



EXPORT CONTROLS ON OBJECTS OF CULTURAL INTEREST

CONSULTATION ON A DRAFT ORDER TO BE MADE UNDER THE EXPORT CONTROL ACT 2002

EXPORT CONTROLS ON OBJECTS OF CULTURAL INTEREST

CONSULTATION ON A DRAFT ORDER TO BE MADE UNDER THE EXPORT CONTROL ACT 2002

CONTENTS

	Page
Executive Summary	1
Introduction	2
The new statutory framework provided by The Export Control Act 2002	4
Summary of the main provisions of the draft Order and Open Licences	6
Regulatory Impact Assessment	8
Draft Export of Objects of Cultural Interest (Control) Order	9
Guide to the draft Order	14
Government Criteria on Consultation	16

EXECUTIVE SUMMARY

The Export Control Act 2002 received Royal assent on 24 July 2002. To be made under the Act, the draft Order published in this document will provide for export controls on objects of cultural interest. It is aimed at being more transparent than the current Order and will be subject to Parliamentary scrutiny.

As is currently the case, objects manufactured or produced more than 50 years before the date of exportation will be subject to a licensing requirement; and we intend to continue the system of Open licences in order to minimise the number of cultural objects which will require an individual export licence from the Department for Culture, Media and Sport.

Publication of the Order in draft provides an opportunity for consultation on the proposed content of the secondary legislation. We invite all those interested in the export control of cultural objects to give their views.

INTRODUCTION

Scope of this consultation

1. The Export Control Act (the Act)¹, which received Royal Assent on 24 July 2002, establishes a new legislative framework for export controls on both strategic goods and objects of cultural interest. **This consultation document relates solely to objects of cultural interest.**
2. This consultation document contains a draft of the Order that the Government intends to introduce under the Act on export controls on objects of cultural interest. It seeks views on the detail of the Order and sets out the reasons why the Government has not felt it necessary to provide a Regulatory Impact Assessment (see page 8).
3. The Department of Trade and Industry (DTI) is conducting a parallel consultation exercise on the Orders to be introduced with regard to strategic exports. This consultation document is available from <http://www.dti.gov.uk/export.control/legislation.htm> on the DTI website.

Previous consultation

4. The Government published a consultation document *Export Controls: Consultation on draft legislation: The Export Control and Non-Proliferation Bill* (Cm 5091) in March 2001, which invited views on the draft Bill in relation to objects of cultural interest, responses were received from a number of individuals and organisations; and these were generally supportive of the Government's proposals.
5. A "draft dummy order" relating to objects of cultural interest was published in October 2001 to aid Parliament in its consideration of the Export Control Bill. The draft Order published in this document is based on the "draft dummy order".

How to respond to this consultation

6. Views are invited from all individuals and organisations with an interest in the export controls on objects of cultural interest. Comments are invited by Wednesday 30 April 2003.

7. Written comments should be sent to:

Mrs Lynn Gates
Cultural Property Unit
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

Tel: 020 7211 6163

Fax: 020 7211 6170

E-mail: lynn.gates@culture.gsi.gov.uk (Attachments sent by e-mail should be in rich text (rtf) format)

8. In commenting on the draft Order, it would be helpful if you could **specify the article on which you are commenting**. It is not necessary to quote at length passages from this document.
9. An electronic copy of this document is available on the DCMS web-site at: http://www.culture.gov.uk/heritage/export_controls.html

¹ The Export Control Act 2002 is available from The Stationery Office at PO Box 29, Norwich, NR3 1GN (Tel 0845 7 023474, Fax 0870 600 5533 or online at <http://www.hmso.gov.uk/acts.htm>).

Publication of responses

10. The Government intends to publish responses to this consultation document. It will be assumed that respondents are content for their comments to be published unless they indicate otherwise. Consultees who wish their responses to remain confidential should make clear whether they wish to protect their identity, the content of their response (or part of it) or both.

The Government's Code of Practice on Written Consultations

11. The Government's criteria for written consultations are set out on page 16 of this document. They are also available in full from the Cabinet Office website.² This consultation is being carried out in accordance with the criteria, including the recommended 12 week consultation period.

12. Any feedback on the manner in which this consultation has been conducted can be sent to:

Craig Patchett
Departmental Consultation Coordinator
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

e-mail: craig.patchett@culture.gsi.gov.uk

²

Available at <http://www.cabinet-office.gov.uk/servicefirst/2000/consult/code/ConsultationCode.htm>

THE NEW STATUTORY FRAMEWORK PROVIDED BY THE EXPORT CONTROL ACT 2002

Order making powers under the Act

13. The Export Control Act contains powers to impose export controls which will, when the Act is brought into force, repeal and replace the existing export control powers contained in the Import, Export and Customs Powers (Defence) Act 1939. Existing controls that are currently in force under the 1939 Act will be carried forward under the new Act.

14. The Act provides for increased transparency and accountability to Parliament in the use of those powers. It does this by:

- setting certain restrictions on the content of the orders;
- providing for parliamentary scrutiny of the orders;
- requiring the Government to publish guidance on the principles to be followed when exercising licensing powers; and
- requiring the Government to report annually on the operation of controls under the Act.

15. These requirements are explained in paragraphs 16 to 20 below.

Restrictions on the order making powers

16. The Act sets restrictions on the categories of goods which may be brought under control. Under Section 5 of the Act, controls may normally³ only be introduced on goods:

- where this is required to give effect to European Community provisions; or
- where this is required to give effect to other international obligations of the UK; or
- as permitted by the Schedule to the Act. The Schedule provides for controls on objects of cultural interest.

17. The provisions in the draft Order in this consultation document fall within one or more of the categories set out above.

Parliamentary scrutiny of Orders

18. Under the Act (Section 13), provision is made for Parliamentary scrutiny of the orders introduced under the Act. This will normally be by the negative resolution procedure; and it is this procedure which will apply to the Order which is the subject of this consultation.

Guidance

19. Under the Act (Section 9), the Secretary of State is required to give guidance about the general principles to be followed when exercising her licensing powers. It is intended that these will include the current criteria for identifying cultural objects of national importance (known as the "Waverley criteria"), together with an explanation of how these may be interpreted. The Waverley criteria are applied to an object as follows: -

1. Is the object so closely connected with our history and national life that its departure would be a misfortune?
2. Is it of outstanding aesthetic importance?
3. Is it of outstanding significance for the study of some particular branch of art, learning or history?

³ Controls outside these restrictions can be introduced under the Act, but only on a temporary basis and with the express approval of an order by Parliament. The Government does not expect to use this power with regard to objects of cultural interest.

20. In addition, exporters will need to take account of the fact that Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods (as amended) (the Regulation) also imposes a licensing regime (to destinations outside the European Customs Union) and it operates in tandem with UK law. The Regulation also provides that the Secretary of State must ensure that cultural goods despatched from another Member State on or after 1 January 1993 (either directly to the UK or via a third country) have been lawfully and definitively removed from the originating Member State.

Annual Report

21. Under the Act (Section 10), the Government is required to present to Parliament an annual report on the operation of any order relating to objects of cultural interest. It is intended that this will contain details of the decisions taken by the Secretary of State with regard to cases considered by the Reviewing Committee on the Export of Works of Art (the Reviewing Committee), commentary on any policy changes during the year and some statistical tables.

22. The requirement for an annual report from the Secretary of State will be in addition to the current annual report of the Reviewing Committee, which is a Command Paper presented to Parliament by the Secretary of State. We would be particularly interested in your views as to whether the Reviewing Committee's report should continue to be published as a separate document or whether it should be included in the Secretary of State's annual report.

SUMMARY OF THE MAIN PROVISIONS OF THE DRAFT ORDER AND OPEN LICENCES

THE EXPORT LICENSING REQUIREMENTS

23. The draft Order included in this consultation document provides for similar controls to those contained in the draft dummy order published in October 2001, but it takes into account the final form of the Act itself. The draft Order relates solely to objects of cultural interest and, to a large extent, reflects the provisions contained in the current Order: *The Export of Goods (Control) Order 1992* (the 1992 Order). In particular, the draft Order contains similar provisions to the 1992 Order in that an export licence is required for:

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

- (1) postage stamps and other articles of philatelic interest;
- (2) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;
- (3) letters or other writings written by or to the exporter or the spouse of the exporter; and
- (4) goods exported by, and being the personal property of, the manufacturer or producer thereof, or the spouse, widow or widower of that person."

24. As now, in order to reduce the burden on would-be exporters, the Government intends to issue a number of open licences, which permit the export of certain specified objects without the need to obtain an individual export licence from the Department for Culture, Media and Sport (DCMS). There are currently two types in operation: the Open General Export Licence and the Open Individual Export Licence.

Open General Export Licence (OGEL)

25. The OGEL, which can be used by any exporter, permits 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 from DCMS, the OGEL also permits the export of an object of cultural interest (which would otherwise require an individual UK licence) where a licence has been granted under the Regulation.

Open Individual Export Licence (OIEL)

26. An OIEL is granted to a named individual, company or institution, to permit either the permanent or temporary export of specified objects.

27. Where neither the OGEL nor an OIEL cover a particular object, an individual export licence is required from DCMS. None of these provisions can over-ride any requirement to obtain an individual licence under the Regulation (for exports to destinations outside the European Customs Union).

REQUIREMENTS FOR REGISTRATION AND RECORD KEEPING

28. The current Order requires exporters to inform the Secretary of State that they have made an export under the OGEL, within 30 days of their first export under the OGEL. Exporters are also required to keep records of exports undertaken under the OGEL. Requirements for record keeping under OIELs are specified in the OIELs. No record keeping is required for standard individual export licences. Given that, in practice, registration and record keeping are not normally required for exports under the OGEL, we have removed (in the draft Order) the registration and record keeping requirements for any OGEL granted under the draft Order.

USE OF INFORMATION

29. In common with the draft orders for strategic goods, this draft Order includes provisions on the purposes for which information held by the Secretary of State and Customs & Excise may be disclosed. This follows the approach adopted by DTI. Among other things, these provisions provide for the exchange of information within government for the regulation and enforcement of export controls. They would also allow the Government to exchange information with international bodies and authorities in other states that have similar functions to those provided for in the Act.

PENALTIES AND ENFORCEMENT

30. The draft Order provides that the Commissioners for Customs and Excise are to be the enforcement and prosecuting authority for offences under both the Order and the Regulation. Article 9 of the Regulation gives Member States the authority to provide for enforcement of the Regulation. Currently the OGEL provides the mechanism for enforcement; but the Department considers that, in order to aid transparency, enforcement should be set out clearly on the face of the draft Order. It will be an offence under the Order to: provide a false statement, document or information in order to obtain an export licence, or fail to comply with licence conditions. The penalties for these offences are set out in the draft Order. It should also be noted that where goods are exported (or an attempt is made to export them) without a licence, an offence is committed under the Customs and Excise Management Act 1979. The maximum penalty of seven years for breach of the prohibition remains as is currently the case.

COMMENCEMENT OF THE ORDER AND TRANSITIONAL ARRANGEMENTS

31. The Government expects the Order to come into force in the second half of 2003. It proposes to allow an implementation period of at least 12 weeks between the laying of the Order and its coming into force. Licences granted under the current Order will continue to remain in force until revoked. It is intended that application forms for licences under the new Order and the statutory guidance (under section 9 of the Act) on the general principles to be applied to licences granted under the new Order will be available at the time the Statutory Instrument is laid.

REGULATORY IMPACT ASSESSMENT

It is not necessary to provide a Regulatory Impact Assessment since the draft Order does not extend the export licensing requirements for objects of cultural interest beyond those already in place under the Export of Goods (Control) Order 1992 (made under the Import, Export and Customs Powers (Defence) Act 1939).

DRAFT

This document is a draft of an Order to be made under sections 1,5 and 7 of the Export Control Act 2002

STATUTORY INSTRUMENTS

200X No.

CUSTOMS AND EXCISE

The Export of Objects of Cultural Interest (Control) Order 200x

<i>Made - - - - -</i>	<i>200x</i>
<i>Laid before Parliament</i>	<i>200x</i>
<i>Coming into force - -</i>	<i>200x</i>

The Secretary of State, in exercise of the powers conferred upon her by sections 1, 5 and 7 of the Export Control Act 2002 (a) hereby makes the following Order:

Citation, commencement and interpretation

1. —(1) This Order may be cited as the Export of Objects of Cultural Interest (Control) Order 200x and shall come into force on [xx Month 200x].

(2) In this Order, unless the context otherwise requires—

“the Commissioners” means the Commissioners of Customs and Excise;

“Community Licence” means an authorisation granted by the Secretary of State (whether before or after commencement of this Order) under the Regulation;

“cultural goods” shall have the same meaning as that given in the Regulation;

“exportation” includes shipment as stores and, unless the context otherwise requires, means exportation from the United Kingdom to any destination except for the Isle of Man;

“objects” mean objects of cultural interest of a description specified in and not excluded from the Schedule to this Order;

“prescribed sum” has the same meaning as in the Customs and Excise Management Act 1979(b);

“the Act” means the Export Control Act 2002;

“the Regulation” means Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods(c).

(a) 2002 c.28

(b) 1979 c.2 (as amended).

(c) OJ No. L 395, 31.12.92, p.1, as amended by Council Regulation (EC) No 2469/96 (OJ No. L 335,16.12.96, p.9), Council Regulation (EC) No 1103/97 (OJ L 162, 17.06.97, p.1) and Council Regulation (EC) No 974/2001 (OJ No L 137, 19.05.01, p.10).

Controls on the export of objects of cultural interest

2. Subject to the provisions of this Order, all objects are prohibited to be exported to any destination except under the authority of a licence in writing granted by the Secretary of State, and in accordance with all the conditions attached to the licence.

Licences

3. —(1) A licence granted by the Secretary of State in pursuance of article 2 may be:

- (a) either general, or individual,
- (b) limited so as to expire on a specified date unless renewed, and
- (c) subject to or without conditions, and any such condition may require any act or omission before or after the exportation of objects under the licence.

(2) Any licence granted under this Order, may be varied, suspended or revoked by the Secretary of State at any time and in such circumstances and on such terms as she thinks fit, by serving a notice to that effect on the holder of the licence.

Misleading applications for licences etc.

4. —(1) Where for the purpose of obtaining a licence under this Order or a Community Licence for the exportation of any objects or cultural goods, as the case may be, any person either—

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) above shall be liable—

- (a) on summary conviction to a fine of the prescribed sum, and
- (b) on conviction on indictment to a fine of any amount, or imprisonment for a term not exceeding 2 years, or to both,

and any licence which may have been granted for the exportation of any objects or cultural goods in connection with the application for which the false statement was made or the false document or information furnished, shall be void as from the time it was granted.

Failure to comply with licence conditions

5. —(1) Subject to the provisions of paragraph (2) below, any person who—

- (a) has done any act under the authority of
 - (i) a licence granted by the Secretary of State under this Order; or
 - (ii) a Community Licence, and
- (b) fails to comply with any condition attaching to that licence or Community Licence,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum, and
- (b) on conviction on indictment to a fine of any amount, or imprisonment for a term not exceeding 2 years, or to both.

(3) No person shall be guilty of an offence under paragraph (1) where—

- (a) the licence condition in question had been previously modified by the Secretary of State; and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and

- (c) the condition with which he failed to comply was modified, otherwise than with his consent, by the Secretary of State after the doing of the act authorised by the licence.

Customs powers to demand evidence of destination

6.—(1) Any exporter or any shipper of objects or cultural goods, as the case may be, which have been exported from the United Kingdom shall, if so required by the Commissioners, furnish within such time as the Commissioners may allow, evidence that the objects or cultural goods have reached the destination to which they were authorised to be exported, in relation to objects, by a licence issued for the purposes of this Order or, in relation to cultural goods, by a Community Licence.

(2) Subject to paragraph (3), any exporter or shipper who fails to comply with the requirement in paragraph 1 shall be guilty of an offence.

(3) No person shall be guilty of an offence under paragraph (2) if he did not consent to or connive at the objects or cultural goods, as the case may be, reaching any destination other than such a destination as aforesaid.

(4) Any person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Application of the Customs and Excise Management Act 1979

7.—(1) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of article 2.

(2) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of the Regulation in respect of the export of cultural goods.

Use and disclosure of information

8.—(1) This article applies to information which is held by—

- (a) the Secretary of State, or
- (b) the Commissioners,

in connection with the operation of controls imposed by this Order or by any directly applicable Community provision on the exportation of cultural goods.

(2) Information to which this article applies may be used for the purposes of, or for any purposes connected with—

- (a) the exercise of functions in relation to any control imposed by this Order or by any order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the United Kingdom of functions which correspond to functions conferred by or in connection with any activity subject to any control by this Order or by any order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this article unless the Secretary of State or the Commissioners are satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) For the purposes of this article “information” is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this article shall be taken to prejudice any power to disclose information which exists apart from this article.

(6) The information that may be disclosed by virtue of this article includes information obtained before the commencement of this Order.

Revocation and saving for export licences for goods granted under the Export of Goods (Control) Order 1992

9. —(1) Except as provided in paragraph (2) the Export of Goods (Control) Order 1992^(a) is hereby revoked.

(2) Nothing in this Order shall affect any licence for the export of goods granted by the Secretary of State in pursuance of article 3(a) of the Export of Goods (Control) Order 1992 and which is in force on the date this Order comes into force.

Secretary of State for Culture, Media and Sport

xx Month 200x

^(a) S.I. 1992/3092, as amended by S.I 1994/1191.

OBJECTS OF CULTURAL INTEREST

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

- (1) postage stamps and other articles of philatelic interest;
- (2) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;
- (3) letters or other writings written by or to the exporter or the spouse of the exporter; and
- (4) goods exported by, and being the personal property of, the manufacturer or producer thereof, or the spouse, widow or widower of that person.

GUIDE TO THE DRAFT ORDER

Article 2 - Controls on the export of objects of cultural interest

This article largely reproduces the current requirement that any object (as defined in the Schedule) being exported to any destination requires a written licence granted by the Secretary of State and that all conditions attached to such a licence must be complied with.

Article 3 - Licences

Under this article, a licence granted under the draft Order may be general or individual, expire on a specified date unless renewed and may be subject to conditions before or after the export. Any such licence may be varied, suspended or revoked by the Secretary of State by serving notice on the licence holder. This reproduces the existing provisions.

Article 4 - Misleading applications for licences etc.

This article clarifies that the current provisions relating to misleading applications for licences apply both to a licence granted under the Order and to a licence (called a Community Licence) granted under the Regulation. It is an offence for any person, for the purpose of obtaining a licence either under the Order or under the Regulation, to make or knowingly furnish (or recklessly to do so) any statement, document or information which is false. Any licence granted following the provision of such a false statement, document or information will be void from the time it was granted. This article also sets out the penalties to which a person found guilty of the offence may be liable.

Article 5 - Failure to comply with licence conditions

This article provides that failure to comply with any condition attached to any licence granted under the Order or to any Community Licence is an offence unless the condition has previously been modified by the Secretary of State and the failure to comply would not have been a failure if it were not for the modification having been made without the exporter's consent after the export had taken place. This article also sets out the penalties to which a person found guilty of the offence may be liable.

Article 6 - Customs powers to demand evidence of destination

This article provides that any exporter or shipper must, if required by the Commissioners of Customs and Excise, present evidence that exported objects or cultural goods have reached the destination specified in the licence granted for their export under the Order or under a Community Licence. Failure to comply is an offence unless the exporter or shipper did not consent or connive at the objects or cultural goods reaching another destination. This article sets out the penalties to which a person found guilty of the offence may be liable.

Article 7 - Application of the Customs and Excise Management Act 1979

This article provides that the Commissioners of Customs and Excise shall take such enforcement action as appropriate to enforce both the Order and the Regulation.

Article 8 – Use and disclosure of information

In common with the draft orders for strategic goods, this article includes provisions on the purposes for which information held by the Secretary of State and Customs & Excise may be disclosed. Among other things, these provisions provide for the exchange of information within government for the regulation and enforcement of export controls. They would also allow the Government to exchange information with international bodies and authorities in other states that have similar functions to those provided for in the Act.

Article 9 - Revocation and saving for export licences for goods granted under the Export of Goods (Control) Order 1992

This article revokes the 1992 Order, although any licence granted under the 1992 Order will remain in force until the licence has been revoked.

Schedule

The Schedule does not extend the definition of objects covered under the current provisions in the 1992 Order.

GOVERNMENT CRITERIA ON CONSULTATION

1. The timing of each consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The complete Code of Practice is available on the Cabinet Office's web site address www.cabinet-office.gov.uk/servicefirst/index/consultation.htm.