



department for
**culture, media
and sport**

Consultation Paper on draft regulations for the publication by museums and galleries of information for the purposes of immunity from seizure under Part 6 of the Tribunals, Courts and Enforcement Act 2007

September 2007

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

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Section 1: Introduction

1. Part 6 of the Tribunals, Courts and Enforcement Act 2007¹ (“the Act”) provides immunity from seizure for objects which are loaned from overseas to temporary exhibitions in approved museums or galleries in the UK. The absence of immunity from seizure legislation in the UK has made foreign lenders increasingly reluctant to lend cultural objects to the UK, such that the quality of major exhibitions has begun to suffer. Subject to compliance by museums and galleries with certain conditions (see further below), the immunity from seizure provisions in the Act will provide lenders with a guarantee that their art treasures will be returned at the end of the exhibition.
2. The Act provides immunity from any form of seizure ordered in civil or criminal proceedings, and from any seizure by law enforcement authorities. It applies to objects of any description which are owned by a person who, or an institution which is not resident in this country. Museums will be invited to apply for the status of approved institutions under the Act, and will need to satisfy the Secretary of State that their due diligence procedures are satisfactory before approval is given.
3. Museums which are approved for these purposes by the Secretary of State will be required, under Subsections (2)² and (9)³ of Section 134 of the Act, to publish information about each protected object in advance of the start of the exhibition in which it is to be displayed, and to provide further information on request in certain circumstances. The information to be provided will be set out in regulations to be introduced by statutory instrument on a date to be determined by the Secretary of State. A draft of the proposed regulations is included in the Annex to this paper. The purpose of the regulations is to ensure that sufficient information is provided, in advance of the exhibition, in order help people who may have a claim to cultural objects which have been stolen, looted or otherwise unlawfully appropriated to identify such objects before they come to the UK and, in such cases to allow the borrowing museum to carry out further investigation into the provenance of the object, to ensure that it the museum complies with its legal obligations and the relevant Departmental Guidance.
4. The current DCMS Guidance “*Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material*” states that museums should borrow items only if they are legally and ethically sound and that they should reject an item if there is any suspicion about it, or about the circumstances surrounding it, after undertaking due diligence. The year 1970 has been generally

¹ 2007 c. 15.

² Section 134 (2) (e) [The conditions are] that the museum or gallery has complied with any requirements prescribed by regulations made by the Secretary of State under this paragraph about the publication of specified information about the object.

³ Section 134 (9) The Secretary of State may make regulations requiring a museum or gallery to provide persons with specified information about an object in specified circumstances (which may include in particular compliance with conditions imposed by or under the regulations).

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accepted as the key point for an ethical approach to acquisition and borrowing and museums should be particularly wary of borrowing items where there are gaps in the provenance of the item after 1970 and/or during the Nazi-era from 1933-1945. Compliance with the Due Diligence Guidance will be a crucial part of the approval process for immunity from seizure and, together with the regulations, is designed help to identify items where the provenance is unsound and which should therefore not be borrowed.

Section 2: Purpose of the regulations and method of publication

5. The publication of information about objects to be exhibited will enable anyone to raise questions about their past before they come to the UK. This is important for anyone trying to trace objects which once belonged to them or their families and which may have been stolen, looted or otherwise unlawfully taken at some stage in the past. Where a query is raised about an object, this would not automatically remove protection against seizure, but it will allow the borrowing institution to look very carefully at the evidence, before taking a final decision on whether or not to borrow that object. The Regulations to be made under Section 134(9) of the Act will require museums to provide information on request to someone who has a plausible legal claim to the object (supported by at least some evidence), and who provides the museum with details of the circumstances giving rise to the claim.
6. Museums which attain the status of approved institutions will be required to publish the information specified in the regulations on their websites, in order for the objects in question to benefit from the immunity. In addition, we propose that there will be a central record on the website of the Museums, Libraries and Archives Council, containing links to the museum websites so that potential claimants and others with an interest do not have to research a number of individual websites. The links will also be available on the Cultural Property Advice website: www.culturalpropertyadvice.gov.uk
7. In drafting the regulations, we were mindful of the need to strike a balance between, on the one hand, requiring museums to provide sufficiently detailed information about the objects they intend to borrow in order to enable potential claimants to identify objects to which they may have a claim, and, on the other, not making these so complex and rigorous that they would place an unreasonable burden on museums and lenders or compromise the security of the objects borrowed.
8. We would not expect problems to arise in connection with the many objects that are borrowed from long established public collections and which have a secure provenance. This will normally represent the majority of cultural objects coming to the UK on loan. However, a significant number of objects are borrowed from private collections and we are aware that some private lenders may wish to remain anonymous, for perfectly good reasons. In such cases, the regulations therefore allow for their agent's details to be published instead. In this, and in other respects it will be necessary in finalising the regulations to strike a reasonable balance between the information that should be placed on the website and available in response to bona fide enquiries and that which should be kept confidential to the borrowing museum. It will also be necessary for museums, in responding to such enquiries, to be able to demonstrate that they have undertaken appropriate checks in line with their approved due diligence policies.

9. Another factor to be taken into account is that much of the information required by the regulations is also required in order for indemnity cover to be provided under the Government Indemnity Scheme (GIS) for the objects being loaned. Museums will therefore wish to consider the most appropriate and economical mechanism for meeting these dual requirements for borrowing objects from abroad in temporary exhibitions where GIS cover is also being sought.
10. The GIS is an arrangement whereby the Government is responsible for payment of compensation in the event of loss of, or damage to, objects which are on loan to a museum, gallery or similar institution in the UK. The application form requires details of the exhibition (or long-term loans) including dates of transport, exhibition dates, full descriptions of objects, names and addresses of lenders, valuations of loans and good quality illustrations of objects. Other information may be required from time to time.
11. All publicly-funded museums, galleries and libraries are eligible for GIS cover and independent museums may be approved for specific loans or exhibitions. All museum objects may be covered, provided that the loan is for the benefit of the public or to increase public understanding of the object.
12. Non-national museums are required to apply for GIS cover at least 3 months before the start of the exhibition, which coincides with option c (iii) in paragraph 15 below for the period of advance notice to be given by museums in publishing information under the regulations. There is no such advance application period for the national museums.
13. We would be interested in views as to whether a museum or gallery or other institution wishing to be eligible for immunity from seizure should, as a general rule, also have been approved for GIS cover. This is on the basis that there are many linkages between the two schemes, such as the provision of information about the objects being borrowed and (potentially) the period before an exhibition at which details of the exhibition should be available – in the case of GIS for the purpose of approval for indemnity. Approval by the Museums Security Adviser is an absolute requirement for GIS cover and views would be welcome as to whether this should also be a pre-requisite for approval for immunity from seizure.

Section 3: Consultation

14. The purpose of the consultation is to seek views on the content of the draft regulations, and in particular: on how far in advance museums should be required to publish information about the objects they intend to borrow; on how detailed this information should be, both initially and in reply to further enquiry by potential claimants; and on the other specific questions raised in paragraphs 18 and 19 below.
15. Three options for the period of advance notice are offered below. Throughout the passage of the Bill through Parliament, we referred to an advance notice period of two months prior to the start of the exhibition. This was suggested as a reasonable compromise between: allowing museums sufficient time to assemble the required information about the objects being borrowed and allowing potential claimants and other interested parties sufficient time to scan the information and raise queries about the objects in advance of their coming to the UK. Following discussions with museums, we are aware that, on occasion, exhibition objects may arrive in the UK more than two months before the start of the exhibition, for example for the purposes of conservation or repair. We have taken this into consideration in offering three options for publication dates in paragraph 18f below.
16. The draft regulations comprise four main provisions covering: general obligations and time limits; information about the lender, the object, its provenance, the exhibition etc; changes in information and information to be supplied on request by potential claimants.
17. It is not proposed, nor do we think it appropriate or necessary, that information should be available under these regulations in relation to items that museums have decided, after research, not to borrow for inclusion in an exhibition. The purpose of the powers in the Act is to provide conditions for immunity for objects that are actually brought to the United Kingdom for the purpose of public display. Information about objects more generally is a different matter, and may in any event be available under the Freedom of Information Act 2000. Schedule 1 to that Act includes a list of the museums and galleries which are subject to the regime.

Section 4: Questions

18. Consultees are asked to comment on the following questions, bearing in mind the need to strike a fair balance between facilitating the public exhibition of cultural objects in the UK and ensuring that the legitimate interests of potential claimants to those objects are not unduly prejudiced:
- a. Is the content of draft regulation 3 sufficiently detailed to allow potential claimants to identify works of art which they believe may have been stolen, looted or otherwise unlawfully disposed of? If not, what else could usefully be added?
 - b. Bearing in mind (a) above, would regulation 3 place an unreasonable burden on museums and galleries and would they discourage genuinely benevolent foreign lenders from being prepared to send their art treasures to the UK on loan for public exhibition? If so, which sections are likely to cause the most difficulty, and why?
 - c. Will publicising the information referred to in regulation 3 on websites have security implications? If so, is there any better way of achieving the same result without compromising security (including the security requirements of the GIS)?
 - d. Would the requirement for inclusion (in information on the website) of a photograph of the object to be borrowed be reasonable, given possible copyright restrictions on publishing photographs on a website and what, if any, suitable arrangements might be available to comply with such restrictions?
 - e. Is it necessary for photographs to be provided other than for items created before 1946 and acquired after 1932 (which dates have been chosen so as to include transactions in the Nazi era generally recognised to have lasted from 1933 – 45)?
 - f. Which of the following options should apply regarding the timing of the publication of information in regulation 2 (see paragraph 15 above)?
 - i. Publish two months ahead of the opening of the exhibition?
 - ii. Publish two months ahead of the opening of the exhibition or one month ahead of importation, whichever is the earlier? (This option is included in the current draft as a ‘middle way’, but the Department is prepared to consider views on the matter and reassess this if appropriate).
 - iii. Publish three months ahead of the opening or one month ahead of importation, whichever is the earlier? (It should be noted here that a three month period ties in with a requirement under the Government Indemnity Scheme, which is that non-national museums are required to apply for GIS cover at least three months in advance of the start of the exhibition (see paragraph 13 above).
19. Under Section 134(9) of the Act, information may be provided on request to someone who has a claim to an object and provides details of the circumstances giving rise to the claim. Regulation 5 of the draft regulations sets out a possible model for such disclosure. Consultees are asked to:

- a. State whether they regard the information set out in regulation 5 to be sufficient or insufficient for the purpose of ensuring that the legitimate interests of potential claimants are not unduly prejudiced?
- b. If the information in regulation 5 is regarded as insufficient, to state what additional information should be provided and why?

Section 5: Conclusion

20. Consultees are invited to comment on any or all of the questions in paragraphs 18 and 19 above. Please be aware that the individual responses and a summary will be published on the DCMS website in due course. Part 6 of the Act will be brought into effect once the regulations have been finalised and approved by Ministers. The regulations will need to be laid before both Houses of Parliament, and are subject to the negative resolution procedure.
21. The deadline for responses is **21 December 2007**. Responses may be emailed or sent in writing to:

Mark Caldon
Cultural Property Unit
DCMS
2-4 Cockspur Street
London SW1Y 5DH
Email: mark.caldon@culture.gov.uk
Tel: 0207 211 6158

The list of consultees has been published on the DCMS website. If you consider that anyone else should see a copy, please let us know and we will forward it to them.

Annex: Draft Regulations under section 134(2)(e) and (9) of the Tribunals, Courts and Enforcement Act 2007

DRAFT STATUTORY INSTRUMENTS

2007 No. XXXX

CULTURAL OBJECTS

The Protection of Cultural Objects (Publication and Provision of Information) Regulations 2007

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 134(2)(e) and (9) of the Tribunals, Courts and Enforcement Act 2007 (2007 c. 15).

The Regulations are made with the consent of the Scottish Ministers, the Welsh Ministers and the Department for Culture, Art and Leisure in Northern Ireland.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protection of Cultural Objects (Publication and Provision of Information) Regulations 2007 and come into force on [date].

(2) In these Regulations—

“the Act” means the Tribunals, Courts and Enforcement Act 2007;

“exhibition”, in relation to an object means the temporary exhibition in the United Kingdom in which the object is, or is to be displayed;

“jurisdiction” means a country, a part of a country or a territory with its own system for the administration of justice;

“lender” in relation to an object means a person whose agreement is required to make the object available for the exhibition;

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“opening day” in relation to an exhibition means day on which then exhibition is first open to the public;

“potential claimant” in relation to an object means a person who—

- (a) considers that he has a valid legal claim to possession of the object, or to damages resulting from unlawful dealings with the object; and
- (b) has provided the relevant institution with a description in writing of the nature of the claim, and of the circumstances giving rise to the claim;

“relevant institution” in relation to an object means the institution approved under section 136 of the Act at which the exhibition is, or is to be held.

Publication of information

2. It is a requirement prescribed under section 134(2)(e) of the Act that the information set out in regulation 3 has been published by the borrowing institution by—

- (a) making it available on its website for inspection by the public without charge for a continuous period of at least—
 - (i) two calendar months ending on the day before the opening day; or
 - (ii) one calendar month ending on the day before the day on which the object is brought into the United Kingdom for the exhibition; and
- (b) sending a copy of the information to the Acquisitions Export and Loans Unit at the Museums, Libraries and Archives Council on, or as soon as practicable after the day on which the information is made available on its website for the first time in connection with the exhibition.

Information required

3.—(1) The information referred to in regulation 2 is set out in the following paragraphs.

(2) The name and address of—

- (a) the lender (or if there is more than one, of each lender); or
- (b) where a lender is an individual, the name and address of a person who is authorised by the lender to act on his behalf in relation to any claims which may be made in relation to the object, provided the address of that person is in the jurisdiction in which the lender resides;

(3) A description of the object sufficient to identify it, including—

- (a) the type of object it is (for example a painting, sculpture, drawing, installation or historic artefact), and a description of the material from which, or on which it was created;
- (b) the identity and nationality of the artist, manufacturer or other creator of the object, where this is applicable and known;
- (c) the title (if any) by which the object is known;
- (d) the dimensions of the object;
- (e) the date, where applicable and known, on which the object was created, or the period in which it was created or is most likely to have been created;
- (f) if the object was—
 - (i) created before 1946, and
 - (ii) acquired by a lender after 1932,
 a photograph of the object;
- (g) a brief description of the appearance of the object, including any identifying marks or inscriptions found on it;
- (h) the actual or likely place of manufacture of the object, or, where the object consists of archaeological or palaeontological material, the place where it was found, or likely to have been found.

(4) The following details of the provenance of the object—

- (a) subject to subparagraph (b), the date on which, the place at which, and the person from whom it was acquired by its current owner (or of there is more than one owner, the date on and place at which, and the person from whom, each owner's interest was acquired);
 - (b) if the person from whom the object or interest was acquired is not known, the circumstances in which the object or interest was acquired, to the extent known;
 - (c) a statement indicating whether or not the borrowing institution possesses a complete history of its ownership from the beginning of the year 1933 to the end of the year 1945.
- (5) The following information about the exhibition—
- (a) the title of the exhibition;
 - (b) each address within the United Kingdom where it is proposed that the object will be on display to the public as part of the exhibition; and
 - (c) the period during which it is proposed that the object will be on display at each such address.

Change of exhibition dates

4.—(1) This regulation applies where, at any time after it is published the information referred to in regulation 3(5) is no longer accurate (for example, due to changes in the plans for the exhibition).

(2) It is a requirement prescribed under section 134(2)(e) of the Act that the relevant institution must, as soon as practicable, publish the information again in accordance with regulation 2 (disregarding the time limits in that regulation).

Provision of information to potential claimants

5. If a relevant institution considers there is a plausible case, supported by evidence, that there is a valid legal claim to an object, it must, upon request by a potential claimant, provide that person with—

- (a) the name of each lender, if not already published under regulation 3(2);
- (b) a copy of the information required to be published by the institution pursuant to regulations 2 and 3;
- (c) a description in writing of the enquiries made by the relevant institution into the provenance and ownership history of the object; and
- (d) any information obtained by the borrowing institution as a result of those enquiries that it may lawfully disclose to the person who made the request.

Signatory text

Address
Date

Name
Minister
Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Regulations)

[To be completed]