



Response to the Quinquennial Review of the Reviewing Committee on the Export of Works of Art

Introduction

On 8 December 2003 the report of the Quinquennial Review of the Reviewing Committee on the Export of Works of Art (RCEWA) was published. The Director of Arts and Culture at DCMS led the Review, which was guided by an independent Steering Group and informed by a thorough consultation exercise.

The Review found that the Committee was fulfilling Government and Departmental objectives in relation to the protection of objects of national importance and that there was widespread support for its continuation.

DCMS undertook to consider the issues raised by the Review. Following this, most of the recommendations have been accepted. The detailed Departmental response to those recommendations that required this are set out below.

Response to individual recommendations

6.1 The need for a RCEWA and the extent to which it contributes to the delivery of Government and, within that, departmental objectives.

6.1.2 We recommend that the RCEWA should retain its current main title, with the addition of the phrase 'and objects of cultural interest'.

Response

We accept this recommendation and will implement it.

6.2 Whether any amendments are needed to the RCEWA's terms of reference to enable it more effectively to play its part in delivering Government and, within that, departmental objectives

6.2.1 (a) We recommend removal of term of reference (iv), 'to supervise the operation of the export control system generally', which is an executive function belonging within DCMS, and revision of item (i) to include the role of *advising* upon the operation of the export control system.

Response

We accept this recommendation and will amend RCEWA's terms of reference accordingly. The revised wording is attached at Annex A.

6.2.1 (b) We welcome the Goodison Review of Saving Art for the Nation and recommend that any change to the third term of reference concerning special Exchequer grants should be made in the light of its conclusions.

Response

Goodison was asked to rule out special Exchequer grants when considering his recommendations because the Treasury considers that the establishment of the National Heritage Memorial Fund has replaced the need for them. However, exchequer grants are still available in Scotland and so we do not propose to remove the third term of reference at this stage.

6.5 Whether the RCEWA should be a standing body or whether there are other options for delivery, and whether any structural changes are needed to enable

the RCEWA more effectively to play its part in delivering Government and, within that, departmental objectives.

6.5.1 We recommend that the RCEWA's status should remain that of an advisory NDPB, sponsored by DCMS, as opposed to its transfer to an NDPB such as Resource, the Council for Museums, Archives and Libraries.

Response

This recommendation is linked to Recommendation 15 of Sir Nicholas Goodison's Review, *Securing the Best for our Museums: Private Giving and Government Support*. That recommended that the administration of the Export Licensing Unit and the Export Licence Review System should be undertaken by Resource (now MLA). We will respond separately.

6.5.3 We recommend that the Chairman of the RCEWA should be independent from both the art market and the museum/gallery world.

Response

We accept this recommendation. The current chairman, who was appointed in December 2003, is independent from both the art market and the museum/gallery world.

6.5.5 We consider it of importance that the RCEWA should both retain and be seen to retain its independence of the DCMS. We recommend that all appropriate steps be taken to further this end including the RCEWA having its own notepaper.

Response

We accept this recommendation and will implement it.

6.5.5 We consider there is considerable value in the RCEWA making its own independent report to the Secretary of State, rather than this report being included in the annual report the Secretary of State will publish in future under the Export Control Act 2002. We accordingly prefer that RCEWA should do so.

Response

We do not accept this suggestion. The RCEWA and the Advisory Council have accepted that it would be helpful for users to have the reports together in hard copy, and that this provides the most cost-effective option. We have agreed to the RCEWA's request for separate publication on the DCMS web-site of: (i) the Secretary of State's report, (ii) RCEWA's report and (iii) the Secretary of State's response to RCEWA's annual report. We have also confirmed with the RCEWA that while the Department will control the physical and editorial style of the report, the RCEWA will determine its substance. The RCEWA's independence will not be impugned.

6.6 Links that exist, or should exist between the RCEWA and other organisations, and opportunities for partnership working.

6.6.1 There appears to be a need for an 'outer circle' of expert advisers to DCMS to be better informed about the export control system and their potential within it. We therefore recommend that copies of the DCMS guidance to expert advisers should be made available to those in other institutions whom the expert advisers need to consult. The guidance should be clear, succinct and kept up to date.

Response

We accept this recommendation. We will amend our guidance to expert advisers to ensure they are reminded that those they consult also need to see the guidance. We will make the revised guidance available on the DCMS website.

6.6.2 We have concluded that improved communication with expert advisers would promote better understanding of the system. We recommend that DCMS should experiment with an annual seminar, to which expert advisers and members of the RCEWA would be invited. This would allow expert advisers to:

- clarify understanding of procedures and share best practice;
- advise DCMS on aspects of process which need to improve;
- encourage onward consultation by expert advisers, who can identify for DCMS colleagues who are frequently consulted by expert advisers so that they can receive relevant guidance;
- address the role of 'championing';
- ensure consistency of the interpretation and application of the Waverley criteria.

Response

We accept this recommendation and are planning to hold a seminar for expert advisers early in the New Year. We will then review whether this should be repeated annually.

6.6.3 We accept that the Advisory Council on the Export of Works of Art provides a satisfactory forum for discussion but recommend that the RCEWA should undertake a review to update its membership.

Response

We accept this recommendation. The RCEWA has reviewed membership of the Advisory Council and identified new members as a result.

6.6.4 We recommend that in making a submission to the RCEWA, expert advisers should take account of, and comment upon, conservation.

Response

We accept this recommendation in principle, subject to the views of expert advisers, whom we shall consult.

6.8 Whether the RCEWA operates in an open and transparent fashion in accordance with the Code of Practice on Access to Government Information

6.8.2 We recommend that those expressing interest in a deferred object might apply to the RCEWA Secretariat for information additional to that published in the Department's press notice and that, where the RCEWA does not find that an object meets any of the Waverley criteria, DCMS considers making an announcement. In both cases, however, the consent of all parties involved with the application would be obtained, given the commercial confidentiality of the licence application.

Response

We accept this recommendation. We do not see the need for a full press notice for occasions when the Committee finds that an object does not meet any of the Waverley criteria and consider newspapers are unlikely to consider this newsworthy.

However, as from January 2005, we shall be placing the notes of case hearings on the DCMS website. If the Committee has found that an item does not meet the Waverley criteria, this will be recorded in the case note.

6.9 The extent to which the RCEWA provides value for money, the scope for increased efficiency gains and the effectiveness of arrangements for administrative support

6.9.1 We recommend that DCMS management assess the complement and use of resources in ELU.

Response

We do not accept this recommendation. We have already reviewed the unit's capacity and consider the existing complement is right. Most delays are caused by applicants failing to supply sufficient information.

6.10 Whether the RCEWA could make better use of new technology

6.10.2 We recommend that greater use should be made of e-mail for delivery of material to expert advisers and that one e-mail list could be used by both the RCEWA Secretariat and ELU

Response

We accept this recommendation. We are already making greater use of e-mail in communicating with expert advisers than when the Quinquennial Review's report was written and will look to increase this further. We will look at whether it would be helpful to create an e-mail list for use across ELU & RCEWA.

6.10.3 We recommend that arrangements for generating publicity and interest among UK collecting institutions, in relation to export-stopped items, should be reviewed. We understand that there is some overlap between press contact lists and that it would be appropriate for DCMS to evaluate whether a bespoke targeted list for a single mailing would be better, and whether e-mail can be used more extensively.

Response

We accept this recommendation and will review arrangements for generating interest in export-stopped items.

6.10.4 We consider that a database of past export stopped cases is desirable. However, we understand that, as part of the review, the following information has been collected and we recommend that it should be maintained in future: items placed under indefinite stop; cultural goods for which export licences have been refused since 1987; applications withdrawn after an offer had been made; applications withdrawn after interest had been expressed.

Response

We accept this recommendation. We have updated the information held in order to incorporate cases referred to in the report on Export of Works of Art 2002-3 and will continue to do so regularly. As objects have not been placed under indefinite stop since 1986, when it was found that any application must be given proper and due consideration, the list of items placed under indefinite stop will not change.

6.11 Whether it is appropriate for changes to be made to the system and procedures for controlling the export of cultural goods

6.11.2 The Waverley Criteria

We recommend some clarifications to the rubric accompanying the Waverley criteria, including the association of an object with an important collection, as mentioned below in 6.11.5, and the provision of more up-to-date examples under each criterion.

Response

We accept this recommendation and will incorporate the revised wording (attached at Annex B) into the relevant documents.

6.11.3 Fossils

We recommend that individual fossils of material value be brought within the UK export control, and therefore within the remit of the Waverley system. We would propose as a means of doing this a definition of a fossil which combines wordings used in an Australian Statutory Instrument, the Protection of Moveable Cultural Heritage Regulations 1987 and the Canadian Cultural Property Export Control. The form of words would of course be subject to consultation before implementation, including the choice of an appropriate value threshold.

Response

We agree to consider this further. We have undertaken some initial consultation and are currently consulting further.

6.11.4 Definition of an archive

The Working Party on Manuscripts, Documents and Archives has proposed for inclusion in the OGEL an up-to-date professional definition of an archive. The RCEWA has agreed this definition and a consultation is being undertaken regarding its adoption in the OGEL. We recommend support for this policy change and attach considerable importance to it.

Response

We accept this recommendation. Ministers have agreed the new definition, which was introduced when the new Open General Export Licence came into force on 1 May 2004.

6.11.5 Collections

We recommend expanding the rubric to the third Waverley criterion, to note that an object "might be considered of outstanding significance either on its own account or on account of its connection with a person, place, event, archive, *collection or assemblage*".

Response

We accept this recommendation and will incorporate the revised wording (attached at Annex B) into our guidance.

We also recommend that an owner should be able to apply for a licence for a whole collection *if he wishes to export it as an entity*, whether or not all the items would otherwise qualify.

Response

We do not accept this recommendation. Under the current legislation, a UK licence is not needed to export objects which are less than 50 years old. The Export of Objects of Cultural Interest (Control) Order does not differentiate between those items which are part of a collection, and those which are not. Accordingly, some items in a collection may well not require an export licence, and it is not part of the function conferred on the Secretary of State to issue a licence in respect of such items. It has also proved impossible to arrive at a satisfactory definition of what constitutes a collection, although this has been considered before on a number of occasions, from 1986 onwards.

6.11.6 Export Licence Applications

We recommend that it should be made clear to applicants that adequate information about the history and provenance of a work should be provided when an application for an export licence is made and that the UK export licence application form should also include a reminder that it is an offence to give false statements for the purposes of applying for a licence.

Response

We note this recommendation. The provision of provenance is an area where we are constantly trying to improve the performance of exporters. The UK application already contains a statement "Penalties may be imposed for false statements in connection with applications for export licences".

We recommend that it should be made clear to applicants that they may be required to make a formal declaration (to the RCEWA) that they have provided all relevant information on provenance known to them.

Response

We accept this recommendation and will amend the request for information from applicants to ensure they provide this information and sign a declaration to that effect.

6.11.7 Valuation and Deferral Period

We recommend that in future, when the RCEWA is not satisfied that there is adequate evidence to support a price proposed by the applicant, evidence in the form of a private contract will only be accepted where the RCEWA can be satisfied a) that such contract price represents the price agreed between parties at arms' length and b) that such contract contains all the terms agreed. This might be provided by an affidavit sworn by a professional adviser but if that or other evidence satisfactory to the RCEWA is not available, then the terms (including price) of such a contract will not be taken into account in reaching a fair price. In such a case, the RCEWA could offer the applicant the option of a third party determination of the value as set out below. If the applicant were not agreeable to following this route, then the RCEWA would be entitled to recommend refusal to the Secretary of State.

We recommend that the process for third party determination of value should be more clearly set out in the Department's guidance, using the following model:

- The applicant should propose a valuation and, as now, would be asked at the meeting to clarify the basis for it;
- The RCEWA would ask the views of the expert adviser as well as RCEWA members and independent assessors and, if these were satisfactory to the RCEWA, it would agree the valuation;

- If the RCEWA remained unsatisfied with the applicant's proposed valuation after hearing the expert adviser's views, it would ask for the evidence relied on by the applicant to justify the applicant's valuation. If the evidence was not properly supported, the RCEWA would ignore it;
- If the RCEWA remained dissatisfied, the applicant and the expert adviser would each propose a valuer acceptable to each other and to the RCEWA and the two valuers so chosen would seek to agree a value;
- Should the two valuers be unable to agree, the RCEWA would appoint a third valuer to hear the arguments of the other two and give his determination on value;
- The RCEWA, having received the value as so determined, would then make its recommendation to the Minister.

We do not accept these recommendations. The function of RCEWA is simply to provide advice to the Secretary of State about the value of an object, who can decide whether to obtain more information about its value if there are concerns about this. We consider the current arrangements to be adequate and more appropriate.

6.11.10 Private Offers ('The Ridley Rules')

We recommend that the system for private offers should incorporate the following conditions:

- The conditions relating to such purchases should, in each case, be made known;
- How these conditions are to be enforced should now be agreed;
- Accessibility: this must be sufficient to strike a balance between the public interest and the interest of the purchaser. If the conditions were too demanding, the Rules would be used even less frequently;
- Adequate Security;
- Acceptable Conservation;
- An undertaking not to part with ownership within a period of time, say five years without obtaining the agreement from the acquirer for the benefit of the Secretary of State to continue the provisions as to access and other undertakings.

We also recommend that the distinction between a public and private offeror should be more clearly set out, and that the definition of a public institution should encompass those bodies included in Schedule 3 of the Inheritance Act 1984 and any other body or person being approved for this purpose by the Minister.

Response

We accept these recommendations and will amend our guidance to exporters accordingly.

6.11.11 Refusal of offers and withdrawal of applications

We recommend that, at the end of the RCEWA hearing, the applicant should be asked if he would not be prepared to accept a matching offer in any circumstances. If the applicant makes it clear that he would not be prepared to accept a matching offer in any circumstances, then the RCEWA should recommend the refusal of a licence.

Response

We do not accept this recommendation. We have no objection to changing procedures so that the applicant is asked at the end of the hearing (rather than at the beginning) whether he or she would be prepared to accept a matching offer, but do not think it is necessary to change the existing question to one asking whether he or she would “not” be prepared to accept a matching offer “in any circumstances”. Under the current arrangements, if the applicant makes it clear at the meeting that he or she will not accept a matching offer, the Secretary of State can decide whether to refuse the licence outright without a deferral period and will normally do so.

We recommend that, if at the end of the first deferral period, in the view of DCMS, an institutional or ‘Ridley’ purchaser has expressed a serious intention to purchase the deferred object, the applicant should be asked whether he will accept the matching offer from that specific purchaser. If he will not accept such an offer, refusal of the licence should be recommended.

Response

We do not accept this recommendation. We agree that the applicant should be asked again at the end of the deferral period whether he or she will accept a matching offer. If he or she refuses at this stage, the Secretary of State already has discretion to refuse a licence and will normally do so.

6.11.11 and Annexes G, H and I

We considered a further proposal that, in outline, if a public institution came forward during the first deferral period with serious intent to make a matching offer, then the applicant would be asked to make a binding offer to sell to that institution and that such offer could not be withdrawn during the period of the second stop. ... If an item was found to be of Waverley status at the end of the hearing, the form of the offer document would be given to the applicant to enable him to consider it during the initial stop to be prepared to state whether or not he would enter into it should a public institution come forward. ... We recommend, that the proposal is a reasonable means of preventing the refusal of an offer during the second deferral period, when an applicant has already indicated to the RCEWA at its hearing that such an offer would be acceptable, and that it should be considered for introduction by Ministers.

We do not accept this recommendation. We are concerned that given the relative infrequency of situations where owners refuse matching offers at the end of a deferral period, the introduction of such a system across the board would be disproportionate.. We considered several variants on this recommendation, such as the proviso that the offer might be withdrawn with the consent of the Secretary of State, or that the proposed system should be imposed only for “repeat offenders”, but came to the conclusion that for a variety of legal and practical reasons, these would not be feasible to implement.

Annex A

Revised terms of reference for the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest

- To advise on the principles which should govern the control of export of objects of cultural interest under the Export Control Act 2002' and on the operation of the export control system generally;
- To advise the Secretary of State on all the cases where refusal of an export licence for an object of cultural interest is suggested on grounds of national importance;
- To advise in cases where a special Exchequer grant is needed towards the purchase of an object that would otherwise be exported.

Annex B

Revised Waverley Criteria

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. We might, for instance, conclude that an exquisite snuff box 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, we 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 object might be considered of outstanding significance either on its own account or on account of its connection with a person, place, event, archive, collection or assemblage. Such items serve as bench marks for assessing other objects since they can throw new light on the study of their type. We believe that 'learning' in relation to culture should cover a wide number of disciplines e.g. art history, archaeology, ethnography, anthropology, palaeontology (subject to an agreed 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, Shepherd and Robertson c. 1870, a thirteenth-century gold and sapphire clasp, a Hutton racing car, and the *Swan Roll* manuscript.

General statement applying to all criteria

We 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.