

DEPARTMENT FOR CULTURE, MEDIA AND SPORT

MEMORANDUM TO THE JOINT COMMITTEE ON STATUTORY INSTRUMENTS

**THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
(COMMENCEMENT NO. 2) ORDER 2007 (SI 2007/3613 (C.158))**

This memorandum explains to the Committee the Department's reasons for what may be regarded as an unusual exercise of the Secretary of State's commencement power in section 148(3) of the Tribunals, Courts and Enforcement Act 2007 ("the Act").

2. The Committee may be aware of the forthcoming exhibition entitled "From Russia" to be held at the Royal Academy from 26th January 2008.

3. Part 6 of the Act was enacted in the last Parliamentary session in order to provide immunity from seizure for cultural objects lent from abroad to approved institutions in the United Kingdom for temporary public exhibition. The legislation is intended to facilitate cultural exchanges by ensuring that cultural objects (including works of art) can be lent for exhibition in the United Kingdom without fear that they may be subject to seizure or forfeiture whilst in the jurisdiction. The Government of Russia have particular concerns in this area, resulting from the temporary seizure in 2005 of paintings held by the Pushkin Museum whilst they were on loan in Switzerland.

4. The conditions for immunity set out in section 134(2) of the Act include the condition that the borrowing institution "has complied with any requirements prescribed by regulations made by the Secretary of State ... about the publication of specified information about the object [in question]". The Department's public consultation on draft Regulations to be made pursuant to this provision ended on 21st December 2007. The intention was to bring Part 6 into effect at the same time as the Regulations, which would be laid before Parliament in the New Year once the responses to consultation had been analysed and the draft Regulations finalised. According to this timetable, Part 6 of the Act would not have effect until after the "From Russia" exhibition was due to begin, assuming that the Regulations had to be in place no later than the commencement date¹.

5. In late December 2007 it became apparent that the Russian museums involved in the "From Russia" exhibition, and the Russian Ministry of Culture would not be content with anything short of complete statutory protection for the works to be loaned. Neither the Department's timetable for the commencement of Part 6, nor the requirements of the draft Regulations (e.g. the requirement that information about loaned works be published two calendar months before the opening of the relevant exhibition) would allow for such protection to be given in time for the 26th January opening date.

6. Given the importance of the exhibition for cultural life in the United Kingdom, and for cultural relations between the United Kingdom and Russia the Department took

¹ It is important to note that in accordance with section 134(1) of the Act, whether the immunity applies is to be determined at the time when an object enters the United Kingdom.

the view that the required statutory protection should be made available in time if at all possible, provided that this could be done lawfully, properly and in accordance with its general policy objectives in relation to immunity from seizure.

7. The Department's conclusion was that this could be done, by commencing Part 6 of the Act on 31st December 2007 in advance of the making and laying of the Regulations under section 134(2). This would result in immunity being available for objects that complied with section 134(2)(a) to (d) of the Act; but there would, for the time being, be no prescribed requirements applicable by virtue of section 134(2)(e). The Royal Academy could then be approved as an institution under section 136 of the Act by an expedited administrative procedure, and the immunity could apply in time for the opening of the exhibition on 26th January.

8. In determining to adopt this unusual course of action the Department took account of-

- the cultural objectives referred to in paragraph 6 above;
- the fact that the Royal Academy's history and standing make it an obvious and practically indisputable candidate for approval under section 136 of the Act in any event;
- the fact that pending the commencement of the Regulations access to immunity under Part 6 would still be controlled by the section 136 approval process;
- the fact that the Department's knowledge of the particular works to be loaned for the exhibition in January makes it highly unlikely that the purposes of the Regulations would be frustrated by allowing the immunity to apply before they take effect;
- the fact that the proposed arrangements would be temporary only - the Regulations will still be made in accordance with the original schedule.

9. Against this, the Department had to weigh the undesirability of commencing Part 6 in the absence of requirements under s134(2)(e). This would mean that advance information about the objects to be loaned would not be available as contemplated in the draft Regulations. Although the Department considers this to be regrettable, on balance it took the view that early commencement of Part 6 was the most desirable outcome.

Department for Culture, Media and Sport
December 2007