

**EXPLANATORY MEMORANDUM TO
THE CONTRACTING OUT (FUNCTIONS IN RELATION TO CULTURAL
OBJECTS) ORDER 2005**

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

2. Description

2.1 This Order under the Deregulation and Contracting Out Act 1994 gives the Secretary of State the power to authorise a person to exercise on her behalf certain functions vested in her relating to cultural property. The relevant functions are:

- The acceptance of property offered in lieu of Inheritance Tax under s.230 of the Inheritance Tax Act 1984 and s.12 of the National Heritage Act 1980, together with the allocation of that property and the power to receive or make payments in relation to it (under sections 9 and 10 of that Act) (“the acceptance in lieu scheme”;
- the power to give indemnities under s.16 of the National Heritage Act 1980 for loss or damage suffered to items lent to institutions in the United Kingdom, and the requirement to make a report on indemnities given annually to Parliament under s.16A of that Act (“the government indemnity scheme”),
- the power to issue a licence for the export of cultural goods under articles 2 and 3 of the Export of Objects of Cultural Interest (Control) Order 2003.

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

3.1 None.

4. Legislative Background

4.1. Section 69 of the Deregulation and Contracting Out Act 1994 gives Ministers the power to authorise another person to exercise powers which have been conferred on the Minister by statute. This power is being used to enable the Secretary of State to give such an authorisation in relation to the powers set out above.

5 Extent

5.1 This instrument applies to Great Britain.

6 European Convention on Human Rights

6.1 In the view of the Secretary of State for Culture, Media and Sport, the provisions of the Contracting Out (Delegation of Cultural Property Functions) Order 2005 are compatible with the Convention rights, within the meaning of the Human Rights Act 1998.

7. Policy Background

7.1 This Order is being made to implement recommendations made in the January 2004 report, *Securing the Best for Our Museums: Private Giving and Government Support*, to HM Treasury by Sir Nicholas Goodison, who was commissioned to look into ways of bettering the effectiveness and efficiency of support to regional and national museums, so as to help them acquire works of art that might otherwise be sold abroad. Sir Nicholas saw the benefit to be derived from centralising within one organisation a number of cultural property functions that are currently vested in a number of different bodies. Sir Nicholas envisaged that such a move would help to *'reduce confusion, improve knowledge and provide impartial and free source of authoritative advice and guidance.'*

7.2 Further to Sir Nicholas' recommendations, it has been agreed that the Council for Museums, Libraries and Archives ("MLA") should be authorised to exercise the functions set out in paragraph 2.1. In addition MLA will provide the Secretariat for the Reviewing Committee on the Export of Works of Art, a non-statutory body which advises the Secretary of State whether a work of art or a cultural object, for which an export licence application has been received, is of national importance.

7.3. MLA is already responsible for parts of the acceptance in lieu scheme and the government indemnity scheme. Authorising MLA to exercise the functions set out in this Order on behalf of the Secretary of State will concentrate a range of cultural property functions and expertise within MLA, and centralise within MLA all the administration relating to those functions for which MLA had some responsibility prior to the transfer. It will create a 'one stop shop', thereby offering a better, more streamlined, service to the public. This fits well with MLA's proposed development of an advice service relating to other cultural property issues, and ensures that, across a range of issues, MLA will constitute a single source of authoritative advice and guidance. DCMS will remain responsible for ensuring the effectiveness of the new arrangements in meeting the statutory responsibilities of the Secretary of State. The terms upon which MLA will be authorised to exercise the functions of the Secretary of State set out in this Order, and the Services which they will provide to the Secretary of State in connection with these functions will be set out in an Agreement between MLA and the Secretary of State. A summary of that Agreement will be deposited in the library of each House.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contacts

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DEPARTMENT FOR CULTURE, MEDIA AND SPORT

REGULATORY IMPACT ASSESSMENT FOR THE CONTRACTING OUT (FUNCTIONS IN RELATION TO CULTURAL OBJECTS) ORDER 2005

1. The objective

1.1 This Order, made under the Deregulation and Contracting Out Act 1994, aims to achieve the transfer of a number of functions, currently sitting with the Secretary of State for Culture, Media and Sport, to the Council for Museums, Libraries and Archives (“MLA”). This Order therefore gives the Secretary of State the power to authorise a person to exercise these functions on her behalf. The relevant functions are:

- The acceptance of property offered in lieu of Inheritance Tax under s.230 of the Inheritance Tax Act 1984 and s.12 of the National Heritage Act 1980, together with the allocation of that property and the power to receive or make payments in relation to it (under sections 9 and 10 of that Act) (“the acceptance in lieu scheme”);
- the power to give indemnities under s.16 of the National Heritage Act 1980 for loss or damage suffered to items lent to institutions in the United Kingdom, and the requirement to make a report on indemnities given annually to Parliament under s.16A of that Act (“the government indemnity scheme”),
- the power to issue a licence for the export of cultural goods under articles 2 and 3 of the Export of Objects of Cultural Interest (Control) Order 2003.

2. Background

2.1 This Order is being made to implement recommendations made in the January 2004 report, *Securing the Best for Our Museums: Private Giving and Government Support*, to HM Treasury by Sir Nicholas Goodison, who was commissioned to look into ways of bettering the effectiveness and efficiency of support to regional and national museums, so as to help them acquire works of art that might otherwise be sold abroad. Sir Nicholas saw the benefit to be derived from centralising within one organisation a number of cultural property functions that currently sit with a number of different bodies. Sir Nicholas envisaged that such a move would help to ‘*reduce confusion, improve knowledge and provide an impartial and free source of authoritative advice and guidance.*’

2.2 As things stand, the administration of the acceptance in lieu scheme and the government indemnity scheme is split between MLA and DCMS. DCMS also has responsibility for the issuing of export licences for the export of cultural goods, and for providing the secretariat for the Reviewing Committee on the Export of Works of Art, a non-statutory body which advises the Secretary of State whether a work of art or a cultural object for which an export licence application has been received is of national importance. Sir Nicholas pointed out that these were all executive functions which sat rather uneasily in DCMS, which was otherwise a strategic body. Consequently, further to Sir Nicholas’ recommendations, it has been agreed that MLA should be authorised to

exercise the functions referred to in paragraph 1, and to provide the Secretariat to the Reviewing Committee on the Export of Works of Art.

3. Risk Assessment

3.1 Sir Nicholas' report highlighted the continuing risk to the quality of UK collections of art, arising from the loss of many cultural items to overseas buyers; indeed, during the twentieth century, some collections had disappeared from the UK altogether. While the functions outlined above have served to abate this process, Sir Nicholas noted that their spread across a number of different organisations has occasionally hindered their effectiveness, resulting in an inconsistent service offered to the public, and less than optimal results in terms of the retention of items within the UK. The administrative recommendations of his report, which the proposed transfer of the above functions from DCMS to MLA aims to meet, intends further to stem this tide by ensuring that the functions currently operated across two different bodies will be centralised in one organisation, thereby enabling a more consistent, customer-focused, service to be offered. It is envisaged that this will encourage further use of these functions.

4. Options

4.1 Three options exist:

- **Option 1: Do nothing** – while Sir Nicholas admitted that the current arrangements have worked well in helping to retain objects in the UK, he also highlighted that these arrangements potentially hindered the ability of those administering the service to deliver a consistent service to the public; this in turn meant that, under the status quo, take up of the functions outlined above was not as high as it might be.
- **Option 2: Transfer only the Government Indemnity Scheme and Acceptance in Lieu schemes to MLA** – under this option, responsibility for some of the functions (e.g., GIS and AIL) would transfer to MLA, while DCMS would retain export licensing and the Secretariat to the Reviewing Committee on Export of Works of Art. While this would achieve some of the benefits envisaged by Goodison, it would still fall short of the optimum proposed in his report,
- **Option 3: Transfer all four functions to MLA** – this is the option we hope to achieve. It would ensure the creation of a pool of expertise within MLA relating to four areas which are closely interwoven. This would enable a better service to be delivered to the public through closer coordination of the different strands. It would also facilitate the streamlining of the services, with consequent efficiency savings, which we would expect to be equivalent to one or two administrative posts.

5. Benefits

5.1 MLA is already responsible for parts of the acceptance in lieu scheme and the government indemnity scheme. Authorising MLA to exercise the functions set out in this

Order on behalf of the Secretary of State will concentrate a range of cultural property functions and expertise within MLA, and centralise within MLA all the administration relating to those functions for which MLA had some responsibility prior to the transfer. It will create a 'one stop shop', thereby offering a better, more streamlined, service to the public. This fits well with MLA's proposed development of an advice service relating to other cultural property issues, and ensures that, across a range of issues, MLA will constitute a single source of authoritative advice and guidance.

6. Costs

6.1 This move will result in upfront, one-off, costs for MLA arising from the immediate need to establish new office facilities and IS systems for the extra staff which MLA will require to discharge these facilities; these extra costs will come to £196,000 in the year 05/06, which DCMS will make available to MLA to effect the transfer. Beyond this, in the immediate term, this transfer will be cost-neutral, with the savings achieved by DCMS being transferred to MLA to cover the further costs incurred in taking on the additional functions; this will result in a further transfer from DCMS to MLA of £1,033,000, spread over three years up to 07/08. In the medium to long term, it is expected that this transfer will produce benefits in terms of efficiency gains, and a better service to users of the functions which are being transferred.

6.2 We do not believe there will be any environmental or social costs arising from this proposal.

7. Equity and Fairness

7.1 There are no perceived issues of equity and fairness.

8. Consultation with small business: the Small Firms' Impact Test

8.1 Initial soundings have shown that there are no firms likely to be affected by the proposals. The Small Business Service have been consulted and agree that there is unlikely to be any impact on small business and at this time there is no requirement to carry out stage one of the small firms impact test. Should information come to light which highlights any as yet unidentified or unintended impacts on small firms as a result of the proposals, the position will be reviewed and the Small Business Service consulted further.

9. Competition Assessment

9.1 We do not expect there to be a significant impact on competition as a result of these proposals.

10. Enforcement and Sanctions

10.1 The terms on which MLA are to perform the functions being transferred, and to provide the relevant services will be set out in an Agreement between DCMS and MLA.

Failure by MLA to perform the Services to the standards set out in the Agreement will be actionable as a breach of contract.

11. Monitoring and Review

11.1 The operation of the delegated functions and the form of the Agreement between MLA and DCMS will be reviewed a year after the date of the transfer.

12. Consultation

i) Within government

HM Treasury
Welsh Assembly Government
The National Archives

ii) Public Consultation

These proposals are based upon the results of Sir Nicholas Goodison’s review, which consulted with over 300 stakeholders. Written responses to Sir Nicholas’ consultation document were received from 86 individuals and organizations, as indicated in Annex B of his report. By and large, these responses showed widespread support for the measures proposed by Sir Nicholas, which were aimed at encouraging private giving to museums, and for Sir Nicholas’ proposed role for MLA as a one-stop shop, coordinating these measures across the museum sector.

The form of this delegation, and the funds that DCMS will make available to MLA, have been the subject of detailed discussions between MLA and DCMS, both of whom are now content with the proposed arrangements.

13. Summary and Recommendation

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
Option 1: Do nothing	The opportunity to streamline the services and offer a better service to the public, thereby raising the number of items caught by these schemes and made available to the UK public, will be lost.	Nil
Option 2: Transfer GIS and AIL to MLA	Nil	Some benefits arising from the administrative merger

		of these schemes with the existing provision in MLA. However, this will still not realise the wider public benefit envisaged by Sir Nicholas Goodison through the positioning of all four functions within MLA.
Option 3: Transfer all four functions to MLA	Initial start up costs arising from the immediate need to establish new office facilities and IS systems for the extra staff which MLA will require to discharge these facilities; these extra costs will come to £196,000 in the year 05/06, which DCMS will make available to MLA to effect the transfer. Beyond this, in the immediate term, this transfer will be cost-neutral	In the medium to long term, it is expected that this transfer will produce benefits in terms of efficiency gains, and a better service to users of the functions which are being transferred.

13.1 Based on the above, and as set out in the rest of the RIA, the recommended option is option 3.

14. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

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