

Partial Regulatory Impact Assessment

Title:

Immunity from seizure for works of art on loan from other countries to the UK.

The proposal is to introduce additional clauses within the Bill implementing the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols (the Hague Convention) Bill, which has been put forward as part of the Department's legislative bid for 2006-7.

Objective:

Providing immunity from seizure will reassure international institutions that it continues to be safe to lend to the UK and will help preserve the UK's status as a major world exhibition centre for art.

Background:

This issue first arose in November 2005 when works of art from the Pushkin Museum in Moscow were seized at the Swiss border at the request of the trading company Noga on the grounds of a claimed Russian government debt. The items were later released, following the intervention of the Swiss national Government but the Russians have become increasingly nervous about lending to the UK and other countries without protection from seizure legislation. Other countries are also insisting on such safeguards.

In the absence of legislation guaranteeing immunity from seizure we are unable to satisfy such requests. The State Immunity Act 1978 (the Act) provides some protection for works of art lent to exhibitions in this country where such works are state owned. However this protection does not apply to property which is in use, or intended for use, for commercial purposes. The application of the Act to works of art which are lent to this country for exhibitions is not entirely clear. In addition, the protection given by the Act does not extend to works borrowed from private collections.

Options:

We therefore need a lasting solution to satisfy Russia and an increasing number of other countries which are demanding immunity. Primary legislation is the only way to enable the United Kingdom to provide the necessary guarantees.

The key options for legislation are:

1. How far coverage should extend, for example to all museums, galleries and archives in the UK, to just those designated under the Museums, Libraries and Archives Council's designation scheme or to national museums only, and whether all exhibitions should be covered;
2. We also need to decide whether immunity should apply to both publicly owned works and those in private ownership;

3. Should the immunity offered extend to immunity from seizure in criminal proceedings.

The consultation paper discusses two possible procedures for granting immunity. Immunity can be made to depend on an application, or can be made available automatically to all works which satisfy the criteria set out in the legislation. It also considers a number of options for the type of protection that should be granted.

Risks:

Risk	Consequence	Avoid
Do nothing		
Important works of art no longer lent to the UK.	UK's status as a leading cultural venue under threat. Major exhibitions will not come to the UK or quality diluted. Knock on effect for tourism and ultimately the Olympic culture offer.	No ultimate solution without new legislation.
Works of art in the UK on loan from abroad may be seized.	Some works of art may be protected under the State Immunity Act, but this does not cover any works of art borrowed from private collections	No ultimate solution without new legislation.
Do something		
Concern by the restitution lobby that this legislation is being brought forward ahead of deaccessioning of spoliated items spoliated during the Nazi era.	Expect them to complain that Government is dragging its heels on deaccessioning.	Make clear our long-term intentions regarding deaccessioning legislation.
Further concern that introducing immunity from seizure will protect spoliated items from being returned to their rightful owners.	Again, restitution lobby may protest.	Explain that legislation will only cover works from abroad. .

Costs and benefits

If, as we propose, protection is given automatically (rather than on application by the relevant institution) the costs for the government should be minimal.

Sector affected	Costs	Benefits
Government	None once legislation was introduced. Intention is to have automatic immunity for works of art, rather than a system of application which would involve significant administrative costs.	Ability to offer security to international lenders. Protect the UK's reputation as a leading world exhibition centre and will be beneficial to tourism and research.
National UK museums and galleries	None.	Reduced legal and administration fees.. Guarantees the future of important exhibitions and removes the need for lengthy discussions/negotiations with lenders on the threat of seizure.
Private sector - shippers	None	Reduced legal and administrative costs. Legislation should limit potential seizures from taking place, limiting costs to shippers as well as to lenders
International lenders	Should not result in any new costs for lenders. The need to take legal advice and consider risk should reduce.	Will want to lend to the UK and will be confident to do so.

Equity and Fairness

The benefits of immunity from seizure will be enjoyed by all international lenders. From an equity perspective, the legislation will not affect particular groups in society in different ways or give advantage to a particular group.

Small Firms Impact Test

Very difficult to assess. Shippers are the only small businesses which may be involved. Legislation may not stop occasional potential attempts at seizure, though international creditors should be less inclined to try. However, the risk of seizures should be significantly reduced. The legislation will not have an adverse impact on small firms.

Competition Assessment

The legislation is likely to assist all museums and galleries which put on international exhibitions in the United Kingdom. It will not affect competition in the museums sector. We have not addressed the 'competition filter test' as it refers to firms and we are not dealing with these.

Enforcement, Sanctions and Monitoring

Unlikely to be an issue with regards to immunity from seizure. The recommended course will avoid the museums sector and lenders from being involved in any additional procedures.

Implementation and Delivery Plan

To be completed after consultation (in accordance with Cabinet Office guidelines).

Post implementation review

This will be considered once the method of implementation has been finalised.

Summary and recommendation

The objective of this project is to provide immunity from seizure for international works of art on loan to the UK. This will ensure that the UK continues to be acknowledged worldwide as a leading centre for international art exhibitions. It is our intention to consult on the most appropriate method of achieving the objectives set out above. Recommendations on the best method of achieving the objective will follow on from that.