

UK Export Licensing for Cultural Goods

[please note that the rules for direct export of cultural goods from Northern Ireland to non-EU countries are at Appendix I]

Procedures and guidance for exporters of works of art and other cultural goods

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Introduction

1. This notice provides guidance on the procedures involved in applying for an export licence for cultural goods. Part I sets out the controls which apply to the export from the UK and the Isle of Man of cultural goods (works of art, antiques and collectors' items etc.), when an individual export licence is required and how you should apply for one. Part II details how decisions are reached on licence applications for objects of national importance. All references to the UK include the Isle of Man. The operation of the export control regime for cultural goods is the responsibility of the Export Licensing Unit within Arts Council England (the Arts Council): address and telephone numbers at Appendix A.

Part I: Export Control

This part sets out the export controls which apply to cultural goods, when an individual export licence is required and how you should apply for one.

What is the purpose of the export control system?

2. The purpose of the export control system is to provide an opportunity for the UK to retain cultural goods judged to be of outstanding national importance that would otherwise be exported and to provide a guarantee of the legality of the export. The system is designed to strike a balance, as fairly as possible, between the various interests concerned in any application for an export licence: the protection of national treasures; the rights of the owner selling the goods; the exporter or overseas purchaser; and the position and reputation of the UK as an international art market.

How does the export control system work?

3. For cultural goods over certain age and monetary limits, an individual licence is required for export from the UK (see paragraph 8), unless one of the exceptions in Table 1 applies. Licences may be required for both permanent and temporary exports, including when you are transferring your own property abroad.

Open Licences

4. In order to reduce the burden on would-be exporters, the Secretary of State has issued a number of open licences permitting the export of certain specified objects without the need to obtain an individual export licence. There are two types currently in operation: the Open General Export Licence (Objects of Cultural Interest) (OGEL); and the Open Individual Export Licence (OIEL).

Open General Export Licence (Objects of Cultural Interest)

5. The OGEL may permit the permanent export to any destination, except an embargoed one, of certain classes of cultural goods provided the value of the object is less than the figure specified in the OGEL for the relevant class. It

removes the need to apply for an individual licence. It also permits the export (for up to six months) of some common temporary exports and the re-export of some common temporary imports. The OGEL may also permit the export of an object of cultural interest (which would otherwise require an individual export licence) where: (i) a licence was granted for it by the Export Licensing Unit under Council Regulation (EC) No 116/2009 on the export of cultural goods (the "EU Regulation") ; (ii) it has not been released into free circulation in the UK; or (iii) the Secretary of State has approved its return following a recommendation to that effect by the Spoliation Advisory Panel.

6. The OGEL is available for use by any exporter in the UK; it is a valid export licence and the conditions attached to it are binding. No prior authorisation is required from the Export Licensing Unit to use the OGEL, no licence need be applied for from the Export Licensing Unit and no licence has to be presented to Customs. Customs officials at ports and airports should be informed that the goods are being exported under the OGEL by quoting its title in the export documentation. A copy of the current OGEL is at Appendix B and on the Arts Council's website (www.artscouncil.org.uk). Because the OGEL is revised from time to time, you should always check that you have the latest information (especially value limits) by checking the Arts Council's website or contacting the Export Licensing Unit which will be able to provide you with a copy of the latest OGEL.

Open Individual Export Licences

7. Exporters who regularly export items (e.g. for fairs) may obtain an OIEL for certain documents, manuscripts or archives and such licenses may be issued for certain other classes of cultural goods. There is also (i) a Museums and Galleries OIEL which permits the temporary export of any object owned by or under the care of the museum holder for a period of up to three years without having to apply for an individual export licence and (ii) an Objects of Cultural Interest OIEL which allows the permanent export of any goods imported into the UK within 50 years of the date of export. For information about these and how to apply for one please contact the Export Licensing Unit.

When must I have an individual export licence?

8. If you are intending to export a cultural object that is valued at or above the age and value thresholds in the OGEL and cannot be exported under the OGEL and it cannot be exported under an OIEL, you must apply for an individual licence. To determine whether you require an individual licence, please refer to the flow chart and tables on pages 28 to 30. **If the object is valued below the specified OGEL threshold, no individual licence is required.**

I have looked at the flow chart and table on pages 28 to 30 and have concluded that I need to apply for an individual export licence. How do I apply for it?

9. Please apply for an export licence on the ELU Form C which can be downloaded from the Arts Council's website where you will find instructions on how to submit it to the Export Licensing Unit.

You should apply as soon as you know that an object is to be exported and the name and address of the consignee to whom it is going. Completed application forms must give details of **the full provenance and ownership history of the object**.

How soon will I receive my export licence once I have submitted my application?

10. This depends on whether your application is referred to an Expert Adviser (usually a director, senior keeper or curator in a national museum or gallery) for scrutiny as to whether the object is of national importance (see paragraph 20). If an Expert Adviser needs to be consulted, your application will normally be referred within five business days of its receipt by the Export Licensing Unit. We ask Expert Advisers to respond to us within 15 business days. If the Expert Adviser does not consider the object to be of national importance, the total time taken to issue the export licence from receipt of the application will normally be 28 business days. Expert Advisers will need detailed contextual information and all known provenance (including any catalogue entries) in order to decide whether a cultural object meets the **Waverley criteria** (see paragraphs 37-39). They also require high resolution digital photographs. When providing photographs please ensure they are up to date and of sufficient size and quality to show details of workmanship. In relation to clocks, the Expert Adviser will require an external photograph of the clock and another photograph of its workings. In the case of vehicles the Expert Adviser will require a copy of the logbook or equivalent document (where available), information on the history of the vehicle (including race details where applicable), the engine and chassis number and a clear photograph of the front and side view of the car (the front view to include its number plates). In the case of metal detecting finds, a photograph showing each individual object (which may be a group photograph); for archives, a list or calendar of the papers in the archive. Failure to provide any of this information will result in delay, or it may result in the Export Licensing Unit not being able to process your application.
11. If, however, you can provide evidence with your licence application that the object arrived legally in the UK within the last 50 years, your application will not normally be referred to an Expert Adviser. If there is no referral to an Expert Adviser, the licence can normally be granted within five business days from receipt of your application, provided that all the necessary information has been submitted.

For the purposes of the policy of referring applications to Expert Advisers, the **Channel Islands** are regarded as part of the UK. Therefore, objects which have arrived in the UK within the last 50 years from the Channel Islands are normally referred to an Expert Adviser for scrutiny as to national importance.

If my cultural object has arrived in the UK within the last 50 years, what evidence should accompany the application?

12. The documentary evidence must provide details of the provenance and legal status of the object concerned. If the object is a recent arrival in the UK it may be simpler to provide copies of the commercial shipping documentation or a copy of the Customs Single Administrative Document (C88) with your licence application. If there are no recent import documents available, it is important that an export licence application is supported by provenance dating back as far as possible or, in the case of material from Iraq, 1 August 1990. Failure to provide any of this information will result in delay, or it may result in the Export Licensing Unit not being able to process your application.

If my cultural object has arrived in the UK from an EU Member State on or after 1st January 1993, what evidence should accompany the application?

13. In addition, where an object has come to the UK from an EU Member State (listed in Appendix C) on or after 1 January 1993, either directly or indirectly via a third country, applicants should include evidence that the object was lawfully and definitively exported from the originating Member State. Applications for such objects should be accompanied by:
 - (a) documentation providing all relevant information on the cultural object and its legal status at the time when the application is made, in order to allow the Export Licensing Unit to assess whether a previous export of the object was lawful and definitive; and
 - (b) a high-resolution digital photograph of the cultural goods in question (this requirement may be replaced, where appropriate and at the discretion of the Export Licensing Unit, by a detailed list of the cultural goods).

What about the special considerations which apply to manuscripts?

14. For some manuscripts, the Expert Adviser may recommend that the UK national interest can be satisfied by the retention of a copy and that the originals should be granted an export licence. In such cases, the Export Licensing Unit will ask for a copy, so that it may be deposited at the British Library. Access to the copy is then normally denied for seven years, unless the owner of the original specifically consents to some lesser restriction. To save time, you may therefore wish to provide (where possible) a good quality copy of the original with your licence application. Illegible or poor-quality copies (e.g. with parts of the text cut off in copying) are not acceptable, as they will be of no use to researchers in the future. If the manuscript in question is unsuitable for photocopying, copies can be made using a camera mounted above the manuscript. Prints made using a standard camera or a digital camera are acceptable, as is the use of microfilm. When using microfilm please ensure that it is 35mm. Digital copies are also acceptable provided they meet the standard set out in Appendix G and are accompanied by a signed statement confirming that they meet this standard. Digital copies will be stored at the British Library.
15. You should, however, ensure that by making a copy, you are not infringing the rights of the copyright owner. If you choose not to agree to a copy being

deposited at the British Library, your licence application will be referred by the Export Licensing Unit to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (see paragraph 36).

When will the presence of marginalia mean that printed matter should be treated as a manuscript for the purposes of export?

16. Where printed material contains significant manuscript annotations of literary, scholarly or historical interest, it shall be treated as a manuscript for the purposes of export licensing. Simple ownership or presentation inscriptions will not be considered to meet this test.

Manorial Documents

17. No manorial documents may be removed from England and Wales without the permission of the Master of the Rolls so before considering submitting a licence application for such documents, applicants must consult the Secretary of the Royal Commission on Historical Manuscripts (HMC) on whether the Master of the Rolls will consent to their export (details at Appendix D). A copy of the written comments from the HMC should accompany the licence application.

What special considerations apply in Scotland?

18. Under Scottish law certain public records, such as court related records, are considered to be *extra commercium*. This means that they are held for the benefit of the community at large and cannot become private property by sale or gift. In practice, the Keeper of the Records of Scotland has a responsibility for such records and can take action to reclaim those that may have passed into private hands.
19. If you want to export Scottish public records that may potentially be defined as being *extra commercium*, you should contact the National Records of Scotland for advice. Telephone number: 0131 334 0380; email: customerservices@scotlandspeople.gov.uk

How does an Expert Adviser decide what is of national importance?

20. An Expert Adviser may object to the granting of a licence if they believe that an object's departure from the UK would be a misfortune because it satisfies one or more of the **Waverley criteria** (see paragraphs 37-39). This can include an object by a living manufacturer or producer. Expert Advisers are entitled to view an object before reaching a decision.
21. If the Expert Adviser objects, the Export Licensing Unit refers the licence application to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (see paragraph 36). In cases of doubt, Expert Advisers should refer the application to the Reviewing Committee for it to decide.

What happens if the Expert Adviser makes no objection under the Waverley criteria?

22. If no objection is lodged, the export licence will normally be granted. Usually, our Expert Advisers collectively object to the granting of licences for about 25 to 50 objects each year out of a total of approximately 20,000 objects referred to them.

Do museums and galleries need to apply for export licences?

23. Yes. Museums and galleries must apply for export licences. A museum or gallery is more likely to be arranging a temporary loan of an object for an exhibition abroad rather than seeking a permanent export. A temporary licence application by a national museum or gallery or one that holds a Museums & Galleries OIEL (see paragraph 7) is not normally referred to an Expert Adviser.

Can an export licence be revoked once it has been issued?

24. Yes. The Secretary of State may modify or revoke an issued export licence at any time.

What if I want to apply for a temporary licence?

25. Applications for temporary export licences are made on the same form. The same considerations apply to them as to applications for permanent export licences except that they are not scrutinised as to national importance. Instead the Expert Adviser will be requested specifically to comment on the object's fitness to travel and whether there are sufficient assurances provided as to its return in good condition at the end of the temporary licence period. Such applications will not normally be referred to the Reviewing Committee. Applications for extensions to temporary licences (see paragraph 27) will not normally be referred to an Expert Adviser.

How long is a temporary licence issued for?

26. A temporary licence will not normally be issued for a period of more than three years. It is possible to apply for one extension to an existing temporary licence, but this extension will not normally exceed three years, irrespective of the period for which the original temporary licence was granted. The object must be returned to the UK on expiry of the temporary licence. Failure to return it within the specified period constitutes an offence under section 5(b) of the Export of Objects of Cultural Interest (Control) Order 2003. Exporters who wish to keep a cultural object outside the UK for longer should apply for a permanent licence.

How do I apply for an extension to an existing temporary licence?

27. You must apply in writing to the Export Licensing Unit stating why the extension is required, confirming the new return date and providing any further details such as

a change of venue. You should also include a copy of the existing temporary licence. An extension must be applied for before the return date shown on the existing temporary licence. Any applications for an extension received after the return date has expired cannot be processed as the licence will have been exhausted and the object or objects will have to be returned to the UK.

I have been granted a temporary licence for an object, but now wish to export it permanently. Do I need to make a fresh application?

28. Yes. Temporary licences are issued on the basis that an object will be returned to the UK by a specified date. An Expert Adviser may decide not to object to the granting of a temporary export licence where they would have objected to a permanent licence for the same object. You must inform the Export Licensing Unit in writing of the return of all objects granted a temporary export licence, quoting the licence number and the expiry date. It is a condition of all temporary export licences that the objects be returned to the UK by the date stated thereon.

What if I fail to return an object exported under a temporary licence within the specified time period?

29. In addition to it constituting an offence (see paragraph 26), failure to return an object exported under a temporary licence within the specified time period will be taken into account when considering any further temporary licence applications by the same applicant in respect of any object at any time. The temporary licence application will normally be refused unless the applicant can give a reasonable explanation for their failure to comply with the terms of the previous temporary licence.

Can I apply for a temporary licence for my object if it was found to be a national treasure?

30. Enabling the long-term export of objects that have been found by the Reviewing Committee to be national treasures under a temporary licence fundamentally undermines the aims of the export licensing system for cultural objects. As a result, a temporary licence will only be issued for such objects for a maximum period of three years, and normally only for the purposes of display in a public institution. The grant of a temporary licence for such objects will be subject to the conditions set out at Appendix J. No extension will be available and the object will have to be returned to the UK when the licence expires and will then have to remain in the UK for a further period of three years before a further application for a temporary licence can be made on the same terms. This would allow such objects to be displayed abroad for a specified period, but would ensure their return to the UK for at least a further three years.

I have my export licence. What other export paperwork do I need?

31. You should contact your local HM Revenue and Customs Advice Centre (telephone number at www.yell.co.uk) for advice and copies of HM Revenue and Customs publications. You should also be aware that there are prohibitions on the export of certain species of animals and plants and their derivatives (e.g. works of

art incorporating ivory or plumage) covered by the Convention on International Trade in Endangered Species (CITES). For advice as to whether CITES export permits are required and how to apply, contact the Animal Health CITES Team (details at Appendix D). An export licence may also be required from the Department for Business and Trade (DBT) for cultural goods classified as firearms, military or paramilitary equipment, regardless of monetary value. For advice, contact the Export Control Joint Unit within DBT (details at Appendix D).

What should I do if I lose my export licence?

32. You should write to the Export Licensing Unit explaining the circumstances of the case and requesting a replacement licence.

What should I do if I discover that I have inadvertently exported an object without the required licence?

33. You should make a voluntary written disclosure of the facts and circumstances to the Export Licensing Manager of the Export Licensing Unit. The Arts Council may then refer your written disclosure to HM Revenue and Customs and/or Border Force, a law enforcement command within the Home Office which is responsible for the enforcement of the export control. Border Force will then consider what action, if any, is appropriate.
34. You should be aware that if an object is presented to Customs for export without an export licence where one is required, the exporter and any other party concerned with the unlicensed exportation may be subject to penalties including criminal prosecution under the Customs and Excise Management Act 1979. The unlicensed object may also be subject to seizure under the provisions of the same Act.

What if I learn that HM Revenue and Customs has stopped the export of my object?

35. You should speak to the office of HM Revenue and Customs concerned.

Part II: National Treasures

This part sets out how decisions are reached on licence applications for objects which are potentially of national importance and describes the role of the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (the Reviewing Committee).

What is the role of the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest?

36. The Reviewing Committee is a non-statutory independent body set up to advise the Secretary of State on whether a cultural object that is the subject of an application for an export licence is a national treasure in the context of the Waverley criteria. The Reviewing Committee consists of eight members appointed by the Secretary of State for Culture, Media and Sport, who have expertise in one or more fields (paintings, furniture, manuscripts etc.). It was established in 1952, following the recommendations of the Waverley Committee in its Report in September of that year, and its terms of reference are:

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

Details of the present membership are given at Appendix E. Correspondence for the Chairman of the Reviewing Committee should be sent via the Reviewing Committee Secretariat (see Appendix A for details).

What is a National Treasure?

37. The Reviewing Committee will designate an object as a 'national treasure' if it considers that its departure from the UK would be a misfortune on one or more of the following three grounds:

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

38. These are known as the Waverley criteria (named after the 1950 committee chaired by Viscount Waverley which was appointed to consider and advise on an export policy). They are used to measure an object's importance and are not, nor ever have been, mutually exclusive, nor is any one criterion more important than the others. An object need only meet one criterion to be considered a national treasure. The first criterion is concerned with our history and the object's national importance, the second with aesthetic and artistic importance and the third relates to historic value for scholarship. References to 'Waverley one', 'Waverley two' and 'Waverley three' should not be interpreted as indicating a hierarchical ranking.
39. A helpful elucidation of the criteria is as follows:

I - History

Is it closely connected with our history and national life?

This category can include objects which have been produced abroad, but which have acquired national importance by association with an important person, location or event. The first criterion was originally intended to catch such objects as the 'Alfred jewel' or the manuscript of Gray's *Elegy* but it is now interpreted in a somewhat wider context to include objects which are of major importance for local history, or which have been part of collections which are of great historical significance, or which are associated with significant historical events, people or places. Examples of 'Waverley History' objects have included: the archive of manuscripts relating to the editing of Newton's *Principia Mathematica*; a pair of paintings by Canaletto entitled '*View of the Grand Walk, Vauxhall Gardens*' and '*the Rotunda of Ranelagh House*'; a 'jadeite' Neolithic axe-head; a collection of Thomas Hardy typescripts; Benjamin Britten's complete draft score of '*The Young Person's Guide to the Orchestra*'; the judge's annotated Penguin paperback copy of D. H. Lawrence's *Lady Chatterley's Lover* and a copy of the warrant for the execution of Mary Queen of Scots.

II - Aesthetics

Is it of outstanding aesthetic importance?

The assessment of outstanding aesthetic importance involves a subjective judgement. It is not restricted to great works of painting or sculpture. It might, for instance, be concluded that an exquisite snuff box met this criterion as well as a painting by Poussin. In the case of works by great artists it may be claimed that anything from the hand of Rembrandt is outstanding. However, such arguments will not always be accepted, and the condition as well as the quality of the work in question and the extent of the damage or restoration to which it may have been subjected may also be taken into account. Examples of 'Waverley Aesthetics' objects have included: the painting '*Venus and Adonis*' by Titian; a watercolour painting, '*The Blue Rigi Sunrise*', by J M W Turner; the 'jadeite' Neolithic axe-head also listed above; Domenichino's '*Saint John the Evangelist*'; a lobster telephone (Aphrodisiac) by Salvador Dali and Edward James; a sculpture of a large anthropomorphic crab by the Martin Brothers and a Breguet Four Minute Tourbillon watch owned by King George III for the technical accomplishment and aesthetic qualities of its mechanism.

III - Scholarship

Is it of outstanding significance for the study of some particular branch of art, learning or history?

The object might be considered of outstanding significance for scholarship either on its own account or on account of its connection with a person, place, event, archive, collection or assemblage. Such objects serve as benchmarks for assessing other items since they can throw new light on the study of their type. It is considered that 'learning' in relation to culture should cover a wide number of disciplines e.g. art history, archaeology, ethnography, anthropology, palaeontology, science, engineering, architecture or literature, etc. However, this is an illustrative list and not necessarily a comprehensive one. Examples of 'Waverley Scholarship' objects include: Benjamin Britten's complete draft score of *'The Young Person's Guide to the Orchestra'* also listed above; a 17th-century lead merchant's ledger from the Peak District; a peridot and gold suite of jewellery given by the Prince of Wales to be worn at his daughter's wedding; and a bilingual Middle English-Latin dictionary dating from 1483.

General statement applying to all criteria

The Reviewing Committee may take into account the condition as well as the quality of the object in question and the extent of any damage or restoration to which it may have been subjected. In addition, it may take account of local interest, but only as part of its consideration as to whether one or more of the Waverley criteria apply.

What happens if my application is referred to the Reviewing Committee?

40. When an export licence application is objected to by an Expert Adviser it is referred by the Export Licensing Unit to the Reviewing Committee Secretariat within a day or two of the objection having been received. The Reviewing Committee Secretariat will inform you as soon as it receives the objection that your licence application has been objected to and provide you with the forthcoming Reviewing Committee meeting dates. The case will normally be heard within 2 to 3 months of receipt of the objection by the Export Licensing Unit subject to your and the Expert Adviser's availability. A meeting of the Reviewing Committee is convened at which the eight permanent members are usually joined by three independent assessors chosen for their expertise on the object in question. These independent assessors are treated as (temporary) members of the Reviewing Committee for the application under consideration. Officials from the Arts Council are also present to advise the Reviewing Committee. Prior to the meeting, you are invited to submit a written statement to the Reviewing Committee giving reasons why, in your opinion, the object's departure from the UK would not be a misfortune because it does not satisfy any of the Waverley criteria (if you feel it does not). You may also wish to advance any other arguments as to why the licence should be granted. The Expert Adviser likewise submits a written statement as to why they believe the object's departure from the UK would be a misfortune because it satisfies one or more of the Waverley criteria. The Reviewing Committee Secretariat ensures that all parties see both statements at least one week before the meeting.

41. At the meeting, there is an opportunity for both you and the Expert Adviser to add to your written statements and to ask questions of each other. The Reviewing Committee members may also ask questions of each side. You may be accompanied by any adviser who you feel may help you in relation to some aspect of your case. You will also need to arrange, at your expense and risk, for the object under consideration to be transported to the meeting venue, unless, exceptionally, the Reviewing Committee agrees to undertake a visit because the object is too large or fragile to be moved.
42. Once questions have been answered, you and the Expert Adviser leave the meeting while the Reviewing Committee members vote on whether the object's departure from the UK would be a misfortune because it satisfies one or more of the Waverley criteria. If the Reviewing Committee finds that this is the case, it **recommends** to the Secretary of State that a decision on the licence application should be **deferred** for an initial period, "the first deferral period", (normally two to four months, although longer can be recommended – see paragraph 44) to enable a serious expression of interest to purchase the object at or above the market price (the "fair market price") which will also be recommended by the Reviewing Committee; and a further deferral period in which the sale should complete (the second deferral period). The second deferral period is usually a maximum of six months, except for exceptionally expensive objects when more time may be needed to raise the funds.

Where the Reviewing Committee considers that the object's departure from the UK would not be a misfortune because none of the Waverley criteria are met it will recommend that the export licence should be granted.

What is the purpose of the deferral periods?

43. The purpose of recommending a first deferral period is to allow time for a serious expression of interest to purchase the object at the fair market price to be made and to keep it in the UK. In most cases such expressions of interest are likely to come from public sources (museums, galleries or other heritage bodies such as the National Trust).

How does the Reviewing Committee decide the length of the deferral periods?

44. The Reviewing Committee has wide discretion. The criteria on which the length of deferral is normally based include:
- the value of the object;
 - the likelihood of a fundraising attempt being launched;
 - the proximity of the beginning of the deferral period to a new financial year;
 - the proximity of the beginning of the deferral period to the summer and other holiday periods; and

- whether the requested three months' notice of an intention to sell an object that has been conditionally exempted from capital taxation has been given to the Arts Council.

The deferral period normally consists of a two-stage period, known as a 'split deferral' with the second deferral period usually being a maximum of six months, except for exceptionally expensive objects when more time may be needed to raise the funds.

What is a 'split deferral' period?

45. In a split deferral, the Reviewing Committee recommends that the Secretary of State should defer a decision for an initial period (two to four months is the most common) to enable an Appropriate Purchaser to consider whether they wish to make a serious expression of interest to enter into an Option Agreement to purchase the object and keep it in the UK. The second deferral period (usually a maximum of six months) is for fundraising to take place and is the period at the end of which the sale must be completed. The reasoning behind a split deferral is that, should there not be a serious expression of interest at the end of the first deferral period, the Reviewing Committee is in effect recommending that the licence should be granted at that stage (see paragraph 77).

How does the Reviewing Committee arrive at a recommended fair market price?

46. The objective of the Reviewing Committee is to recommend a valuation which is fair and reasonable to the owner and national heritage interests alike by examining carefully the elements included in the valuation. Therefore, at its meeting, the Reviewing Committee will normally ask what the value as stated on the application form represents and you will be asked to provide evidence to support that valuation. This valuation is likely to fall into one of three categories:
- the price at which the present owner has bought, either at auction or through a private sale; or
 - the price at which the present owner has agreed to sell to a foreign purchaser (either unconditionally or subject to the granting of an export licence); or
 - an estimated price with supporting evidence, such as recent prices fetched by other important objects in the same field.
47. Without the information requested, the Reviewing Committee may not be able to consider the case at the meeting and this will cause delay in considering your licence application.
48. In addition to the base price the Reviewing Committee may include several additional elements in the recommended fair market price. These are:
- buyer's premium;

- reasonable conservation costs (those incurred by a new owner as being necessary to stabilise the condition of an object); and
 - dealer's commission on a sale to a third party (which will not normally include a commission on a sale to a connected party). The Reviewing Committee Secretariat can provide further advice on this policy in specific cases.
49. The Reviewing Committee may also exclude certain elements in arriving at the recommended fair market price. The Reviewing Committee considers that an overseas purchaser of an object which might satisfy the Waverley criteria should be aware, or should be made aware by their agent, that there is a risk that a decision on the export licence application might be deferred. Such purchasers should be prepared to take account of that risk and, therefore, the following factors are not normally included in the Reviewing Committee's recommended fair market price:
- interest charges;
 - transport and storage costs;
 - insurance costs;
 - legal fees; and
 - other than as provided in paragraph 53 below, fluctuations in foreign currency exchange rates.
50. To assist the Reviewing Committee in arriving at a recommended fair market price, you should be prepared at the meeting to answer its questions in respect of valuation.

What questions is the Reviewing Committee likely to ask me in relation to valuation?

51. Questions could include the following:

a) For recent auction sales:

- When was the auction?
- What was the hammer price?
- What does the value on the export licence application represent? Is it the hammer price plus the buyer's premium plus VAT? Is the sale under the margin scheme? You will be asked to provide, in advance of the meeting, a copy of the sales invoice and a breakdown of its components.

b) For privately agreed sales and other situations:

For objects where the valuation provided represents a private sale, a privately agreed sale or an agreement to sell, you will be asked to provide, in advance of the meeting, the original signed written agreement or a certified copy of it together with a copy of the invoice or, where the sale has completed, a copy of the receipted invoice. You will also be asked for confirmation whether the sale agreement is a single transaction or whether the agreement (and in particular the amount payable under it) was, is or will be affected by any other past, current or future transactions between the owner and the purchaser. For objects where the valuation provided represents an estimate, you will be asked to provide, in advance of the meeting, a written explanation of how the value was reached. You may be asked the following questions at the meeting:

- What does the value on the export licence application represent?
- Is there a sale agreement between the owner and the overseas purchaser? If so, what are the payment and other terms?
- Is the owner in any way connected with the overseas purchaser?
- Has the object been sold at auction or privately in the last ten years? If so, when and what was the price?
- If the object was bought by a dealer at an auction, was the dealer purchasing for stock or bidding on behalf of the present overseas purchaser?
- If a UK purchaser wishes to buy the object, what would the price be bearing in mind the price you quoted on your export licence application? Would VAT be payable and if so on what and how much would it amount to?

52. If the Reviewing Committee accepts your valuation, the licence application is likely to be deferred at that value. If the Reviewing Committee does not agree that the evidence provided justifies the estimated valuation and a value cannot be agreed by all parties, it will normally recommend that the Secretary of State seek an independent valuation from valuers with recent market experience in the specific field of the object. [see paragraph 54]

What if I have paid for the object, or the sale agreement is, in a currency other than Pound Sterling?

53. You will need to provide evidence that you have paid for the object in this currency or the agreement is in this currency. For the purposes of setting the fair market price in Pound Sterling the Reviewing Committee will give you the choice at the hearing of using the exchange rate at the date of the sale or the agreement; the date of your licence application or the date of the hearing.

What will happen if the Reviewing Committee is not satisfied that the valuation provided is adequately substantiated?

54. If, after hearing your answers to the questions at the meeting, the Reviewing Committee is not satisfied that the valuation provided is adequately substantiated, it may request that you provide further information to dispel any remaining concerns. If the Reviewing Committee has grounds for considering that there is evidence to substantiate a value other than the value given on the export licence application (for example a recent price at auction, or an agreed sale price that differs from the value on the licence application) it may recommend that the Secretary of State bases the fair market price on this evidence. If the Reviewing Committee does not consider that the valuation is adequately substantiated and considers that further independent advice is needed, it may recommend to the Secretary of State that an independent valuation be sought.

If the Secretary of State agrees to seek an independent valuation the process that is to be followed is as follows:

The Secretary of State will appoint an independent valuer who is suitably qualified to advise on the object in question. The owner will be informed of that valuer's identity and the letter of instruction to them will be agreed beforehand by all parties.

The Secretary of State's independent valuation will be shared with the owner who will be asked whether they agree it and agree to be bound by it.

If the owner does not agree the Secretary of State's independent valuation they can submit a further valuation within four weeks of the Secretary of State's valuation from another independent valuer of their choice. The letter of instruction to the owner's independent valuer will be agreed beforehand by the parties.

If there is a difference between the owner's independent valuation and the Secretary of State's independent valuation the two valuers will be asked to attempt to reach an agreed value. If they fail to agree a value the Secretary of State will appoint a third person to act as an arbitrator, not as an expert, to determine which of the two values is correct.

Once the value has been agreed this will be the fair matching price and the Secretary of State will, having received further advice from the Reviewing Committee, set the length of the deferral periods.

When will I know the Reviewing Committee's recommendation?

55. Once the Reviewing Committee has completed its discussions on the Waverley criteria, deferral period and price, and has voted, you and the Expert Adviser are invited back into the meeting room and are informed of the Reviewing Committee's recommendation, including, where relevant, the recommended length of the deferral periods and the recommended fair market price. You are also told which of the criteria the Reviewing Committee considers have been satisfied. If you have any further questions, they are dealt with at this stage.

What happens to the Reviewing Committee's recommendation after the meeting?

56. As soon as possible following the meeting and in any event within two weeks, the Reviewing Committee Secretariat informs the Secretary of State of the Reviewing Committee's recommendation. The Secretary of State then makes a decision on the deferral period and fair market price, taking into account the Reviewing Committee's recommendations. Once the Secretary of State has made a decision, the Reviewing Committee Secretariat will inform you in writing of that decision. If there is to be a deferral period, the first deferral starts on the date of the press notice announcing the decision, not the date of the Reviewing Committee meeting. If the licence is to be granted, it will normally be issued within five business days of receipt of the Secretary of State's decision.

What does the press notice say?

57. The press notice invites interested parties to make a serious expression of interest to purchase the object through the Reviewing Committee Secretariat. It explains why the object is of national importance and details the length of the deferral periods and the fair market price. The press notice is circulated to museums and galleries, the National Lottery Heritage Fund, the National Heritage Memorial Fund, the Art Fund and other interested parties, as well as to the media.

What happens once I have received the Secretary of State's decision on my export licence application?

58. When you receive a letter informing you that the decision on your export licence application has been deferred, you should consider how you wish to proceed and/or advise the owner accordingly. Any serious expressions of interest to purchase will be communicated to you through the Reviewing Committee Secretariat as soon as reasonably possible after they are received.

What happens at the end of the first deferral period?

59. If one or more serious expressions of interest have been received during the first deferral period the Reviewing Committee Secretariat will write to you the day after it ends informing you. You will then have 15 Business Days to decide whether or not you wish to proceed with the process and to grant the prospective purchaser ("the Buyer") of your choice if there is more than one, an Option. The form of the Option Agreement, which is non-negotiable, is at Appendix K. The form of the Option Agreement is a standard template: it cannot be varied other than where variations are permitted in the agreement and in the footnotes to it.

If you accept an offer, the first condition report (see para 68 below) is produced by the Buyer and has to be agreed before the Option Agreement is entered into, so within the 15 Business Day consideration period. If there is more than one serious expression of interest you will need to decide which one to accept in sufficient time to enable them to complete the first condition report and enter into the Option Agreement within the 15 Business Day period.

If you delay in expressing a preference where there is more than one serious expression of interest, decide not to proceed or fail to grant the Option by the end of those 15 Business Days this will be taken as an unwillingness to accept a matching offer and the Secretary of State will refuse your licence.

When will the second deferral period start?

60. The second deferral period will start on the day the Option is entered into by both parties.

What constitutes a serious expression of interest?

61. An expression of interest from a **public body** will be considered serious if it is in the form of a formal letter from its Board of Trustees or the person with delegated authority to bind it and gives a detailed breakdown of how much of its own funds it can commit to the purchase, how much it will be seeking funding for and from which sources.

From a **private source** an expression will be considered serious if it is accompanied by a signed undertaking to the Secretary of State guaranteeing reasonable public access and satisfactory conservation and security arrangements. This should be in the form of a letter confirming willingness to acquire the object at the fair market price; giving details of the UK institution to which the object would be lent; the period of the loan; whether the loan would be long term or for a specified number of months per annum and for how many years; the date when display will commence and confirmation that this arrangement will continue for as long as the object is in their ownership with an agreement that they will not to part with ownership of the object within ten years without obtaining an undertaking from the purchaser guaranteeing comparable requirements on access, conservation, security and re-sale.

The letter should give details of where the object will be held at times when it is not on display and confirmation reasonable access will be given to the borrowing museum's Director to allow them to check that appropriate environmental and security conditions are in place.

The private purchaser should also provide a letter from the Director of the museum confirming that it will put the object on public display. This letter should verify the agreed display arrangements, as set out in the private purchaser's signed undertaking to the Secretary of State, specifying the gallery, periods of display and commencement date. The letter should be accompanied by a draft loan agreement, confirming that the museum will discuss the environmental and security conditions for display while the object is not on loan, and that it will give every assistance to the private purchaser in ensuring that the object is kept in an environment which will provide for its long-term conservation and security.

As a guideline the following will be expected to be guaranteed for the expression to be considered serious:

- a) reasonable public access to the object in a public institution. As a guideline, access for a minimum of 100 days a year (except in exceptional circumstances) will normally be considered to constitute reasonable public access;
- b) satisfactory conservation conditions and security arrangements;
- c) agreement not to part with ownership within ten years without obtaining an undertaking from the purchaser guaranteeing comparable requirements on access, conservation, security and re-sale; and
- d) written confirmation from the public body concerned that it will facilitate the access guaranteed by the undertaking.

To arrange such an agreement you can either approach a public body directly or assistance may be available from the person appointed as Champion for the case. The Champion is the person appointed by the Secretary of State, usually the Expert Adviser, whose role it is to bring the Secretary of State's decision to the attention of institutions which may be interested in acquiring the object. The Reviewing Committee Secretariat will be able to provide you with contact details for the Champion.

What is a public body?

- 62. It is for the Secretary of State to decide if a body is a public body for the purposes of this guidance. Broadly speaking, this will be the case if the body is listed below. This list is not exhaustive, but does indicate the sort of body that the Secretary of State is likely to treat as a public body.
- 63. The National Gallery; The British Museum; The National Museums of Scotland; The National Museums and Galleries of Wales; The National Museums of Northern Ireland are all public bodies. Other public bodies include:
 - any museum, art gallery, library or other similar institution in the UK having as its purpose or one of its purposes the preservation for the public benefit of a collection of historic, artistic or scientific interest;
 - any library the main function of which is to serve the needs of teaching and research at a university in the UK;
 - English Heritage; Historic England; the National Trust; the National Trust for Scotland; the Art Fund (formerly known as the National Art Collections Fund); the Trustees of the National Heritage Memorial Fund; the Friends of the National Libraries; the National Churches Trust (formerly known as the Historic Churches Preservation Trust); Natural England (formerly known as the Nature Conservancy Council);
 - any local authority (including National Park Authorities); and
 - any Government department; any university or university college in the UK;

- any body listed in Schedule 3 of the Inheritance Tax Act 1984.

Can museums offer less than the fair market price?

64. An offer from a public body under the tax free private treaty sale arrangements for less than the specified fair market price can be made provided that it is a compensating offer. Such an offer should not normally disadvantage owners or put them in a worse position than they would have been in had they accepted a fair market price. The Secretary of State will take into account the existence of a compensating offer to purchase **when making a decision on an export licence application.**

What are the private treaty sale arrangements?

65. A private treaty sale of a cultural object to a qualifying public body may be exempt from capital taxation (i.e. Inheritance Tax, Capital Gains Tax and Corporation Tax on companies' chargeable gains). Where the exemption does apply, the vendor will receive the sale proceeds without any liability to tax. If applicable, a tax exemption on sale proceeds can enable a purchasing public body to make (and the Secretary of State to take into account as an effective compensating offer) an offer which is lower than the fair market price (i.e. the fair market price less the allowance against capital taxation). These tax concessions are not available on sales to private purchasers.
66. This is only a general outline of the arrangements that exist for a private treaty sale of a cultural object to qualifying public bodies. For further information contact your local HM Revenue and Customs tax office (telephone number at www.yell.co.uk).

What happens if I decide to grant the Option Agreement?

67. You will be entering into a legally binding agreement to sell the object to the party you have granted the Option to if they exercise the Option during the second deferral period (the Option Period).

The Option will be exercised by the Buyer once they have raised the purchase price during the second deferral period (the Option Period). If the Buyer chooses not to exercise the Option because they fail to raise the necessary funds, or they revoke the agreement because the object is damaged, then a licence would normally be granted.

The Option Agreement provides that once the Option has been exercised by the Buyer, completion of the sale must take place no less than five and no more than ten Business Days after the date of the Exercise Notice.

Condition reporting

68. Under the Option Agreement, the Buyer will be responsible at their own expense for preparing a condition report of the object (the "first condition report") before the

Option Agreement is signed by the parties. This must be sent to the owner on or before the fifth day of the 15 Business Day consideration period. Owners will then have 10 Business Days to agree to the first condition report and grant the Option. If the owner does not agree with the first condition report, the parties must jointly instruct an independent third party to prepare a further report (the independent condition report). If the parties are unable to agree on the identity of the independent third party, the agreement provides for the President of the Law Society of England and Wales to nominate a suitable third party.

69. A further condition report (the “second condition report”) shall be prepared by the Buyer, after exercising the Option, but before completion of the sale. If the second condition report shows that the object has sustained damage since the first condition report (or the independent condition report as applicable) was prepared, then a reduction will be made to the purchase price the amount of such reduction to be determined by an independent third party agreed by the Buyer and Seller (or, in the absence of such agreement, to be nominated by the President of the Law Society). Alternatively, where the object has sustained damage, the Buyer can revoke their exercise of the Option, either immediately or when the purchase price reduction has been determined, and the export licence will normally be granted.

Storage and other provisions

70. The Seller and the Buyer will agree, prior to the Option Agreement being signed, the terms that will apply to the storage and care of the object during the Option Period. The Option Agreement allows the parties to agree these terms and any provisions relating to viewing the object by the Buyer and/or funding bodies, to its delivery and the transfer of risk during the second deferral period on a case by case basis in clause 5.2.

Currency fluctuations

71. The Option Agreement provides three options for payment of the Consideration for the object which are set out in Schedule 1, Part B as follows:
- (i) The Consideration is specified and paid in Pound Sterling; or
 - (ii) The Consideration is specified and paid in a currency other than Pound Sterling. This option is available to the Seller if the Seller can prove that they paid for the object in this currency, and if the Buyer is content to pay the Consideration in that other currency; or
 - (iii) The Consideration is specified in a currency other than Pound Sterling, and then this amount is converted into Pound Sterling using the exchange rate on the last Business Day immediately prior to the date of Completion. This option is available to the Seller if the Seller can prove that they paid for the object in this currency, and if the Buyer is content to pay the Consideration in Pound Sterling and bear the exchange rate risk.

It will be a matter for you to agree with the Buyer in what currency the Consideration is specified in the Option Agreement.

Where the sale is arranged as a private treaty sale (see paragraph 65) in circumstances where the sale to the foreign purchaser has not completed and the UK owner is the Seller under the Option Agreement, the Seller will not be offered this option and the Consideration must be paid in sterling.

What happens if the Option is exercised and the sale completed?

72. Your licence application will automatically be treated as withdrawn.

Can I withdraw my application after granting an Option?

73. No, the Option is a legally binding agreement and if you renege on it your licence will be refused and the procedures in paragraphs 79-82 will apply.

What happens if I receive a serious expression of interest from a public source and a private one with the requisite undertaking as set out in paragraph 61?

74. You are free to choose between them. The Secretary of State hopes that you will accept the one which provides the greater public benefit.

What happens if the Buyer under the Option chooses not to exercise it?

75. Your export licence will normally be granted at the end of the deferral period although in some circumstances the Secretary of State may decide to defer a decision on your licence application for a further period.

Who is the ultimate authority to decide whether I get an export licence?

76. The Reviewing Committee only provides advice and recommendations to the Secretary of State. It is for the Secretary of State to make a decision on your licence application. The Secretary of State has discretion when making decisions on licence applications, but that discretion must be exercised reasonably.

What happens if no serious expressions of interest are received in the first deferral period?

77. If no serious expressions of interest are received during the first deferral period, your export licence will normally be granted at the end of it although in some circumstances the Secretary of State may decide to defer a decision on your licence application for a further period.

In what circumstances has the Secretary of State decided to defer a licence for a further period?

78. There have been cases where the Secretary of State has agreed to a further deferral period at the end of the deferral period originally set where a public body attempting to acquire the object had a real possibility of finding the outstanding funds required for purchase. However, additional deferral periods are rare and normally only granted where there is a reasonably certain prospect of raising the residual sum within a prescribed timescale.

What happens if an export licence has been refused in the past and I wish to re-apply for a licence?

79. Where a subsequent application is made for a licence to export an object which has been found by the Reviewing Committee to be a national treasure and its export licence has been refused it will be subject to the normal licensing procedures as set out in this notice. If the Expert Adviser objects to the granting of the licence under the Waverley criteria, the application will be referred to the Reviewing Committee for consideration as to whether the object still satisfies the Waverley criteria and its departure from the UK would be a misfortune.
80. If a subsequent application is being made within ten years or so of a licence application which was refused, the applicant for the fresh licence should include, in their written statement to the Reviewing Committee, details of any change of circumstances since the earlier application, or other arguments in support of the new application. In particular, the applicant should set out any arguments they wish to advance as to why the Reviewing Committee should not recommend a further licence refusal, without a deferral period, given the history of the previous application (assuming the object is still found to be a national treasure). If the Reviewing Committee concludes that the object is a national treasure and sees no change of circumstances to justify recommending approval of the licence, it will normally recommend that the licence be refused without a deferral period.
81. If the applicant can show that, since the previous application, the object has been made available for sale to an appropriate purchaser, the Reviewing Committee can advise on all relevant factors, such as whether the price at which it had been offered was reasonable, the identity of the prospective purchaser, the time since the offer and the time since the previous licence refusal. The Secretary of State will take all factors relating to such an offer into account including the absence of any such offer in deciding on the licence application but this latter factor will not necessarily be decisive.
82. An application by, or on behalf of, a person closely connected with the person who was the owner at the time of the earlier application (for example the spouse of the previous owner or a company controlled by the previous owner) will normally be treated in accordance with paragraphs 79-81.

To whom should I speak if I am not content with the handling of my licence application?

83. Staff in the Export Licensing Unit and the Reviewing Committee Secretariat are happy to answer queries by telephone about export licensing. We encourage people to contact us about any problems so that we can try to remedy them. If you are not happy with the service provided, please tell the person who is dealing with your enquiry why you are dissatisfied with the way in which it is being handled. They will try and address the problem there and then or refer you to someone who can help. Alternatively, you can contact the Head of Enquiries at the Arts Council. Our contact details can be found here: [artscouncil.org.uk/contact](https://www.artscouncil.org.uk/contact). If you are not

happy with the response to your complaint, you can ask for a review of how it has been dealt with by the Chief Executive – same contact details as above.

84. You can seek to have your complaint reviewed by the Parliamentary Ombudsman, an officer of the House of Commons who is wholly independent of the Government, at any time, by asking your MP to put your complaint to the Ombudsman.

What is the Advisory Council on the Export of Works of Art?

85. The Reviewing Committee is guided in its policy advice by the membership of the Advisory Council on the Export of Works of Art. The Advisory Council was established to provide a forum for the discussion of the principles and operation of the export control system and usually meets once a year in June or July. Museums and galleries, representatives of art trade organisations and various 'heritage' bodies are represented on the Advisory Council. A full list of members is at Appendix F.

Can I get an advance ruling from an Expert Adviser or the Reviewing Committee on whether my object meets the Waverley criteria?

86. No. The recommendations of the Reviewing Committee cannot be pre-judged. Each licence application is treated on its own merits.

Does the Reviewing Committee publish details of its past recommendations?

87. Yes. The Reviewing Committee has an Annual Report which is published by the Stationery Office Publications Centre (see Appendix D). The Report, which is presented to Parliament, outlines the Reviewing Committee's policy discussions and gives detailed accounts of the cases considered.

What guidance is available on the internet?

88. This guidance is on the Arts Council's website at:

[Export Licensing page](#)

89. Notes of Reviewing Committee case hearings, together with associated papers, are on the Arts Council's website at:

[Reviewing Committee page](#)

90. Press notices about export licensing decisions by the Secretary of State are on the DCMS website at:

[DCMS press releases page](#)

Table 1: Objects excluded from the export control (referred to in paragraph 3)

How to use this table

If you intend to export an object which falls fully within one of the categories described below, an export licence application is **not** required

category of item

1. Postage stamps and other articles of philatelic interest.
2. Letters or other writings written by or to the exporter or the spouse of the exporter.
3. Birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter.
4. Any object exported by, and being the personal property of, the manufacturer or producer thereof (does not apply to companies), or the spouse, widow or widower of that person.
5. Any object less than 50 years of age at the time of export.

Flow chart (as referred to in paragraphs 8-9)

Do I require an individual export licence?

(Please ensure that you read any relevant footnotes and take account of the age limits applicable in Table 2).

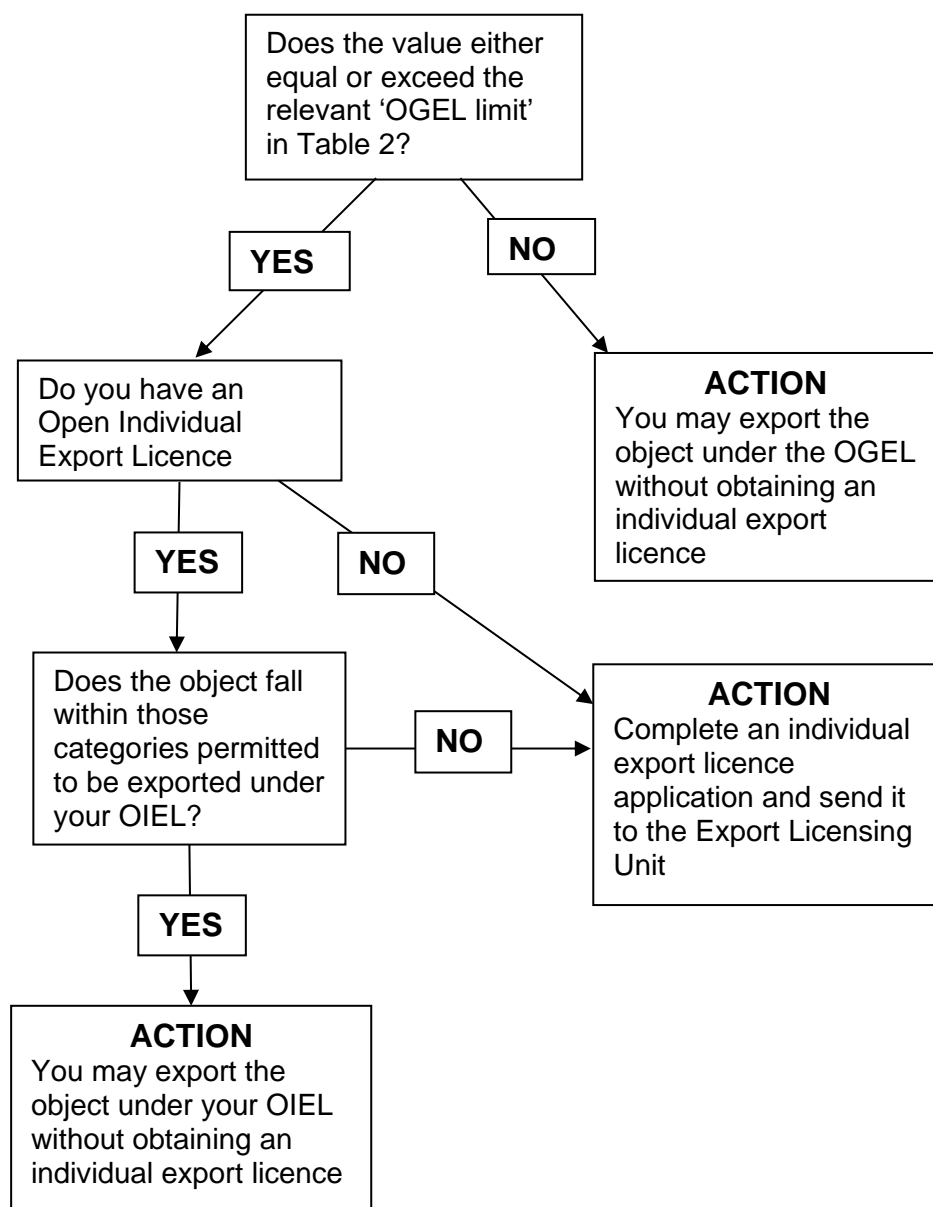


Table 2: OGEL value limits for the export of cultural goods

	Category of Object	OGEL value limit ¹
1.	Any article over 50 years of age (excluding objects listed in categories 2-11 below) ²	£ 65,000
2.	Archaeological material found in UK soil or UK territorial waters over 50 years of age	£ Zero
3.	Any document or manuscript (in any case not being printed matter) ³ over 50 years of age	£ Zero
4.	Any archive of manuscripts and documents in any medium, created and/or accumulated by an individual, family, corporate body or institution, which has survived or been preserved as evidence of their purpose and activities over 50 years of age	£ Zero
5.	An architectural, scientific or engineering drawing produced by hand over 50 years of age	£ Zero
6.	A photographic positive or negative or any assemblage of such photographs over 50 years of age	£10,000
7.	A textile (excluding carpets and tapestries) over 50 years of age	£12,000
8.	A portrait or other article consisting of or including a representation of the likeness of any British historical personage ⁴ (made otherwise than by photography and excluding a coin) over 50 years of age	£10,000
9.	A firearm over 100 years of age and any other arms or armour over 50 years of age ⁵	£35,000
10.	A firearm between 50 and 100 years of age ⁵	£65,000
11.	A painting in oil or tempera (excluding any portrait of a British historical personage) over 50 years of age	£180,000

1. The value is the value of the article as required to be declared for Customs purposes and if the goods to be exported consist of a matching set or pair of articles the value is the value of the matching set or pair.

2. **An individual export licence is not required to export the following goods:**

- a) any musical instrument over 50 years of age temporarily exported for a period of less than 6 months for use in the course of work by a professional musician;
- b) any musical instrument over 50 years of age exported following temporary importation for a period of less than 6 months, having been imported for use in the course of work by a professional musician;
- c) any motor vehicle (wherever registered) over 50 years of age (other than those designed or adapted for military or paramilitary use) temporarily exported for a period of less than 6 months for use for social, domestic or pleasure purposes (including attendance at or participation in a race, rally, or non-commercial exhibition);
- d) any foreign registered motor vehicle over 50 years of age (other than those designed or adapted for military or paramilitary use) exported following temporary importation for a period of less than 6 months, having been imported for use for social, domestic or pleasure purposes (including attendance at or participation in a race, rally, or non-commercial exhibition).
- e) any article over 50 years of age that is in the UK following its importation solely for the purpose of transit through the UK with a view to export;
- f) any article over 50 years of age that is not in free circulation in the UK;

- g) any article over 50 years of age that the Secretary of State has approved for return to the claimant following a recommendation of the Spoliation Advisory Panel. For such articles there must be produced to Customs at the place of export a copy of the Spoliation Advisory Panel's report together with a letter from the claimant confirming that they are content for the article to be exported.
- 3. Before considering submitting a licence application for manorial documents, applicants must consult the Secretary of the Royal Commission on Historical Manuscripts (HMC) on whether the Master of the Rolls will consent to their export.
- 4. A British historical personage means any person, living or dead, in respect of whom an entry appears in the *Dictionary of National Biography* (or any supplement thereto), *Who's Who*, or *Who was Who*.
- 5. An export licence from the Export Control Joint Unit within the Department for Business and Trade may be required for cultural goods classified as firearms, military or paramilitary equipment manufactured or produced less than 100 years before the date of exportation, regardless of monetary value. See address at Appendix D.

Appendix A

Export Licensing Unit and the Secretariat to the Reviewing Committee
on the Export of Works of Art and Objects of Cultural Interest

Export Licensing Unit

Export Licensing Unit
The Arts Council
21 Stephen Street
London
W1T 1LN

Email: elu@artscouncil.org.uk

Telephone: 0161 934 4317

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

Address export policy questions and correspondence for the Reviewing Committee
to:

The Secretariat
Reviewing Committee on the Export of Works of Art and Objects of Cultural
Interest
The Arts Council
21 Stephen Street
London
W1T 1LN

Email: rcewa@artscouncil.org.uk

Telephone: 0161 934 4317

Appendix B

OPEN GENERAL EXPORT LICENCE

EXPORT LICENCE

Open General Export Licence (Objects of Cultural Interest) dated 1st January 2021 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Article 2 of the Export of Objects of Cultural Interest (Control) Order 2003 (“the 2003 Order”), hereby grants the following Open General Export Licence:

Licensed exports

1. Subject to the following provisions of this Licence, the following goods, manufactured or produced more than 50 years before the date of exportation, may be exported from the United Kingdom to any destination except an embargoed destination:

(a) any musical instrument temporarily exported for a period of less than six months for use in the course of work by a professional musician;

(b) any musical instrument exported following temporary importation for a period of less than six months, having been imported for use in the course of work by a professional musician;

(c) any motor vehicle (wherever registered) temporarily exported for a period of less than six months for use for social, domestic or pleasure purposes (including attendance at or participation in a race, rally, or noncommercial exhibition);

(d) any foreign registered motor vehicle exported following temporary importation for a period of less than six months, having been imported for use for social, domestic or pleasure purposes (including attendance at or participation in a race, rally or non-commercial exhibition);

(e) any photographic positive or negative or any assemblage of such photographs, the value of which is less than £10,000;

(f) any firearms manufactured or produced more than 100 years before the date of exportation, and any other arms or armour manufactured or produced more than 50 years before the date of exportation, the value of which is less than £35,000;

(g) any firearms manufactured or produced more than 50 years but not more than 100 years before the date of exportation, the value of which is less than £65,000;

(h) any painting in an oil or tempera medium (excluding any portrait of a British historical personage, which would fall within sub-paragraph (i) below), the value of which is less than £180,000;

(i) any portrait or other article consisting of or including a representation of the likeness of any British historical personage (made otherwise than by photography and

excluding a coin), the value of which is less than £10,000;

(j) any article of clothing or footwear, or any article manufactured from textiles and textiles in the length or piece (excluding any carpet or tapestry), the value of which is less than £12,000;

(k) any article the value of which is less than £65,000 other than one of a description specified in the Schedule hereto;

(l) any article for which an EU licence has been issued by the Secretary of State;

(m) any article that is in the United Kingdom following its importation solely for the purpose of transit through the United Kingdom with a view to export;

(n) any article that has been imported into the United Kingdom from a country outside the United Kingdom and is not in free circulation.

Nothing in this sub-paragraph shall permit the exportation of

- i. any article which has been imported into the United Kingdom from the Channel Islands; or
- ii. any article which has been returned to the United Kingdom following its temporary export under the authority of a temporary export licence;

(o) any article that the Secretary of State has approved for return to the claimant following a recommendation to that effect by the Spoliation Advisory Panel.

Conditions

2. In respect of any musical instrument licensed to be exported under paragraph 1(a) above and any motor vehicle licensed to be exported under paragraph 1(c) above this Licence is subject to the following conditions:

a. that the exporter must return the goods to the United Kingdom within six months of the date of exportation; and

b. that the goods must not be sold when they are not in the United Kingdom and must at all times remain in the possession of the exporter.

3. In respect of an article falling within paragraph 1(l) above and being exported on the basis that an EU licence for temporary export has been issued, the exporter must return the article to the United Kingdom by the date stated for re-importation on the temporary EU licence and must immediately notify the Export Licensing Unit of its return in writing.

4. In respect of any article falling within paragraph 1(o) above, there must be produced to the proper officer of HM Revenue and Customs/the UK Border Force at the place of export a copy of the Spoliation Advisory Panel's report relating to the article, together with a letter from the claimant confirming that he/she is content for the article to be exported.

Interpretation

5. Any reference in this Licence to the value of an article shall:

- a. where the goods to be exported consist of a matching set or pair of articles, be construed as a reference to the value of the matching set or pair;
- b. be construed as the value of the article as required to be declared for Customs purposes.

6. In this Licence:

“British historical personage” means any person, living or dead, in respect of whom an entry appears in the Dictionary of National Biography (or any supplement thereto), “Who’s Who” or “Who was Who”;

“tapestry” means a fabric with a non-repetitive pattern woven in during making;

“embargoed destination” means a destination to which an export ban applies by virtue of a prohibition contained in legislation implementing sanctions.

7. Unless the context otherwise requires, any other expression used in this Licence shall have the meaning it bears in the Export Control Act 2002 or in the 2003 Order.

Prohibition not affected by this Licence

8. Nothing in this Licence shall affect any prohibition or restriction on the export of any goods other than under the 2003 Order.

Entry into force and revocation

9. The Open General Export Licence (Objects of Cultural Interest) dated 12 March 2015 is revoked.

An Official of the Department for Digital, Culture, Media and Sport authorised to act on behalf of the Secretary of State for Digital, Culture, Media and Sport

SCHEDULE (see paragraph 1(k))

- Any document or manuscript (in any case not being printed matter);
- Any archive of manuscripts and documents in any medium, created and/or accumulated by an individual, family, corporate body or institution, which has survived or been preserved as evidence of their purpose and activities;
- Any architectural, scientific or engineering drawing produced by hand;
- Any article which has been recovered at any time from the soil of the United Kingdom or from the bed of any lake, river, stream or other area of water therein or from the bed of the sea within the territorial waters of the United Kingdom other than any article which has been buried or concealed for a period of less than 50 years;
- Any photographic positive or negative or any assemblage of such photographs;
- Any firearms, arms or armour manufactured or produced more than 50 years but less than 100 years before the date of export;
- Any article of clothing or footwear, and any article manufactured from textiles and textiles in length or piece (excluding carpets and tapestries);
- Any portrait or other article consisting of or including a representation of the likeness of any British historical personage (made otherwise than by photography and excluding a coin).

EXPLANATORY NOTE

(This note is not part of the Licence)

The provisions of this Licence only apply for the purposes of the Export of Objects of Cultural Interest (Control) Order 2003 (S.I. 2003/2759) (“the 2003 Order”). This Licence permits (in some cases subject to certain conditions) the export from the United Kingdom to any destination (except an embargoed destination) of certain goods which were manufactured or produced more than 50 years before exportation. Exporters should note that this Licence does not remove the need for other consents that may be required for the export of particular cultural goods.

This Licence does not affect any other prohibitions or restrictions on the export of certain types of cultural goods. Details of those types of goods can be obtained by contacting the Export Licensing Unit, which issues export licences for objects of cultural interest on behalf of the Secretary of State.

Appendix C

Member States and territories of the European Union

Member States of the European Union (EU) are:

Austria	Germany	Poland
Belgium	Greece	Portugal
Bulgaria	Hungary	Romania
Croatia	Ireland	Slovakia
Cyprus	Italy	Slovenia
Czech Republic	Latvia	Spain
Denmark	Lithuania	Sweden
Estonia	Luxembourg	
Finland	Malta	
France	The Netherlands	

The following territories are also in the EU for export licensing purposes:

Andorra

Canary Islands

French Overseas Departments of Guadeloupe, French Guiana, Martinique and Reunion

Monaco

Mount Athos (Greece)

Appendix D

Useful addresses

TSO (The Stationery Office)

PO Box 29

Norwich

NR3 1GN

Telephone orders/

Enquiries: 0870 600 5522

Fax orders: 0870 600 5533

Email: book.orders@tso.co.uk

Animal and Plant Health Agency CITES Team

Centre for International Trade - Bristol

Floor 3, Horizon House

Deanery Road

Bristol BS1 5AH

General enquiries: 0117 372 3700

Email: wildlife.licensing@apha.gov.uk

Export Control Joint Unit

Department for Business and Trade Old Admiralty Building

Admiralty Place

London SW1A 2DY

Telephone: 020 7215 4594

Email: exportcontrol.help@trade.gov.uk

Website: <https://www.gov.uk/government/organisations/export-control-organisation>

The Secretary of the Royal Commission on Historical Manuscripts

Archives Sector Development

The National Archives

Kew

Richmond

Surrey TW9 4DU

Telephone: 020 8392 5369

Email: asd@nationalarchives.gsi.gov.uk

Website: <http://www.nationalarchives.gov.uk/information-management/legislation/other-archival-legislation/manorial-documents/>

Appendix E

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

Andrew Hochhauser KC (Chairman)

Andrew Hochhauser is a KC at Essex Court Chambers, a Deputy High Court Judge, a Fellow of the Chartered Institute of Arbitrators, Honorary Counsel to the Dean and Chapter of Westminster Abbey and a Fellow of the Royal Society of Arts. He specialises in commercial and employment litigation.

As well as an LLM from the LSE, he has an MA from the Courtauld Institute of Art, where he studied British Modernism.

He is a former Trustee of the V&A, a Bencher and (in 2021) the former Treasurer of the Honourable Society of Middle Temple, Chair of the Samuel Courtauld Trust and an ex officio member of the Board of the Courtauld Institute of Art, Chair of Paintings in Hospitals (until January 2023), a Governor of the University of the Arts London, a Trustee of the National AIDS Trust, the V&A Foundation, the Aurora Orchestra, Orchestra for the Earth and a Director of Ensemble Plus Ultra. He was Chair of Dance Umbrella from 2007-2014 and thereafter a Governor of the Central School of Ballet. He is currently on the Board of Ballet Black.

Appointed 17 September 2022: appointment expires 16 September 2026

Christopher Baker

Christopher Baker is currently the Paul Mellon Rome Fellow and holds a number of non-executive roles and Trusteeships. He formerly served as Director of European and Scottish Art and Portraiture at the National Galleries of Scotland, where he was responsible for the collection and programme at the National Gallery and Portrait Gallery in Edinburgh. He has been a Visiting Fellow at the Yale Centre for British Art and before moving to Scotland in 2002 worked at Christ Church, Oxford, and the National Gallery in London. Christopher is a member of the Spoliation Advisory Panel, the Recognition Committee (Museums Galleries Scotland) and the Advisory Board of the Arts and Humanities Research Council (UKRI).

He has organised numerous exhibitions in the U.K. and internationally on aspects of British art pre-1900, drawings and watercolours, and old master paintings. His publications include: Fuseli, The Realm of Dreams and the Fantastic (2022, co-author); J. M.W. Turner: The Vaughan Bequest (2018); Landseer: The Monarch of the Glen (2017); Jean-Étienne Liotard (2015, co-author); John Ruskin: Artist and Observer (2014, co-author); Catalogue of English Drawings and Watercolours 1600-1900, National Gallery of Scotland (2011); Collecting Prints and Drawings in Europe, c.1500-1800 (2003, co-editor); and The National Gallery [London] Complete Illustrated Catalogue, (1995, co-author).

Appointed 1 October 2019: appointment expires 30 September 2027

Mark Hallett

Professor Mark Hallett is Director Designate of the Courtauld Institute of Art, where he'll be succeeding Professor Deborah Swallow as Märit Rausing Director in August 2023. Hallett's scholarly research has focused on British art from the seventeenth century onwards. The many books he has written and edited include the prize-winning *Reynolds: Portraiture in Action* (2014). Hallett also co-edited the major online publication, *The Royal Academy Summer Exhibition: A Chronicle, 1769–2018* (2018). Professor Hallett has also been involved in curating numerous exhibitions. These have included the 2007 Tate Britain exhibition *Hogarth*, the 2015 Wallace Collection exhibition *Joshua Reynolds: Experiments in Paint* and two 2018 exhibitions: the Royal Academy exhibition *The Great Spectacle: 250 Years of the Summer Exhibition* and the Yale Center for British Art's *George Shaw: A Corner of a Foreign Field*. Hallett has been the recipient of a Leverhulme Research Fellowship and a Mellon Senior Fellowship. He has been Visiting Scholar at Pembroke College, Cambridge (2013–14) and a Visiting Professor at the Courtauld Institute of Art (2014–16).

Appointed 13 August 2021: appointment expires on 12 August 2025

Helen Jacobsen

Dr Helen Jacobsen is Executive Director of The Attingham Trust, a charitable educational trust that organizes study programmes on historic houses for professionals in the heritage sector. Formerly Senior Curator and Curator of 18th-century Decorative Arts at the Wallace Collection, where she was responsible for furniture, porcelain, clocks, gilt bronze and gold boxes, she has curated exhibitions and published on eighteenth-century decorative art and collecting history. She is a member of the Council of the French Porcelain Society and of the Grants Committee of the Furniture History Society, and is a trustee of the Leche Trust.

Appointed 1 September 2023: appointment expires on 31 August 2027

Stuart Lochhead

In 2018 Stuart set up his own firm dealing in European Sculpture from the late Medieval period to Rodin based in St James's, London and has since sold a number of works of sculpture to US and UK museums. Upon graduating from the Courtauld Institute of Art in 1994 Stuart Lochhead joined Daniel Katz at his newly opened gallery in Jermyn Street. In the following years Stuart mounted numerous exhibitions in New York and London on European Sculpture. He organised three major loan exhibitions at the gallery on Renaissance and Baroque bronzes from The Ashmolean Museum, Oxford, The Fitzwilliam Museum, Cambridge and the Rijksmuseum, Amsterdam. Stuart was formerly on the board of the Public Monuments and Sculpture Association, The Sculpture Journal and Chairman of the Courtauld Association. Stuart organised the first gift by a UK company to a museum through the Cultural Gifts Scheme and has been an independent assessor to the Reviewing Committee on the Export of Works of Art.

Appointed 1 October 2019: appointment expires 30 September 2027

Tim Pestell

Tim Pestell is the Senior Curator of Archaeology at Norwich Castle Museum and Art Gallery, part of Norfolk Museums Service. He studied Archaeology at Cambridge followed by a PhD at the University of East Anglia, looking at the foundation of medieval monasteries in East Anglia and then worked professionally in field archaeology across the UK before becoming a curator. Pestell is a Fellow of the Society of Antiquaries and has served as board member on various bodies including the Treasure Valuation Committee for ten years, Bury St Edmunds cathedral's Diocesan Advisory Committee and various local and national archaeological society committees.

Appointed 13 August 2021: appointment expires on 12 August 2025

Caroline Shenton

Dr Caroline Shenton is an archivist, historian and writer. She has a degree in medieval history from the University of St Andrews and a doctorate on the court culture of Edward III from Worcester College, Oxford, and qualified as an archivist and records manager at University College London. She was a senior archivist at the National Archives from 1993 and then moved to the Parliament Archives in 1999, becoming its Director in 2008. Since 2017 she has been Secretary to Council at Girton College, Cambridge. Caroline has been a member of various technical and policy committees relating to archives at both national and international level, and is a fellow of the Royal Historical Society and the Society of Antiquaries. She is an accredited Arts Society lecturer, and for eight years taught Public History to postgraduate archivists at the Centre for Archives and Information Studies at the University of Dundee. As well as a number of academic and professional publications, Caroline is also the author of three acclaimed popular books on heritage in peril: *The Day Parliament Burned Down* (OUP, 2012) which won the Political Book of the Year Award in 2013, *Mr Barry's War* (2016), and *National Treasures. Saving the Nation's Art in World War II* (John Murray, 2021).

Appointed 1 September 2023: appointment expires on 31 August 2027

Pippa Shirley

Pippa Shirley read History at Oxford before an MA in Art History at the Courtauld Institute, London. She worked in publishing as a Commissioning Editor for the Grove Dictionary of Art, then went to the British Museum as a curator in the then Department of Medieval and Later Antiquities. In 1992 she moved to the V&A as a curator in Metalwork, Silver and Jewellery Department, specialising in decorative ironwork and English and continental silver, working on three major gallery projects to redisplay the National Collections of ironwork and silver. In 2000 she came to Waddesdon Manor as Head of Collections, where she leads the curatorial team responsible for the contents of one of the most important National Trust properties in the country, home to a spectacular ensemble of continental decorative arts and English, French and Netherlandish paintings created by four generations of the Rothschild family. In 2015 oversight of the Gardens was added to her role. The Manor is managed today by a charitable trust, The Rothschild Foundation, under the direction of Lord Rothschild. She has published and lectured on a range of subjects. She also represents Waddesdon across different media channels for both press and marketing and in her curatorial role.

Appointed 15 October 2018: appointment expires 14 October 2026

Appendix F

Composition of the Advisory Council on the Export of Works of Art and Objects of Cultural Interest

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

- a) the independent members of the Reviewing Committee ex officio;
- b) the departmental assessors on the Reviewing Committee
(representatives of the Department for Culture, Media and Sport;
Department for Business and Trade; HM Treasury; the Foreign,
Commonwealth and Development Office; HM Revenue and Customs;
Scottish Executive Department for Culture; National Assembly for Wales
Department for Culture; and Northern Ireland Department for Culture);
- c) the Directors of the English and Scottish national collections, National
Museums Wales, National Museums Northern Ireland, and the
Librarians of the National Libraries of Wales and Scotland;
- d) the Expert Advisers to whom applications for export licences are
referred, other than those who are members by virtue of (c) above;
- e) eight representatives of non-grant aided museums and galleries in
England, Scotland, Wales and Northern Ireland, nominated by the
Museums Association;
- f) representatives of the:
 - Arts Council England
 - Arts Council of Northern Ireland
 - Arts Council of Wales
 - Association of Independent Museums
 - Creative Scotland
 - Conference of Directors of the National Museums and Galleries
 - English Heritage
 - Friends of the National Libraries
 - National Lottery Heritage Fund
 - National Archives
 - National Records of Scotland
 - The Art Fund
 - National Fund for Acquisitions
 - National Heritage Memorial Fund
 - National Trust
 - National Trust for Scotland
 - Pilgrim Trust
 - ACE/V&A Purchase Grant Fund

g) representatives of the:

British Academy
British Records Association
Canadian Cultural Property Export Review Board (Observer Status)
Chartered Institute of Library and Information Professionals (CILIP)
Council for British Archaeology
Historic Houses Association
Royal Academy of Arts
Royal Historical Society
Royal Scottish Academy
Scottish Records Association
Society of Antiquaries of London
Archives and Records Association
Society of College, National and University Libraries

h) representatives of the trade nominated by the:

Antiquarian Booksellers' Association (two)
Antiquities Dealers' Association (two)
Association of Art and Antique Dealers (two)
Bonham's
British Antique Dealers' Association (three)
British Art Market Federation
British Numismatic Trade Association (two)
Christie's
Fine Art Trade Guild
Society of London Art Dealers (two)
Society of Fine Art Auctioneers
Sotheby's

Appendix G

Standard formats for digital copies of manuscripts

Originals should be digitally captured to create a master image that should be at least of the same legibility as the original. A good quality scanner or digital camera will normally generate images of sufficient quality. The following standards apply:

- Where images are generated using a flatbed scanner the digital image must be at a minimum resolution of 300 pixels per inch.
- For images created using a digital camera, the camera used should have a minimum specification of 6 megapixels, although 8 megapixels are recommended.
- The image must be in colour or greyscale.
- The files must be submitted in uncompressed .tiff format.
- A clear ruler should be placed on one edge of the image with the scale clearly shown.
- Files must be named so that each of them is uniquely identified. This can be done using the name of the collection with a sequential number for each image captured. For example, each image in the collection Styles Family letters could be named stylesletter0001.tif, stylesletter0002.tif etc. Software is available that automatically generates file names like these.
- The files must be submitted on a DVD/CD, memory stick or hard drive. They should be clearly labelled.
- An electronic file containing information about the images should be supplied with the image files. This must be at least to the standard of a sale catalogue description of the item. Where this is a collection the description should provide details of individual volumes and groups of letters. A table is attached as an example of the form this file should take.

Note

All digital images submitted as copies of manuscripts must be accompanied by a signed and dated declaration stating that the images meet the standards set out above

Title of object/collection	
Physical Description of object/collection	
Number of pages/folios	
Total number of digital images submitted	
Completed by	
Date	

For collections, if possible provide the following information for each item in the collection:

Item name	Item Description	No. of images submitted	Image filename(s) can be a range eg collection001.tif – collection008.tif

APPENDIX H

Goods not entered into free circulation

This term refers to cultural goods brought into the UK which have not been released into 'free circulation' and are not domestic goods within the meaning of the Taxation (Cross-border Trade) Act 2018.

This means that cultural goods which:

1. have been imported into the UK; and
2. have not been subject to a chargeable Customs procedure

do not require an individual export licence for export from the UK as they are covered by the OGEL.

APPENDIX I

Goods being exported direct from Northern Ireland (NI) to non-EU countries

1. There is both EU and UK legislation on the export control of cultural goods being exported directly from NI to non-EU countries and either an EU or a UK licence application may be required depending on the type of object and its value.
2. An exporter may not rely on either the OGEL or an OIEL where there is a requirement to obtain an individual licence under EU legislation. The relevant legislation is Council Regulation (EC) No 116/2009 on the export of cultural goods (as amended) (the EU Regulation)¹. This regulates the export of certain cultural objects direct from Northern Ireland to destinations outside the European Customs Union other than to Great Britain.
3. To determine whether you require an individual EU licence, please refer to the flow chart below.
4. The following objects are excluded from export control when being exported directly from NI to non-EU countries:
 - (i) Postage stamps and other articles of philatelic interest.
 - (ii) Letters or other writings written by or to the exporter or the spouse of the exporter.
 - (iii) 'Non-Community' goods i.e. goods not released into free circulation in the EU as defined in article 4 of the Community Customs Code.
 - (iv) Those objects described under categories 3, 4, 5, 6, 7, 8 and 9 in Annex I to the EU Regulation (see below) which belong to their originators.
5. If you are intending to export an object to a final destination outside the EU, please ensure that you apply for an export licence on the correct form (in most cases an EU licence or, for some objects, a UK licence (ELU Form C)). The flow chart on page 47 and Table 2 on page 29 and Table 3 on page 48 should help you to determine which form you require. If, however, you are intending to export an object to an EU Member State, you must apply for a UK licence in all cases.
6. The forms can be downloaded from the Arts Council's website where you will also find instructions on how to submit your application to the Export Licensing Unit.

¹ See also implementing Regulation (EU) No. 1081/2012

Flow chart (as referred to in paragraph 3 of this Appendix)

What type of licence do I require for export from Northern Ireland?

(Please ensure that you read any relevant footnotes and take account of the age limits applicable in Table 2 on page 29 and Table 3 in this Appendix).

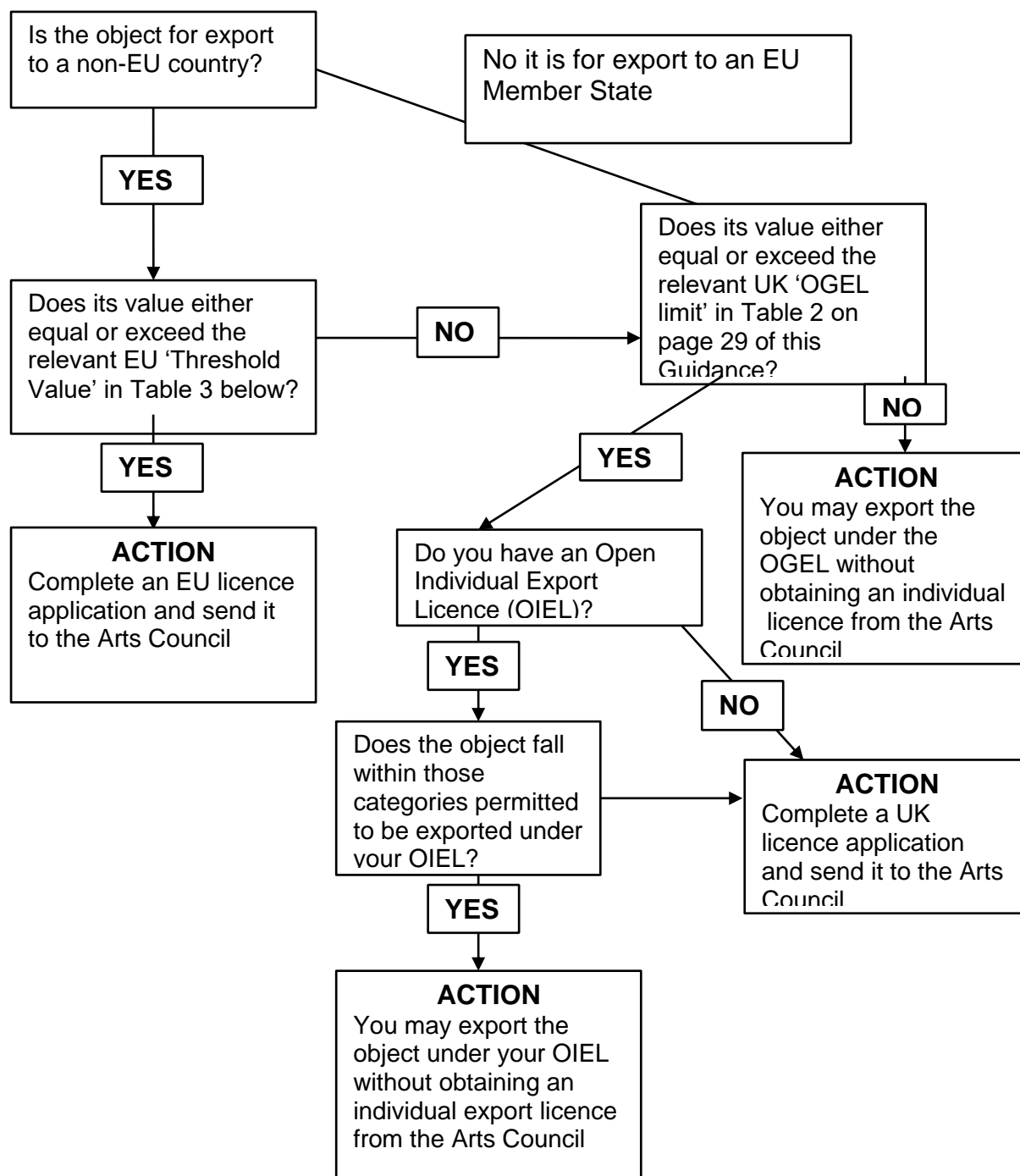


Table 3: EU categories for the export of cultural goods direct from Northern Ireland to non-EU countries

Category	Description	Threshold value in GBP £	Customs code (CN Code)
1	Archaeological objects more than 100 years old which are the products of: <ul style="list-style-type: none"> • excavations and finds on land or under water • archaeological sites • archaeological collections 	Zero	9705 00 00 9706 00 00
2	Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years	Zero	9705 00 00 9706 00 00
3	Pictures and paintings, other than those included in categories 4 or 5, executed entirely by hand in any medium and on any material ¹	131,666	9701
4	Watercolours, gouaches and pastels executed entirely by hand on any material ¹	26,333	9701
5	Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material ¹	13,167	6914 9701
6	Original engravings, prints, serigraphs and lithographs with their respective plates and original posters ¹	13,167	Chapter 49 9702 00 00 8442 50 99
7	Original sculptures or statuary and copies produced by the same process as the original ¹ , other than those in category 1	43,889	9703 00 00
8	Photographs, films and negatives thereof ¹	13,167	3704, 3705, 3706 4911 91 80
9	Incunabula and manuscripts, including maps and musical scores, singly or in collections ¹	Zero	9702 00 00 9706 00 00 4901 10 00 4901 99 00 4904 00 00 4905 91 00 4905 99 00 4906 00 00
10	Books more than 100 years old, singly or in collections	43,889	9705 00 00 9706 00 00
11	Printed maps more than 200 years old	13,167	9706 00 00
12	Archives, and any elements thereof, of any kind or medium which are more than 50 years old	Zero	3704, 3705, 3706 4901, 4906 9705 00 00 9706 00 00
13	(a) Collections ² and specimens from zoological, botanical, mineralogical or anatomical collections; (b) Collections ² of historical, palaeontological, ethnographic or numismatic interest	43,889	9705 00 00 9705 00 00
14	Means of transport more than 75 years old	43,889	9705 00 00 Chapters 86-89
15	Any other antique items not included in categories 1 to 14: (a) between 50 and 100 years old: <ul style="list-style-type: none"> • toys, games • glassware • articles of goldsmiths' or silversmiths' wares • furniture • optical, photographic or cinematographic apparatus • musical instruments • clocks and watches and parts thereof • articles of wood • pottery 	43,889	Chapter 95 7013 7114 Chapter 94 Chapter 90 Chapter 92 Chapter 91 Chapter 44 Chapter 69

	<ul style="list-style-type: none"> • tapestries • carpets • wallpaper • arms³ <p>(b) more than 100 years old</p>	43,889	5805 00 00 Chapter 57 4814 Chapter 93 9706 00 00
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1. Which are more than 50 years old and do not belong to their originators.
2. As defined by the Court of Justice in its judgement in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading No 97.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value'.
3. An export licence from the Export Control Joint Unit within the Department for Business and Trade (DBT) may be required for cultural goods classified as firearms, military or paramilitary equipment manufactured or produced less than 100 years before the date of exportation, regardless of monetary value. See address at Appendix D.

Appendix J

MODEL CONDITIONS FOR TEMPORARY LICENCES

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

the United Kingdom.

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

10. Save to the extent necessary:

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

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

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

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

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

Appendix K

Template Option Agreement

DATED [■]
202[■]

PARTIES

- (1) [[INSERT INDIVIDUAL NAME] of [INSERT INDIVIDUAL'S ADDRESS]] [[INSERT NAME OF COMPANY] (Company registration no: [INSERT CO. NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]] [[INSERT OTHER DESCRIPTION OF SELLER IF NEITHER AN INDIVIDUAL OR COMPANY]] (the **Seller**).
- (2) [[INSERT NAME OF COMPANY] (Company registration no: [INSERT CO. NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]] [INSERT OTHER DESCRIPTION IF BUYER NOT A COMPANY] (the **Buyer**).

WHEREAS

- (A) The Seller owns the Works and has agreed to enter into a call option in favour of the Buyer to purchase the Works on the terms and subject to the conditions of this agreement.
- (B) The Buyer has agreed to enter into a call option to purchase the Works on the terms and subject to the conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause 1 apply in this agreement (including in recital (A) and (B) above).

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Completion: the completion of the exercise of the Option and the purchase of the Works by the Buyer as described in Clause 8.

Consideration: the purchase price for the Works set out in Part B of Schedule 1, payable by the Buyer to the Seller on Completion in accordance with the procedure set out in Part B of Schedule 1.

Encumbrance: any mortgage, charge (fixed or floating), pledge, claim, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, however created or arising, or any other agreement or

arrangement (including a sale and repurchase agreement) having similar effect (and **Encumber** shall be construed accordingly).

Exercise Notice: the written notice given by the Buyer in accordance with Clause 6.

First Condition Report: the condition report set out in Schedule 2 relating to the Works which has been prepared by the Buyer prior to the date of this agreement.

Good Industry Practice: at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert seller of works similar to the Works to a buyer like the Buyer, such seller seeking to comply with its contractual obligations in full and complying with applicable law.

Independent Condition Report: the condition report referred to in Clause 2.2.

Lapse: the lapse of the Option in accordance with Clause 4.

Option: the option granted by the Seller in favour of the Buyer in accordance with Clause 3.

Option Period: the time during which the Buyer may exercise the Option, as set out in Clause 4.

Second Condition Report: the condition report to be prepared under Clause 8 in relation to the Works.

Seller's Bank Account: [■]²

Transfer Deed: a deed in the form set out in Annexure 2 and which has been signed by each of the parties and held by the Buyer's solicitor to the Seller's solicitor's order pending Completion.³

Works: the works more particularly described in Part A of Schedule 1.

- 1.2 Clause, Schedule, Annexure and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Unless otherwise stated, references to clauses, the Schedule and the Annexures are to the clauses of, and the Schedule and Annexures to, this agreement and references to paragraphs are to paragraphs of the Schedule or Annexure (as applicable).

² Drafting Note: details to be completed by the Seller.

³ Drafting Note: it is anticipated that the respective Solicitors of the parties will agree arrangements whereby the signed Transfer Deed will be held by the Buyer's solicitor to the order of the Seller's solicitor, i.e. that the Buyer's solicitor may not take any action in relation to the signed Transfer Deed without the consent of the Seller's solicitor, other than when the Exercise Notice has been served and Completion has taken place.

- 1.4 The Schedule and Annexures form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule and the Annexures.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 A reference to a party shall include that party's successors and permitted assigns.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to **in writing** or **written** shall not include fax or e-mail (unless otherwise expressly provided in this agreement).⁴
- 1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. FIRST CONDITION REPORT

- 2.1 The Buyer shall forward the First Condition Report to the Seller as soon as possible following its completion, and in any event no less than [10] Business Days prior to the parties signing the Option Agreement, and in the absence of any response from the Seller within a period of ten (10) Business Days, the First Condition Report shall be deemed to be a fair and reasonable assessment of the condition of the Works.
- 2.2 If the Seller objects to the contents of the First Condition Report, it shall inform the Buyer within ten (10) Business Days of receipt and the parties shall jointly instruct an independent third party to undertake an assessment of the condition of the Works and the report prepared by such independent third party (**Independent Condition Report**) shall be binding on the parties save in the case of a manifest error by such independent third party. If the parties fail to agree on the identity of the independent third party, the President of the Law Society of England and Wales shall, on the request of either party, be requested to nominate an independent third party.

⁴ Drafting Note: The parties may, if they wish, agree that service by fax or email is to be permitted.

- 2.3 The parties shall be jointly responsible for the costs of the independent third party in the preparation of the Independent Condition Report.

3. GRANT OF THE OPTION

- 3.1 In consideration of the payment of £1 by the Buyer to the Seller (receipt and sufficiency of which is hereby acknowledged by the Seller), the Seller grants to the Buyer an option to purchase the Works on the terms and subject to the conditions set out in this agreement.
- 3.2 Following the Buyer's exercise of the Option, and in accordance with the terms of this agreement, the Seller shall sell and the Buyer shall purchase the Works with full title guarantee free from all Encumbrances.

4. OPTION PERIOD

- 4.1 The Option may only be exercised by the Buyer on or before 23:59 (UK time) on [INSERT DATE] and, if the Option is not exercised on or before such time, it shall lapse.⁵
- 4.2 For the purposes of this Clause 4, the time and date of exercise of the Option is the time and date (UK time) on which the Buyer serves the Exercise Notice on the Seller (which the Seller acknowledges and agrees may be served on it by e-mail sent by or on behalf of the Buyer addressed to [●] at this email address [●], and not the time and date on which the Seller receives the Exercise Notice or is deemed to receive the Exercise Notice in accordance with Clause 16.

5. BUYER'S PROTECTION

- 5.1 During the Option Period, and until Completion if the Option is exercised, the Seller shall not sell, transfer or otherwise dispose of, or mortgage, charge, pledge or otherwise Encumber the Works or the Seller's legal or beneficial right and interest in it.
- 5.2 During the Option Period, and until Completion if the Option is exercised, the Seller shall *[insert any specific standards which are required in relation to the care of the Works which may also include specific arrangements relating to access and/or viewing of the Works by the Buyer and/or its potential funders during the Option Period. In certain circumstances, the parties may also agree that the Buyer may take possession of the Works during the Option Period to aid fundraising.]*⁶

6. EXERCISE

- 6.1 The Option shall be exercised only by the Buyer serving on the Seller an Exercise Notice in the form set out in Schedule 3 and which shall include (for the avoidance of any doubt):

⁵ Drafting Note: the parties should note the statements contained in Arts Council England's guidance 'Procedures and guidance for exporters of works of art and other cultural goods' regarding length of the option Period.

⁶ Drafting Note: To be completed following discussion between the Seller and the Buyer.

- 6.1.1 the date on which the Exercise Notice is given;
 - 6.1.2 a statement to the effect that the Buyer is exercising the Option;
 - 6.1.3 a statement to the effect that the Buyer has the Consideration available to purchase the Works;
 - 6.1.4 a date, which is no less than five (5) and no more than ten (10) Business Days after the date of the Exercise Notice, on which Completion is to take place; and
 - 6.1.5 a signature by or on behalf of the Buyer.
- 6.2 Subject to Clause 8.1 and 9.3, once given, an Exercise Notice may not be revoked without the written consent of the Seller.

7. CONSIDERATION

- 7.1 The Consideration payable for the Works following exercise of the Option shall be satisfied on Completion in accordance with Part B of Schedule 1.
- 7.2 The Buyer shall be responsible for any Value Added Tax due in the United Kingdom arising as a result of the sale of the Works.

8. COMPLETION

- 8.1 Following service of the Exercise Notice and prior to Completion, the Seller shall permit a Second Condition Report to be undertaken by the Buyer. Where the Second Condition Report determines that the Works have been damaged other than to the extent known under the First Condition Report (or, where relevant, under the Independent Condition Report obtained in accordance with Clause 2) then the Buyer may:
- 8.1.1 refer the matter to an independent third party agreed by the parties in writing, and failing agreement, nominated by the President of the Law Society of England and Wales, to confirm in writing such reduction in the Consideration as is appropriate in view of the damage suffered. In such event:
 - (a) the length of time the Buyer has to Complete shall be extended by the time it takes for the independent third party to confirm to the parties in writing the reduction in the Consideration payable for the Works plus five (5) Business Days; and
 - (b) following confirmation by the independent third party of the reduction in the Consideration payable for the Works, which shall in the absence of manifest error be binding on the parties, the Seller shall sell and the Buyer shall, subject to Clause 8.1.2, buy the Works for the Consideration so determined; or

- 8.1.2 revoke the Exercise Notice upon notice to the Seller in writing (which may be served by e-mail to the recipient email address identified in Clause 4.2) whereupon the Option will lapse and the parties shall not Complete the sale and purchase of the Works.
- 8.2 Subject to Clauses 8.1 and 9.3, Completion shall take place on the date specified by the Buyer in the Exercise Notice or such later date as the parties may agree in writing.
- 8.3 On Completion:
- 8.3.1 the Transfer Deed shall come into effect and released from the Seller's solicitor's order⁷;
- 8.3.2 the Buyer shall pay the Consideration to the Seller by transfer to the Seller's Bank Account;
- 8.3.3 the Seller shall provide an appropriate receipt to the Buyer⁸; and
- 8.3.4 [title to and risk in the Works shall pass to the Buyer]⁹.

9. WARRANTIES AND INDEMNITY

- 9.1 The Seller represents and warrants to the Buyer, subject to any specific disclosures disclosed in writing by the Seller to the Buyer prior to the date of this Option Agreement, that:
- 9.1.1 it has full power, capacity and authority to enter into and perform this agreement and to grant the Option on the terms and conditions of this agreement;
- 9.1.2 this agreement is executed by a duly authorised representative of the Seller and that, once executed, this agreement will constitute the Seller's legal, valid and binding obligations;
- 9.1.3 it is, and will remain during the Option Period, the sole legal and beneficial owner of the Works, subject only to the Option¹⁰;
- 9.1.4 it has, and will retain during the Option Period (and, if later, until Completion), all right, title and interest to the Works free from all Encumbrances such that, subject to the Buyer's exercise of the Option in accordance with this

⁷ Drafting Note: The parties may, if they wish, elect to use the services of an Escrow Agent or an alternative mechanism for the logistics of Completion.

⁸ Drafting Note: If the Seller owns any copyright in the Works, the parties may elect to include this in the sale also. Appropriate amendment to be inserted here and in the Transfer Deed.

⁹ Drafting Note: The Seller and the Buyer should agree the process in relation to delivery and when risk in the Works passes to the Buyer.

¹⁰ Drafting Note: Where the Seller has entered into a provisional sale agreement, conditional upon the grant of an Export Licence, this warranty may be amended to include a reference to the provisional sale agreement also.

agreement, the Seller will transfer to the Buyer good and valid title and the exclusive and unrestricted right to possession of the Works;

9.1.5 it has no knowledge of any Encumbrances threatened or pending nor any knowledge of any facts or circumstances likely to give rise to any Encumbrances;

9.1.6 it is not aware of any challenges or disputes (pending or threatened) relating to the provenance of the Works and it has provided the Buyer with all information concerning the provenance of the Works in the Seller's control or possession and has notified the Buyer in writing of any and all concerns, enquiries, claims or other form of expression of which it is aware that are or have been expressed by third parties in relation to the provenance and/or ownership of the Works;

9.1.7 to the best of the Seller's knowledge, information and belief, having made all due and reasonable enquiries in accordance with Good Industry Practice:

(a) the Works have not been imported into or exported from any country contrary to its laws; and

(b) the Works were originally created by [●].

9.1.8 if during the Option Period (and, if later, until Completion) it becomes aware of any information that would have put the Seller in breach of the warranties at sub-clauses 9.1.1 to 9.1.7 had it been aware of that information on the date of this agreement it will notify the Buyer in writing immediately.

9.2 The Seller shall indemnify and shall keep indemnified the Buyer against all losses, damages, costs or expenses and other liabilities arising from a breach of the Seller's representations and warranties in this Clause 9.

9.3 If following the exercise of the Option but prior to Completion the Seller notifies the Buyer of any information pursuant to its obligation under sub-clause 9.1.7 then the Buyer shall be entitled (at its discretion) to revoke the Exercise Notice upon notice to the Seller in writing (which may be served by e-mail to the recipient email address identified in Clause 4.1) whereupon the Option will lapse and the parties shall not Complete the sale and purchase of the Works.

9.4 The Seller acknowledges that the Buyer, if it exercises the Option, will do so in reliance on the representations, warranties and indemnity contained in this Clause 9.

9.5 Without prejudice to the Transfer Deed, the Seller will repeat on Completion each of the representations and warranties contained in this Clause 9 (construed accordingly).

10. CONFIDENTIALITY AND ANNOUNCEMENTS

10.1 The Seller undertakes to the Buyer, and the Buyer undertakes to the Seller, save as otherwise provided in this Clause 10, to keep confidential the terms of this agreement.

- 10.2 The Buyer may disclose the existence of this agreement and the amount of the Consideration and the Option Period (but no other term of the agreement including the identity of the Seller) to any potential donor or funder for the purpose of raising funding to enable it to exercise the Option and purchase the Works.
- 10.3 Either party may disclose any information that it is otherwise required to keep confidential under this Clause 10:
- 10.3.1 to such of its professional advisers, consultants and employees or officers as are reasonably necessary to advise on this agreement, or to facilitate the exercise of the Option, provided that the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party;
 - 10.3.2 with the written consent of the other party;
 - 10.3.3 to the extent that the disclosure is required by law; and
 - 10.3.4 in the case of the Buyer, to: (i) its auditors, (ii) any Government or regulatory authority having jurisdiction over it (including by way of a funding agreement); and (iii) Arts Council England.
- 10.4 No announcement, or other publicity in connection with the subject matter of this agreement, shall be made by the Seller at any time or shall, subject to Clause 10.2, be made by the Buyer prior to Completion or (if earlier) the lapse of the Option. On Completion the Buyer (only) shall (with the consent of the Seller, such consent not to be unreasonably withheld or delayed) be permitted to make a press announcement concerning the purchase of the Works in which the Consideration (but not the identity of the Seller) may be made public. In the event of the lapse of the Option, the Buyer shall be permitted to make a press announcement of the fact that it has failed to acquire the Works.
- 10.5 [The parties acknowledge that the Buyer is subject to the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**) and agree that if Buyer receives any request under the FOIA or EIRs for information relating to this agreement it will, prior to responding, notify the Seller of the same and of its proposed response to the same. The Buyer will give consideration to any reasonable representations made by the Seller in relation to the proposed response before submitting the same, provided always that it is agreed that the ultimate form of response is the sole responsibility of the Buyer and at its complete discretion.]¹¹

11. FURTHER ASSURANCE

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as the other party may reasonably require for the purpose of giving full effect to this agreement. For the avoidance of any doubt, this

¹¹ Drafting Note: To consider whether this clause should be included, depending on the status of the Buyer.

Clause 11 does not entitle the Seller to require the Buyer to exercise the Option. The Option is exercisable at the Buyer's sole and complete discretion.

12. ASSIGNMENT

Neither party shall be entitled to assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement (or any other document referred to in it).

13. ENTIRE AGREEMENT

13.1 This agreement (together with the documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to their subject matter.

13.2 Nothing in this Clause 13 shall limit or exclude any liability for fraud.

14. VARIATION AND WAIVER

14.1 No variation of this agreement shall be effective unless it is in writing and signed by or on behalf of each party (or their authorised representatives).

14.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under this agreement or by law is only effective if it is in writing.

14.3 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. COSTS

15.1 Except as expressly provided in this agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this agreement (and any documents referred to in it).

15.2 Notwithstanding the provisions of Clause 15.1, the parties may agree alternative arrangements relating to the payment of the costs and expenses referred to in Clause 15.1.

16. NOTICES

16.1 A notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to the relevant party as follows:

Seller	Buyer
Name:	Name:
Address:	Address:
[Fax No:]	[Fax No:]
[Email:]	[Email:] ¹²

16.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this Clause 16 have been satisfied) if delivered by hand, at the time the notice is left at the address, [or if sent by fax, at the time of transmission]¹³, or if sent by post on the second Business Day after posting, [or if sent by email at the time of transmission]¹⁴ unless such deemed receipt would occur outside business hours (meaning 9:00 am to 17:00 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), in which case deemed receipt will occur when business next starts in the place of receipt (and all references to time are to local time in the place of receipt).

16.3 This Clause 16 does not apply to the service of any proceedings or other documents in any legal action.

17. SEVERANCE

17.1 If any provision of this agreement or part-provision of this agreement is or becomes invalid, unenforceable or illegal, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

¹² Drafting Note: delete unless the parties elect to allow fax or email as a means of serving notice.

¹³ Drafting Note: delete unless the parties elect to allow fax as a means of serving notices.

¹⁴ Drafting Note: delete unless the parties elect to allow email as a means of service notices.

19. COUNTERPARTS

This agreement may be executed in two counterparts, each of which when executed shall constitute a duplicate original, but the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this agreement (but, for the avoidance of doubt, not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with an original counterpart as soon as reasonably possible thereafter.

20. INADEQUACY OF DAMAGES

The Seller acknowledges and agrees that damages alone would not be an adequate remedy for breach of Clauses 3.2, 5, 8, 9.1.4, 10, 11 and 12.1 by the Seller. Accordingly, the Buyer will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of such clauses by the Seller.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)¹⁵.

This agreement has been entered into on the date stated at the beginning of it.

Signed by, for and on behalf of <i>[insert Seller name]</i>	
Position	
Signature	
Date	

¹⁵ Drafting Note: The parties may include a provision entitling either party to refer a dispute to arbitration if this is preferable.

Signed by, for and on behalf of <i>[insert Buyer name]</i>	
Position	
Signature	
Date	

Schedule 1

Part A

The Works

[Insert Description of Works and include a detailed photograph or photographs of the Works]

Part B

Consideration

[Option 1 - The Consideration payable for the Works shall be the sum of £[●].]¹⁶

[Option 2 - The Consideration payable for the Works shall be the sum of [●] payable in [●].]¹⁷

[Option 3 – The Consideration payable for the Works shall be the sum of [●].]¹⁸ In order to arrive at the [Pounds Sterling] amount of any Consideration, any Consideration expressed in another currency shall be converted into [Pounds Sterling] at an exchange rate which shall comprise the average of the final selling rates of Pounds Sterling for the currency in which the Consideration is expressed, as quoted by [xxx] Bank plc, in London, England as of the close of business on the last business day immediately prior to the date of Completion.]

The Consideration is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.¹⁹ The Seller shall indemnify the Buyer against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Buyer at any time in respect of the Seller's failure to account for, or to pay, any VAT relating to payments made to the Seller under this agreement.

¹⁶ Drafting Note: for use where the Consideration is to be specified and paid in pound sterling.

¹⁷ Drafting Note: for use where the Seller purchased the Works in a currency other than sterling, the Seller can provide proof that they did so, and the Buyer is content to pay the Consideration in that other currency, which should also be stipulated.

¹⁸ Drafting Note: for use where the Seller purchased the object in a currency other than sterling, the Seller can provide proof that they did so, and the Buyer is content to pay in sterling and bears the exchange rate risk.

¹⁹ Drafting Note: The parties may elect for an alternative margin scheme VAT-inclusive consideration, to which no further VAT would be added.

Form of the Transfer Deed

THIS DEED is made on

20[■]

BETWEEN

(1) [■] (**Seller**); and

(2) [■] (**Buyer**).

AND IS SUPPLEMENTAL TO

an Option Agreement dated

20[■] between the Seller and the Buyer (**Option Agreement**).

NOW THIS DEED WITNESSES as follows:

1. Words and phrases defined or otherwise interpreted in the Option Agreement and not otherwise defined in this Deed shall have the same meaning when used in this Deed. Words and phrases defined in this Deed shall have the meaning ascribed to them herein when used in this Deed.
2. The Seller hereby transfers with full title guarantee all rights, title and interest in and to the Works to the Buyer free from all Encumbrances.
3. Risk in and title to the Works will pass to the Buyer on the date of this Deed.
4. The Seller warrants and represents to the Buyer on the date of this Deed, subject to any specific disclosures disclosed in writing by the Seller to the Buyer prior to the date of this Deed, that:
 - 4.1 it is the sole legal and beneficial owner of the Works and the Works are free from any Encumbrances;
 - 4.2 it has full power, capacity and authority to:
 - 4.2.1 enter into and to perform this Deed; and
 - 4.2.2 transfer the legal and beneficial ownership in the Works to the Buyer;
 - 4.3 this Deed is executed by a duly authorised representative of the Seller and that, once duly executed, this Deed will constitute the Seller's legal, valid and binding obligations;
 - 4.4 it has no knowledge of any Encumbrances (threatened or pending) nor knowledge of any facts or circumstances likely to give rise to any Encumbrances;
 - 4.5 having made all due and reasonable enquiries in accordance with Good Industry Practice, it is not aware of any challenges or disputes (pending or threatened) relating to the provenance of the Works and it has provided the Buyer with all information concerning the provenance of the Works in the Seller's control or possession and has notified the Buyer in writing of any and all concerns enquiries, claims or other form of

expression of which it is aware that are or have been expressed howsoever by third parties in relation to the ownership and/or provenance of the Works;

4.6 to the best of the Seller's knowledge, information and belief:

4.6.1 the Works have not been imported into or exported from any country contrary to its laws; and

4.6.2 the Works were originally created by [●]; and

4.7 good and marketable title to the Works will on Completion pass to the Buyer free from any Encumbrances such that, upon Completion, the Buyer has good and valid title and the exclusive and unrestricted right to possession of the Works.

5. The Seller agrees to indemnify and keep indemnified the Buyer against all losses damages and expenses arising from a breach of the Seller's representations and warranties in clause 4 above and in relation to any breach of clause 4.6.2 of which the Buyer becomes aware within a period of twelve (12) months from the date of this Deed, the Buyer shall be entitled to serve written notice on the Seller demanding repayment of the Consideration which shall be due and payable by the Seller to the Buyer as a debt within twenty (20) Business Days of service of such notice. The Buyer shall deliver the Works to the Seller on repayment of the Consideration.

6. This Deed may be executed in two counterparts, each of which when executed shall constitute a duplicate original, but the counterparts shall together constitute the one Deed. Transmission of an executed counterpart of this Deed (but, for the avoidance of doubt, not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either method of delivery is adopted, without prejudice to the validity of the Deed thus made, each party shall provide the other with an original counterpart as soon as reasonably possible thereafter.

7. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the parties hereto have executed this instrument as a Deed on the date first before written

Appendix L

GLOSSARY

Appropriate purchaser - a UK public institution, or an individual or company who will keep the object in the UK with a commitment to ensure reasonable public access, satisfactory conservation and security arrangements for the object.

Arts Council England - an executive non-departmental public body, sponsored by the Department for Digital, Culture, Media and Sport. The operation of the export control regime for cultural goods is the responsibility of the Export Licensing Unit (ELU) within the Arts Council.

Business Day - A day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Buyer - the potential purchaser of the cultural object (whether a UK public institution or private appropriate purchaser), in their capacity as a party to the option agreement; or, in cases where there are multiple potential purchasers, potentially the Secretary of State or another public body, in their capacity as a party to the option agreement (for the purpose of assigning the agreement to a potential purchaser prior to exercise of the option).

Consideration period - period of time between the first and second deferral period. This is to allow the Owner to reflect upon the Minister's decision and, if they decide to enter the second deferral period, for the exchange of the Option Agreement to take place.

Deferral period - If the RCEWA concludes the object is a national treasure, it recommends to the Secretary of State that the decision on issuing a licence should be deferred for a period of time. The Secretary of State can defer the decision for a certain period of time ('a deferral period') to allow a purchaser to seek to acquire the object and keep it in the UK. The **first deferral period** provides an opportunity for a compensating offer to purchase the object to be made by a UK buyer, and begins once an Owner agrees that they would be willing to accept a matching offer. The **second deferral period**, invoked when the Option Agreement is signed, allows for fundraising and is the period at the end of which the sale must be completed.

Due diligence - investigation or exercise of care that a person would normally be expected to take before entering into an agreement or contract with another party, particularly in identifying the source and history of an item offered for acquisition before acquiring it.

Expert adviser - usually a director, senior keeper or curator in a national museum or gallery who can object to the granting of an export licence by scrutinising, against the Waverley criteria, whether the object is of national importance. If an expert adviser objects to the granting of a licence, the licence application is referred to the RCEWA.

Legally binding mechanism (or a 'binding offer') - The method by which an Owner, who has entered the export deferral process, is legally required to accept a matching offer for the object to be purchased (if they have agreed to accept such an offer).

National treasure - a cultural object judged to be of outstanding national importance to the United Kingdom. An object must meet one or more of the Waverley criteria to be deemed a national treasure.

Option agreement - the legally binding agreement to be entered into between the Owner and the Buyer (at the end of the first deferral period. Under the Option Agreement the potential purchaser will have a contractual right (but not an obligation) to buy the cultural object from the Owner at the fair market price, by serving a notice in writing before the end of the option period (the second deferral period).

Owner - the legal owner of the cultural object to which the export licence application relates.

Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA) - The RCEWA is an independent body which advises the Secretary of State on whether a cultural object that is the subject of an application for an export licence is a national treasure in the context of the Waverley criteria.

Seller - the Owner (and usually the licence applicant), in their capacity as a party to the option agreement.

Waverley criteria - The Waverley criteria are used to decide whether an object should be considered a national treasure on the basis that the object's departure from the UK would be a misfortune (see page 6 for further detail).