

Department for Culture, Media and Sport

Consultation on draft Regulations for the publication by museums and galleries of information for the purposes of immunity from seizure under Part 6 of the Tribunals, Courts and Enforcement Act 2007 (the Act): Summary of responses

1. The Department for Culture, Media and Sport (DCMS) held a consultation on the above draft Regulations from 21 September to 21 December 2007. The purpose was to invite views on the content of the draft Regulations and on the timing of the publication of information by museums and galleries under Section 134 of the Act.
2. We are grateful for the 18 responses received from organisations and individuals. Section 4 of the consultation paper invited comments on a number of questions on the content of the Regulations. The following is a summary of the responses to those questions.

Question 18

(a) Is the content of draft regulation 3 (information required) sufficiently detailed to allow potential claimants to identify works of art which they believe may have been stolen, looted or otherwise unlawfully disposed of? If not, what else could usefully be added?

Most museums thought that the regulation was sufficiently detailed in this respect. One museum considered that Clause 3 (g) of the Regulations should be amended to require information to be provided but only where it is available and reasonable to do so. The Commission for Looted Art in Europe and others (hereinafter referred to as the representative groups) were strongly of the opinion that owners should be required to provide the date on which they acquired the object and full provenance information, including details of the previous owner who may have acquired the item unlawfully. They felt that requiring the borrowing institution to possess a complete history of ownership from 1933-1945 (Regulations, Section 3(4)(c)) was insufficient and that the dates should be 1916 until the present, which would cover the Russian revolution.

(b) Bearing in mind (a) above, would regulation 3 place an unreasonable burden on museums and galleries and would they discourage genuinely benevolent foreign lenders from being prepared to send their art treasures to the UK on loan for public exhibition? If so, which sections are likely to cause the most difficulty, and why?

Most museums felt that the additional work required in complying with the Regulations was a reasonable trade off for having immunity from seizure. A major concern was that information required under Regulation 3 may discourage some

private individuals from lending, even where they were represented by an agent. It was also suggested that an unwelcome consequence of releasing owners' names was that it might encourage speculative claims. The representative groups considered that it would be important for the borrowing institution to know the owner's name in order to check the provenance of the item, even if that information is not published.

(c) Will publicising the information referred to in regulation 3 on websites have security implications? If so, is there any better way of achieving the same result without compromising security (including the security requirements of the GIS)?

Similar concerns were raised as under question 18 (b) and one respondent felt that it would be helpful to seek the advice of the National Security Adviser on these issues. Some museums were concerned that publishing the information referred to in regulation 3 would alert professional art thieves to the forthcoming movement of artwork. It may therefore be preferable to state a date at the latest by which importation will take place, rather than the actual date of importation. Issues relating to the consent of owners to the publication of personal information about them under the Data Protection Act 1998, the Freedom of Information Act 2000 and human rights legislation were also raised and it was noted that the pre-agreement of private lenders may be required which would lengthen the process and further discourage them from lending. Several museums suggested that a description of the objects to be exhibited should be published with lender details only being made available on request, as is the case under the United States Federal Act.

(d) Would the requirement for inclusion (in information on the website) of a photograph of the object to be borrowed be reasonable, given possible copyright restrictions on publishing photographs on a website and what, if any, suitable arrangements might be available to comply with such restrictions?

Museums were generally supportive of the proposal under Regulation 3(3)(f) but were concerned that this would have resource implications. One museum suggested that photographs could be provided on receipt of a plausible claim. It was noted that more than one photograph might be required in some cases, for example, three-dimensional objects or to show important identifying marks. Concerns were raised over the practicality of providing photographs of books and manuscripts, given the need to uniquely identify a particular book which could only be done using many images. The representative groups considered that the provision of images was a key part of the Regulations and that copyright should not be a problem as Section 50 of the Copyright Designs and Patents Act 1988 (CDPA) allows publication where it is authorised by an Act of Parliament. The Museums Copyright Group were slightly cautious on this point as, whilst the provisions on immunity from seizure are set out in primary legislation, the Regulations are to be introduced by statutory instrument. They recommended further checking of whether the publishing of photographs in this context qualifies for exception under section 50 of the CDPA.

(e) Is it necessary for photographs to be provided other than for items created before 1946 and acquired after 1932 (which dates have been chosen so as to include transactions in the Nazi era generally recognised to have lasted from 1933 – 45)?

There was a mixed reaction from museums on this question. One museum felt that the requirement should be lifted altogether for archaeological and paleontological material post 1970. A further suggestion was that photographs should be provided as a matter of course for the Nazi-era but should be made available for items outside of that time period on further enquiry. The representative groups felt that photographs should be provided in all cases.

(f) Which option should apply regarding the timing of the publication of information?

Option (iii), that of publishing three months ahead of the opening of the exhibition or one month ahead of importation, was favoured by museums. However, the representative groups felt that information should be published at least two months ahead of the date of importation. One museum suggested that a notice period of nine to six months would be appropriate, to give borrowing museums the opportunity to source other objects if a loan is not completed. The Museums, Libraries and Archives Council took that view that information should be made available considerably in advance of the time of importation to give potential claimants a reasonable amount of time to examine the published information, seek additional information from the museum where necessary and to inform the museum of any doubts there might be as to the suitability of the item for the exhibition.

Question 19 - information to be provided on request. Regulation 5 sets out a possible model for such disclosure.

(a) State whether they regard the information set out in regulation 5 to be sufficient or insufficient for the purpose of ensuring that the legitimate interests of potential claimants are not unduly prejudiced?

(b) If the information in regulation 5 is regarded as insufficient, to state what additional information should be provided and why?

The representative groups felt that the provision of information under Regulation 5 was far too restrictive and that disclosure should be available to anyone on request, particularly as most museums were subject to the Freedom of Information Act 2000. They considered that museums would find it very difficult to assess from the information to be provided, whether or not a claim was sufficiently valid to trigger the release of further information, particularly if they do not have in-house legal advice. One museum suggested that the Secretary of State or an independent authority should consider claims and the associated release of information. Most respondents considered that the terms "plausible case" and "valid claim" in Regulation 5 needed to be defined or the Regulation redrafted to avoid ambiguity.

List of respondents

Board of Deputies of British Jews
British Library
British Museum
City Art Centre, Edinburgh
Commission for Looted Art in Europe
Heritage Matters
Leeds Museums and Galleries
Lord Janner
Museums Copyright Group

Museums, Libraries and Archives Council
National Maritime Museum
National Museums of Scotland
National Portrait Gallery
Norfolk Museums and Galleries
Anna O'Connell
Scottish Council of Jewish Communities
Tate
Victoria and Albert Museum