

Government Indemnity Scheme

Guidelines for national institutions

Arts Council England
January 2016



National institutions may be defined as museums, galleries, libraries and other similar bodies and institutions that are supported wholly or mainly from public funds provided by Parliament and which are outlined as eligible bodies in section 16(2) of the Act, in particular those institutions which fall within sections 16(2)(a)(i) and 16(2)(b)(i).

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The Arts Council of England champions, develops and invests in artistic and cultural experiences that enrich people's lives. It supports a range of activities across the arts, museums and libraries – from theatre to digital art, reading to dance, music to literature, and crafts to collections. Great art and culture inspires us, brings us together and teaches us about ourselves and the world around us. In short, it makes life better.

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Part 1

Introduction

Why a Government Indemnity Scheme (GIS)?

1.1 The GIS exists for the UK public benefit. It aims to enhance and widen access to objects of a scientific, technological, artistic or historic nature. By giving undertakings to lenders, the GIS enables certain institutions to borrow objects to an extent they could not otherwise afford. The scheme therefore facilitates loans to museums, galleries, libraries and other kinds of bodies such as the National Trust as well as between each other. The public can therefore have access to objects:

- on display in temporary exhibitions or on long-term loan
- made available for study

In addition, the scheme provides for:

- the study of loaned objects by borrowing institutions which then bring into the public domain the findings and conclusions of that study such that there is a material contribution to the public's understanding or appreciation of the objects loaned

As the GIS contingent liability falls on the UK public purse, UK public benefit must be clear in all cases. The GIS facilitates loans by indemnifying in favour of owners and so offering them comfort during the loan period. This is the case whether those owners are resident abroad or in the UK. The GIS therefore acts to help certain UK persons, bodies or institutions to borrow. It does not operate to favour foreign borrowers – they must arrange cover of their risk, for example, during transit out of the UK. However, some concession may be possible for some touring loans.

[Refer to 2.1, 2.3 to 2.9, 2.35, and 2.57]

What is indemnity?

1.2 The general legal definition of indemnity is as follows:

The purpose of indemnity is that in the event of loss the indemnified party should be restored to the same financial position after the loss that the party was in immediately prior to the loss; but an indemnified party should not be able to profit to any extent from the event which generates that loss; nor should the indemnified party be left in a worse financial position after the loss.

Legislative provision

- 1.3** The provisions for the GIS are made by the National Heritage Act 1980 (as amended from time to time) ('the Act'). The text of the relevant section of the Act is provided at 2.1 below. Section 16(1) of the Act provides that the Secretary of State may undertake to indemnify any institution, body or person for the loss of, or damage to, any object belonging to that institution, body or person while on loan to any other institution, body or person falling within the terms of section 16(2).
[Refer to 2.1]
- 1.4** The Act therefore provides a statutory basis for the Secretary of State to underwrite the risk of loss of, or damage to, objects loaned for the public benefit to museums, galleries, libraries, the National Trust and other similar institutions and bodies (either those falling under the categories of eligible bodies outlined in section 16(2)(a) to (d) or approved from time to time under section 16(2)(e)). Whilst the giving of a section 16 undertaking under the Act indicates that the Government has covered risk, it is not a guarantee of automatic compensation (for example, upon investigation of a claim, it may emerge that the cause of loss falls under circumstances excluded by the relevant indemnity certificate). For the purposes of these guidelines, undertakings to indemnify given by the Secretary of State under section 16 of the Act are referred to as 'an indemnity' or 'indemnity'.
[Refer to 1.18]

The party indemnified

Owner is indemnified

- 1.5** As a matter of law, indemnity is in favour of the owner and is provided by the Secretary of State to the owner. It indemnifies the owner lending to the borrowing institution. In practice, indemnity is issued to owners via the applicant borrower and it is the responsibility of the borrower to ensure that owners are sent their indemnity certificate.

Borrower takes on risk

- 1.6** When an owner makes a loan, the borrower takes on the risk for the loss of, or damage to, the object loaned. When the Secretary of State issues indemnity to an owner in respect of such a loan, s/he underwrites the borrower's risk. As the borrower's risk is covered, they may then proceed with the loan.

Who has authority to give undertakings?

- 1.7** The Act grants powers to the Secretary of State to undertake to indemnify, but does not make provision for the Secretary of State to delegate that function to an institution, body or person. Therefore, indemnity undertakings in respect of loans to borrowers covered by these guidelines can only be given by the Secretary of State. In practice, the issuing Secretaries of State are those heading the Departments set out at 1.17 below. The borrowing institutions covered by these guidelines have no power under the Act to grant such indemnities themselves.
[Refer to 1.17]

Deciding the issuing Secretary of State

- 1.8** In practice, the location of the borrower and the Department which sponsors that applicant borrowing institution determines which Secretary of State issues the indemnity. For example: owners resident overseas lending to an eligible borrower in the UK will normally be indemnified by the Secretary of State who is responsible for the borrowing institution; a loan by an owner resident in Wales to the National Gallery would be issued indemnity by the Secretary of State for Culture, Media and Sport as s/he is responsible for the borrowing institution.

Eligible owners – Government policy

Exchequer-funded bodies are not eligible

- 1.9** The Act sets out the categories of eligible institutions, bodies or persons, to whom the Secretary of State may give section 16 undertakings.
- 1.10** In practice, the national collections and other wholly or mainly Exchequer-funded institutions and bodies are not issued indemnity when they lend objects. This is because it is either not considered economical to purchase commercial insurance where a body is mostly state-funded (and therefore the Exchequer bears its own risk in any event) or because of the indivisibility of the Crown (and hence the inability of one part of the Crown to indemnify or make good loss of another part). In certain cases, as a matter of Government policy, money might be made available on a discretionary basis to compensate loss or to cover the cost of repairs to objects damaged whilst on loan from an Exchequer-funded body, but this is entirely on a separate basis from the GIS. Examples of categories of Exchequer-funded bodies are given at 4.10 (you will note that they are not confined only to the bodies listed at Annex A). Many Exchequer-funded bodies (especially those having Crown status) are listed in the *Civil Service Year Book* (published by HMSO).
[Refer to 4.10 and 6.4(d) to 6.4(h)]

Guaranteed compensation not appropriate

- 1.11** For certain bodies funded by the Exchequer (national museums, galleries and libraries are examples) it is not considered appropriate to issue indemnity in respect of property that they lend. This is because of the rule whereby such bodies bear their own risk for public property (refer to 1.9 and 1.10 and to *Government Accounting*, Chapters 26 and 27). In addition, to issue indemnity to such Exchequer-funded bodies would (in the event of a legitimate claim) offer a guarantee of compensation, forcing the public purse to meet the cost of repair, depreciation or total loss in respect of property that in any case has been acquired at a cost to the public then held in trust for its benefit or has otherwise been acquired and held in trust for them. For national institutions that are concerned about lending their property, there is guidance in Part 6. This discusses the discretionary arrangements for deciding whether, and to what extent, national institutions might be compensated.
[Refer to 1.9 to 1.10, 1.12 and 1.13, 4.1, 6.4(d) to 6.4(h)]

Exchequer-funded owners bear their own risk when lending

- 1.12** In circumstances where the rule of bearing its own risk applies, section 16 cover is not considered appropriate. This arrangement allows Ministers the discretion to decide whether to compensate loss by an Exchequer-funded body which has lent property.
[Refer to 1.9 to 1.11, 1.13, 2.38 to 2.42, 4.1 to 4.3, Part 6]

Crown cannot indemnify itself

- 1.13** In some circumstances, owners will have the status of a Crown body. It is a point of law that the Crown is indivisible. Therefore, one part of the Crown cannot indemnify another part of the Crown – so indemnity cannot apply to a Crown body when it lends its property. A list of Crown bodies is provided in the *Civil Service Year Book* (published by HMSO).

Eligible owners – definition

- 1.14** Owners who may be issued indemnity are defined by section 16(1) of the Act, but given Government policy (summarised at 1.9 to 1.13 above) and for the purposes only of practical guidance, eligible owners may be defined as:

institutions, bodies or persons overseas; persons in the UK (but not Corporate Soles such as the Sovereign or a Minister of the Crown in an official capacity); and institutions or bodies in the UK which are not wholly or mainly Exchequer-funded. These include non-Exchequer-funded institutions and bodies such as locally run institutions. In the main, these locally run institutions comprise: local authority-funded museums, galleries, libraries and other similar bodies and institutions; university museums and collections; National Trust properties; and local museums, galleries and other similar bodies that are governed by a local charitable trust or society. Many of these eligible lending UK institutions and bodies are listed in the *Museums Yearbook* (published by the Museums Association).
[Refer to 1.9 to 1.13, 2.1]

National institutions

- 1.15** These guidelines provide guidance on the GIS for national institutions. Such bodies may be described as museums, galleries, libraries and other similar bodies and institutions that are supported wholly or mainly from public funds provided by Parliament and which are outlined as categories of eligible bodies in section 16(2) of the Act. In particular, the institutions to which these guidelines apply are those which fall within the following sections of the Act: 16(2)(a)(i) and 16(2)(b)(i). In these guidelines, such institutions are referred to variously as ‘national institutions’, ‘nationals’, ‘national borrowers’, ‘borrowing nationals’, ‘borrowing national institutions’, and ‘borrowers’.
[Refer to 2.1 and to Annex A]
- 1.16** These guidelines replace all previous versions. Indemnity issued under any previous guidance will be unaffected.

Issuing Secretary of State

1.17 Monies are voted by Parliament to certain Government Departments that provide grant support to national and other museums, galleries, libraries and other similar institutions, drawing on those voted resources. These are called 'issuing Departments' and are listed below:

England

Department for Culture, Media and Sport
Cultural Property Unit
4th Floor
100 Parliament Street
London SW1A 2BQ

Scotland

Sponsorship and Funding Team, Culture and Historical Environment Division
Directorate for CEAC
2H North, Victoria Quay,
Leith, Edinburgh EH6 6QQ
Tel: 0131 244 0351

Wales

Museums, Archives and Libraries Division (MALD)
Welsh Government
Rhodfa Padarn,
Aberystwyth, Ceredigion SY23 3UR
Tel: 0300 062 2112

Northern Ireland

Department of Culture, Arts & Leisure (DCAL)
Causeway Exchange
1-7 Bedford Street
Belfast BT2 7EG
Tel: 028 9025 8825

Ministry of Defence

DS Sec (Sec)
Whitehall
London
SW1A 2HB

A full list of the national institutions covered by the Act (and by these guidelines) is provided at Annex A.

‘The Secretary of State’, ‘Department’, ‘Section 16 Indemnities’ and so on

1.18 For ease of reading, these guidelines sometimes refer to ‘the Department’ – in all cases this means the Secretary of State or other Minister in charge of the Department responsible for the national institution concerned, except in the case of Northern Ireland, where ‘the Secretary of State’ should be read as ‘the Department of Education for Northern Ireland’.

An undertaking to indemnify given by the Secretary of State under section 16 of the Act is referred to as ‘an indemnity’ or ‘indemnity’ or ‘section 16 indemnity’.

The Arts Council of England is referred to as ‘the Arts Council’.

Non-national institutions

Guidelines

1.19 Guidance for non-national institutions, namely those bodies that are not national institutions as described in paragraph 1.15 above and which are defined at 1.20 and 1.21 below, is contained within separate guidelines issued by the Arts Council (address at 1.21 below) on its website www.artscouncil.org.uk. The Arts Council administers the GIS on the Secretary of State's behalf in respect of national and non-national institutions.
[Refer to 1.15, 1.20, and 1.21]

Definition

- 1.20** Non-national institutions for the purposes described at 1.19 above are those institutions or bodies that are not wholly or mainly Exchequer-funded. They may be defined as those institutions or bodies falling within the following sections of the Act: 16(2)(a)(ii); 16(2)(b)(ii); 16(2)(c); 16(2)(d); and bodies approved from time to time by the Secretary of State for the purposes of section 16 of the Act under the provisions of section 16(2)(e). [Refer to 1.19, 2.1]
- 1.21** These non-national institutions and bodies include non-Exchequer-funded institutions and bodies such as locally run institutions. In the main, these comprise local authority-funded museums, galleries, libraries and other similar institutions and bodies; university museums and collections; National Trust properties; and local museums, galleries and other similar bodies that are governed by a charitable trust or society. Many of these bodies are listed in the *Museums Yearbook* (published by the Museums Association). It is the Secretary of State who decides which borrowers are eligible, but if national institutions wish to check whether a certain non-national is an eligible borrower under the Act, they should contact the Manager, Government Indemnity Scheme at the Arts Council.

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What constitutes a loan?

Definition

- 1.22** It may help borrowers to note the following guidance on what factors constitute a genuine loan:
- Title: title to the object or item loaned remains vested in the lender
 - Control: during the period of the loan, the loaned object(s)/item(s) should come substantially under the control of the borrower, who must be able to exercise control over its safekeeping
 - Return: the loan is subject to return to the lender in accordance with the terms of the loan

Loans under section 16

- 1.23** An important judgement for national borrowers to make when considering a possible loan is the extent to which they can ensure public benefit. If indemnity covers the risk to a loan, the resulting contingent liability falls on the public purse and public benefit must be clear.
[Refer to section 16(3) in the text of the Act provided at 2.1 and guidance on public benefit at 2.3 to 2.9]
- 1.24** Occasionally, the display or study of an object might require the borrowing of other objects which are integral to that display or study. An example might be an art installation that includes audio-visual playing and monitoring equipment. Other examples are picture frames (which may be valued separately) or a specialised display cabinet or plinth. In such circumstances, the Secretary of State will give favourable consideration to whether indemnity may cover such objects as part of the loan and therefore include it in the indemnity. However, normal wear and tear is not covered. This is discussed at 2.44 to 2.46.
[Refer to 2.3 to 2.9, 2.44 to 2.46]

Part 2

Provisions applicable to granting indemnity

Legislative provision – text

2.1 The following are the current provisions and requirements of the National Heritage Act 1980 (as amended by the Museums and Galleries Act 1992). The Act and these guidelines set out the circumstances in which Government Indemnity may be granted:

16(1) Subject to subsections (3) and (4) below, the Secretary of State may, in such cases and to such extent as he may determine, undertake to indemnify any institution, body or person for the loss of, or damage to, any object belonging to that institution, body or person while on loan to any other institution, body or person which falls within subsection (2) below.

(2) The institutions, bodies and persons which fall within this subsection are -

(a) a museum, art gallery or other similar institution in the United Kingdom which has as its purpose or one of its purposes the preservation for the public benefit of a collection of historic, artistic or scientific interest and which is maintained -

(i) wholly or mainly out of monies provided by Parliament or out of monies appropriated by Measure; or

(ii) by a local authority or university in the United Kingdom;

(b) a library which is maintained -

(i) wholly or mainly out of monies provided by Parliament or out of monies appropriated by Measure; or

(ii) by a library authority;

or the main function of which is to serve the needs of teaching and research at a university in the United Kingdom;

(c) the National Trust for Places of Historic Interest or Natural Beauty; and

(d) the National Trust for Scotland for Places of Historic Interest or Natural Beauty; and

(e) any other body or person for the time being approved for the purposes of this section by the Secretary of State with the consent of the Treasury.

(3) The Secretary of State shall not give an undertaking under this section unless he considers that the loan will facilitate public access to the object in question or contribute materially to public understanding or appreciation of it.

(4) The Secretary of State shall not give an undertaking under this section unless the loan of the object in question is made in accordance with conditions approved by him and the Treasury and the Secretary of State is satisfied that appropriate arrangements have been made for the safety of the object while it is on loan.

(5) Subsections (1) to (4) above shall apply in relation to the loan of an object belonging to an institution, body or person established or resident in Northern Ireland with the substitution for references to the Secretary of State and the Treasury of references to the Department of Education for Northern Ireland and the Department of Finance for Northern Ireland respectively.

(6) In section (2) above 'library authority' means a library authority within the meaning of the Public Libraries and Museums Act 1964, a statutory library authority within the meaning of the Public Libraries (Scotland) Act 1955 or an Education and Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1972 and 'university' includes a university college and a college, school or hall of a university.

(7) References in this section to the loss of or damage to, or to the safety of, an object while on loan include references to the loss of or damage to, or the safety of, the object while being taken to or returned from the place where it is to be or has been kept while on loan.

16A (1) For each of the successive periods of six months ending with 31st March and 30th September in each year, the Secretary of State shall prepare a report specifying -

(a) the number of undertakings given by him under section 16 above 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 given by him under that section at any time as remain outstanding at the end of that period.

(2) A report under section (1) above shall be laid before Parliament not later than two months after the end of the period to which it relates.

(3) Subsections (1) and (2) above shall apply in relation to undertakings given under section 16 above by the Department of Education for Northern Ireland -

(a) with the substitution for references to the Secretary of State of references to that Department; and

(b) with the substitution for the reference to Parliament in subsection (2) of a reference to the Northern Ireland Assembly.

Notwithstanding a borrower's duty of care at common law, before deciding whether, and to what extent, to grant indemnity to an institution, body or person lending to a national institution, the Secretary of State will need to be satisfied that such borrowing national institutions have implemented proper, appropriate and effective measures to evaluate, manage, control and limit risk and the Secretary of State will also need to be satisfied as to the following matters:

Undertakings by national institutions

- 2.2** Each national institution will be required to sign and return to its sponsoring Department, the irrevocable undertaking (at Annex B) before the first indemnity is granted under these guidelines. The irrevocable undertaking should be signed at Director level. This undertaking will apply at all times thereafter in respect of all loans to that institution for which indemnity is granted. The undertaking need not be signed by national borrowers in respect of every indemnity application. Once signed, it will apply thereafter in respect of all indemnities issued in respect of loans to that national borrower.

Public benefit

Loans for public access

- 2.3** Objects on loan may be made accessible to the public at temporary exhibitions, displayed on long-term loan or made available for study (for example, manuscripts, books, works on paper). In assessing public access considerations, the Secretary of State will take account of the location and accessibility to the public of the place where the object is to be exhibited or made available for study, including periods of opening to the public. Objects which are not displayed but instead made available for study should be adequately advertised as available for viewing by special arrangement. Borrowing institutions that have, on behalf of the owner of an object, obtained indemnity and that subsequently are unable to fulfil the requirement of providing public access should contact the relevant Department, which will decide if indemnity can continue in those circumstances.

Objects which are stored

- 2.4** National institutions should be aware that from time to time objects may be borrowed with the intention of facilitating public access but for unforeseen reasons are eventually not displayed or made available for study, but are instead stored (for example, emergency closure of a display space). The Secretary of State would be prepared to allow indemnity to continue to apply if public display had clearly been the intention. In the case of touring exhibitions, it can sometimes be the case that some objects are stored in the UK on their way to the next country or on return to the owner. In these circumstances, the Secretary of State will consider on a case-by-case basis whether indemnity is appropriate. However, borrowers should note that the Secretary of State is very unlikely to indemnify where a loan is accepted without any intention to exhibit or to study it or where there is no demonstrable public benefit. There should be no contingent liability on the public purse where there is no public benefit (guarding against such circumstances could be interpreted as one of the objects of section 16(3) of the Act). Refer to 2.59 which provides guidance on touring loans that may at some stage be stored in the UK but which are nevertheless displayed or studied in the UK before the tour has finished.
[Refer to 1.23, 1.24, 2.1, 2.59]

Loans for examination, study, analysis and the like

- 2.5** Under the GIS, objects may be borrowed for study by the institution itself. In this latter circumstance, the applicant borrower must state the nature of the examination, study or analysis and how the results of this are to be promulgated or otherwise made known to the public. The results or findings should be used in such a way that the examination, study or analysis will contribute materially to public understanding or appreciation of the object loaned (refer to the model application form at Annex C, which provides for such information to be given to the Secretary of State).
[Refer to 3.1 and Annex C]

- 2.6** By way of guidance only, some examples are given below of public benefit in this circumstance.

Objects loaned which are the subject of academic, scholarly or scientific examination, study or analysis, the results of which are:

used to enhance interpretation or explanation to the public of the object loaned; brought into the public domain; published or otherwise made available or promulgated to the public, for example, in a scholarly publication; made publicly available in an exhibition catalogue, leaflet, pamphlet, video, CD-ROM, laserdisc; made available on the internet; displayed to the public on a wall label or other display material alongside the object loaned; and published in a book or CD-ROM by curatorial staff of the applicant borrower.

Another example is an object loaned earlier than usual for an exhibition so that it may be photographed for an exhibition catalogue.

Possible gifts, bequests and the like

- 2.7** From time to time objects may need to be considered by a national institution with a view to acceptance as a gift or bequest or under other similar arrangement. The national institution must assess the potential for public benefit in terms of facilitating public access to that object or contributing materially to its understanding or appreciation. The national institution may then make a case for indemnity cover and the Secretary of State may issue indemnity to cover the loan period prior to the relevant irrevocable Deed of Gift or other such agreement being effected.
- 2.8** By way of example, if a possible gift, bequest or purchase (refer to 2.9) needs to be borrowed so that the Board of Trustees of the national institution may view it for consideration, then indemnity may be given if the public would be likely to benefit from the possible gift, bequest or purchase. Indemnity may cover the period before ownership passes to the borrowing national institution (namely, the period before the national institution obtains full and unconditional title to the object). There also may be cases where a prospective donor might undertake to purchase an object then gift it to the national institution, should the institution decide it wants it. Indemnity may be granted to the current owner while such deliberations take place.

Possible purchases

- 2.9** The rules for provision of indemnity for objects being considered for purchase by a national institution are the same as those described in paragraphs 2.7 and 2.8 where the owner is making a private offer solely to the institution. While indemnity may cover a possible purchase offered solely to a national institution, it does not apply to possible purchases on the open market.
[Refer to 2.7, 2.8, 2.10]

Loans which go on sale on the open market

- 2.10** The Secretary of State wishes to avoid permitting lenders and dealers to capitalise on the indemnified public display of an object for their own benefit. If a borrowing institution becomes aware that indemnified material is being offered for sale on the open market by the owner, the Arts Council must be informed immediately. In such circumstances, if the Secretary of State views the benefit as being with the owner or in furtherance of the owner's own interest, the indemnity would cease. The owner would then be responsible for arranging any necessary insurance cover. An example of a circumstance where the Secretary of State might withdraw indemnity would be where it appears to him/her that an owner or their agent is using or intends to use the indemnified loan as a platform or 'showroom' for a sale.
[Refer to 2.9]

Security and transport conditions

- 2.11** Indemnity will only be issued when the loan in question is made in accordance with the Arts Council's security and transport conditions, the current versions of which are set out in Annexes D and E. The Secretary of State may seek assurances that these conditions can be met before granting indemnity and, if a claim is lodged, will require confirmation that they were complied with.

National Security Adviser

- 2.12** The National Security Adviser, based at the Arts Council, may make further recommendations in individual cases and may, in any case, be consulted by national institutions on any aspect of security arrangements.

Environmental monitoring and control

- 2.13** The Secretary of State will need to be satisfied that arrangements have been made for providing a level of environmental monitoring and control necessary for the appropriate and effective care of the object loaned. Some general conditions are contained in Annex D. The Environmental Adviser to the Arts Council can provide additional advice to nationals.

Identity of the owner

- 2.14** The identity (both name and address) of the institution, body or person which owns the object to be loaned (namely, the institution, body or person holding full and unconditional title to the object) should be shown on the schedule sheet. This is important, as indemnities are issued to owners and incorrect owner details could render indemnity invalid. If private owners are reluctant to be identified on official documents, the borrower can arrange for the name and address to be omitted from the schedule, but the information nevertheless should be supplied to the Arts Council on a separate sheet and may be limited to name only plus a c/o address. Alternatively, it is possible to inform the Arts Council verbally (but only if absolutely necessary). Borrowers should remind owners that in the event of a claim their full details would be required. Borrowers may assure owners that all information is treated in the strictest confidence and with attention to security of owner details (the Arts Council stores details in locked cabinets within secure buildings).
- 2.15** In circumstances where the owner details are likely to be incomplete and the owner is shown as 'c/o' their agent or 'c/o' an individual or an address, borrowers should contact the Arts Council when preparing the indemnity paperwork and certainly before the application for indemnity is submitted. The Secretary of State may request written confirmation from the owner confirming that they have full and unconditional title to the object. Such a document should be countersigned by the agent confirming that they are authorised to act as the owner's agent.

Change of ownership during loan period

- 2.16** If ownership of an object changes, the current indemnity ceases immediately and a new indemnity must be applied for.
[Refer to Part 3]

Valuation

- 2.17** Before agreeing a valuation with an owner, the borrowing institution must bear in mind the importance of ensuring that the indemnity valuation is appropriate. For example, indemnity valuation should represent a fair estimate of the value that the object to be indemnified might reach if sold on the open market at the time of the loan, this estimate resulting in the specified value agreed for purposes of indemnity.
- 2.18** In scrutinising and assessing a proposed valuation, borrowers should bear in mind that the purpose of providing indemnification is that the party suffering loss should not be out of pocket as a result of that loss but neither should the loss provide them with an opportunity to profit thereby.
- 2.19** If the Secretary of State considers the value attributed to a proposed loan to be too high (10% or more above valuation advised by the borrower or independent valuer), indemnity may be limited to the value of the proposed loan which the Secretary of State thinks appropriate. If agreement on valuation cannot be reached between the borrower and the lender, the Secretary of State may seek the views of an independent assessor. If an increase in a valuation becomes appropriate during the period of the loan, a new indemnity must be applied for. Indemnity cannot be issued on the basis of a provisional valuation.
[Refer to Part 3]

Loans with a value of, or in excess of, £1 million

- 2.20** Before indemnity will be granted, borrowers should be prepared to justify the valuations of loans equal to, or in excess of, £1 million. The Secretary of State reserves the right to question valuations s/he believes excessive and will, if necessary, call on an independent assessor to comment on such valuations. The Secretary of State may from time to time (on a 'spot check' basis) ask borrowers to provide a reasoned argument for a valuation and to cite recent evidence (such as saleroom prices achieved) of valuations for comparable objects if available. Borrowers should routinely check valuations against such evidence.

Conditions under which a loan is made

2.21 It is a requirement of the Act that, for indemnity to be given, the loan must be made in accordance with conditions approved by Government. These conditions, currently approved and usually required to be included in every such loan, are set out in clause 2 of the standard form of indemnity (refer to the standard section 16 indemnity certificate at Annex G). NB National institutions will note that clause 2 of the standard form of section 16 indemnity requires that the borrower should ensure that certain provisions and requirements are included in the loan agreement corresponding to that indemnity.

2.22 The clause 2 conditions, which are a condition precedent of indemnity and which should be reflected in the loan agreement, in the main reflect the exclusions made at clause 4 of the indemnity. Here are some selective comments about clause 4 exclusions – borrowers should bring any of these points to the attention of owners as appropriate:

2.22(a) the borrower is under no liability for the loss of, or damage to, the object arising or flowing from war, hostilities or war-like operations, but excluding acts of terrorism, riot, civil commotion, piracy and hijacking.

2.22(a) 1. Loss or damage arising or flowing from the following events *is* covered whether or not the 'war exclusion' clause is in place: acts of terrorism; riot; civil commotion; piracy; hijacking.

2.22(a) 2. Owners should be advised of this since some request that the war exclusion clause is removed. (By removing the war exclusion, indemnity is provided for loss of, or damage to, the object arising from war, hostilities or war-like operations.)

Owners may ask for such cover because they are concerned about the risk of terrorism, especially in England or Northern Ireland.

2.22(a) 3. The Secretary of State will not normally remove the 'war risk exclusion' and where this has been requested by the lender, they should be asked to confirm that they understand that acts of terrorism are included and state what particular war risk they envisage. They must also provide written confirmation that the loan would not proceed unless war risk cover is in place. Subject to the lender's response, the Secretary of State may decide to remove the war risk exclusion but only in exceptional circumstances. Borrowers must allow at least two weeks for the Secretary of State to consider such requests.

- 2.22(b)** the borrower is under no liability for the loss of, or damage to, the object arising or flowing from the negligence or other wrongful act of the owner, his servants or agents
- 2.22(b)** 1. The Arts Council's direct experience of loans beginning their 'nail to nail' journey from within the care and supervision of a private individual, rather than an institution or body, has demonstrated that to remove the negligence exclusion clause in such circumstances is to take on unacceptable exposure to risk.
- 2.22(b)** 2. The Secretary of State would consider removing the 'negligence of owners' exclusion clause from a section 16 indemnity, providing that the owner is an institution or body of recognised professional reputation and competence. This includes circumstances where the owner is a person, but their loan will begin its 'nail to nail' journey from, or under the direct care and supervision of, such a recognised institution or body. The Secretary of State may also be prepared to remove the negligence exclusion clause if the loan is travelling as part of a touring exhibition operating under the care or supervision of a recognised institution or body.
- 2.22(b)** 3. The borrower should be satisfied that the recognised institution or body meets at least the same standards of professional care and competence practised in their own institution before making an application on the owner's behalf for the negligence exclusion clause to be removed.
- 2.22(b)** 4. The reason for this policy is to ensure that the institution or body where the loan begins its 'nail to nail' journey is one that is competent and capable of exercising effective professional standards of: security; care; environmental monitoring and control; handling; packing; packing specification; knowledge of appropriate competent quality carriers; risk evaluation, management, control and limitation; and so on.
- 2.22(b)** 5. By way of further guidance on what is meant by a recognised institution or body, in the case of the USA, the Secretary of State would expect the institution or body to be accredited to the American Association of Museums. If requests for the negligence exclusion clause to be dropped come from another country, the Secretary of State would expect the body or institution to be accredited to a similar professional body or to be otherwise recognised and acceptable as a capable and competent institution or body.

- 2.22(b)** 6. In any case, the Secretary of State will only remove the negligence exclusion clause if a convincing case to do so is made by the borrower.

Where a lender has requested that cover is provided for war risk and negligence, in line with the points above in paragraphs 2.22(a) and 2.22(b), the Arts Council will provide a template questionnaire for the borrower to complete to assist the Secretary of State in his/her consideration of the request.

- 2.22(c)** the borrower is under no liability for the loss of, or damage to, the object arising or flowing from the condition (including inherent vice or a pre-existing flaw) of the object at the time of its loan.

- 2.22(c)** 1. This subject is pertinent to condition reporting, covered at 2.23 to 2.32 below. A condition report provides essential information in the event of a claim. Refer to paragraph (vi) of the irrevocable undertaking at Annex B. Taking into account practical and cost factors, borrowing nationals are asked to provide or procure condition reports before and after each significant occasion of an object being moved or handled as they believe appropriate. For example, if the object is being collected by the borrower, the report should if possible be compiled and agreed by owner and borrower before the object leaves the care of the owner and the report checked and, if necessary, amended when the object arrives at its destination or, if the object is being delivered by the owner, it should be examined as it is unpacked – preferably in the presence of the deliverer and/or owner. Either way, a condition check report should, where possible, be agreed by both parties before the object is moved.

[Refer to 2.23 to 2.32]

- 2.22(d)** the borrower is under no liability for the loss of, or damage to, the object arising or flowing from restoration or conservation work undertaken to the object by the borrower, his servants or agents with the agreement of the owner

Where section 16 indemnity does not apply

- 2.22(d)** 1. For the purposes only of this guidance, the conservation or restoration processes referred to below are those that are interventive. Therefore, preparation of objects for exhibition or study such as framing, mounting, glazing and de-glazing do not fall under the terms 'conservation' or 'restoration'. However, cleaning; repair; re-touching; polishing; chemical or physical consolidation, stabilization or other treatment; re-lining or stretching; and other invasive procedures are covered by the terms 'conservation' and 'restoration'.
- 2.22(d)** 2. In considering any points below related to conservation or restoration work, borrowers should note that the GIS is not for the benefit of owners. For example, borrowers should consider carefully whether objects should be taken on in a dirty or poor state, such that various insurance risks or burdens related to urgent or essential treatment of the owner's property are transferred to the taxpayer. The GIS is not a means whereby owners can have certain insurance risks covered while essential conservation or restoration work is carried out on their property because a loan was arranged with the borrowing national institution.
- 2.22(d)** 3. If a borrowing national institution is proposing to carry out or arrange treatment because an object is in a delicate state, it should consider whether it should be taking on the loan at all.
- 2.22(d)** 4. All objects loaned under these guidelines must be fit to travel. For example, they should not be so fragile or delicate that transit would result in considerable risk either during travel or during other periods of the loan. Objects loaned should also be otherwise fit: for example, they should not be infested in such a way that the infestation could spread to objects indemnified by the Secretary of State or to a national's permanent collection.
- 2.22(d)** 5. If conservation or restoration is being carried out with the agreement of the owner, loss of, or damage to, the object loaned arising or flowing from the conservation or restoration work itself will not be covered by section 16 indemnity.
- 2.22(d)** 6. In no case will section 16 indemnity cover loss or damage arising or flowing from professional negligence, namely the conservator's (or his servants or agents) own lack of skill or due care and attention or breach of duty of care.

2.22(d) 7. If the conservator does not carry insurance to cover loss or damage arising or flowing from the conservation or restoration work being done, the owner must sign an agreement that the work may be carried out. That agreement should include a detailed schedule of the work and must be agreed by the conservator or restorer in advance. The owner will be responsible for deciding how to cover the risk to his property given that such risk will not be covered by section 16 indemnity.

2.22(d) 8. In no case will section 16 indemnity cover loss or damage arising or flowing from treatment carried out with the agreement of an owner but contrary to an owner's instructions or agreement.

Where section 16 indemnity may apply

2.22(d) 9. The Secretary of State will consider providing cover for transport, fire, theft and certain accident risks if treatment of the loan would contribute materially to the understanding or appreciation of that loan (for example, cleaning of a picture).

2.22(d) 10. If the work is to be carried out by a private, off-site conservator or restorer, the Secretary of State will consider whether transport to and from the studio or workshop may be covered providing the Transport Conditions are met (refer to Annex E).

2.22(d) 11. The Secretary of State will also consider whether s/he will cover loss or damage arising or flowing from fire or theft or accident (if such events are not associated with the conservation or restoration work being carried out) but only if there is a strong case for her/him to do so as it is expected that the conservator carrying out the work will have commercial insurance against loss or damage caused by fire, theft, accident or as a result of the work being carried out.

2.22(d) 12. If the conservator or restorer does not carry insurance to cover risk, the owner must sign an agreement that the work may be carried out. That agreement should include a detailed schedule of the work and must be agreed by the conservator or restorer in advance.

2.22(d) 13. The National Security Adviser should always be consulted about the level of security and fire precautions at off-site premises and the Secretary of State should be consulted on a case-by-case basis.

2.22(e) the borrower is under no liability for the loss of, or damage to, the object arising or flowing from a third party claiming to be entitled to that object

- 2.22(e)** 1. The Secretary of State cannot indemnify lenders against loss arising from legitimate claims as to good title. If a lender transpires not to be the owner (for example, because the 'lender' did not have good title to the object) the contract between the person named on the relevant section 16 indemnity schedule as being the owner and the Secretary of State is rendered unenforceable.
- 2.22(e)** 2. The Secretary of State cannot protect against sequestration in the pursuance of a claim by a third party. This would be a matter for the courts. (Borrowers will note that it is impossible for them to manage, control and limit risk arising or flowing from action through a court and this is a further important factor in excluding section 16 indemnity risk cover.)
- 2.22(e)** 3. Nor can the Secretary of State indemnify for loss resulting from a court holding in favour of a third-party claim or loss arising from a failed third-party claim.

Condition reporting

Initial condition report

- 2.23** Refer also to 2.22(c) above. The Arts Council recognises that there are cost implications and practical difficulties here for national institutions, but borrowers should, whenever possible, ensure that objects to be indemnified are condition checked by their staff or an appointed agent before indemnity is to apply. The purpose of pre-loan checking and reporting is to determine and to record as comprehensively as is reasonably possible a reliable, accurate account of the condition of the object proposed for loan before indemnity is to apply. Agreement should occur between the owner or their appointed agent and the borrowing national institution or its appointed agent on the content of the condition report before care and control of the object passes from the owner to the borrowing national institution, namely before the loan is effected. Borrowers should note that attention to detail (as much as circumstances and the nature of the object allow) is vital. The initial condition report is especially important, since all subsequent checks will be made against it. [Refer to 2.22(c)]

Reporting by transport agents, other bodies and so on

2.24 Pre-loan reports by transport agents might be a useful alternative if the borrower cannot itself make arrangements to check an object. However, transport agents might be limited by their terms of contract to reporting only on 'apparent defects'. They may also deliberately or unintentionally fail to report damage. Another alternative is pre-loan reports from another public collection if the loan is leaving it to travel to the borrower – but the same risks apply in such cases. However, the Secretary of State believes that it is crucial to indemnity for a condition report to be made at all significant stages of a loan if possible. National institutions are strongly urged to ensure that, if they cannot personally carry out a condition report, an appropriate person or body (for example, a transport agent or public institution) does so on behalf of the borrowing national institution.

Checking during unpacking

2.25 Having prepared and agreed (between owner and borrower) an initial condition report, the condition of the loan should then be checked against the initial condition report at the time of unpacking and an additional dated record made of any difference/change in the condition of the loan. If there are no differences/changes in the condition of the loan, this fact should be recorded and dated on the initial condition report.

Checking prior to repacking

2.26 Before being packed to travel back to the owner or next point of care and control (for example, in the case of a travelling exhibition) the condition of an object should be checked against any relevant condition report and appropriate dated notes/records/reports made. An additional note on an existing report is acceptable.

Final condition report

2.27 When returning the loaned object back into the care and control of the owner or their agent, each party (borrower and owner or their agents) should where practical agree a final report on condition before care and control passes back to the owner or their agent, namely before return of the loaned object. This final report will of course in many cases be the report prior to repacking described at 2.26 but it may of course be sensible to condition check very high-value objects on return to the owner and therefore personally to identify any damage during the return transit – this report would then become the final one. An additional note on an existing report is acceptable.

Purpose of condition reporting

Determining loss

2.28 Agreed, timed and dated condition reports are a crucial factor in establishing the time, place, cause and extent of any loss or damage. It is any difference between the initial condition report (object passing into the borrower's care and control) and final condition report (object returning to the owner or their appointed agent) that is then legitimately the subject of a possible claim. Claims arising from loss or damage during transit can be determined with the help of notes, records or reports made before and after transport.

Guarding against mistakes of fact

2.29 The Department recognises that condition reporting in every event may be impractical for borrowing institutions, but borrowers should bear in mind the following: in the event of a claim, the borrowing national institution would be expected to advise the Secretary of State with authority and reasonable certainty whether the claim was legitimate under the indemnity applying (for example: cause and extent of damage; amount of depreciation). Without condition reporting, the borrowing institution could well take on an object in ignorance of its condition. Some examples of the consequences of this are: mistakes of fact; inaccurate claims; illegitimate claims; deliberate or unintentional omission by owners, their servants or agents; fraud or deception by owners, their servants or agents; deception or cover-up by packers or carriers; unnecessary dispute. Without adequate condition reporting, the Secretary of State is vulnerable and exposure to risk is high. Naturally, the Secretary of State looks to national institutions to act responsibly in the domain of condition reporting.

Where an agreed condition report is not possible

Other sources of information on condition

2.30 If it is not possible for the borrowing national institution or an agent appointed by it personally to supervise and agree a condition report (for example, because of cost or because an object is leaving an owner's home in a distant and/or inaccessible place), then the borrowing national institution should make an arrangement that as best as possible protects the Secretary of State (refer to the potential problems at 2.29 above). Possible approaches are to request a signed document from the owner or their agent as to the condition of the object loaned – although this is far from an ideal solution (risk of deliberate or unintentional omission). Another possibility is for qualified staff to prepare initial condition reports if they visit potential lenders at the planning stage of an exhibition and for this report to be verified when the object is collected either by a courier or transport company or other agent.

Minimising risk and mistakes of fact

2.31 The details covered by such a document should be appropriate to the nature of the object to be loaned (for example, details itemised as appropriate for a painting, a photograph, ceramic object, motor vehicle, scientific instrument, archaeological object or art installation). To minimise or preclude deliberate or unintentional omission by owners, their servants or agents and fraud or deception by owners, their servants or agents, signed and dated photographs or videos or other such visual records can be a valuable tool and should therefore be considered a desirable part of such arrangements. In any case, when making such arrangements, namely where it is not possible for the borrowing national institution or an agent appointed by it personally to supervise and agree a condition report, borrowing national institutions should aim to put in place a loan arrangement that minimises or precludes deliberate or unintentional omission by owners, their servants or agents and fraud or deception by owners, their servants or agents. If the above arrangements are not possible, the Secretary of State may in some cases have to consider issuing indemnity only from the point at which it is possible for the borrowing national institution or its appointed agent to agree a condition report with the owner or their appointed agent.

Condition reporting in the event of damage

2.32 In the circumstances of a claim, the borrower must give evidence of the current condition of the object loaned, for example, photographs or a written statement as to the object's condition. In the event of a claim, the type of evidence that would be deemed to be acceptable by the Secretary of State would depend on both the nature of the material and the source of the object loaned.

Objects must be fit to travel

2.33 Regardless of the above, national institutions must establish that an object to be loaned is fit to travel.
[Refer to 2.22(d)(3) and 2.22(d)(4)]

Packing

2.34 As well as being fit to travel, objects must be given appropriate and effective packing protection. Borrowing nationals should advise their agents on good packing methods and specifications and obtain information in advance about the packing type and method used on an incoming loan in order to be as well prepared as possible to ensure correct handling and safe transit at all stages.

Period of indemnity

2.35 Objects which are covered by indemnity are usually covered 'nail to nail'. This means they are usually covered while on loan to the borrower and while being taken to or returned from the place where the object loaned is to be or has been kept while on loan to the borrower and until they are returned to the owner. 'Nail to nail' cover may not always apply in the case of touring loans (refer to 2.4 and 2.56 to 2.59). When making an application, the loan period should include the period necessary to collect and return the object to the lender. Indemnity cannot be pre-dated, namely, a late application cannot result in indemnity being issued retrospectively or backdated to a day or time before the day or time of the receipt of the application.

While the period of indemnity may cover the time required to return objects to lenders, whether they are resident in the UK or abroad, it does not cover the period of transit to foreign borrowers. Overseas borrowers must assume risk during transit out of the UK as well as other risk. However, some concession might be made for touring loans (refer to 2.57).
[Refer to Part 3, 2.4, 2.56 to 2.59]

- 2.36** When indemnity is issued on the day it comes into effect, it is only valid from the precise time it is signed. Where cover for long-term loans is being arranged, the Secretary of State will grant indemnity for a maximum of three years. [Note: For this purpose an indemnity application seeking cover from 25 December 2015 to 24 December 2018 is correct, whereas one seeking cover from 25 December 2015 to 25 December 2018 is incorrect as the cover is inclusive of days, so the latter example is three years and one day.]
[Refer to Part 3]

Renewing or extending indemnity

- 2.37** When renewing or extending indemnity, a fresh processing form and schedule sheet should be sent in the usual way. The expiry date of the previous indemnity should also be supplied.

Commercial insurance

General rule against

- 2.38** As a general rule, the Government and the bodies it funds bear their own risks and do not purchase commercial insurance. Commercial insurance should only be considered in the most exceptional circumstances. An example is where 'top-up' insurance (refer to 2.40 and 2.41) is necessary to secure important loan(s) from owner(s) whose valuation is not acceptable to the borrower or the Secretary of State. In order for national institutions to purchase commercial insurance, the purchase must meet value-for-money criteria. National institutions should refer to *Government Accounting* (especially Chapters 26 and 27) and their Financial Memorandum or Funding Agreement as appropriate. This requirement is not designed to prevent Exchequer-funded institutions or bodies from using commercial insurance in all circumstances but rather to ensure that the arrangements are cost effective for the public sector as a whole.

Source of funds to pay premiums

- 2.39** It may be possible to purchase commercial insurance without using Exchequer monies or public funds, for example, by using funds from a sponsor or independent benefactor. If so, then a named bequest or sponsor should ideally be specified to show clear separation from the usual rules applying to non-grant receipts. National institutions should bear in mind that, apart from Government grants, sources of funds such as admission charges, bank interest, trading activities and shop sales are treated as public funds.

Indemnity and commercial insurance together

2.40 If institutions propose to purchase commercial insurance to run alongside indemnity, the Secretary of State must be consulted before such insurance is purchased. Legal advice may be required to ensure that in the event of a claim the terms proposed for any payment are clear to insurers, owner and borrower and also to ensure there is no duplication of cover. Any such commercial insurance should be taken out in the United Kingdom and governed by English law (Scottish law if the issuing Secretary of State is the Secretary of State for Scotland and the law of Northern Ireland if issued by the Department of Education for Northern Ireland (DENI) (refer to 2.65 and 2.66)). A copy of the terms of the proposed contract of insurance should be sent to the Arts Council at least one month ahead of the proposed loan.

In all cases, where the use of commercial insurance is being considered either on its own or as a top-up to GIS, the relevant sponsorship contact at DCMS should be notified at the earliest opportunity.

Deciding apportionment

2.41 While the position in the event of total loss should be clear (the Secretary of State would pay up to an amount not exceeding the value specified in the relevant indemnity certificate and the commercial insurer would pay the remaining amount of loss) the position on contribution and/or apportionment in the event of damage or depreciation may not be clear and this is why the Arts Council would need to advise parties, having seen the relevant documentation.

Loan agreement

2.42 If there is a dispute about the value of an object to be loaned and the borrowing institution proposes to take out 'top-up' commercial insurance, care should be taken that the indemnity and any corresponding loan agreement show the correct value of the indemnity (namely, not the full value of the object for the purposes of the loan but the amount up to which the Secretary of State thinks it reasonable to provide cover).
[Refer to 2.38, 2.40 and 2.41]

Food and drink

- 2.43** The General security and environmental conditions (refer to Annex D) do not allow food and drink in an area containing objects indemnified under section 16 without prior approval of the arrangements by the National Security Adviser of the Arts Council and the Environmental Adviser to the Arts Council. The type of measures taken to protect indemnified exhibitions and which have proved successful are set out in Annex F.

Mechanical exhibits, moving exhibits, motor vehicles and so on

- 2.44** In no case will indemnity cover loss of, or damage to, an object arising or flowing from normal wear and tear to that object. Paragraph 2.45 below gives some examples of objects where wear and tear might especially be an issue and where the owner and borrower must understand from the outset that normal wear and tear is not covered. Neither would indemnity usually apply to objects which can travel while not on static display (refer to 2.46 below). Where appropriate, borrowers should address such points in the relevant loan agreement. Borrowers should consult the Arts Council on a case-by-case basis about loaned objects that can travel but which they propose to display in motion. The owner should also be consulted. A publication entitled *Standards in the Museum Care of Larger & Working Objects* (1994) is available from the Collections Trust website.

Objects with moving parts

- 2.45** Objects containing or comprising moving parts, for example: musical instruments; watches; clocks; fuel powered, electric powered or mechanically operated tools, devices or items; manufacturing devices; robotic items; mechanical items; mechanical computation equipment; scientific instruments; motor vehicles; motor cycles; civil and military vehicles, aircraft, locomotives, boats and ships; bicycles; carriages; engines; objects operated by remote control; appliances; apparatus; toys; models; record players; music cassette players; music CD players; video cassette players; CD-ROMs; laserdiscs; and other objects and items containing or comprising moving parts, may be the subject of section 16 indemnity but in no case will indemnity cover loss or damage arising or flowing from normal wear and tear.

Objects which can travel

2.46 Objects made for the purposes of travel with the involvement of person(s) or which travel under remote control or travel unaided under their own power, for example: motor vehicles; motor cycles; civil and military vehicles, aircraft, locomotives, boats and ships; bicycles; carriages; objects that can travel under remote control; mechanical devices or items; toys; models; and other objects and items which can travel with the involvement of person(s) or travel under remote control or travel unaided under their own power, may be the subject of section 16 indemnity while on static display, but in no case will such indemnity cover loss or damage arising or flowing while such objects or items are driven, piloted, flown, sailed, ridden, operated and so on, unless the Secretary of State has given specific written approval permitting section 16 indemnity to apply while the object or item is in motion or exhibited as a working display or while it had to be set in motion in order to maintain it in running order. The owner's approval should, of course, also be sought.

Financial limits

2.47 In order to control the Government's contingent liabilities, annual limits are set for each institution eligible to receive Government Indemnity. Accordingly, all national institutions will be asked by their sponsoring Department to submit, in advance of each financial year, a profile giving their best estimate on a month-by-month basis of the total sum of indemnity cover they will be seeking during that year (including any long-term loans which will be in effect).

How a national's annual limit is set

2.48 If the Treasury agrees the total level of section 16 contingent liabilities for the year ahead, indemnity may be granted to the borrowing national institution up to the level of the highest monthly forecasted estimate. These estimates are reported to Parliament (refer to Part 7) and indemnities will not be granted if it would cause the total liability of any institution to exceed the approved profile estimate by £5 million or more (£10 million in the case of the National Gallery, London). As soon as any institution becomes aware of a likely breach of their limit, the relevant Secretary of State or Department must be informed. Arrangements can then be made for the Secretary of State to notify H M Treasury which in turn notifies Parliament of the change.

Northern Ireland

2.49 In Northern Ireland, month-by-month profiles are not required as the Department of Education submits an annual estimate to the Department of Finance and Personnel. Institutions should, however, advise the Department of Education of the likely indemnity requirements of major exhibitions when these are at the planning stage.

Objects co-owned by a national institution and another party

2.50 There may be circumstances where an object is co-owned between a national institution and a non-national institution and each party wishes to judge how indemnity might apply when the object is moved from one party to the other or when it is borrowed by an institution which does not co-own the object. The following advice is based on a 50/50 co-ownership between a national institution and a non-national institution.

During any period when the object is borrowed by the co-owning national institution

2.51 The co-owning national institution may apply on behalf of the co-owning non-national institution to the Secretary of State for indemnity. It may do this only in respect of the non-national institution's 50 per cent share of ownership of the object. In the event of a claim, indemnity would apply solely to the non-national institution. It would apply only up to an amount not exceeding 50 per cent of the object's value specified in the relevant indemnity certificate.

During any period when the object is borrowed by the co-owning non-national institution

2.52 The Secretary of State would not issue indemnity in respect of the national institution and its 50 per cent share of ownership of the object. However, the co-owning national institution should ask the co-owning non-national institution to arrange minimum liability cover (refer to 6.4). The minimum liability calculation (as set out in 6.4) would be based on the lending national institution's 50 per cent share of the object.
[Refer to 6.4]

During any period when the object is borrowed by a non-national institution which does not co-own the object

2.53 Any borrowing non-national which does not co-own the object should apply for indemnity on behalf of the co-owning non-national institution. The co-owning non-national would be covered in respect of its 50 per cent share of the ownership of the object. Indemnity would apply only up to an amount not exceeding 50 per cent of the object's value. In respect of the national institution and its 50 per cent share of ownership of the object, the borrowing non-national should be asked to arrange cover based on the same minimum liability arrangement referred to in 2.52 above.

During any period when the object is borrowed by another national institution

2.54 Any borrowing national institution which does not co-own the object may apply on behalf of the co-owning non-national institution to the Secretary of State for indemnity. In the event of a claim, indemnity would apply solely to the non-national institution. It would apply only up to an amount not exceeding 50 per cent of the object's value. As for the co-owning national institution's 50 per cent interest in the object, it and the borrowing national institution should agree between them an arrangement that ensures clarity of responsibility in the event of loss or damage (refer to 6.4(j)).

Claims

2.55 In all circumstances, for the purposes of any claims in respect of such co-owned objects, indemnity would be applied proportionately such that if, for example, there were a claim for an amount of depreciation equating to 30 per cent of the total value of the object, the indemnity, in applying solely to the non-national institution, would apply only to 50 per cent of that claim (namely, an amount equating to 15 per cent depreciation). In the event of total loss, the co-owning non-national institution would receive up to an amount not exceeding 50 per cent of the value of the object if the claim were agreed by the Secretary of State.

Touring exhibitions

Tours of objects loaned to a national institution

2.56 Where a loan-based exhibition is touring within the UK only, then indemnity may be given. In cases where the UK tour remains under the responsibility of a borrowing national institution, such coverage would include risk at the other UK venues. The Secretary of State will give favourable consideration to covering the inward transport of touring objects and the return journeys to owners where the borrowing national institution is organising the whole UK tour. This is because the national institution may be interpreted as being the principal borrower and as having ultimate responsibility for collecting and returning loaned objects to owners. As the co-ordinator of arrangements, it has a general responsibility while the exhibition is travelling. Where objects loaned are being toured within the UK and they pass into the care and control of another borrower (which is eligible to borrow under the Act) and therefore pass out of the national institution's care and control, then the new borrower should apply for indemnity. Where a venue is a commercial one, then paragraphs 6.9 and 6.10 would apply.

Objects travelling to a foreign borrower instead of returning to the owner

2.57 Where a tour is passing through the UK, indemnity may cover the UK leg of the tour. Where objects are to travel to a borrower outside the UK instead of being returned to the owner, responsibility should hand over at the final UK venue. The foreign borrower should assume care and control of the object(s) at the UK venue – preferably, once condition reports have been agreed between the UK institution and the foreign borrower. The foreign borrower should assume risk for transit out of the UK and itself arrange cover of that risk. While it is legitimate to use indemnity to cover risk of transit back to an owner resident abroad, the GIS does not exist to benefit borrowers outside the UK, for example, by covering transit or other risk for foreign borrowers. Indemnity might, however, be applied to cover risk during the outward transit of touring objects to foreign borrowers where such an arrangement has been planned and agreed in advance of the commencement of the whole tour and where such arrangement is aimed at achieving a 'package' approach to sharing the cost and risk between the participating tour venues. In such cases, it must be absolutely demonstrable that UK public access to the objects would not have been facilitated but for the use of indemnity to cover risk during transit to a foreign tour venue as an element in realising the tour package. If in doubt, consult the Arts Council.

Where a UK borrower is not the last venue on a tour

2.58 Where a tour leaves the UK and goes to another country and this is the last venue before returning to the owner, UK borrowers should not assume that it will fall to the Secretary of State to indemnify the owner in respect of the return of object(s) to that owner. If the last venue of a tour is the UK, then the Secretary of State will give favourable consideration to giving indemnity to cover return to the owner.

Objects which are stored

2.59 If some objects on a touring exhibition have to be stored (for example, because it is not appropriate to split the load at the UK leg of the tour or because there is no room for display at the UK venue(s)), then the Secretary of State will consider whether it is appropriate to apply indemnity (this is covered in 2.4 above). However, borrowers should note that the Secretary of State is unlikely to indemnify where an object is borrowed without any intention to exhibit or to study it in the UK. In circumstances where touring objects are stored in the UK without any UK public benefit, before they then move on to the next venue (outside the UK), then that venue is the beneficiary and should arrange risk cover. If tours are planned ahead sufficiently, the UK borrower should not necessarily have to arrange storage of objects not displayed – the objects could instead go straight on to the country which is intending to display the objects.
[Refer to 2.4]

Emergency and disaster planning

2.60 The Secretary of State believes that emergency and disaster planning is a critical element in risk evaluation, management, control and limitation and s/he therefore expects borrowing national institutions to have such a plan in place.

2.61 Some causes of emergency and/or disaster might be: fire; smoke; escape of water from tank, pipe or appliance; theft; robbery; malicious damage; storm; explosion; terrorist act; political act; flood; riot; civil commotion; pest attack; earthquake; collision by aircraft, aerial device or other vehicle.

- 2.62** A typical emergency and disaster plan would cover broad topics such as: risk analysis, management, control and limitation; preventive measures; and effective preparation, response and recovery. A plan might therefore include such specific topics as: object priority and treatment lists; health and safety; retrieval and salvage procedures; security; plans for involving emergency services; training and procedures for staff, such as keyholders, security, handlers, conservators, restorers, scientists, engineers, registrars, trustees; arrangements for off-site safekeeping of inventories and plans of the building; alternative secure storage and treatment facilities; location of emergency equipment; object labelling; condition reporting; media handling.
- 2.63** Another key element of planning is emergency contact and call-out lists covering staff and their roles in an emergency, as well as emergency arrangements with: suppliers; transporters; contractors; off-site conservators and restorers; and utility services such as gas, water and electricity.
- 2.64** National institutions are welcome to involve Departments in such plans. An example might be to include emergency contact numbers for key decision makers in Departments in case a quick decision is needed – for an example, refer to 5.4 to 5.6 (urgent damage or other treatment to loaned objects).

Law

- 2.65** Any 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. Sometimes owners propose alternatives to this, so the following might be helpful in dealing with enquiries or proposals. First, borrowers may like to note that it is possible for foreign courts to determine disputes according to English law and for English or Welsh courts to determine disputes according to foreign law.
- 2.66** Although there is no reason in law why disputes should not be dealt with by foreign courts, in no case will the Secretary of State consider indemnity being governed by any law other than English law or consider a case taking place in a foreign court of law according to English law or consider a case taking place in a court in England or Wales according to foreign law. The same points at 2.65 above and here at 2.66 apply to indemnities issued by the Secretary of State for Scotland or by DENI (so for 'English law' read 'Scottish law' or 'Northern Irish law' and for 'English and Welsh courts' read 'Scottish courts' or 'Northern Irish courts').

The owner's right to impose conditions on a loan

2.67 The terms and conditions of section 16 undertakings and these guidelines do not affect the owner's right to impose other reasonable conditions on a loan. Nor do they affect the owner's rights to claim compensation from the borrower where conditions imposed by the owner have been breached. Any such compensation will be borne by the borrower and not by section 16 indemnity.

Part 3

Applying for indemnity

Introduction

- 3.1** Under normal circumstances the borrowing national institution should make the application on behalf of the owner. The application should include:

Application/ processing form

- the dates indicating the period required for indemnity cover
- the dates indicating the period during which the proposed loaned object is to be displayed to the public or during which it is to be made available to the public for study or during which it is to be examined, studied or analysed by the borrower

[NB Note that these latter dates are different from the dates above. Exhibition or study dates will inevitably fall inside the total loan period covered by indemnity. This is mainly because of the inward and outward transport periods. The Arts Council needs to know both the total loan period and the exhibition or study period. It needs to judge whether an excessive period is proposed for indemnity cover as this may lead to greater exposure to risk than is necessary.]

[Refer to 2.35 and 2.36]

- the purpose of the loan, for example: temporary exhibition (give its name); long-term loan; availability for public study; examination, study or analysis by the borrower, the results of which are to be brought into the UK public domain – indicate how findings are to be brought into the public domain
[Refer to 2.3 to 2.9]
- the total value of objects on the accompanying schedule sheet(s) (if any valuation is given in a foreign currency, the current exchange rate used and total sterling equivalent should be stated)
- who and where to contact for queries

Schedule sheet (on plain paper)

- the name and address of the owner(s) of the object(s)/item(s) presented in alphabetical order of the owners, with a separate page(s) for each owner;

[Refer to 2.14 and 2.15]

- a full description of the object(s)/item(s) and details of its medium, dimensions and date of making (if known)
- the name(s) of the artist(s), maker(s), author(s), designer(s), manufacturer(s), fabricator(s), craftsperson(s) or as appropriate
- identification number, accession number, index number, collection or catalogue number, rotation number or any other such unique identifier if applicable
- the current market value of the object(s)/item(s) in sterling or foreign currency
[Refer to 2.17 to 2.19]

3.2 Failure to provide the above information may result in delays or refusal of indemnity.

Model application form

3.3 An example of the format in which applications should be made is at Annex C. The Arts Council suggests that national institutions save this format in their system.

3.4 Where an exhibition is to be staged, a single application form should if possible be used on behalf of all lenders, providing the loan period being applied for is the same for all borrowings. Each separate and distinct lending owner must nevertheless be identified on a separate schedule sheet along with the object(s) being lent by them.
[Refer to para 3.5 below and to Annex C]

Schedule sheet

3.5 The model application form described above is intended as the covering sheet only, that is, it should serve as the application/processing form only – national institutions will still of course need to supply schedule sheets (which should preferably be on plain paper and certainly not on logo paper or headed paper) setting out details of the owner, object(s) and valuation(s). Refer to Annex C, which provides a model of how such schedules should be laid out. The model layout is suggested so that the resulting schedule sheet accurately reflects the wording of the section 16 indemnity certificate itself. Note that this states the object as being ‘listed in the first column’ and the specified value as being ‘in the last column’.

Submitting applications

Timing

- 3.6** The Arts Council aims to issue indemnity for nationals (those without apparent problems) within five working days of receipt of their application, in accordance with the Agreement for the Provision of Services in relation to Cultural Objects between the Arts Council and the Department for Culture, Media and Sport dated 3rd February 2015.
- 3.7** Applications should be made as early as possible and, in order to allow time for any queries to be dealt with, preferably not less than one week in advance of the requested commencement date or two weeks where the lender is requesting war risk and/or negligence cover.
- 3.8** Every effort will be made to process applications at short notice, but the Arts Council has other commitments which may mean this is not always possible and so late applications risk a gap in cover for an existing indemnified owner or no cover at the beginning of a new loan.

Northern Ireland

- 3.9** Northern Ireland applications should be made not less than one month in advance of the requested commencement date.

Covering letters

- 3.10** As the model application form (refer to 3.3 to 3.5) provides for all essential details to be declared, no covering letter is required unless special arrangements are being requested. Examples are a request for an exclusion to be removed and an explanation of this or where information needs to be provided that is material to the application (for example, an object coming in earlier than usual or which might be receiving conservation or restoration treatment).

Email and fax applications

- 3.11** An email application is acceptable. Applications should not be faxed to the Arts Council. If it is not possible to email the application please contact the Arts Council to discuss alternative methods of submitting it.

Changes to existing indemnities

- 3.12** If changes are required to an existing indemnity, a new application form and schedule sheet should be sent. The Arts Council will decide whether to issue a replacement indemnity or whether simply to stamp and sign the new schedule sheet.

Considerations made about applications

- 3.13** Before deciding whether to grant an indemnity and on the extent of the indemnity, the Secretary of State will need to be satisfied on the matters set out in Part 2. Accordingly, each national institution must also have given the undertaking set out at Annex B. The Secretary of State may, in addition, seek further information from other sources if necessary.
[Refer to Part 2 and Annex B]

- 3.14** If indemnity is granted, it will usually be offered on the terms set out in Annex G. Certain limited amendments may be made to the standard indemnity undertaking in exceptional circumstances and these are set out in 2.22. The indemnity will be sent to the national institution. That institution should then forward a copy of the indemnity undertaking to the owner or their appointed agent along with a copy of the appropriate schedule.
[Refer to 2.22 and Annex G]

Multiple owners

- 3.15** There is nothing to prevent the Secretary of State indemnifying owners who share title to an object (for example, a group of siblings lending from a private collection). Nationals should, however, consider the potential complexities in the event of a claim and take appropriate action. For example, they could suggest that such lenders provide a clause for inclusion in the loan agreement that addresses how payment of any claim would be divided between them.

Renewing or extending indemnity

- 3.16** When renewing or extending indemnity, a fresh processing form and schedule sheet should be sent in the usual way. The expiry date of the previous indemnity should also be supplied.

Loans returning to owners sooner than anticipated

- 3.17** If a loan is to be returned sooner than declared on a national's original application, please inform the Arts Council as this will affect the total contingent liabilities. Indemnity applies while the object is on loan to the national and ceases when it is returned to the owner. The Arts Council needs to be informed so that records may be amended.

Part 4

Circumstances where section 16 indemnity is not given

Loans by national institutions to non-national institutions

National bears the majority of risk

- 4.1** The Government follows a policy whereby Exchequer-funded bodies bear their own risk. The Secretary of State may also consider it inappropriate to guarantee compensation to an Exchequer-funded public body when it is lending public property. In practice, indemnity undertakings are not therefore given to national institutions in circumstances where they are lending objects owned by them. However, provision is nevertheless made for such loans. For more detail on these points, refer to 1.9 to 1.13 and to Part 6.

Non-national institution carries minimum liability

- 4.2** When a non-national institution (refer to 1.20 to 1.21 above for a definition) asks to borrow a national institution's property, the borrowing non-national institution may seek assurances that it does not need to purchase commercial insurance to cover 100 per cent of the loaned object's value. The borrowing non-national institution does not apply to the Secretary of State or the Arts Council for that assurance, but to the national institution at the time of seeking the loan. The national institution decides whether it is satisfied with the security, environmental, transport and other arrangements surrounding the loan (in most cases in consultation with the Arts Council). If the national institution is content with this and it has satisfied itself that the loan is primarily for the public benefit, then the borrowing non-national institution is relieved of the need to purchase cover of 100 per cent of the value of the loaned object under commercial insurance and the minimum liability arrangements set out in 6.4 below will apply.
[Refer to 1.20 to 1.21, 6.4]
- 4.3** In some circumstances a national institution might have reservations about security or other risks when lending to a non-national institution. It is the decision of the national institution when assessing the level of risk involved, whether to seek an assurance from the borrowing non-national that commercial insurance cover to a satisfactory level is being obtained. In circumstances where the national institution is satisfied with the loan arrangements, 100 per cent cover under commercial insurance should not be required of a non-national borrower and the arrangements set out in Part 6 would apply.

Loans from the Royal Collection Trust or from Royalty

General guidance

4.4 The Government does not provide section 16 indemnity for loans from the Royal Collection Trust, which is inalienable Crown property owned by the Royal Collection Trust. The true beneficiary of this trust is the nation at large but the property is usually described as being held in trust for the Sovereign in Right of Crown which can be constitutionally distinguished from the Sovereign in her private and personal capacity. In the latter personal capacity, the Sovereign is able to obtain the benefit of section 16 indemnity like any other private person lending to an institution to which the GIS applies. The Government has, however, given a specific Undertaking to Her Majesty that it would seek parliamentary authority for compensation in the event that loss or damage occurred to the Royal Collection and therefore commercial insurance is not required by national institutions borrowing from the Royal Collection Trust.

What you have to do

4.5 When considering loans from a Royal source, you should determine whether the object proposed for loan:

- (a) is vested in, and managed by, the Royal Collection Trust, in which case the Undertaking to Her Majesty may apply; or
- (b) is owned by the monarch in a private and personal capacity; or
- (c) is owned by another Royal in a private and personal capacity;

in which case (namely in cases (b) and (c)) section 16 indemnity may apply. Cases (b) and (c) are each qualified where the object has been obtained wholly or mainly with monies from the Civil List. If this is so, it is the Undertaking to Her Majesty which should apply.

4.6 If section 16 indemnity is relevant: the borrower should apply to the Arts Council on the owner's behalf in the normal way.

- 4.7** If the Undertaking to Her Majesty applies: then the borrower should include the following wording in the relevant paperwork (for example, in the loan agreement or in a side letter):

‘For reasons of constitutional principle it is not possible for the Government to provide formal indemnity cover under the National Heritage Act 1980 for loans from the Royal Collection Trust. The Government has therefore given an Undertaking to Her Majesty that, in the event of loss of, or damage to, objects on loan from the Royal Collection Trust, it would be prepared to seek Parliamentary authority for compensation comparable to that available to private lenders.’

The relevant paperwork should clearly state the object(s) being covered by the Undertaking to Her Majesty (in much the same way as objects are detailed on indemnity schedule sheets) so that it is clear which object is being covered.

Property of the Duchy of Lancaster or the Duchy of Cornwall

- 4.8** Property from the Duchies is not interpreted as being vested in the Crown. Loans from either Duchy may be interpreted as loans from the Sovereign and her family in a private and personal capacity. Therefore, either Duchy may be indemnified under section 16 when lending objects – the arrangement at 4.6 above would apply.

Loan by a national institution or a Government Department or to a national institution

- 4.9** It is very unlikely that indemnity would be granted in respect of an object loaned to a national institution by another national institution or to other wholly or mainly Exchequer-funded bodies or institutions. Guidance on arrangements between a national lending to another national is given in more detail at 6.4(j).
[Refer to 1.9 to 1.13, 6.4(j)]

Loan by a national institution to a Government Department

- 4.10** When objects are loaned by national institutions to central government departments, departmental executive agencies, Government regional offices, other Government outstations or to Exchequer-funded bodies, Crown or Civil Service bodies, or to other national institutions, the cost of replacement of objects lost or destroyed will normally fall on the grant-in-aid of the lending institution. However, the lending national institution may negotiate an agreement with the borrower in advance of the loan for the borrower to meet the cost of loss or damage provided that the borrower can meet such costs from within its existing resources. In any case it is not possible for the Secretary of State to issue indemnity where loans are made to central government departments and their executive agencies, Government regional offices or other Government outstations or other such Crown or Civil Service bodies. This is because they are not eligible borrowers under the Act.
[Refer to 1.9 to 1.13 and 4.1]

Loan by a national institution to the British Council

- 4.11** Indemnity does not apply in circumstances where national institutions loan objects owned by them to the British Council. Enquiries about any indemnity arrangements should be addressed to:

British Council

Arts Group
10 Spring Gardens
London SW1A 2BN
Tel: 020 7389 3194

Loan by a national institution to institutions, bodies or persons overseas

- 4.12** When an overseas body borrows from a national institution, the national institution should request that the borrower obtains commercial insurance unless indemnity is offered by the relevant host government or state. Host government or state indemnities should usually be acceptable. If there is any doubt about their adequacy or reliability, the lending national should seek advice from their legal adviser (or their sponsoring Department). By way of an example, some foreign government indemnities do not apply outside their territorial limits/waters. The lending national institution should in such circumstances request that the borrowing foreign institution obtains cover by other means, to cover the lending national until the point at which the host government indemnity can come into effect.

Objects of a value of £1,000 or less

4.13 Indemnity will not be granted for any object which has a value of £1,000 or less. Damage or loss to objects valued at £1,000 or less must be borne by the borrowing institution up to a limit of £25,000 per annum. The purpose of this arrangement is to eliminate small claims on the Secretary of State. However, when an institution is borrowing a large collection where the compilation of individual valuations would be particularly onerous, the Secretary of State will consider granting indemnity for the collection with a group valuation. If this is the case, the borrowing institution will nevertheless consider a claim for individual objects lost or damaged if their value is £1,000 or less and bear any such claim. The Arts Council should always be consulted before an application is submitted with a group valuation.

[Refer to 5.1, 5.16, 5.19, 6.4(d), 6.4(e)]

Acceptance-in-lieu items

4.14 The Secretary of State may issue section 16 indemnity in respect of items which have been accepted in part or whole satisfaction of Estate Duty, Capital Transfer Tax or Inheritance Tax by the Commissioners of HM Revenue and Customs under the acceptance in lieu (AIL) procedure. (AIL is provided for in the Inheritance Tax Act 1984, supplementary Finance Acts and the National Heritage Act 1980.) However, the Secretary of State will do so only in respect of repairable damage. In no case will indemnity cover total loss of an object accepted in lieu of capital taxes. This is because AIL items have already been acquired for the nation at a cost to the public purse (loss of tax revenue) and paying for total loss is unacceptable. Borrowing national institutions must exercise great care to avoid applying to the Secretary of State for standard indemnity cover in respect of items acquired under the AIL procedure – they should request a modified certificate giving cover only for repairable damage. The Secretary of State will not issue indemnity to national institutions in respect of AIL items held in their own permanent collections.

4.15 If AIL items are lent by one national institution to another, agreement may be reached in advance for the borrowing institution to meet the cost of repairs for damage, providing that the borrower can meet such costs from existing funds.

Deposits

- 4.16** Objects may be sent to a national institution by an owner solely in furtherance of the owner's own interest or for other reasons, for example: for identification; for expert opinion; for storage; for private conservation or restoration work at the national institution; for examination or analysis; sent or deposited unsolicited. No indemnity will be granted to cover the risk in such circumstances.
- 4.17** The national institution should not accept any liability for unsolicited deposits and the owners should be given a disclaimer explaining that neither the national institution nor its officers shall be liable for any loss of, or damage to, the objects whilst they are at the national institution or in transit. If owners are concerned, they should consider purchasing commercial insurance at their own cost.

Loans to commercial institutions

[Refer to 6.9 and 6.10]

Part 5 Claims

Minimum liability

- 5.1** In accordance with the irrevocable undertaking signed (at Annex B), borrowing national institutions must bear the cost of claims up to a limit of £25,000 per year (the year being the financial year of the borrowing national institution). The purpose of this minimum liability is to encourage appropriate and effective care, responsibility and stewardship and to eliminate small claims on the Secretary of State.
[Refer to 4.13, 5.16, 6.4(d), 6.4(e)]

Reporting an incident

- 5.2** Any incident which may result in a claim should be reported to the Arts Council immediately.

Submitting a claim

- 5.3** In practice, national borrowers will submit claims to the Arts Council on behalf of the owner. Such submissions should contain the information listed below.

The aim is to provide:

- proof of loss or damage
- information on cause of loss or damage
- advice on extent of loss

The standard information required is:

- the date on which the loss or damage occurred or was discovered
- a full description of the events surrounding the incident including eyewitness report(s) if available and report or opinion on cause
- photographs or other visual records taken before, during and after the incident, if available
- a copy of all relevant condition reports, for example, the condition report prepared when the object was received/collected and, if the object is in a touring exhibition, a copy of the condition report from the previous venue

- a condition report following damage, including an assessment of whether the object is restorable or not
- if restorable, an assessment of the extent and likely cost of restoration required
- an estimate of depreciation expressed as an amount of monies
- a formal declaration that the security and/or transport conditions were being met at the time of the incident and a brief outline of the arrangements in place
- a copy of the relevant indemnity and the relevant schedule sheet(s)
- a copy of the loan agreement applying to the loan which is the subject of the claim
- proof of the owner's good title to the loan (the Secretary of State may insist on this if the claim is large)

Conservation or restoration in the event of damage

- 5.4** Unless the Arts Council has first been consulted, conservation or restoration should not be carried out on a damaged object. The exception to this is where it is manifest that immediate structural, consolidation or other treatment is necessary to prevent further damage or deterioration (by way of example, it might be necessary to repair a tear in a canvas that might continue to widen and undermine the paint surface still further if left untreated). The borrower should where possible consult the owner (or their agent) before proceeding.
- 5.5** The Arts Council encourages national institutions to carry out treatment in their own conservation departments if they have the relevant expertise and the owner has agreed.

Requests by owners to use a particular restorer

- 5.6** If the owner wishes a particular conservator or restorer to carry out the work, a second comparable estimate must be obtained. If the cost of using the owner's conservator or restorer is considerably in excess of the second estimate, the Secretary of State will seek justification for the difference. If agreement cannot be reached, a suitable professional will be selected through arbitration.
[Refer to 5.9]

Deciding a claim

- 5.7** Based on the evidence provided, the Secretary of State will decide if the claim is eligible.
- 5.8** If an object is to be declared irretrievably damaged or if the amount of depreciation in value of a damaged object is to be assessed, the borrowing institution concerned should utilise its own expertise and seek the opinion of at least one independent/external expert, although two independent/external opinions are preferable and the Secretary of State may insist on this in the event of a large potential claim. If agreement cannot be reached, the claim will go to arbitration.

Arbitration

- 5.9** Any dispute or difference between the owner and the Secretary of State in connection with 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 of England (or the Law Society of Scotland if the indemnity which is the subject of the claim was issued by the Secretary of State for Scotland or the Law Society of Northern Ireland if issued by DENI). Such arbitration shall take place in London (or Edinburgh or Belfast, as applicable).

Payment of a claim

- 5.10** Compensation for loss will be made at up to an amount not exceeding the value specified on the corresponding schedule attached to the relevant indemnity certificate.
- 5.11** If an object is damaged, and that damage is not made good, compensation will consist of the cost of reasonable repairs to the object and the amount or the value by which the object has depreciated as a consequence of the damage after repairs have been effected up to an amount not exceeding the specified value.
- 5.12** Depreciation will be established by valuing the object following damage rather than by estimating percentage fall in value.
- 5.13** Any reasonable costs incurred by the owner in the settlement of the claim shall be borne by the borrower, for example transport for the owner to inspect the object, or professional valuer's fees.

5.14 Payment of claims will be made direct to the owner by the Secretary of State.

Foreign currency payments

5.15 If a specified value is given in foreign currency and the owner wishes to be compensated in that currency, this may be arranged. The exchange rate is usually decided by the rate applying at the time funds are transferred, on behalf of the Secretary of State, to the owner's account by the Bank of England's Foreign Currency Settlement Department.

Payment by national institutions under minimum liability arrangement

5.16 Claims whose amounts do not, in its financial year, exceed a national institution's £25,000 minimum liability should be handled by the national institution and appropriate payment made direct to the owner by the national institution. By way of illustration, if the total claims in one financial year were 10 claims at £2,000 each, the national institution would handle and pay all 10 claims directly. If there was one claim for £1 million then the national institution would submit the claim to the Arts Council. If the Secretary of State decided to pay the claim, the national institution must pay £25,000 to the Department, which would then make the complete payment to the owner.
[Refer to 4.13 and 5.1]

Disposal of objects irreparably damaged

5.17 If an object is irreparably damaged and the whole specified value is paid to the owner (total loss), any remains of the object may be dealt with as follows:

- retained, with full and unconditional title to that object, by the borrower with the agreement of the owner
- bought back by the owner for a sum agreed between the borrower and the owner
- destroyed

Subrogation

- 5.18** One definition of subrogation is a principle that allows the Secretary of State to acquire the right to take action against any person for damages in respect of a claim which has been settled. In no case will this section 16 indemnity standard provision be removed as the Secretary of State will not forgo the right to take action against any party (for example, a party that might be liable for negligent or wilful damage).

Pairs, sets and the like

- 5.19** Sometimes, the specified value for loaned objects or items may be determined on the basis of those objects or items constituting a pair or set. If there is a claim because of loss of, or damage to, part of that pair or set, the Secretary of State will consider the amount of loss suffered by the owner. S/he will consider the loss suffered in terms of any depreciation in value of the complete pair or set. However, in no case will the Secretary of State construe as total loss any partial loss to a pair or set. National institutions should make these points clear when negotiating a relevant loan and the terms of the relevant loan agreement.

After a claim has been settled but the object is recovered

- 5.20** If the object is lost and subsequently recovered and returned to the owner, the owner shall immediately repay to the Secretary of State the sum received by them under indemnity.

Claims against third parties (in respect of loans to or from Exchequer-funded bodies)

- 5.21** Claims in respect of loss, damage or depreciation against persons responsible, including packers, carriers, restorers and other third parties, should be pursued to justifiable limits by the institutions concerned, which should keep the Arts Council advised in all except minor cases. If the loss or damage occurs through the action of a third party who for some reason has only minimal cover to meet normal business risks, institutions should use discretion as to the extent to which it is worthwhile to pursue a claim against the third party.

Part 6

Compensation arrangements in respect of objects loaned by national institutions

Loan out by a national institution – Government policy

6.1 Under the principle that the Exchequer bears its own risk, national institutions are not in practice indemnified under section 16 of the Act in respect of objects loaned by them. In addition to this reason, the Secretary of State will not guarantee compensation to a national institution for loss or damage to public property. The Secretary of State instead prefers that any decision on compensation should be discretionary. These points are discussed elsewhere.

[Refer to 1.9 to 1.13, 4.1]

6.2 The irrevocable undertaking to the Secretary of State at Annex B contains a requirement to notify the Secretary of State of the loss of, or damage to, any indemnified objects. In addition to this, these guidelines introduce a requirement on all national institutions to notify the Secretary of State of any loss of material owned by a national institution, whether or not it is on loan.

Loan from a national to a non-national – standards of security, etc

6.3 In order for non-national borrowers to benefit from taking on objects for which the Exchequer will bear most of the risk, they must at least meet the standards set down by the Arts Council on matters such as security, transport, environmental monitoring and control, and food and drink so that risk to public property is reduced. Nationals should determine whether such borrowers have been approved by the Arts Council in these areas (National Security Adviser of the Arts Council and Environmental Adviser to the Arts Council) if they are to lend under the arrangements set out at 6.4.

Paragraphs 6.5 and 6.6 suggest how these and other matters pertinent to such loans might be addressed in the loan agreement between the lending national and the borrowing non-national.

Loan from a national to a non-national – minimum liability, etc

6.4 In addition to certain circumstances set out in 6.5 to 6.7 below, the following arrangements will apply if an object is loaned by a national institution to a non-national institution (refer to 1.20 to 1.21 for a definition) and loss or damage occurs.

[Refer to 1.20 to 1.21, 6.5 to 6.7]

The borrowing non-national's position

6.4(a) Loss

The borrowing non-national must meet the cost of any loss up to:

- (i) a limit of £300 where an object is valued at less than £4,000, or
- (ii) £300 plus 1 per cent of the object's total value where that value is £4,000 or above.

6.4(b) Damage

The borrowing non-national must meet the cost of any damage up to:

- (i) a limit of £300 where the cost of the damage (excluding depreciation) is less than £4,000, or
- (ii) £300 plus 1 per cent of the value of the damage (excluding depreciation) where the value of the damage is £4,000 or above.

OR

In the case of a non-national which has a Designated collection under the Arts Council's Designation Scheme and which has opted for a minimum liability arrangement of £25,000 within its financial year, such a borrowing non-national must meet the cost of loss or damage up to a limit not exceeding £25,000. The borrowing non-national can inform the lending national if it has opted for this arrangement. The Arts Council can supply a list of Designated collections.

- 6.4(c)** The borrowing non-national can elect to cover any minimum liability amounts due under the arrangements at 6.4(a) and 6.4(b) (or under the £25,000 minimum liability option used by some institutions with Designated collections) by purchasing commercial insurance. Alternatively, the borrowing non-national may give the lending national institution an assurance that the minimum liability can be met from existing resources or from other resources.

The lending national institution's position

- 6.4(d)** In respect of loans out, the lending national institution will be expected to bear from its own resources the first £25,000 per year (the year being the financial year of the lending national institution) of any loss or damage above the amounts referred to in 6.4(a), 6.4(b) or under the optional arrangement for institutions with Designated collections.
- 6.4(e)** When a national institution has met its minimum liability in respect of any claims for loans out (refer to 6.4(d)) this sum will form part of the overall £25,000 for which the national institution is responsible in respect of loans in (refer to 5.1 and 5.16).

The Government's position – damage to a national institution's property

- 6.4(f)** The Department will consider without commitment, claims for cost of repair, restoration or conservation in excess of the amounts referred to in 6.4(a), 6.4(b), 6.4(d) and 6.4(e). These may be met from the Department's own resources, usually up to a maximum amount for all claims on the Department of £150,000 per financial year.

The Government's position – total loss of a national institution's property

- 6.4(g)** The Department will consider, without commitment, claims for compensation in excess of the amounts referred to in 6.4(a), 6.4(b), 6.4(d) and 6.4(e). These may be met from the Department's own resources, usually up to a maximum amount for all claims of £150,000 per financial year.

Consideration might be given either to compensating the national institution in purely financial terms if appropriate or to enabling the institution to purchase an object comparable in value and appropriate to fill any gap left in the national's permanent collection caused by the loss, assuming such an object were available to buy.

The Government's position – the kinds of issues considered

6.4(h) In regard both to 6.4(f) and 6.4(g) above, for claims by national institutions where the limit of £150,000 has been exhausted, the Department will consider, without commitment, whether to find further funds to make available to the national institution that has suffered the damage or other loss.

In assessing whether to make public monies available to fund the cost of repair, restoration or conservation, or to compensate for total loss, the following kinds of issues will be considered in regard to the object which is the subject of the claim:

- the financial value of the object
- the scientific, technological, artistic or historic importance of the object
- in the case of damage, whether scientific, technological, artistic or historic interest in the object is retained despite the damage
- in the case of damage, whether the cost of repair, restoration or conservation exceeds the value of the object
- whether the national institution could absorb costs by undertaking repair, restoration or conservation as part of their typical programme of work, whether in-house or off-site
- what public benefit could be demonstrated by repair, restoration or conservation of the object or the filling of the gap its total loss has left in the permanent collection

The Government cannot commit itself (or bind its successors) to future spending, for example where the level and date of expenditure are unknown.

6.4(i) Where loss or damage to an object accepted in lieu of tax occurs, the Government will only give consideration to funding the cost of repair. [Refer to 4.14 and 4.15]

Objects loaned from one national institution to another

- 6.4(j)** Arrangements in such circumstances are for the two national institutions to decide between them. By way of guidance only, one approach might be for the lending national to bear the risk of total loss and for the borrowing national to accept the cost of repairs in the event of repairable damage, provided that the borrowing national can meet such costs from within existing funds.
[Refer to 4.9]

The loan agreement

- 6.5** When lending objects to non-nationals, the lending national institution should ensure that the following issues are addressed by the terms of the loan agreement with the borrowing non-national institution:

- public benefit (refer to 2.3 to 2.9)
- security and transport (refer to Annexes D to F)
- environmental monitoring and control (refer to Annex D)
- minimum liability (refer to 6.4(a) and 6.4(b))
- arrangements for condition reporting (refer to 2.23 to 2.32)

[Refer to 6.3]

- 6.6** On some occasions, the national institution will agree to lend an object for an exhibition in which there will also be objects loaned by non-national institutions or private lenders in respect of which indemnity will be sought. In those circumstances, the national institution should apply the following terms in the relevant loan agreement (in addition to the matters specified at 6.5 above):

- the borrower will comply with any additional security conditions recommended by the National Security Adviser
- the loan is conditional upon indemnity cover not being refused for the other objects loaned for the exhibition on the grounds that the arrangements for the exhibition are unsatisfactory in respect of any of the following: public access; security; transport; environmental monitoring and control; and arrangements for condition reporting.

Action to be taken in the event of a claim

- 6.7** Where the provisions of paragraph 6.4 apply, and a national institution has incurred loss or damage, it should consider informing the appropriate sponsoring Department. The national institution should pursue to justifiable limits any claim it may have against the borrower of the object or any third party, keeping the sponsoring Department informed.
[Refer to 5.21, 6.11]

Touring exhibitions

Tours of objects owned by a national institution

- 6.8** Where a national institution arranges a touring exhibition within the UK of objects which it owns, and the objects remain under the control of the owning national institution, the provisions set out in paragraph 6.4 will not apply as long as the objects are in the care of, and are being handled by, the staff of the owning national institution and under that national institution's management, responsibility and so on. The national institution will bear its own risk for loss or damage at such times. In circumstances where the objects have passed into the care and control of the venue where the exhibition is to be held, the provisions of paragraph 6.4(a) to 6.4(c) would apply to those venues that are non-national institutions. Where the receiving venue is another national institution, then the provisions of paragraph 6.4(j) will apply. Where the receiving venue is a commercial body, the provisions of 6.9 and 6.10 will apply.
[Refer to 1.9 to 1.13, 'Touring exhibitions' at 2.56 to 2.59, 4.9, 6.4(a) to 6.4(c), 6.4(j), 6.9 and 6.10]

Loan to a commercial body

- 6.9** As a general rule, where a national institution lends an object overseas or to a person or commercial institution or body in the UK, such as a privately owned museum or gallery or a museum or gallery which is not a non-national institution (defined at 1.20 to 1.21 above), the arrangements set out in paragraph 6.4 will not apply. The national institution should ensure that the borrower arranges insurance cover for the object for the entire period. If the borrowing commercial institution has been approved as a borrower for the purposes of section 16 of the Act under section 16(2)(e), then the arrangements set out in paragraph 6.4 can apply. The Manager of the GIS at the Arts Council can tell the national institution whether an organisation is an approved borrower under section 16(2)(e) of the Act.
[Refer to 1.20 to 1.21, 4.12, 6.4]

6.10 From time to time, commercial organisations might act as the host venue for exhibitions which are arranged in partnership with, or under the auspices of, or with the major involvement of, a national institution. These exhibitions might include objects from the national's permanent collection and objects from other owners. Subject to certain requirements proving satisfactory about the proposed borrower, the purpose of the event, and arrangements such as: public access; valuation; security; transport; environmental monitoring and control; condition reporting; and borrower undertakings, the proposed borrower may be considered for approval under section 16(2)(e) of the Act. In such circumstances, indemnity could be given in respect of eligible owners lending to the approved commercial borrower and the provisions of paragraph 6.4 would apply.
[Refer to 6.4]

Sums recovered

6.11 Where a national institution receives a payment as a result of a successful claim against commercial insurance or via action taken against a third party, the sums in question cannot be regarded as automatically available for retention by the national institution. Such receipts will be treated in accordance with *Government Accounting* (Chapter 22). In the case of Northern Ireland, such receipts may be retained, but only to be used in turn for specimen purchase.

Objects recovered

6.12 Where commercial insurance applies to property loaned out by a national institution, compensation payments will usually be accompanied by a statement of the particular arrangements to be made in the event of the recovery of a lost object. If an object which has been subject to such arrangements is recovered and returned to the national institution, the Arts Council should be contacted to discuss suitable arrangements for reimbursing the insurance company.

Part 7

Reporting section 16 indemnity contingent liabilities to Parliament and the Treasury

Introduction

- 7.1** Under the Act, the Secretary of State (in practice, the Secretary of State for Culture, Media and Sport) is required to make a report to Parliament. (Refer to 2.1 above, which gives the text of section 16 of the Act; in particular, refer to sections 16A(1) and section 16A(2).)
[Refer to 2.1]
- 7.2** The report must state the number and the amount or value of contingent liabilities arising from the undertakings s/he has given under section 16 of the Act, namely the number and the amount or value of indemnity he/she has issued to owners via borrowers such as the national institutions.
- 7.3** In practice, the report is a brief statement which includes the total value of indemnities in place for nationals, non-nationals and undertakings given to Her Majesty. .
- 7.4** The Arts Council requires borrowing national institutions to help it prepare the report by providing accurate and timely information (non-national institutions are dealt with under separate arrangements).
- 7.5** The Arts Council also requires other information, either for its own use or to include in reports required by the Treasury. Exactly what is required of national institutions is set out below.

Information required from national institutions

- 7.6** The Arts Council requires the following information within every 12-month period from the national institutions:

Indemnity profile estimates

- 7.7** These are requested from national museums, galleries, libraries, etc in advance of each financial year. They are included in the Supply Estimates stated to Parliament. The Supply Estimates are a forecast of expenditure by the Department for Culture, Media and Sport. The forecast value of objects proposed for loan and expected to be covered under section 16 has to be included in these estimates. This is because they are classed as 'contingent liabilities'. Loans in from other national institutions should not be included in the annual forecast.

An annual review of contingent and actual liabilities

7.8 The Arts Council has to prepare this at the end of each financial year. It is presented to the Treasury and is a follow-up to the Supply Estimates. It details all the statutory/non-statutory actual and contingent liabilities held by the Department as at 31 March.

A report of indemnities and their liabilities to Parliament every six months

7.9 In addition to the annual review of actual and contingent liabilities, the Arts Council also has to report the level of contingent liabilities in place at the end of every six months to DCMS which are then reported to Parliament. This is a statutory requirement. The reports cover two six-month periods: 1 April – 30 September and 1 October – 31 March (this is so that the Government financial year of April to March is covered in two reports). As the end of March coincides with the Treasury review of contingent liabilities, the Arts Council uses the figures from the October – March exercise to produce both the Parliament and Treasury contingent liability returns (refer to 7.8 above).

Loans from Royal sources

7.10 Objects loaned from the Royal Collection Trust or from Royalty – where those objects have been purchased wholly or mainly with monies from the Civil List – are declared, even though such loans are not covered by the Act (they may instead be covered by an Undertaking to Her Majesty). They are declared to Parliament as a separate entry from the one covering section 16 indemnity contingent liabilities.
[Refer to 4.4 to 4.8]

Information requests by the Arts Council

7.11 Because of the information required, the Arts Council will write to the national institutions in early April and early October asking for the following information:

Loans in (covered by indemnity)

7.12 A single figure giving the total amount or value (in pounds sterling) of loans in, to national institutions, which are covered by section 16 indemnity and which remained outstanding at 31 March (the April letter) or 30 September (the October letter) – namely, the total contingent liabilities applying (still active) on that date in respect of loans covered by section 16 indemnity. This includes both short- and long-term loans.

Loans in (covered by the Undertaking to Her Majesty)

- 7.13** A single figure giving the total amount or value (in pounds sterling) of loans in to the organisation from the Royal Collection Trust or loans in from other Royal sources, where the objects loaned have been purchased wholly or mainly from the Civil List. This single figure will cover objects on loan which remained outstanding at 31 March (the April letter) or 30 September (the October letter) – namely, the total contingent liabilities applying (still active) on that date in respect of loans in, to which the Undertaking to Her Majesty has been applied.
[Refer to 4.4 to 4.8]

Need for punctual returns

- 7.14** The Secretary of State for Culture, Media and Sport is required to report the information required by Parliament on contingent liabilities within two months of the March and September dates specified above. This is a statutory requirement. Institutions must, therefore, respond to the Arts Council's requests within the deadlines set in its April and October letters.

Northern Ireland

- 7.15** Northern Ireland institutions will not be asked for figures for the report to Parliament and the Department of Finance and Personnel as these can be supplied 'in-house' by the Department of Culture, Arts & Leisure.

Annex A

Ineligible lenders for the purposes of section 16 indemnity arranged through the Arts Council of England due to their current funding arrangements

If applicants wish to borrow an object from one of the institutions listed below they should contact that institution directly to make the necessary arrangements for cover of the object (see Part 6).

Bodies funded by the Department for Culture, Media and Sport

- 1 Arts Council England
- 2 British Film Institute, London
 - i) BFI National Archive
- 3 British Library, London
 - i) British Library Sound Archive
- 4 British Museum, London
- 5 Historic England
- 6 Geffrye Museum, London
- 7 Horniman Museum, London
- 8 Imperial War Museum
 - i) IWM London
 - ii) IWM Duxford
 - iii) IWM North, Manchester
 - iv) Churchill Museum and Cabinet War Rooms, London
 - v) HMS Belfast, London
- 9 National Gallery, London
- 10 Royal Museums Greenwich
 - i) National Maritime Museum
 - ii) the Queen's House
 - iii) Royal Observatory Greenwich
- 11 National Museums Liverpool

- i) International Slavery Museum
- ii) Lady Lever Art Gallery
- iii) Merseyside Maritime Museum
- iv) Museum of Liverpool
- v) National Conservation Centre
- vi) Sudley House
- vii) Walker Art Gallery
- viii) World Museum Liverpool

12 Science Museum Group

- i) Science Museum, London
- ii) National Railway Museum, York
- iii) National Media Museum, Bradford
- iv) Museum of Science and Industry, Manchester
- v) Science Museum Swindon, storage facility

13 National Portrait Gallery, London

- i) Displays at Montacute House, Bodleywyddan Castle and Beningborough (buildings – National Trust)

14 Natural History Museum

- i) Natural History Museum, South Kensington
- ii) Natural History Museum, Tring

15 Royal Armouries

- i) Royal Armouries in Leeds
- ii) Royal Armouries, Fort Nelson
- iii) Royal Armouries at the Tower of London

16 Sir John Soane's Museum, London

17 Southbank Centre, London*

- i) Hayward Gallery

18 Tate

- i) Tate Britain, London
- ii) Tate Modern, London
- iii) Tate Liverpool
- iv) Tate St Ives (including the Barbara Hepworth Museum and Sculpture Garden)

19 Victoria and Albert Museum

- i) V&A in South Kensington

- ii) V&A Museum of Childhood, Bethnal Green

20 Wallace Collection, London

Bodies funded by the Scottish Government

- 1 Creative Scotland, Edinburgh
- 2 Historic Scotland, Edinburgh
- 3 National Galleries of Scotland
 - i) Scottish National Gallery, Edinburgh
 - ii) Scottish National Portrait Gallery, Edinburgh
 - iii) Scottish National Gallery of Modern Art, Edinburgh
 - iv) Granton Centre for Art, Edinburgh
 - v) Paxton House, Berwickshire
 - vi) Duff House, Banff
- 4 National Museums Scotland
 - i) National Museum of Scotland, Edinburgh
 - ii) National War Museum Scotland, Edinburgh Castle
 - iii) National Museum of Costume, Dumfries
 - iv) National Museum of Rural Life, East Kilbride
 - v) National Museum of Flight, East Lothian
 - vi) National Museums Collection Centre
- 5 National Library of Scotland, Edinburgh
- 6 National Archive of Scotland, Edinburgh
- 7 Royal Botanical Gardens, Edinburgh

Bodies funded by the Welsh Government

- 1 Arts Council of Wales, Cardiff
- 2 Amgueddfa Cymru – National Museum Wales,
 - i) National Museum Cardiff
 - ii) St Fagans: National History Museum
 - iii) Big Pit: National Coal Centre, Blaenafon
 - iv) National Wool Museum, Drefach
 - v) National Roman Legion Museum, Caerleon

- vi) National Slate Museum, Llanberis
- vii) National Waterfront Museum, Swansea
- viii) National Collections Centre, Nantgarw

3 National Library of Wales, Aberystwyth

Bodies funded by the Northern Ireland Assembly

- 1 Arts Council of Northern Ireland, Belfast
- 2 National Museums Northern Ireland
 - i) Ulster Museum, Belfast
 - ii) Ulster Folk and Transport Museum, Cultra
 - iii) Ulster-American Folk Park, Omagh
 - iv) Armagh County Museum, Armagh

Bodies funded by the Ministry of Defence

- 1 The National Museum of the Royal Navy and its constituent museums
 - i) NMRN (Portsmouth) formerly the Royal Naval Museum
 - ii) The Royal Marines Museum (Southsea)
 - iii) The Royal Navy Submarine Museum (Gosport)
 - iv) The Fleet Air Arm Museum (Yeovilton)
- 2 National Army Museum, London
- 3 The Royal Air Force Museum
 - i) Royal Air Force Museum, Cosford
 - ii) Royal Air Force Museum, London

Bodies funded by the British Foreign & Commonwealth Office

- 1 British Council, London

Others

- 1 Government Art Collection, London
- 2 The National Archives, Kew
- 3 The Royal Botanical Gardens, Kew

*The Southbank Centre does not receive direct grant from Government. It receives an operating grant from the Arts Council, which receives grant-in-aid from the Department for Culture, Media and Sport. For the purposes of GIS, the Southbank Board (Hayward Gallery) is treated as a national institution.

Annex B

Irrevocable undertaking by national institutions

To: The Secretary of State

In consideration of the giving by you of any undertaking to indemnify under section 16 of the National Heritage Act 1980 (or any statutory modification or re-enactment thereof) for the loss of, or damage to, any object belonging to an institution, body or person while on loan to us (hereinafter called 'the object(s)' or 'object(s) loaned') we hereby irrevocably undertake:

- (i) to facilitate public access to the object(s) or to examine, study or analyse the object(s) in such a way that this will contribute materially to public understanding or appreciation of the object(s), for example by using consequent results, findings or conclusions to enhance interpretation or explanation to the public of the object(s) or by bringing into the public domain the results, findings or conclusions;
- (ii) to manage, safeguard and care for the object(s) in the same manner that this institution would manage, safeguard and care for objects or items in its own collection(s) which are similar to the object(s) loaned as necessary for the appropriate and effective care of the object(s);
- (iii) to provide a level of environmental monitoring and control equivalent to that applied to objects or items in our own collection which are similar to the object(s) loaned and which are necessary for the appropriate and effective care of the object(s) loaned;
- (iv) to comply with the security, transport and food and drink conditions for time being set out in Annexes D, E and F of the document entitled *Government Indemnity Scheme – Guidelines for national institutions* and to follow guidance on security, transport, food and drink in consultation with the National Security Adviser of the Arts Council of England (hereinafter called 'the Arts Council') where appropriate, while the object(s) are on loan to us or while being taken to or returned from the place where the object(s) are to be or have been kept while on loan to us;
- (v) to scrutinise and assess valuations submitted by potential lenders so that valuations submitted to you are a fair estimate of the value that the object(s) to be indemnified might reach if sold on the open market at the time of the loan;

- (vi) to provide or procure the best possible evidence in the circumstances of the condition of the object(s) as received into our care and control, bearing in mind such factors as the value of the object(s) and its susceptibility to damage, the distance between our geographical situation and the object's current location and the resources required to make a formal condition report and to make a record of the condition of the object(s) as received back out of our care and control and to forward such records (including any interim records) to you in the event of any claim;
- (vii) to meet the cost of any one or more claims made under any such section 16 undertaking up to a limit of £25,000 per year or such lesser amount as may remain after the amount borne by us in the year (being our financial year) of any claim(s) in respect of loss of, or damage to, any objects loaned out by us has been deducted, while recognising that the purpose of this minimum liability is to encourage appropriate and effective care, responsibility and stewardship for both loans out and loans in and to eliminate small claims on the Secretary of State;
- (viii) to notify the Arts Council immediately in writing of the loss of, or damage to, any of the object(s) and of any proposed variation in the arrangements for public access, the security or transport arrangements or environmental control provisions adopted in relation to the objects loaned;
- (ix) to provide a condition report following any damage to any of the object(s);
- (x) to take note of, and endeavour to comply with, any guidance issued by you to us in respect of borrowing by us of object(s) which are or are likely to be the subject of section 16 undertakings;
- (xi) to take steps to confirm to the best of our knowledge that the owner(s) of the object(s) loaned has legal title to it and that such object(s) have not been wrongfully taken of illegally exported; and
- (xii) to acknowledge the Government Indemnity Scheme by using the following wording in exhibition literature and in all credits: *“This exhibition has been made possible as a result of the Government Indemnity Scheme. The [name of institution] would like to thank HM Government for providing Government Indemnity and the Department*

for Culture, Media and Sport and Arts Council England for arranging the indemnity.”

For and on behalf of.....
(being a person authorised to sign on that behalf)

Signature:

Name:

Position held in institution:

Date:

Annex C

Model application form for national institutions

Government Indemnity Scheme

Application form – national institutions

1 Name of institution:

Contact for queries:

Name of department:

Job title:

Address:

Telephone:

Email:

2 Title of exhibition/loan:

Arts Council GIS reference if existing or previous reference for renewals:

3 Due diligence

Confirmation due diligence checks have been carried out to ensure only ethically acceptable objects are borrowed

Name:.....Job title:¹

4 Total value of objects to be covered: £

If objects are valued in a foreign currency, please give an approximate sterling equivalent, exchange rate, source and date:

Valuation(s) approved by: Name:.....Job title:²

Total overall value of objects to date for this reference:

5 Total number of objects to be covered:

¹ Confirmation due diligence procedures have been followed and approval for valuations should be given by a curator or director

² Confirmation due diligence procedures have been followed and approval for valuations should be given by a curator or director

Please attach details of objects on a separate page for each owner
Total overall number of objects covered under this reference

Total overall number of objects to date for this reference:

6 Purpose of loan:

Is it a tour?

7 Period of indemnity cover: From: To:.....

Indemnity for long-term loans is arranged for three years in the first instance and can subsequently be renewed for further three-year periods.

8 Display dates: From: To:.....

9 Display area: Please specify the gallery or space where indemnified loans will be displayed. If a different building to that specified in Section 1 is to be used, please give details below

Name of gallery/space:

Address:

Government Indemnity Scheme

Schedule

(list of all objects for which indemnity cover is required)

Property of:			
	Full description (Title, dimensions, medium and date)	Artist/Craftsman	Valuation
1			
2			
3			
4			
5			

Annex D

General security conditions and environmental conditions which apply under the Government Indemnity Scheme

National Heritage Act 1980, section 16

1. The borrower shall at all times be responsible for ensuring that the greatest possible care is taken of the indemnified object.
2. The indemnified object must be accommodated in a strong building which has well-protected windows, doors and skylights. The building must also provide appropriate control for the indemnified object.
3. The whole building must have an automatic fire detection system fitted by a NACOSS (National Approval Council for Security Systems) or SIA (Security Industry Authority) approved alarm company which is serviced annually and maintained in good working condition.
4. At night, or when the building is closed or not otherwise in normal use, there should be either an agreed level of night guarding by security staff within the building and/or an intruder detection alarm system which covers all possible routes into the building including windows and rooflights. The alarm system should be fitted by a NACOSS or SIA approved alarm company and should be serviced twice annually and maintained in good working condition.
5. The intruder and fire detection systems must be connected by a secure monitored signal to an alarm receiving centre unless they are monitored internally at all times by security personnel.
6. If, as the result of false calls, the police response to an intruder detection system is: downgraded; withdrawn; or if there is a failure which renders the system ineffective; or if the system cannot be re-set immediately, then guarding by trained personnel must be introduced until the police response is restored or the system repaired or re-set.
7. Environmental conditions must be maintained 24-hours a day, 7-days a week throughout the loan period from the time the indemnified object arrives until it departs from the loan venue.
8. Relative humidity, temperature and light levels should be monitored throughout the loan period in the space within which the indemnified object is contained.
9. Paintings, drawings and similar objects must be secured to walls by mirror plates and security screws or, if this is not possible for any reason, an acceptable alternative must be agreed with the National Security Adviser.

10. Small pictures, less than 450mm x 250mm (A3 including frame), must not be displayed near windows, fire escapes, or entrances and exits to the building.
11. Any indemnified objects including but not limited to unglazed paintings, fragile or sensitive material must not be mounted within two metres of a portal or doorway and there shall be at least 1 metre between the floor level and lowest part of the frame/works. They shall be protected by rope or other barriers which must be at least 1 metre from the exhibits or an acceptable alternative must be agreed with the National Security Adviser and the Environmental Adviser.
12. Small portable objects must be exhibited in locked display cases which should be fitted with anti-bandit laminated glazing meeting British Standard BS 5544 and EN 356 P3A. This glazing will be 11.3mm thick or greater. The use of Acrylic or Perspex material may be permitted as an alternative provided its minimum thickness is 12mm. If the material consists of gold, silver, jewellery, coins or medals or items which are especially valuable, the cases must be fitted with alarm devices. The cases must be secured in a manner approved by the National Security Adviser.
13. All indemnified objects must be displayed so that they are invigilated by trained personnel who are in line of sight and nearby the indemnified objects. This will normally mean at least one person to a room unless an acceptable alternative is agreed in advance with the National Security Adviser.
14. Warding or qualified staff must be constantly deployed in the exhibition rooms during the time the public is admitted and proper arrangements must be made for their relief for refreshment and other purposes. They must concentrate on the safety and security of the displayed indemnified objects at all times.
15. When it is not possible to arrange for exhibition space(s) containing indemnified objects to be properly invigilated, it/they must be closed to the public.
16. There must be a form of drill, with which every member of staff is familiar, to cater for all emergencies.
17. An Emergency Plan should be drawn up, updated regularly and tested with practical exercises to cope with emergencies such as: fire; smoke; escape of water from tank, pipe or appliance; theft; robbery; vandalism; storm; explosion; terrorist act; political act; flood; riot; civil commotion; pest attack; earthquake; collision by aircraft or other vehicle.
18. Warding staff must be equipped with a means of communication to other members of staff.
19. When meetings, functions or other events are held in areas containing

indemnified objects, consideration must be given as to an appropriate level of supervision and invigilation.

20. Food or drink must not be allowed in the area containing an indemnified object except under arrangements approved in advance by the National Security Adviser and Environmental Adviser of the Arts Council.
21. The arrangements for formal openings, private views, staff parties and other such events, functions and so on must comply with all the above conditions.
 - A** In the event of loss or damage due to the specified conditions not having been observed the Secretary of State shall be entitled to conduct in the name of the owner or lender the pursuit or settlement of a claim against the borrower or a third party or to prosecute in the name of the owner. The Secretary of State shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the owner shall give all such information and assistance the Secretary of State may require.
 - B** These conditions are the minimum requirements of the Government Indemnity Scheme, but borrowers should be aware that some lenders impose additional conditions which the borrower will be required to meet for the loan to proceed.

January 2016

Annex E

General transport conditions which apply under the Government Indemnity Scheme¹

National Heritage Act 1980, section 16

- 1 Any transport company used to move the object(s) must have proven experience in the transport of fragile and valuable artefacts with employees recognised and trained in the handling of such material and must be able to meet the conditions below and confirm this in writing.
- 2 When object(s) are sent out or brought in from abroad, the company used must have the ability and appropriate experience to handle consignments of valuable and fragile material. When the value of a single consignment exceeds a threshold determined by the DCMS, tracking devices will be fitted to the object carry cases as well as the carrying vehicle. Company staff must be experienced in dealing with airport and seaport procedures and all necessary documentation.
- 3 The removal, packing, unpacking and transport of the indemnified object must be supervised by senior members of the transport company in consultation with the lender and/or borrower of the object or under the licence of the Department for Transport's Known Consignor Scheme.
- 4 Any vehicle, whether owned by a transport company or the borrower or the lender, used for the transport of indemnified objects must conform to the specifications in paragraphs 5 to 10 below.
- 5 Vehicles used should normally be closed vans (i.e. having solid sides and roof) with a windowless freight compartment separate from the driving cab. All vehicles should be equipped with good quality locking devices. Additional locking facilities may also be required, such as closed shackle padlocks. Any locking bars or external fittings must be secured with concealed or non-return screws or welded or riveted into place.
- 6 Vehicles should provide appropriate protection against vibration and shock and extremes in relative humidity and temperature conditions for consignments of valuable and fragile material. Air-ride suspension and climate control equipment

¹Special circumstances apply to overseas transport. Overseas arrangements should be at least as rigorous as shown in these Transport Conditions. You should discuss air and sea transport arrangements with the National Security Adviser if you need advice.

may be necessary in appropriate circumstances. Environmental conditions should be monitored.

- 7 Vehicles have to be equipped with tracking systems and crew with appropriate means of communication, radio or mobile telephones for dealing with delays or emergencies.
- 8 Keys to the freight compartment should be kept separate from the vehicle ignition keys.
- 9 Vehicles other than closed vans may be used in appropriate circumstances, e.g. the carriage of exceptionally large objects which may demand the use of an open lorry with the load suitably covered. Furthermore, small consignments or single objects may be carried by car, small van, taxi, train or air provided a sufficient number of couriers and or staff are in attendance.
- 10 All vehicles must be fitted with fire-fighting equipment appropriate to the load and the crew must be trained in its use.
- 11 Whatever method of transport is used, compliance with the operating conditions in paragraphs 12-19 is required.
- 12 A vehicle must always carry two drivers on long journeys, one driver and a courier on short journeys. The crew must be experienced in the handling of valuable consignments, responsible and capable of dealing effectively with any emergency situation.
- 13 Where a space on the carrying vehicle is limited, or where deemed essential for security control, a second escorting vehicle will need to be provided and equipped with radio / mobile telephone communications.
- 14 The route should be carefully planned and the addresses and telephone numbers of emergency services should be carried by the crews and accompanying couriers.
- 15 Ideally, the journey should be completed in one haul.
- 16 When a stopover is necessary arrangements must be made to lodge the vehicle and/or objects in secure premises which are protected by a 24-hour intruder and fire alarm system or under continuous supervision.

- 17 On no account should a vehicle be left unattended by the crew, even in an emergency.
- 18 Special circumstances may apply to some overseas transport, but arrangements must be no less rigorous than those specified above.
- 19 An effective 'no-smoking' policy should apply in respect of areas containing indemnified objects.

A In the event of loss or damage due to the specified conditions not having been observed the Secretary of State shall be entitled to conduct in the name of the owner or lender the pursuit or settlement of a claim against the borrower or a third party or to prosecute in the name of the owner. The Secretary of State shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the owner shall give all such information and assistance the Secretary of State may require.

B These conditions are the minimum requirements of the Government Indemnity Scheme, but borrowers should be aware that some lenders impose additional conditions which the borrower will be required to meet for the loan to proceed.

January 2016

Annex F

Food and drink conditions which apply under the Government Indemnity Scheme

National Heritage Act 1980, section 16

The general security and environmental conditions applying to exhibitions and displays covered by indemnity do not allow food and drink in the area containing indemnified objects unless arrangements are approved in advance by the National Security Adviser and the Environmental Adviser of the Arts Council.

If it is not possible in connection with private views or other functions (such as formal openings, staff parties, concerts or dance events) to serve food and drink in spaces other than those containing indemnified objects the National Security Adviser must be consulted and the following conditions are likely to apply:

1. Food and drink is prepared and dispensed in a space not containing indemnified objects. No heat or steam generating equipment can be used or bottles uncorked in the space containing indemnified objects.
2. The serving and carrying of red wine in glasses in any space containing indemnified objects which are unglazed or uncased must be avoided.
3. Strict attention is given to the cleaning operation to ensure removal of residue of food and drink. Appropriate checks should ensure that chemical cleaning agents or extra amounts of water do not adversely affect environmental stability or the corrosivity of the atmosphere next to indemnified objects.
4. Where practicable the installation of suitable barriers are required to prevent close approach to unglazed, fragile or sensitive exhibits. Such barriers must be a minimum of one metre distant from the indemnified object to provide a manageable sterile zone.
5. The deployment of adequate staff on invigilating duties in all exhibition spaces containing indemnified objects especially if barriers cannot be installed.

If arrangements are made incorporating the above together with any additional measures required by the Arts Council the indemnity will remain valid. If, however, there are any doubts about arrangements or where it is felt that indemnity may be affected or that different arrangements are sought, the National Security Adviser and Environmental Adviser must be consulted.

January 2016

Annex G

Sample Section 16 Indemnity for national institutions

Ref:

**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 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 specified 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 2015 while it is on loan to the borrower and while on display between and 2015 at the exhibition 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 conditions and any further such conditions which the National Security Adviser of the Arts Council 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 conditions which the Environmental Adviser of the Arts Council 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.

[Authorised name and signature]

The Arts Council of England
For and on behalf of the Secretary of State for Culture, Media and Sport

Dated this ... day of ... 2016

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