

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF CULTURAL OBJECTS ON LOAN (PUBLICATION AND
PROVISION OF INFORMATION) REGULATIONS 2008

2008 No. 1159

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations specify the information that a borrowing institution must publish about an object lent from abroad for a temporary public exhibition in order for the object to be protected from seizure or forfeiture in accordance with Part 6 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (“the Act”). They also specify the information about the object that must be provided by the institution to certain persons in order for the institution to comply with that Part. The Regulations provide that information concerning the identification and provenance of the object must be published at least four weeks before the day on which the object is brought into the country, and thereafter made available to the public for a further period of twelve weeks or until the closure of the exhibition, whichever is the longer period. Where a person reasonably believes that he or she may have a claim to the object the Regulations provide for the provision of information concerning its provenance to that person.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Part 6 of the Act provides that an object lent from abroad for a temporary public exhibition in the United Kingdom is protected from seizure or forfeiture where the conditions specified in section 134(2) of the Act are met when the object enters the United Kingdom. These Regulations are made under section 134(2)(e) and (9) of the Act and specify the information that must be published or made available to the public or certain specific persons, as well as the methods by and times during which it must be so published or made available. The Regulations are subject to the negative resolution procedure.

5. Extent

5.1 The Regulations extend to England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 6 of the Act provides immunity from seizure for objects loaned from overseas for a temporary public exhibition at an approved museum or gallery in the United Kingdom. The legislation was introduced to enhance cultural life in the United Kingdom by assuring foreign lenders that a cultural object lent for an exhibition would be returned at the end of the exhibition. This removes a significant and growing obstacle to UK museums' access to foreign cultural objects for exhibition in the UK - and thus enhances the UK public's access to such objects.

7.2 The publication of information about an object that benefits from the immunity will enable anyone to raise questions about the object's past history and ownership. This is an important facility for anyone trying to trace objects which once belonged to them or to a member of their family and which may have been stolen, looted, otherwise unlawfully taken or spoliated in the broader sense of that term. The details concerning the object that must be published or otherwise made available to the public are listed in regulation 3. The applicable methods and time periods are specified in regulations 4 and 5.

7.3 In accordance with regulation 7, an individual who considers he or she has a claim to the object can request further information from the borrowing institution provided the request is not unreasonable; that is, provided the claim has not already been rejected by a court or similar body, the information has not already been made available, or the request is not made more than twelve weeks after the institution ceases to be obliged under the Regulations to make information about the object available to the public at large.

7.4 The information that the borrowing institution is required to publish has been defined, following public consultation, so as to strike a balance between providing sufficiently detailed information to enable a potential claimant to identify an object and not imposing an unreasonable burden on borrowing institutions and lenders.

8. Impact

8.1 An Impact Assessment has been prepared and is annexed to this memorandum.

9. Contact

Hillary Bauer at the Department for Culture, Media and Sport Tel: 0207 211 6102 or e-mail: Hillary.Bauer@culture.gsi.gov.uk can answer any queries regarding the Regulations.

Annex

Department for Culture, Media and Sport

Impact Assessment

Title

1. The Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008.

Purpose and intended effect

2. Part 6 of the Tribunals, Courts and Enforcement Act 2007 (the Act) provides that an object lent from abroad for a temporary public exhibition in the United Kingdom is protected from seizure or forfeiture where the conditions specified in section 134(2) of the Act are met when the object enters the United Kingdom. Borrowing institutions are not compelled to seek protection for objects lent from abroad but, if the borrowing institution and the lender wish to benefit from the protection, the conditions specified in section 134(2) of the Act must be satisfied.
3. These Regulations specify the information that a borrowing institution must publish about an object as a condition for its immunity and the information about the object that must be provided by the institution to certain persons.
4. The Regulations provide that information concerning the identification and provenance of the object must be published at least four weeks before the day on which the object is brought into the country, and thereafter made available to the public for a further period of twelve weeks or until the closure of the exhibition, whichever is the longer period.
5. The publication of information about an object that benefits from the immunity will enable anyone to raise questions about the object's past history and ownership. This is an important facility for anyone trying to trace objects which once belonged to them or to a member of their family and which may have been stolen, looted, otherwise unlawfully taken or spoliated in the broader sense of that term.
6. The information that the borrowing institution is required to publish has been defined, following public consultation, so as to strike a balance between providing sufficiently detailed information to enable a potential claimant to identify an object and not imposing an unreasonable burden on borrowing institutions and lenders.
7. The legislation was introduced to enhance cultural life in the UK by assuring foreign lenders that a cultural object lent for an exhibition would be returned at the end of the exhibition. This removes a significant and growing obstacle to UK museums' access to foreign cultural objects for exhibition in the UK - and thus enhances the UK public's access to such objects.

Rationale for Government Intervention

8. It is optional for museums whether they wish to apply for approved status under the Act, or whether they wish to seek immunity in relation to particular objects for

exhibition. However, where an object is to be protected, the Government concluded that it is necessary to ensure that the public and, in particular individuals who may have claim to a cultural object intended for exhibition, should have access to information about the object.

Options

9. DCMS undertook a public consultation on the content of the Regulations towards the end of 2007 and the comments received on various policy options have been taken into account in framing the final version of the Regulations.

Costs and benefits

10. As mentioned above, it is optional for museums whether they wish to apply for approved status under the Act. There will be no costs to the public resulting from the Regulations.
11. The additional work that the Regulations will impose on museums is the publishing of detailed information about objects on the museum's website, where they choose to seek immunity for those objects. The cost of transforming the data into the required format for the Regulations and publishing it on the museum's website is minimal and we have not attempted to calculate this. In accordance with Departmental policy, museums are obliged to seek the information required by the Regulations in any event. Hence, the requirement to publish it on a website is the only substantive change to the burden on museums in this area.
12. The publication of information will enable anyone with an interest to raise questions about objects that may have been wrongfully taken. The website of the Museums, Libraries and Archives Council will provide a central link to all the museum websites where protected objects are to be exhibited. This will provide one point of access for those interested in searching the information. Approved museums will need to make the information available in other formats where required to do so under the Disability Discrimination Act. Institutions in Wales will have to make the information available in Welsh in some circumstances.

Small firms impact test

13. The Regulations will have no impact on small firms.

Competition assessment

14. The Regulations will not affect competition in the museums sector as they affect all museums in the same way. We have not addressed the 'competition filter test' as it refers to firms and we are not dealing with these.

Enforcement and Sanctions

15. Under Section 136(3) of the Act, the Secretary of State may withdraw approval from an institution if it appears to him that it has failed to comply with a requirement of the Regulations under Section 134(9) on the advance publication of information about the objects to be borrowed. Additionally, if information is not published by a museum as

required when objects enter the UK, the conditions for immunity are not satisfied and the immunity will not be available.

Implementation and delivery plan

16. The Regulations are to be laid before Parliament.

Post implementation review

17. Approved museums will be subject to a process whereby their compliance with the Regulations will be monitored and a programme of spot checks will be put in place. An annual report to the Secretary of State on museums' compliance will also be produced. The Government proposes to evaluate the effectiveness of the Regulations 12 months after they come into force.