



EXPORT CONTROLS ON OBJECTS OF CULTURAL INTEREST

**STATUTORY GUIDANCE ON THE CRITERIA TO
BE TAKEN INTO CONSIDERATION WHEN
MAKING A DECISION ABOUT WHETHER OR
NOT TO GRANT AN EXPORT LICENCE**

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INTRODUCTION

1. Section 9 of The Export Control Act 2002 (the Act) requires the Secretary of State to provide guidance about the exercise of functions under control orders made under the Act. The Export of Objects of Cultural Interest (Control) Order 2003 S.I. 2003/2759 (the Control Order) prohibits, except under the authority of a licence, the export of:-

“Any objects of cultural interest manufactured or produced more than 50 years before the date of exportation except:

postage stamps and other articles of philatelic interest;

birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;

letters or other writings written by or to the exporter or the spouse of the exporter; and

goods exported by, and being the personal property of the manufacturer or producer thereof, or the spouse, widow or widower of that person.”

OPEN LICENCES

2. 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 and the Open Individual Export Licence. However, where a requirement to obtain an individual licence exists under Council Regulation (EEC) No 3911/92 on the export of cultural goods (as amended), which relates to exports to destinations outside the European Customs Union for certain cultural objects (the EU Regulation), an exporter may not rely on an open licence unless a licence has been issued under the EU Regulation.

Open General Export Licence (OGEL)

3. The OGEL, which can be used by any exporter, may permit the permanent export of those objects valued below specified financial thresholds. The OGEL also permits the export (for up to three months) of some common temporary exports and the re-export of some common temporary imports. Further, in order to avoid the need for exporters

to obtain an individual UK licence, the OGEL may also permit the export of an object of cultural interest (which would otherwise require an individual UK licence) where a licence has been granted under the EU Regulation.

4. The Secretary of State will normally undertake a full consultation with all interested parties, and will take their views into account, before suspending, amending or revoking an OGEL.
5. A copy of the OGEL is on the Department for culture, Media & Sport web site at www.culture.gov.uk and the Museum, Libraries and Archive Council website at www.mla.gov.uk/action/cp/00exp.asp or can be obtained from:-

The Export Licensing Unit
Acquisitions, Export and Loans Unit
Museum, Libraries and Archives Council
3rd Floor 83 Victoria Street
London
SW1H 0HW
Tel: 0207 0708 6280 Fax: 0207 0708 6294
e-mail: elu@mla.gov.uk

Open Individual Export Licence (OIEL)

6. An OIEL may be granted to a named individual, company or institution, to permit either the permanent or temporary export of specified objects. Possession of an OIEL may also mean that applications for individual export licences required under the EU Regulation should not be subject to scrutiny for national importance (see paragraph 9 below). An OIEL may be subject to conditions including the requirement to keep records of all exports made under the OIEL.
7. In considering whether to grant an OIEL, the Secretary of State will consider such factors as membership of a professional trade association and the extent to which the granting of the OIEL would reduce the administrative burden on the holder of the OIEL. An OIEL will not normally be granted without the agreement of the relevant Expert Adviser (a Director, Senior Keeper or Curator in one of the national museums and galleries).

INDIVIDUAL EXPORT LICENCES

8. Where neither the OGEL nor the OIEL cover a particular object, an individual export licence is required from the Secretary of State.

Consideration for national importance

9. Normally only those objects valued at or above the financial thresholds in the OGEL, and which have been in the UK for more than 50 years, are considered for national importance.

The role of the Expert Adviser

10. Such an object is referred to one of the department's Expert Advisers (normally a Director, Keeper or Curator in one of the national museums and galleries), who may object to the granting of an export licence on the basis that the object satisfies one or more of the Waverley criteria.

11. The Waverley criteria are:-

Waverley one

Is the object so closely connected with our history and national life that its departure would be a misfortune?

Waverley two

Is it of outstanding aesthetic importance?

Waverley three

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

12. A revised interpretation of the Waverley Criteria was set out in the Quinquennial Review of the Reviewing Committee on the Export of Works of Art, published on 8th December 2003, and subsequently accepted. This is as follows.

I Is it so closely connected with our history and national life that its departure would be a misfortune?

This criterion refers to national treasures, whose departure from the country would be a misfortune since they possess outstanding artistic, historical, or archaeological value. This category can include items 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 we interpret it in a somewhat wider context to include items 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 One' items include: the deposit from the 'royal' ship burial from Sutton Hoo, the Middleham jewel, the Lutterell psalter, The Dog of Alcibiades, a portrait miniature of Henry Stuart, Lord Darnley, the archive of manuscripts relating to the editing of Newton's *Principia Mathematica*, decorations awarded to Sir William Carnegie in connection with the battle of Trafalgar, Lewis Carroll's photographs of Alice Liddell (the Alice of *Alice in Wonderland*), the Royal Standard belonging to Sir Ernest Shackleton and Captain Scott's sledging flag.

II Is it of outstanding aesthetic importance?

The assessment of outstanding aesthetic importance involves a subjective judgement. The Committee does not restrict this criterion to great works of painting or sculpture. It might for instance, conclude that an exquisite snuffbox 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, the Reviewing Committee are not always swayed by such arguments and may take into account 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. Examples of 'Waverley two' items include the paintings *Venus and Adonis* by Titian and *The Holy Family with the Infant St. John* by Fra Bartolommeo, a pair of George II open armchairs by William and John Linnell, Henry Moore's sculpture, *Bird Basket*, a George III mahogany commode attributed to Thomas Chippendale, a drawing by Gainsborough, *A Peasant Family Going to Market* and a Van Gogh watercolour, *Harvest in Provence*.

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

The item might be considered of outstanding significance either on its own or on account of its connection with a person, place, event, archive, collection or assemblage. Such items serve as benchmarks for assessing other items since they can throw new light on the study of their type. The Reviewing Committee believe that 'learning' in relation to culture should cover a wide number of disciplines e.g. art history, archaeology, ethnography, anthropology, palaeontology (subject to definition of 'fossils') science, engineering, architecture or literature, etc. We would emphasise that this is an illustrative list and not necessarily a comprehensive one. Examples of 'Waverley three' items include: a lady's secretaire by Thomas Chippendale, mathematical instruments associated with Charles, Earl Stanhope, ledgers and account books of Messrs Fribourg and Treyer, three albums comprising photographs of Indian architecture and scenery by Samuel Bourne, a Hutton racing car, and the *Swan Roll* manuscript.

General Statement Applying to all Criteria

The RCEWA may take into account the condition as well as the extent of the damage or restoration to which it may have been subjected.

13. In addition, an Expert Adviser may take account of local interest. This does not mean that local interest is a further criterion as one or more of the Waverley criteria must be met.
14. In deciding whether to make an objection, the Expert Adviser should reach a decision solely on the basis of the Waverley criteria. No other factors should be allowed to influence that judgment. In particular, the following considerations should not be taken into account:-

interest of an expert adviser in acquiring an object for his/her own institution;

the knowledge that an expert adviser's own department is at present unable to afford a particular object which it would like to have acquired;

the knowledge that a public institution is interested in acquiring an object for its collection;

the possibility that, when several objects from one collection are being disposed of, one item may be made available to an institution in exchange for a licence being granted for another object;

a statement or undertaking by the owner that, in due course, the item will be given or bequeathed to an institution in this country;

judgements about the value shown on the application form, either extravagantly high or suspiciously low (although an expert adviser may expect to be asked his/her opinion on whether the value claimed represents a fair market price);

the destination to which the applicant wishes to export the item, and the conditions under which it might be kept there; and

press speculation in highly publicised cases.

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

15. If the Expert Adviser makes an objection, the case will be referred to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest, a non-statutory independent body which advises the Secretary of State for Culture, Media and Sport. In addition to the eight permanent members of the Committee, each of whom has expertise in one or more types of object of cultural interest, the Committee is assisted for each case by three Independent Assessors. These are experts in the particular object under consideration and, for the cases which they attend, they are full members of the Committee.
16. Both the Expert Adviser and the applicant for the licence are invited to submit evidence to the Committee as to why one or more of the Waverley criteria might or might not be satisfied. They are also invited to attend the meeting of the Committee at which the case is being considered.
17. The Reviewing Committee will advise Ministers about whether or not an object satisfies one or more of the Waverley criteria. If the object is not considered to be of Waverley standard, it is normal procedure to grant an export licence.
18. Where the Committee advises that one or more of the criteria is satisfied, it will recommend that a decision on the licence application is deferred for a specified period (normally two to six months, although any length of deferral can be recommended) to provide an opportunity for a compensating offer to purchase to be made to the owner. The Committee will recommend the fair market price at which an offer should be made.
19. Taking into account the advice provided by the Reviewing Committee, the Secretary of State will decide whether to grant an export licence or defer the decision on the licence

application for a specified period. The Secretary of State will also decide the fair market price at which offers to purchase should be made to the owner.

20. If there is no offer to purchase during a deferral period, a licence would normally be granted. Where an offer to purchase is accepted, the application for the export licence lapses.

Refusal of an export licence

21. An owner is entirely free to reject an offer to purchase made during the deferral period. However, if the owner rejects such an offer, the Secretary of State will take the existence of that offer into account in reaching a decision about whether or not to grant a licence. Where an offer to purchase was refused from a public source (a museum, gallery or other heritage body such as the National Trust), the Secretary of State will normally refuse to grant a licence.
22. However, where an offer to purchase was refused from a private source, in determining whether to grant a licence, the Secretary of State will take the existence of the offer into account only where the offeror has combined the offer with a signed undertaking with a public institution that he/she will guarantee public access to the object, provide satisfactory conservation conditions and not sell the object for a specified period (in order to secure the public access). In such circumstances, the Secretary of State will normally refuse to grant a licence.
23. The Secretary of State will also normally refuse to grant a licence where an owner indicates in advance that he/she is not prepared to accept an offer to purchase, if one is made.
24. In addition, if an application is withdrawn after an offer to purchase has been made from a public source, the owner is likely to be considered as having refused a compensating offer to purchase; and any subsequent application will normally be treated as if a licence had been refused; and paragraphs 25 to 27 below will apply in such cases.

Subsequent application for an export licence

25. Where a subsequent application is made for a licence to export an object of Waverley standard belonging to a person who, at the time of the first application, refused (or declined to consider) an offer to purchase, it will be subject to the normal licensing procedures. If the Expert Adviser objects to the granting of the licence under the Waverley criteria, the application will be referred to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest for consideration as to whether or not the object still satisfies one or more of the Waverley criteria.
26. If a subsequent application is made within 10 years or so of a licence being refused (or where the owner declined to consider an offer to purchase), and the Committee concludes that the object still satisfies one or more of the Waverley criteria, and there has been no change of circumstances since the previous application, the Secretary of State will normally refuse an export licence without a deferral period.

27. If, since the previous licence was refused (or where the owner declined to consider an offer to purchase), the object has been made available for sale to a public body (or a private owner within the context of paragraph 22), the Secretary of State will take into account all relevant factors, such as whether the price 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 into account the absence of an offer to purchase in making a decision about the licence, but this factor will not necessarily be decisive.

IMPORTED OBJECTS

28. Where there is proof that an object has been imported within the last 50 years, an export licence will normally be granted unless it is subject to the special considerations which apply to objects from the European Union (see paragraph 29 below) or if it is subject to a European Union or United Nations sanction.

Objects from another Member State of the European Union

29. Under the EU Regulation, the UK cannot be the competent authority to grant a licence for an object which was unlawfully removed from the territory of another Member State on or after 1 January 1993. Therefore, an application for a licence under the Regulation, in such circumstances, must be refused and, by extension, the licence that would normally apply under UK legislation, the Open General Export Licence (see paragraphs 3 to 5 above) cannot be relied on.

EMBARGOED DESTINATIONS

30. A licence cannot be issued for export to an embargoed destination. This means a destination to which an export ban applies by virtue of a prohibition contained in legislation implementing European Union or United Nations sanctions.

FURTHER INFORMATION

The Export Licensing Unit
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