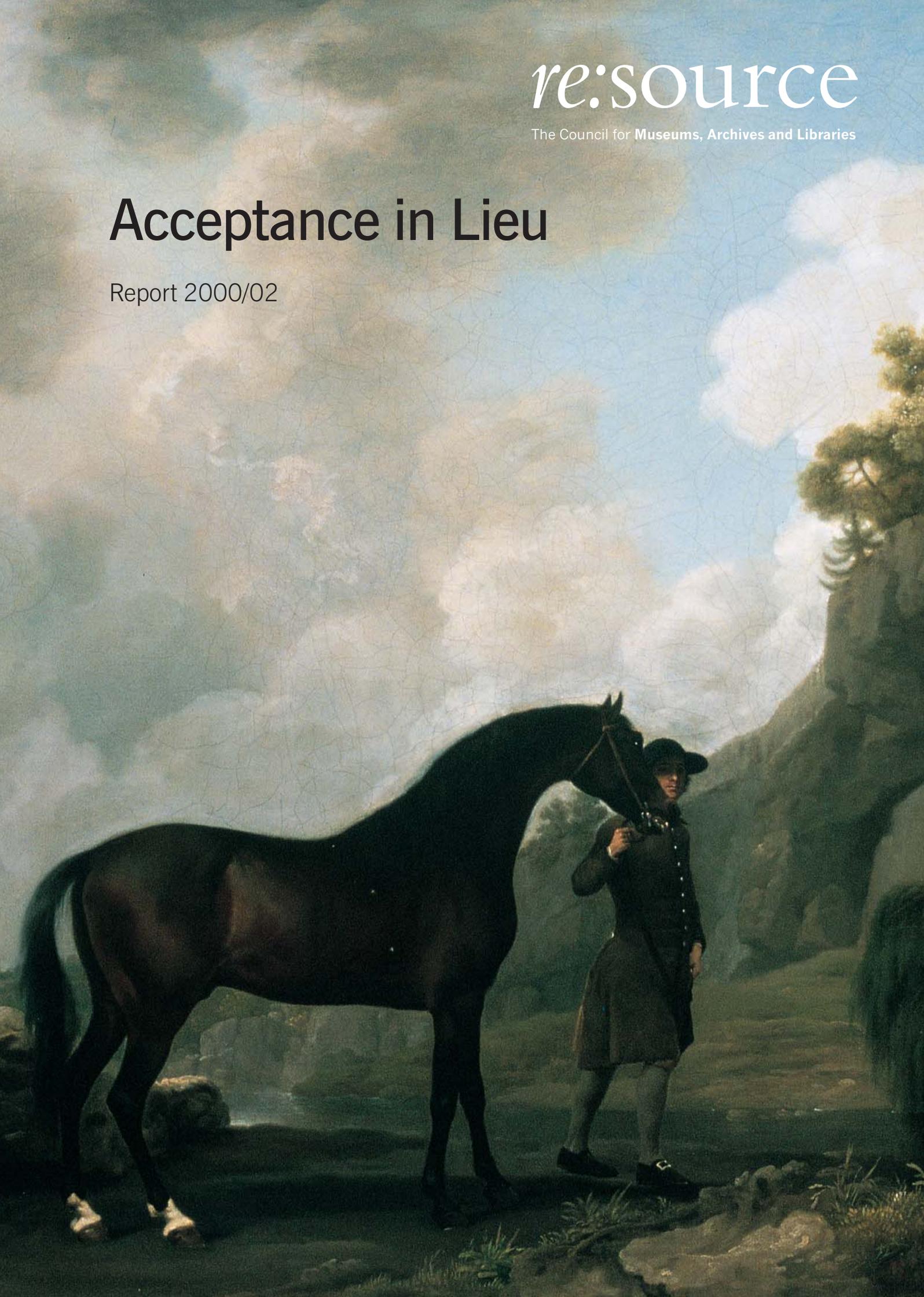


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The Council for Museums, Archives and Libraries

# Acceptance in Lieu

Report 2000/02





# Contents

Preface	3
Introduction	4
<b>1</b>	
<b>History of the Scheme</b>	5
<b>How the Scheme Operates</b>	6
The Legislative Framework	6
Criteria for Pre-eminence	6
Association with a Building	7
<b>AIL in Practice</b>	7
Open Market Price	7
Provenance	8
Allocation	8
<b><i>In Situ</i> Offers</b>	9
<b>Time Involved</b>	9
<b>Benefits to the Offeror</b>	10
<b>Expert Advisers</b>	10
<b>Archival Offers</b>	10
<b>The Success of the Scheme</b>	11
<b>2</b>	
<b>AIL Cases 2000/01</b>	12
1 George Stubbs: <i>The Marquis of Rockingham's Arabian Stallion</i>	12
2 Pair of Three Light Candelabra by Charles Frederick Kändler, 1738–9	12
3 Parcel-gilt Tankard by Jacob Bodendick, c.1672	14
4 Silver Gilt Communion Set by Benjamin Bathurst, 1691	14
5 <i>The Dacre Beasts</i>	14
6 A Collection of Architectural and Decorative Drawings	15
7 Jacopo Tintoretto: <i>Portrait of an Elderly Gentleman</i>	16
8 Cimabue: <i>Madonna and Child with Angels</i>	16
9 Gabriel Metsu: <i>An Elegant Young Man Offering a Young Woman a Glass of Wine</i>	17
10 Barbara Hepworth, Five Sculptures: <i>Four-square (Walk Through), Ancestor I, Ancestor II and Parent I, and Minoan Head</i>	18
11 Longton Hall 'Snowman' Ceramics, c.1750–2	18
12 William Gear: <i>Winter Structure, Grey Vertical and Mau Mau</i>	19
13 Limoges Renaissance Painted Enamels	20
14 John Crome: <i>The Fishmarket, Boulogne</i>	20
15 Meynell Family Portraits	21
16 Paintings by Aelbert Cuyp, Adriaen van Ostade and Jan Steen	22
17 Jan van Goyen: <i>A View of Dordrecht with the Grote Kerk across the Maas</i>	22
18 Walter Smith: <i>The Widow Edyth</i>	23
19 Three Medieval Books	24
20 The Wentworth Woodhouse Archive	24
21 The Makins Archive	24
22 French Ivory Mirror Back, Early 14th Century	25
23 Dundas Chairs	26

	<b>AIL Cases 2001/02</b>	26
24	Furniture and Tapestries from Houghton Hall	26
25	Port Eliot Archive	27
26	A Collection of Eight Old Master Paintings	28
27	Leo and Julian Amery Archive	29
28	Archive of John Wharltton Bunney	29
29	Hazlerigg Archive	30
30	Edward Baird: <i>The Birth of Venus</i>	30
31	Gainsborough: <i>Rocky Wooded Landscape with Rustic Lovers, Herdsman and Cows</i>	32
32	Archive of the 13th, 14th & 15th Earls of Derby	32
33	Sir Henry Raeburn: <i>The Archers: Robert Ferguson of Raith and Lieutenant-General Sir Ronald Ferguson</i>	33
34	Bonnard: <i>Le Repas</i>	34
35	Spinnet by Richard Horsburgh	34
36	Henry Moore: <i>Bird Basket</i>	34
37	Charles II Gold Chocolate Cup and Cover	35
38	Christopher Wood: <i>The Fisherman's Farewell</i>	36
39	Medieval Ivory Crozier Head	36
40	Pierre Subleyras: <i>Diana and Endymion</i>	37
41	Giambologna: Two Wax Models	38
42	Zoffany: <i>Three Sons of the 3rd Earl of Bute and Three Daughters of the 3rd Earl of Bute</i>	38
43	Filmer Wilson Textile Collection	39
44	William Scott: <i>Orange and Red</i>	40
45	Henry Wilson: Buckle and Belt Tag	41
46	Cornelius Jonson: <i>Portrait of Two Unknown Children</i>	41
47	Archive of the Gregory of Stivichall Family	42
48	Sir Anthony van Dyck: <i>Charles I and the Knights of the Garter in Procession</i>	42
49	John Constable: <i>Harwich Lighthouse</i>	43
50	Arthur Devis: <i>The Rev Streyntsham Master and his Wife, of Croston, Lancashire</i>	44
	<b>Appendices</b>	45
1	Objects accepted, allocations and tax values for the last six years	45
2	Panel Members	50
3	Expert Advisers 2000/02	50

# Preface

It is one of the great strengths of Resource: The Council for Museums, Archives and Libraries that it can combine its principal role of providing strategic leadership and advocacy to the whole sector, with an ability to give detailed specialist advice on the many items that enter our museums, archives and libraries by means of the Acceptance in Lieu (AIL) scheme.

We are able to do this through working in partnership with the Department for Culture, Media and Sport (DCMS) and the Inland Revenue, and with the highly qualified experts who generously give their time and knowledge to assess and value the items that come through the AIL scheme. Most importantly, Resource relies on in its Acceptance in Lieu Panel, a dedicated group of people who in the midst of many other demands, give their time freely to ensure that the best of Britain's heritage is brought into public ownership, made available to the public and enjoyed by the millions who use museums, galleries, archives and libraries. I would like to thank all those involved for ensuring that the AIL scheme is such an enormous success.

Reading through this report, I am delighted to see the range of items that have been accepted in lieu during the first two years of Resource's life. There are great masterpieces, ranging from Cimabue's *Madonna and Child with Angels* from 13th century Italy, which now hangs in the National Gallery, to three dramatic sculptures from the 1960s by Barbara Hepworth, which stand outdoors on the Suffolk coast at Snape. Less visible, but just as significant, is the impressive range of important historical documents that have been allocated to Record Offices in the regions. From early medieval times to the last decade, papers that detail our history have been preserved.

With riches such as these being allocated throughout the country, the need for vigorous and strong museums and galleries which can make these items come alive for all the communities that they serve is even more important. *Renaissance in the Regions*, the report that Resource published in late 2001, set out both a vision and a detailed plan to ensure that the riches of our heritage and of contemporary society are enjoyed across the country and not just concentrated in a few large metropolitan centres. I trust that the success of the AIL scheme, which is celebrated in this report, will reinforce the efforts of those who are now working for the full implementation and financing of *Renaissance in the Regions*. Pre-eminent objects ought to be housed in pre-eminent museums and galleries.

A handwritten signature in black ink that reads "Matthew Evans". The signature is written in a cursive, slightly slanted style.

*Lord Evans of Temple Guiting*

# Introduction

4

The last two years have been highly successful for the Acceptance in Lieu (AIL) scheme. During this period, the Secretary of State for Culture, Media and Sport, and her predecessor, along with the relevant Ministers in Scotland and Wales, agreed recommendations to accept works of art and archives with a gross value of approximately £65 million in lieu of tax. As a result, tax of £42.6 million has been satisfied.

The UK's national museums and galleries have benefited from some notable acquisitions: major paintings have been allocated to the National Galleries in London, Edinburgh and Cardiff, and to the Tate Gallery. The Victoria and Albert Museum has benefited from the acquisition of four magnificent heraldic creatures, *The Dacre Beasts*, and some important silver, jewellery and sculpture. Regional museums and galleries have also been enriched: paintings, sculpture and ceramics have been allocated to collections in Bedford, Birmingham, Canterbury, Cambridge, Leeds, Liverpool, London, Manchester, Norwich, Stoke-on-Trent and Winchester. The National Trust has acquired objects previously on loan to its houses, while rare books and historic archives have been secured for the nation. Furniture and tapestries have been allocated to the Victoria and Albert Museum but will remain *in situ* at Houghton Hall, Norfolk. Without the AIL scheme, few of these important objects could have been purchased by the institutions which now own them.

During this period a number of exceptionally important archives have also been offered. They include the private papers of two prime ministers and of some 20th century public figures, as well as crucial documents from the time of the Civil War and numerous key papers for local history studies. All these have been allocated to appropriate museums, galleries and libraries.

Resource feels that it would be useful to publish reports of the AIL Panel's work on a regular basis, giving details of objects accepted in lieu, not only to show that the tax satisfied has been applied to good purpose, but also to publicise the locations where the objects that have been accepted are now to be seen. We are using this first report as an opportunity to explain the mechanics of the scheme and the policies that guide our decisions in the hope that those with actual or potential capital tax liabilities and their professional advisers will have a better understanding of how the system works. We also wish to encourage museums and galleries which have not previously benefited from the scheme to apply if they think that an object might be suitable for their collection.

# 1

## History of the Scheme

5

The AIL scheme dates back to 1910, when it first became possible to offer paintings and works of art in lieu of tax. For a long period, however, it remained virtually unused because the Treasury insisted that some other government department should reimburse it for the tax foregone. This was temporarily rectified with the establishment of the National Land Fund as a memorial to those who had died in the Second World War, but, after the Treasury had withdrawn a substantial part of the Fund's capital, its operations effectively lapsed. In the late 1970s, concern about the sale of important houses and their contents was brought to a head when Lord Rosebery offered Mentmore Towers and its contents in lieu of death duties. The offer was rejected and the house and its contents were then sold for twice the amount regarded by the Treasury as excessive. Following this affair and the resultant Parliamentary Committee report in 1978, the National Land Fund was abolished, the National Heritage Memorial Fund established, and the National Heritage Act 1980 set out a new framework for the acceptance of heritage objects in lieu of tax.

The scheme was substantially enhanced in July 1985 when Lord Gowrie, then Minister for the Arts, announced that, in addition to the annual allocation of £2 million available for the acceptance of buildings and works of art, application could be made to the Reserve when large and important offers were concerned. It was expected that up to £10 million might be applied annually for such offers, although this sum was stated to be neither a limit nor a target. The implementation of this far-sighted policy has resulted in the acquisition by the nation of a large number of important objects which would otherwise almost certainly have been sold to overseas buyers. Since 1990 nearly 90 museums, galleries, historic houses, archives and libraries have received important objects which have settled some £138 million of tax liabilities. Due to taxpayer confidentiality we are unable to publish the open market value agreed in each case but only the amount of tax satisfied. However, the aggregate open market value of all objects accepted since 1990 is estimated to be £205 million.

The scheme was administered from 1985 by the Museums & Galleries Commission which, in 1992, set up a separate AIL Panel to handle the increasing complexity of the offers being made. From 1994 until 2000, this Panel was chaired by Sir Jack Baer, under

whose skilled and tactful guidance the scheme has developed with such success. We should like to acknowledge the great contribution which he made to the work of AIL during his chairmanship and the wise advice he continues to give on an informal basis. In 2000, a new body, Resource: The Council for Museums, Archives and Libraries absorbed the functions of the Commission. One of its first acts was to initiate a review of the Panel's operations, calling for comment from a wide range of parties. The subsequent report, which on the whole endorsed the Panel's method of operation, was published in January 2001.

## How the Scheme Operates

### The Legislative Framework

The legislation under which chattels and land can be accepted in lieu of tax is contained in Sections 230 and 231 of the Inheritance Tax Act (IHTA) 1984, which was originally issued as the Capital Transfer Tax Act 1984. The Inland Revenue published the official guidance to this legislation, *Capital Taxation and the National Heritage*, in 1986. The legislation permits the acceptance in lieu of:

- land;
- objects which are or have been in certain buildings;
- items which are individually pre-eminent or form part of pre-eminent collections.

### Criteria for Pre-eminence

Objects are regarded as pre-eminent if they would constitute a 'pre-eminent' addition to the collection of a national, local authority, university or other independent museum, or are 'pre-eminent' in association with a particular building. The criteria for pre-eminence are based on the long established 'Waverley criteria'. These are used to assess the importance of objects which have been referred to the Reviewing Committee on the Export of Works of Art.

### AIL Criteria

- That the object has an especially close association with our history and national life.
- That it is of especial artistic or art-historical interest.
- That it is of especial importance for the study of some particular branch of art, learning or history.
- That it has an especially close association with a particular historic setting.

The Panel interprets these criteria with some freedom, while maintaining rigorous standards of excellence. An object needs to meet only one of the criteria in order to qualify as pre-eminent.

Under the first criterion we would typically include objects closely associated with historic personages or events or, for instance, with British political, cultural or religious movements. This criterion typically covers portraits and archives associated with some well-known historic figure. However, it might be extended to embrace, for instance, a collection of classical antiquities which illustrates the importance of the Grand Tour to the formation of national taste in the 18th century; a group of objects brought back from the travels of a famous Victorian explorer or designs relating to the Festival of Britain in 1951. We do not interpret this criterion solely in terms of national history. It might therefore be extended to cover an archive, which is important for an understanding of the history of a region, and views of towns, houses or landscapes or portraits of local worthies, which are significant in a regional context, even if they are not great works of art or of national significance. We feel that it is important to give due weight to items which have an impact and resonance which are primarily regional.

The second criterion embraces not only the works of great masters, but also painting and sculpture by artists who were important in their day and made a significant contribution to the artistic life of their times even if they were not international figures. We do not limit our recommendations to the works of artists such as Gainsborough, Turner and Bacon and the most notable foreign painters, but also recommend acceptance of paintings by, for instance, artists who are key figures of a local school. This criterion also applies to outstanding examples of decorative or applied art.

The third criterion covers archives, good examples of the work of local potteries or furniture manufacturers, notable examples of the costume or embroidery of previous centuries, objects which, although not important in themselves, form part of a collection that is important – the complete library of an 18th century botanist, for instance, or a collection of medieval antiquities that includes ‘Gothic’ objects deliberately faked to attract enthusiasts for the age of Ivanhoe – and non-British works of art which illustrate the history and taste of other countries or civilisations. It would also cover important engineering plans and models, key examples of design and technology and scientific apparatus, although we have not yet received any offers of such objects.

The criterion for association with a particular building embraces not only objects currently in a historic building, but those which may have been removed as a result of sale, inheritance or gift and are being returned to their original setting.

### Association with a Building

Under the legislation, anything may be accepted when *‘it appears to the Ministers desirable for the object to remain associated with a building’*. The building concerned, however, must be owned either by the government or by a heritage organisation, such as the National Trust.

The wording of the legislation is so all-embracing that it could cover an electric cooker in the kitchen or a wheelbarrow in the potting shed. Objects associated with a building do not themselves have to be pre-eminent but the Panel takes account of their contribution to the history and atmosphere of the place. Furniture and china in a historic house need not be of museum quality to be worthy of acceptance in lieu, but should be attractive and appropriate to their setting. There is a general understanding that, in order to qualify, the objects must have been associated with the property for a number of years or with a person who lived there for a significant period.

## AIL in Practice

When a liability to capital taxation has been incurred, often following a death, the owners of a painting, historic archive etc., typically the executors or trustees, can offer it to the Commissioners of Inland Revenue in lieu of the tax payable. The Inland Revenue accepts or declines the offer on the recommendation of the Secretary of State for Culture, Media and Sport, (or the appropriate Minister for cases with a Scottish, Welsh or Northern Irish interest) who is, in turn, advised by the Acceptance in Lieu Panel.

After an offer has been received, the Inland Revenue informs the Department for Culture, Media and Sport (or the Scottish Executive, Welsh Assembly or Northern Ireland Executive where there is an appropriate interest) and refers the case to Resource. The Panel then takes over the case. If the Panel decides that the object appears to be pre-eminent, it appoints two or more Expert Advisers, who are generally museum curators, scholars in the field or members of the art trade. These experts examine the object, assess its condition and provide written reports to the Panel, advising on whether the object meets one or more of the criteria outlined above, whether its condition is satisfactory and whether the price at which it is offered represents the open market price. In the light of this advice, and the collective knowledge of its members, the Panel then makes a recommendation to the Secretary of State. When the object has particular regional associations with Scotland, Wales or Northern Ireland, the recommendation is made to the appropriate Minister with a copy to the Secretary of State.

Occasionally objects are offered which, although interesting, are not pre-eminent or are in poor condition and would need substantial conservation. In such circumstances, the Panel may suggest to the offeror that some other object from the same collection might be substituted. Where an object is substituted at the Panel's request, it will be treated for purposes of charging interest on tax as if it had been made at the time of the original offer.

### Open Market Price

The price at which the object is offered should represent the open market price at the time of the offer. Where comparable objects have been sold at auction, or by known private sales through dealers or agents, it is not

too difficult to agree the price. In some cases, however, where nothing similar has been sold in recent years, because of the rarity of the object, its exceptional beauty or its historical associations, it may be harder to assess what it might have fetched at auction. An artist may have produced only a few great works, all concentrated in one brief part of his career, and it may be that none of these paintings has been sold on the open market for many years. In such circumstances, a comparison with recent sales of inferior works from the artist's *oeuvre* might well result in a false valuation. The value of works by contemporaries may form a better basis for assessing the correct price.

The Panel spends a great deal of time testing the Expert Advisers' opinions on price and strives to be scrupulously fair to the offeror. We are not seeking to extract a bargain on behalf of the nation but to arrive at a fair price. On a few occasions, however, we have been unable to reach an agreement with the offeror's agents and have, therefore, had to tell the Secretary of State that we could not recommend acceptance of the offer.

On a number of occasions objects are offered which do not meet the Panel's criteria for pre-eminence. Recently, for instance, two libraries have been offered. In both cases the Panel considered that they undoubtedly contained books that were useful for a working reference library, but that they were not pre-eminent as libraries and so were rejected.

In a recent case an outstandingly important painting was offered at a price considerably above anything achieved by other works of that artist. After prolonged consultation with Expert Advisers, the Panel recommended acceptance at a value slightly below the offeror's figure. This was not accepted and the painting subsequently achieved a far higher price at auction than the offeror or anyone else predicted. This demonstrates that outstanding works of art may fetch exceptional prices and that the Panel's recommendations must take this into account.

We emphasise our wish to be fair. If an offer is made at a price below that which we consider might have been achieved on the open market, we ask the offeror's agent if they wish to revise the price. On some occasions, of course, the offeror may be aware that the offer is below the open market price but is content that the value of the

object covers the tax liability and is generously willing to forego any benefit from the higher market price which might have been agreed. In other cases, where the agreed value more than covers the outstanding tax, the museum or gallery has to pay the offeror the difference between the tax liability and the agreed open market value. The latter are termed 'hybrid arrangements'.

## Provenance

As a result of the growing awareness of the looting carried out under the Nazi regime, the provenance of all objects for the period 1933 to 1945 is thoroughly investigated. In the case of chattels from historic British collections this is, of course, no problem. Where, however, the ownership history of objects is not documented, in particular of paintings by foreign artists, it is necessary to make detailed enquiries to ensure that objects which were either looted or sold as a result of duress are not acquired by the government. This is inevitably a lengthy process, but it is important to ensure that all possible steps have been taken to investigate the whereabouts of the objects offered for the relevant period.

## Allocation

Objects can be offered without any conditions, but many offerors are concerned about the future destination of things that they have loved and make their offers conditional upon allocation to a particular museum, gallery, library or archive. If the Minister agrees that the institution named in the condition is an appropriate recipient then the object is transferred to that location when the due process has been completed.

Alternatively, the offer can be made with a wish, which is not binding on the Secretary of State, that the object should be allocated to a particular institution. When an object has only been offered with a wish, its availability is advertised in the *Museums Journal* and on the Resource website and, after considering the responses received, the Panel advises the Secretary of State whether the nominated location is in fact appropriate.

In most cases the offeror's wishes are complied with but if, for instance, a similar painting is already in the nominated gallery, whereas the artist is not represented in

another equally suitable institution, or if the nominated gallery is unable to provide suitable access, we may recommend that the object should be allocated elsewhere. In all cases, the ability of the museum or gallery to provide adequate and safe display is an essential condition for being considered an appropriate location. As will be seen from the case studies on pages 12–44, during the last two years objects were allocated in accordance with offerors' wishes in almost every instance.

When an offer is made without any condition or wish, the object is also advertised in the *Museums Journal* and on the Resource website and the Panel then makes a recommendation to the Secretary of State on the basis of interest expressed. In the case of archives, the Historical Manuscripts Commission advises on allocation.

It should be understood that, in most cases, once an offer has been accepted and a recommendation as to allocation made and approved, ownership of the object passes to the nominated museum, gallery, library or archive.

We are keen to broaden the range of museums and galleries benefiting from the scheme. We therefore encourage curators across the UK to visit the Resource website ([www.resource.gov.uk](http://www.resource.gov.uk)) to stay aware of what may be available and to make applications for objects which they consider may be appropriate for their collections. They must be aware of course, that they may not always get what they would like, if there is competition for the same object. We are aware that some curators have been cultivating good relations with potential offerors for many years. When these efforts have resulted in the object having been on display in the museum or gallery, or on deposit in an archive during the owner's lifetime, it is only right that such arrangements should, normally, continue undisturbed.

## *In Situ* Offers

On a number of occasions in recent years, owners of objects on loan to houses belonging to the National Trust have offered pictures and furniture with a condition that they should remain *in situ*. By an extension of this process, it is possible for an offeror to make an offer of the important contents of a historic house which is not in public ownership. If these chattels are judged to be pre-

eminent, they can remain *in situ* on condition that provision for adequate access is agreed and that security and conservation arrangements are accepted as satisfactory. In these cases, the ownership of the object or the contents of certain rooms is transferred to a suitable museum or gallery and the owner of the house then enters into a loan agreement with the institution so that the chattels can remain in their historic location. This is an excellent arrangement whereby groups of particular importance can be kept together for the benefit of visitors.

At present there are *in situ* arrangements covering sculpture at Mellerstain; furniture at Longleat; furniture and sculpture at Hagley Hall; and paintings at Arundel Castle, Corsham Court, Dodington Hall, Floors Castle, Holkham Hall, Houghton Hall, Norton Conyers, Sledmere House, Highclere Castle and Cawdor Castle.

The acceptance of the magnificent contents of three of the state rooms at Houghton Hall is reported in detail on pages 26–27. This *in situ* arrangement has particular significance: it is the largest case to have been agreed and the first to be accepted since the new *in situ* arrangements were issued by the Department for Culture, Media and Sport in 1997. The success of the Houghton offer should act as an encouragement for those who might consider a similar approach to meeting an Inheritance Tax liability.

## Time Involved

Acceptance *in lieu* is a fairly lengthy process. After the Inland Revenue has passed a case to Resource the process includes:

- the Panel's initial consideration;
- appointment of Expert Advisers;
- visits by the Advisers to see the object;
- the Advisers' work in assessing the price;
- the Panel's subsequent review of the case;
- the agreement of the price with the offerors and their agents;
- recommendation to the Secretary of State;
- the decision of the Secretary of State;
- the advertising, when appropriate, and final arrangements on allocation.

Where *in situ* cases are involved, it is also necessary to seek conservation and security reports and to agree loan

and public access arrangements between the museum to which the object has been allocated and the owner of the property in which it is being retained. The Panel does all it can to minimise delays but, where the nation is foregoing large sums of tax, proper procedures must be observed in assessing the objects on offer.

## Benefits to the Offeror

Offerors are able to apply a higher portion of the value of an object to satisfy a tax liability if they offer the object in lieu rather than selling it at auction. This is because of the special price or 'douceur' which is available in cases of offers in lieu. If, for example, in order to settle a tax liability, a taxable estate sells an object valued at £100,000 on the open market, Inheritance Tax is generally payable at a rate of 40% (i.e. £40,000) and the estate only receives a net sum of £60,000. If, however, the same object is offered in lieu, 25% of the tax that would have been payable (i.e. £10,000, being 25% of the £40,000 tax payable) is credited to the estate, with the result that the object has a tax settlement value of £70,000. An object is, therefore, worth 17% more if it is offered in lieu of tax than if it is sold on the open market at the same price. This constitutes a significant benefit.

It is worth bearing in mind that, while a sale at auction may produce an exceptional price, such a result cannot be guaranteed and, after the sale, tax and interest due to the Inland Revenue must be paid. By contrast, in an AIL transaction, the price is fixed with certainty and interest ceases to accrue from the day on which the offer is made. Furthermore, the agent's fees to an estate for negotiating an AIL transaction may well be less than the seller's commission and publicity costs incurred at auction.

There are further attractive, although intangible, benefits. Many owners like to think that objects which may have been in their families for centuries can remain in the UK and they welcome the opportunity of having a say in their allocation. Where an object is offered *in situ*, it can still remain an integral part of a collection, even though ownership will have changed.

## Expert Advisers

The scheme could not function without the support of the numerous advisers on whom the Panel calls for help in assessing the pre-eminence and the value of the objects offered for acceptance. Often the objects are to be viewed in the depositories of one of the auction houses which act as agents for the offeror. Sometimes, however, lengthy journeys are necessary to view objects in remote locations, while the work involved in assessing the value of a large archive or an extensive collection of porcelain is very considerable. We are most grateful to all our advisers for the time which they give and the care which they devote to this important task.

## Archival Offers

A notable feature of the AIL scheme in the last few years has been the increasing number of offers involving archival material. This is particularly welcome, especially as Resource's remit extends beyond museums and galleries to include archives and libraries. Not only has the number of archival offers increased but also their range. As well as the traditional family archives which include documents relating to a single estate over many centuries, there have been offers of a number of more specialist archives. Contemporary papers have recently been offered relating to politics, architecture and literature. The loss of several recent important modern architectural and literary archives abroad raises the question of whether the vendors in these cases considered fully the financial benefits of AIL.

Offers of 20th century political archives made the news early in 2002 when it was announced that the Amery Archive (see page 29) had been accepted in lieu. This decision was criticised in certain sections of the press on the grounds that it was somehow improper for political papers to be offered in lieu and that such material should either be the nation's by right or given to an archive centre. *The Times*, however, in its leader of 19 January 2002, rightly stated: "*Puritans can always jib at any expenditure. But the Amery papers are, prima facie, an integral part of Britain's history. They are the legitimate property of the family, from which they are as entitled to benefit as any politician's relatives are from memoirs or diaries. They can command a market price, as the zeal with which US universities seek private papers shows.*" The article went on to speak of the

difficulty in placing an accurate valuation on such items and the need for a better solution to that problem, rather than precluding modern political archives from the scope of the scheme.

While the difficulty of valuing archives is acknowledged, the same difficulty arises for any unique object. The AIL Panel and its Expert Advisers carefully examined the prices paid for contemporary British archives by the very same American universities alluded to in *The Times*' article. They are satisfied that the papers were acquired at a price which was fully justified by these comparisons and that it is both fair to the offeror and to the nation.

## The Success of the Scheme

The AIL scheme has been highly successful in recent years. The range of objects acquired has included great paintings by artists as diverse as Cimabue, Rubens, Van Dyck, Metsu, Cuyp, Gainsborough, Stubbs, Raeburn and Constable and from the 20th century Baird, Wood, Gear and Scott, as well as sculpture by Giambologna, Moore and Hepworth. Archives acquired include documents from the 12th century to the late 20th century. Another category of objects embraces furnishings from the home of the first Prime Minister, medieval ivory carvings, Renaissance enamels, Chippendale furniture, early English ceramics, an 18th century spinet and an Arts & Craft belt buckle and clasp. The most recent years have seen a great diversity of items being accepted, including a range of British paintings from the 17th century to the middle of the 20th century.

The variety of objects acquired as a result of the scheme is admirably wide and the quality is high. It must be emphasised, however, that the Panel is, inevitably, passive in that it does not influence the number or the timing of offers. In most cases an offer will follow on from a death in the family of the offeror. Objects which were granted conditional exemption upon a death may at a later stage be sold, giving rise to a liability to tax which may be met by an offer in lieu. If the scheme did not exist, there is little doubt that many executors and trustees would have to offer pre-eminent objects for sale to meet tax liabilities and there would be even greater pressure on museum purchase grants and on the resources of those constant stalwarts, the Heritage Lottery Fund and the National Art Collections Fund.

At a time when museum purchase grants are severely restricted, AIL is, in terms of value, by far the largest source of acquisitions for our collections, both national and regional.

Even if the Panel has to be passive, some public collections make proactive use of the scheme. The good relations built up between a gallery and the owner of a fine painting or a piece of silver during his or her lifetime often result in an offer being made after the owner's death. In a significant number of cases, museums and galleries have been able to convert loans into acquisitions at no cost to themselves as a result of the scheme. The National Trust is also a major beneficiary. In previous years, owners often transferred their properties to the Trust, but retained the contents, which were left on loan. Through the scheme the Trust is able to acquire those chattels which, if sold, would considerably reduce the pleasure for visitors.

The AIL Panel is pleased that Resource has decided to maintain its involvement with the AIL scheme and is grateful for the support of the Resource Board. We should also like to express our appreciation for the sympathetic way in which our recommendations are handled by the Secretary of State and the Minister for the Arts and their predecessors, and the enthusiastic response which governments have given to the scheme in recent years.

We believe that AIL is achieving its purpose of acquiring pre-eminent heritage objects for the nation and, equally importantly, that it is helping to mitigate the loss of such objects overseas by reducing the number of export applications. Judging by the quality of the objects which have been offered recently, we are confident that the scheme continues to give excellent value for money.