the Chairman of the RCEWA to take place each month), liaising with expert advisers and applicants as necessary;
 - 71.2 arrange one meeting of the Advisory Council each year, or more often as circumstances require, and prepare minutes of each meeting;
 - 71.3 engage independent assessors as necessary for the consideration of each case;
 - 71.4 undertake research on issues identified by, or of relevance to, the RCEWA, and provide advice or discussion papers accordingly;
 - 71.5 prepare and circulate papers, case histories and agendas in advance of meetings; prepare, agree and circulate notes of both policy and case discussions;
 - 71.6 prepare a report for DCMS setting out the recommendations of the RCEWA in relation to each application considered by the RCEWA together with a draft press release and provide DCMS with copies of all information necessary to enable the Secretary of State to reach a decision in relation to the licence application;
 - 71.7 reimburse travel expenses incurred by RCEWA members and independent assessors in attending meetings;
 - 71.8 communicate with RCEWA members, and independent assessors outside meetings by correspondence as required;
 - 71.9 arrange an independent valuation where the Secretary of State directs that such a valuation should be obtained, whether on the recommendation of the RCEWA or otherwise;

- 71.10 where the grant of an export licence has been deferred by the Secretary of State on the recommendation of the RCEWA, refer promptly to the owner, or to their representative any expressions of interest in purchasing that object received from institutions during the first deferral period;
- 71.11 where such an expression of interest has been received, extend the deferral of the grant of an export licence until the end of the second period recommended by the RCEWA, and notify the parties accordingly;
- 71.12 notify DCMS whether the object in question has been purchased or exported at the end of the deferral period. Where the applicant has rejected an offer to purchase the item made by a UK institution or private individual under the “Ridley” rules, the Secretariat shall make a recommendation to the Secretary of State that the licence application is refused;
- 71.13 consult the RCEWA about any matter when required to do so by DCMS; and
- 71.14 draft the RCEWA Annual Report in consultation with DCMS, RCEWA members, the Advisory Council, expert advisers and applicants, and other interested parties (such as funding bodies, or the Department for Business, Innovation and Skills, as appropriate). The Secretariat will seek the Minister’s agreement to the policy section of the Report, and publication of the Report, and will liaise with DCMS Publications team to arrange publication. The RCEWA Annual Report, together with the Secretary of State’s response and the annual report the Secretary of State is required to submit to Parliament under section 10(1)(a) of the Export Control Act 2002 shall be published as a single report by DCMS. ACE will also provide DCMS with statistical information for inclusion in its annual publication, *The Export of Objects of Cultural Interest Statistical Release*, in accordance with the standards set by the Statistics and Registration Service Act 2007, by 30 September in each year.
72. ACE shall ensure that the RCEWA complies with the terms of the guidance issued from time-to time by the Secretary of State.
73. The Secretariat shall inform DCMS immediately of any issues arising in relation to a particular application after the RCEWA has made a recommendation in relation to that application, shall consult with DCMS on the resolution of that issue and prepare advice for the Secretary of State in relation to that issue as requested by DCMS.

SECTION E : CULTURAL PROPERTY ADVICE WEBSITE

74. ACE shall be responsible for ensuring that the website, www.culturalpropertyadvice.gov.uk, which is managed via a service level agreement with the Collections Trust, is maintained as an up to date and comprehensive source of advice on cultural property issues.

SCHEDULE 2

STANDARDS TO BE MET IN PERFORMANCE OF THE SERVICES

Export licensing

1. Export licences will be issued within five working days of ACE receiving the application, unless:
 - (i) information is missing from the application,
 - (ii) the application needs to be referred to an Expert Adviser in a museum or gallery, or
 - (iii) further enquiries need to be made in respect of the object's provenance.
2. Where ACE is informed that the applicant needs a licence by a particular deadline, ACE will use its best endeavours to issue the licence within the requested deadline.
3. Where it is necessary to refer an application to an Expert Adviser, the Expert Advisers will normally be consulted within five working days, and asked to respond within 15 working days.
4. If telephone queries about export licensing cannot be dealt with immediately, ACE will return the call within one working day. If more detailed information is required, ACE will send an information pack within one working day. Detailed requests requiring a written reply will be answered within one week.

Government Indemnity Scheme

1. An indemnity under the Government Indemnity Scheme shall be issued, or the application rejected, within five working days from the date on which the application and all required information is received from National Museums and Galleries, and within three months of the date on which a complete application is received from any other museum or gallery.
2. When a claim for payment under an indemnity is approved by DCMS in accordance with Schedule 1, ACE shall ensure that within two weeks of the date on which the claim is admitted by ACE, DCMS has all the necessary information relating to the claim and the indemnified person or body to be able to make payment to the indemnified person or body.

Immunity from Seizure

1. ACE will notify DCMS immediately if it becomes aware of the following: (i) that an approved museum is failing to maintain high standards of due diligence; (ii) that there is a claim or potential claim for an object which is protected by immunity from seizure legislation or which has been the subject of published information required by the Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008.

2. ACE will provide a link on its website to the websites of museums and galleries with forthcoming public exhibitions which will include protected objects within two working days of receiving the request.

RCEWA

ACE will ensure that a report is made to DCMS in relation to applications considered at each meeting of the RCEWA as soon as possible following the meeting, and in any event within two weeks of the meeting .

SCHEDULE 3

DCMS OBLIGATIONS

Government Indemnity Scheme

1. DCMS shall approve and pay claims made under the Government Indemnity Scheme in accordance with paragraph 2 of Schedule 2 to this Agreement.
2. DCMS shall be responsible for laying before Parliament reports to Parliament prepared by ACE for each successive period of six months ending 31 March and 30 September in each year specifying:
 - a. the number of undertakings given under section 16 of the National Heritage Act 1980 during that period; and
 - b. the amount or value, expressed in sterling, of any contingent liabilities as at the end of that period in respect of such of the undertakings as remain outstanding at the end of that period.

Acceptance in Lieu Scheme

3. DCMS shall be responsible for laying before Parliament statements prepared by ACE giving particulars of all disposals or transfers made in that year, in connection with the Acceptance in Lieu Scheme, in pursuance of Directions given under section 9 of the National Heritage Act 1980, in accordance with section 9(6) of that Act.
4. As set out in Schedule 1, DCMS shall be responsible for negotiating the terms of an in situ agreement.

SCHEDULE 4

FACILITIES TO BE MADE AVAILABLE

DCMS shall provide:

- Art display stand (for the use of meetings of the RCEWA).
- Subject to the requirements of the Secretary of State, a conference room large enough to accommodate meetings of the RCEWA shall be made available to ACE once a month and the Advisory Council once a year.

SCHEDULE 5

GOVERNMENT INDEMNITY AGREEMENT

UNDERTAKING TO INDEMNIFY BY THE SECRETARY OF STATE UNDER SECTION 16 OF THE NATIONAL HERITAGE ACT 1980

Definitions

1. In this indemnity:

the borrower means the [XXX];

the loan agreement means the agreement between the borrower and the owner for the loan of an object;

the owner means a person or institution specified in a schedule hereto;

the object means an object listed in the first column of the relevant schedule hereto;

the relevant schedule means the schedule in which the owner is specified;

the specified value in relation to an object shall mean the amount specified in relation to that object in the last column of the relevant schedule.

Condition Precedent

2. This indemnity is conditional upon it being a term of the loan agreement that:

2.1 no restoration or conservation work is carried out on the object without the prior agreement of the owner;

2.2 the borrower is under no liability for the loss of, or damage to, the object arising or flowing from:

2.2.1 war, hostilities or war-like operations but excluding acts of terrorism, riot, civil commotion, piracy and hijacking;

2.2.2 the negligence or other wrongful act of the owner, his servants or agents;

2.2.3 the condition (including inherent vice or a pre-existing flaw) of the object at the time of its loan;

2.2.4 restoration or conservation work undertaken to the object by the borrower, his servants or agents with the agreement of the owner; or

2.2.5 a third party claiming to be entitled to the object; and

2.3 any liability which the borrower may incur to the lender arising out of the loan of the object shall not exceed the specified value.

Indemnity

3. Subject to paragraphs 4 to 6 below, in consideration of the owner lending the object to the borrower, the Secretary of State hereby undertakes to indemnify the owner for:

3.1 loss of the object up to an amount not exceeding the specified value, or

3.2 damage to the object up to an amount not exceeding:

- 3.2.1 the cost of reasonable repairs to the object and the reduction in the value of that object as a result of which repairs have been effected; or
- 3.2.2 the specified value, whichever is the lower.

- 4. No liability under this indemnity shall exist where loss or damage arises or flows from any of the following circumstances:
 - 4.1 war, hostilities or war-like operations but excluding acts of terrorism, riot, civil commotion, piracy and hijacking;
 - 4.2 the negligence or other wrongful act of the owner, his servants or agents;
 - 4.3 the condition (including inherent vice or a pre-existing flaw) of the object at the time of its loan to the borrower;
 - 4.4 restoration or conservation work undertaken to the object by the borrower, his servants or agents with the agreement of the owner; or
 - 4.5 a third party claiming to be entitled to the object.
- 5. The Secretary of State shall be entitled to take over and conduct for his own benefit any action against any person for damages in respect of the loss or damage. For this purpose, the owner shall give all such information and assistance as the Secretary of State may require and shall, if so requested by the Secretary of State, execute a formal assignment of his rights arising from such loss or damage to the Secretary of State failing which the provisions of this indemnity shall be null and void.
- 6. If the object is lost and subsequently recovered and restored to the owner, the owner shall immediately repay to the Secretary of State any sum received by him under this indemnity in respect of the loss of the object (less, if the object is recovered in a damaged state, an amount representing the reduction in the value of that object as a consequence of the damage).

Extent of the Indemnity

- 7. This indemnity shall apply to any loss of, or damage to, the owner's object between [] and [] while it is on loan to the borrower and while being taken to or returned from the place where it is to be or has been kept while on loan to the borrower.

Security

- 8. The borrower agrees to comply with the security and transport arrangements and any further such arrangements which the National Security Adviser of MLA may recommend while the indemnified object is on loan to the borrower and while being taken to or returned from the place where it is to be or has been kept while on loan to the borrower.

Environment

- 9. The borrower agrees to provide a level of environmental control appropriate to the care of the indemnified object, and to comply with any further arrangements which the Environmental Adviser of MLA may recommend to the borrower.

Valuation

10. For the avoidance of doubt, the specified value of the object is agreed for the purposes of this indemnity only and is without prejudice to any other valuation of the object, which has or may be agreed for any other purpose.

Law

11. This indemnity shall be governed by and construed in accordance with the law of England and Wales, the Courts of which shall be the Courts of competent jurisdiction.

Arbitration

12. Any dispute or difference between the owner and the Secretary of State in connection with this indemnity shall be referred to and determined by a sole arbitrator. The arbitrator shall be appointed by agreement between the owner and the Secretary of State or, in default of agreement, by the President for the time being of the Law Society. Such arbitration shall take place in London.

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

Dated this [] day of [] 0

SCHEDULE 6

MODEL CONDITIONS FOR TEMPORARY LICENCES

1. This licence for temporary export is granted solely for the purpose of enabling the goods to be exhibited on a temporary basis at [ADDRESS].
2. The goods shall not be exported if the licensee has any cause to suspect that the authorities of the country of destination will not permit the return of the goods to the United Kingdom within the time required by this licence.
3. The goods shall not be exported if any legal proceedings have been commenced which may result in loss of ownership, possession or control of the goods by the licensee, where such proceedings either have been commenced in the country of destination or may result in a judgement capable of being enforced in that country; nor shall they be exported if any person has indicated an intention to commence such proceedings, unless the Secretary of State has been satisfied that the intention has been abandoned.
4. The goods shall be transported to the place notified to Arts Council England (“ACE”) as the destination to which the goods are to be consigned, by a route which secures that their arrival is not impeded or delayed, and thereafter shall be kept in the country of that destination until being returned to the United Kingdom.
5. Any change in the place where the goods are kept or in the address of that place shall immediately be notified to ACE.
6. The goods shall be returned to the United Kingdom by no later than [return date]. The manner of their return to the United Kingdom shall be such as to secure that their arrival in the United Kingdom will not be impeded or delayed.
7. As soon as the goods have been brought back to the United Kingdom the Secretary of State shall be given notice of their return and a person authorised by him shall be given facilities to inspect them.
8. While the goods are outside the United Kingdom all reasonable precautions

including proper security arrangements shall be taken to ensure the safe return of the goods to the United Kingdom.

9. The licensee shall not take any action which may impede the return of the goods to the United Kingdom within the time required by this licence, and shall inform the Department for Culture, Media and Sport immediately of any occurrence beyond their control which may result in the goods not being returned to the United Kingdom on time.

10. Save to the extent necessary:

(a) to enable the goods to be exhibited on a temporary basis at the [ADDRESS], or

(b) to arrange in an emergency for the goods to be repaired within the country of destination or for urgent action to be taken there to ensure their preservation in a state of good repair, or

(c) as a consequence of the method of transportation used to export the goods or to return them to the UK, or of storage for the purpose of such transportation,

the licensee shall not part with possession or control of the goods while they are outside the United Kingdom.

11. The licensee shall make such arrangements as are necessary to ensure that it remains fully able, at all times, to comply with the conditions attaching to this Licence.

SCHEDULE 7

THE "WAVERLEY" CRITERIA

History	Aesthetics	Scholarship
Is it so closely connected with our history and national life?	Is it of outstanding aesthetic importance?	Is it of outstanding significance for the study of some particular branch of art, learning or history?
Waverley 1	Waverley 2	Waverley 3