

Question and Answer session at seminar on 23 June to consider the protection of cultural objects on loan from abroad under Part 6 of the Tribunals, Courts and Enforcement Act 2007 (the Act) and The Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008

This information is provided as a guide only. Institutions must obtain their own legal advice on compliance with the requirements for protection under Part 6 of the Tribunals Courts and Enforcement Act 2007

Q How long does the approvals process take?

A It depends on whether the consultants highlight issues in the application that need to be addressed before the Minister's approval can be sought. Extra time needs to be built in the event of this happening. In addition the Minister has requested that approvals submission should not be sent to her with urgent deadlines. In view of this, applications should be submitted at least 6 weeks before an object requiring protection under the Act enters the UK. However, museums should not wait until planning an exhibition where the protection is required before making an application for approval. **Applications should ideally be made during 2008.**

Q Would an object be protected under the Act in the event of seizure from a museum in response to a request by an EU authority?

A **The protection does not apply to an order made by a court in the UK in order to comply with a Community obligation or any international treaty.**

Q If the museum's website is not working for a period during the 4 week period before the object arrives in the UK would this affect its protection under the Act?

A The Regulations state that in calculating the period any occasional and minor interruptions in the availability of the information resulting from technical or other problems outside the reasonable control of the borrowing institution may be included. (see regulations 4(3)(a) and 5 (3)(a)).

Q Must the institution list all the objects in the exhibition on the website or just those borrowed from abroad?

A Only information about objects that require protection under the Act need to be included on the website.

Q If the UK borrowing museum is partnered with a USA museum, should the UK museum conduct its own due diligence procedures?

A Yes. A borrowing institution approved for the purposes of this Act is expected to comply with all due diligence procedures. It is the responsibility of the borrowing museum to ensure that the information required to be published by the Regulations is full and accurate .

Q What expertise do Tate Advisory Panel members have?

A The panel comprises existing Tate staff with a range of skills and experience –current members include - a registrar, a press officer, a lawyer, a curator and a representative of the Director.

Q Would the protection apply to an object owned by a foreign Trust with British beneficiaries?

A It would depend on the precise facts. To qualify for protection an object must not be owned by a UK resident. Section 143 (3) of the Act provides that a person owns an object whether he owns it beneficially or not and whether alone or with others. Section 137 sets out provisions for when an owner is a UK resident:

- an individual is a UK resident if he is ordinarily resident in the UK for the purposes of income tax or would be if he received income on which tax is payable
- trustees of a settlement (or in Scotland trustees of a trust) are resident in UK if they are resident and ordinarily resident for the purposes of income tax or would be if they received income on which tax is payable
- a partnership (including a limited partnership) or unincorporated association is resident in the UK if it is established under the law of any part of the UK
- a body corporate is resident in the UK if it is incorporated under the law of any part of the UK

When conducting initial discussions with lenders, borrowing institutions must stress that it is for the lender and borrower to ensure that all the conditions are met for the protection to apply.

Q Are the Channel Islands covered by the Act?

A No.

Q Will "Letters of Comfort" continue to be provided for Museums not approved under the Act?

A No.

Q Is there a policy of Museums not borrowing objects without full provenance between 1933 and 1945?

A No. It is a decision for the museum whether to borrow the object following thorough provenance research including searches on art loss databases. No two loans are the same and decisions will be made on the basis of a number of factors such as: where is the object coming from? who is the lender? how long they have owned the object? Etc

Q In the case of touring exhibitions where one museum is signing loans for another venue, is it necessary for the other venue to be approved under the Act in order for the protection to also apply to them?

A It depends on the facts. The key requirements are that the **borrowing institution that is holding the exhibition or under whose direction the temporary exhibition takes place** (see section 137 (4) and (5)) is approved under the Act and publishes the

information as required by the Regulations. One museum organise an exhibition at several locations provided that borrowing museum remains responsible for the exhibition or the exhibition is held under its direction. However, if an exhibition is held at several locations and at each location a separate museum is responsible for the exhibition and it is not under the direction of one borrowing museum, then each responsible museum will have to satisfy the conditions for protection.

It should be noted that definition of "temporary exhibition" for the purposes of the Act means an exhibition of one or more objects which is open to the public for a period of less than twelve months, whether at a single location or at a succession of locations.

Q Would it be acceptable to have a simplified process for provenance research of lower value items?

A Provenance research is a matter for the museum but it is important to establish a provenance research standard that is sufficiently rigorous to probe any gaps in information and this should be applied in all cases regardless of the value of the object.

Q Does the protection only apply in the UK.

A Yes.