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The United Kingdom's Immunity from Seizure Legislation

Anna O'Connell [*]

Abstract: The UK's Department for Culture Media and Sport (DCMS) has introduced legislation to provide immunity from seizure for cultural objects on temporary loan from other countries to approved museums and galleries in the UK. The legislation is aimed at facilitating the cross-border lending of objects and bringing the UK into line with other countries such as the United States, France and Germany, that already afford such legal immunity. In the absence of immunity legislation in the UK, many museums and private lenders had been reluctant to loan their objects because of the risk that they might be seized by creditors seeking to settle financial disputes or by claimants contesting ownership of the works. This article examines whether the new law will be effective to provide museums and lenders with the protection they have been hoping for and asks whether it goes too far in depriving claimants of legal rights and remedies.

INTRODUCTION

On 31 December 2007, the UK Government introduced anti-seizure legislation[1] to protect cultural objects on temporary loan from other countries to approved museums and galleries in the UK. The UK's legislative initiative was prompted by a highly publicised seizure incident which occurred in November 2005 when 54 paintings, which included works by Picasso, Matisse and Cezanne, were seized by customs officers in Switzerland.[2] The pictures, from the Pushkin State Museum of Fine Arts in Russia, were impounded after they had left the town of Martigny in Switzerland following a three-month loan to the Pierre Gianadda Foundation.

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[1] Tribunals, Courts and Enforcement Act 2007 (Commencement No.2) Order 2007, SI2007/3613.

[2] The borrowing institution in Switzerland had not applied for immunity from seizure (or what is referred to as a 'return guarantee') under the newly enacted Swiss Cultural Property Transfer Act 2005, as this Act had not entered into force at the time the exhibition opened.

The Swiss authorities acted on a court order obtained by a Swiss import and export firm, Noga SA (Noga), who claimed that the Russian Government owed it several million dollars in unpaid debts relating to an oil-for-food deal signed in the early 1990s and who was seeking to enforce a Stockholm arbitration award in its favour.

The impounding of the paintings was just one of several attempts by Noga to recover its purported debt by seizing Russian assets abroad. In 2000, Noga instituted proceedings to seize a Russian sailing ship that was due to take part in a regatta in France. It then sought to freeze the accounts of the Russian Embassy in Paris. Both actions were dismissed by court rulings in favour of Russia. In 2001, it tried to appropriate two Russian military jets during the prestigious Le Bourget air show in France. This attempt failed also. But, it was Noga's seizure of the Pushkin paintings which sparked the most outrage in Russia. The Director of the State Hermitage Museum in St Petersburg (the Hermitage) said that 'works of art are now being used as hostages in trade disputes'. Although the seizure order was quickly cancelled by Switzerland's Federal Council, the Hermitage warned that no Russian museum would be able to send objects on loan to any overseas venue unless it received concrete legal guarantees that its artworks would not be seized during the loan period.

Unlike some other countries, the UK did not, at that time, have legislation granting immunity from seizure for items lent to exhibitions at its cultural institutions. Furthermore, the provisions of the UK's State Immunity Act 1978 (the 'SIA') afford insufficient protection to cross border loans of cultural objects. The SIA applies only in relation to property owned by a foreign state, including its government and any of its departments. No immunity is provided to a separate entity 'which is distinct from the executive organs of the state and is capable of suing or being sued'[3] and most museums, including national museums, fell into that category. Furthermore immunity clearly does not extend to artworks on loan from foreign private collections. Finally, a state is only entitled to immunity in respect of acts *jure imperii* and not acts *jure gestionis*. In other words, the foreign state is not immune from suit in connection with its 'commercial transactions'.[4] This term is very broadly defined and would possibly apply to loans by foreign states of cultural objects for non-profit exhibition (although the UK courts have not yet had an opportunity to adjudicate on this issue).

In the absence of guaranteed legal protection from seizure, it was feared by cultural institutions in the UK that lenders might refrain from lending their artworks lest they become embroiled in costly legal disputes and become deprived of possession of the works for a significant period of time (or indeed, for good).

Five months after the Noga seizure in Switzerland, a consultation process was launched by the DCMS as to whether the UK should introduce immunity from seizure laws to protect items lent from abroad for exhibition. On 31 December

[3] State Immunity Act 1978, s.14.1.
[4] State Immunity Act 1978, s.3.1.

2007,[5] immunity from seizure legislation came into effect in England and subsequently in Scotland on 21 April 2008[6] and in Wales and Northern Ireland on 22 April 2008.[7] The relevant provisions are set out in sections 134 to 138 in Part 6 (Protection of Cultural Objects on Loan) of the Tribunals, Courts and Enforcement Act 2007 ('the Act'). Implementing regulations under the Act came into effect on 20 May 2008 ('the Regulations').[8]

BACKGROUND

Immunity from seizure laws exist only in a few countries. Their purpose is to protect cultural objects which are loaned from abroad for temporary exhibit from any legal claims which might occur when a claimant takes advantage of the fact that the object is temporarily in a different country with a different set of laws from those of its normal location and takes the opportunity to seize or immobilise the object. There are three main situations in which this might happen. Firstly, an object on loan could be the subject of a claim for interim injunctive relief if there is a dispute concerning its rightful ownership. Such claims may affect artworks which were looted by the Nazis or Soviet Trophy Brigades during the Second World War or were nationalised without compensation following the Bolshevik Revolution in 1917. Secondly, an individual or company (such as Noga, mentioned earlier), who purports to be a creditor of the lender of the cultural object, might have difficulty enforcing a financial judgment against the lender in the country where the art is usually located. This may particularly apply if the debtor is a sovereign state. It may therefore seek to enforce its judgment against the debtor's assets in the country where the cultural object is on temporary loan by seizing the art as collateral for its unsatisfied debt. Lastly, works of art may be seized during the course of criminal investigations. For example, under the UK Police and Criminal Evidence Act 1984, a police officer lawfully on the premises of a museum could seize anything on the premises if he had reasonable grounds for believing that it has been obtained as a result of the commission of an offence such as theft or conversion.[9]

[5] Tribunals, Courts and Enforcement Act 2007 (Commencement No.2) Order 2007, SI2007/3613.
[6] Tribunals, Courts and Enforcement Act 2007 (Commencement) (Scotland) Order 2008, SSI 2008/150.
[7] Tribunals, Courts and Enforcement Act 2007 (Commencement No.4) Order 2008, SI2008/1158.
[8] The Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008.
[9] For instance, in January 2006, Scotland Yard seized a medieval casket, from the Victoria & Albert Museum where it had been on loan following a claim that it has been looted in Poland.

CONTROVERSIAL ASPECTS AND FORUM SHOPPING

Immunity from Seizure laws are not without controversy however and raise important moral, ethical and legal issues. Some argue that a strengthened legal regime of immunity from seizure interferes with the freedom of the individual to bring a legal action. For example, the legislation is likely to prevent claims being made to works of art which from the point of view of the claimant, cannot be pursued as easily in the country where the works are normally located. This can be a particular problem in the case of restitution claims, not least claims from Holocaust survivors and their families.

Indeed controversy over the protection provided by immunity from seizure arises in the broader context of the conflict between common law and civil law jurisdictions regarding the transfer of stolen goods and the related issue of forum shopping. Common law and civil law jurisdictions take different approaches as to whether the good faith purchaser of stolen artwork or the original owner should have the legal right to ownership. Civil law jurisdictions such as France and Italy generally favour the good faith purchaser under a policy fostering commercial certainty,[10] whereas common law countries such as the United States and the United Kingdom generally favour the original owner.[11] In practice therefore, the recovery of a stolen or looted artwork from certain civil law jurisdictions can be extremely difficult and in many cases a potential claimant has a far greater chance of pursuing its claim successfully in a common law country.

Important legal considerations arise also. For instance, some question whether immunity from seizure laws are in conflict with, if not the letter, at least the spirit of a number of other legal instruments either adopted or having force in the jurisdictions in which they operate. For example, in making a claimant's recovery efforts more difficult, do they offend human rights legislation (such as the right to an effective access to court and the right to the peaceful enjoyment of one's possessions under Article 6 and Article 1 of the First Protocol respectively of the European Convention on Human Rights)?

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[10] For example, European civil law nations differ in the time the good faith purchaser is required to possess an object before he acquires title. For example, in France, the victim of the theft has three years from the date of theft in which to reclaim the stolen item from any person in whose possession he finds it. The three-year time limit runs from the date of the loss of the theft, not from the date of the good faith purchase. In Italy, the law affords even greater protection to the good faith purchaser who acquires title immediately upon purchase. By contrast, in the United States, the laws of many states delay the accrual of a cause of action out of recognition that it usually takes an owner many years to locate and make a claim for the stolen work. Some states have adopted the "discovery rule" under which the limitations period accrues when the theft victim knew or reasonably should have known the whereabouts of the artwork. Entitlement to the benefit of the "discovery rule" is dependent upon whether the claimant used due diligence to recover the paintings at the time of the alleged theft and thereafter. New York state has rejected the "discovery rule" in favour of the "demand and refusal rule" whereby the three-year statute of limitations accrues upon the demand and refusal to return a stolen work.

[11] For instance, as far as the UK's general law on title is concerned, a buyer can never sell on a better title than the one he has (Sale of Goods Act 1979, s 21.1). If a collector buys a work of art which had previously been stolen, he has no title to pass onto a third party and the artwork is not his. Even if the buyer bought the artwork innocently in good faith and with no knowledge that it had been stolen, he must return it to its original owner.

INTERNATIONAL CONTEXT

Since its first adoption in 1965, and up until 1998, immunity from seizure legislation was in force in just three countries: the United States (by Federal Act and at state level in New York),[12] Canada (in five of its thirteen provinces[13]) and France.[14] In the past decade, such legislation has been adopted by a further six countries, Israel, Germany, Austria, Belgium, Switzerland, the UK and in the United States in states of Texas, Rhode Island, Pennsylvania and Tennessee.[15]

The rise in the adoption of immunity from seizure laws in the past 10 years may be due in part to the dramatic increase in the value of works of art as well as the high profile and extensive publicity given by the media to several cases involving the restitution of looted art. This has invariably led to an increase in claims by individuals, families, ethnic groups and governments to cultural objects to which they feel entitled for historic reasons. Furthermore, since the 1998 Washington Conference on Nazi-Confiscated Art, there has been a renewed awareness of the unprecedented looting of cultural property during the Nazi era. The Conference's 44 participating governments endorsed several principles for countries dealing with Nazi-looted art, including the principle that pre-war owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted. In this climate, it is unsurprising that lenders of objects of doubtful or unclear provenance have generally become more reluctant to lend overseas without robust legislation in place guaranteeing the return of the artworks at the end of the loan period.

The process for obtaining immunity from seizure protection differs in each country but, generally, one of three distinct models has been adopted. In some countries, immunity protection applies automatically, provided the criteria set out in the legislation is met. No action is required by the borrowing museum and the cultural object is protected while in the state or country in question during the

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[12] US Federal Act 22 USC s.2459 (Public Law 89-259), approved 19 Oct 1965; New York Exemption from Seizure Law, Arts and Cultural Affairs Law (ACAL), section 12.03.

[13] British Columbia, Ontario, Quebec, Alberta and Manitoba.

[14] Loi no. 94-679 of 8 August 1994, Article 61.

[15] Anti-Seizure legislation is also currently under consideration in Italy, the United Arab Emirates and Finland. It is also worth mentioning that Ireland and Australia, while not providing the full breadth of immunity from seizure protection, do have laws which facilitate the lending of certain cultural objects imported from abroad for temporary exhibit. The Irish legislation applies to archaeological objects and exempts their foreign owners from the usual disclosure obligations imposed by Irish law on possessors of archaeological objects in circumstances where they are imported into Ireland for temporary public exhibit (such as requirement to disclose their personal details and to give a detailed description of the object as well as a detailed account of how it came into their possession). In Australia, the temporary exhibit of Australian protected objects imported into Australia from abroad is facilitated in so far as the lender may apply for a certificate guaranteeing the export of the object at the end of the loan period. Furthermore, unlawfully imported cultural objects of a foreign country will not be liable to forfeiture if imported for temporary public exhibition in Australia.

term of the loan period. This model has been adopted by Belgium, the US States of New York, Rhode Island, Tennessee and Texas, and the Canadian province of British Columbia. In other countries, the borrower or the lender must make an application for immunity from seizure protection for a specific exhibition to an official adjudicating body. If the application is successful, details of the exhibition (including a list of the borrowed objects) are then published in an official journal. This model has been adopted by the United States (under its Federal Act), Austria and Germany. Lastly, some 'application' countries provide potential claimants with a specific time period during which they have the opportunity to challenge an immunity order. After this time period has elapsed, claimants are precluded from taking any further action. For instance, in France a potential claimant has four months to challenge an immunity order following its publication in the French *Journal Officiel*.[16] In Switzerland, a claimant has just 30 days in which to do so.

IMMUNITY FROM SEIZURE LEGISLATION IN THE UK

PROCEDURE FOR GRANTING IMMUNITY

The process for obtaining immunity from seizure protection in the UK is unique and differs from all of the other immunity from seizure models currently in force. The procedure might best be described as a semi-automatic model or a 'middle way' between the automatic and application models which have been adopted by other countries. It is likely that the DCMS was seeking to strike a balance between, on the one hand, avoiding the administrative costs and complexity of an application system while at the same time seeking to ensure that a hands-off automatic system would not result in museums becoming less rigorous in making provenance enquiries with regard to the objects they intend to borrow.

Museums or galleries who wish to avail themselves of the protection afforded by the Act must undertake a two step process. Firstly, they must make a one-off application to obtain the status of approved institution (which is not linked to any specific exhibition) to the appropriate adjudicating body specified in the legislation (the Secretary of State in respect of museums or galleries in Great Britain). Approval is conditional on the institution demonstrating that it's due diligence procedures are fit for purpose.[17] Secondly, once approval has been obtained, and

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[16] The four month period only applies in respect of claimants who are non-French nationals. Claimants who are French nationals have two months to challenge the Order.

[17] Although not specified in the legislation, in practice the approval process involves the cultural institution completing a government questionnaire concerning the extent to which it complies with national and international due diligence standards and codes of ethics, submitting a copy of its standard form loan agreement, its loans-in policy, and the checklist used by curators to conduct provenance research. The applicant must also give specific examples of provenance research it has conducted for loan objects and its methodology of provenance research for a specific exhibition, and provide details of its staff training programme for dealing with incoming loans.

the museum or gallery identifies objects it would like to borrow and for which immunity protection is required, it must publish certain specified information concerning these objects on its website.[18] This information includes the name and address of the lender or his agent, a description of the object(s) for which immunity is being sought,[19] details of the object(s) provenance[20] and information concerning the exhibition.[21] The information must be published for a minimum of four weeks before the date on which the object enters the UK and for an additional period of at least 12 weeks or until the exhibition closes, whichever is the longer.

More specific information[22] must be disclosed to potential claimants on request, unless the request is unreasonable. It will only be possible for a borrowing museum to treat a request as unreasonable where a court or other authority has already rejected a claim or where the information has already been disclosed by the borrowing museum or some other person or is otherwise freely available. Where a query is raised about an object, this will not remove protection from seizure but will allow the borrowing museum to carry out further due diligence before taking a decision on whether to borrow and include that object in the proposed exhibition.

In the writer's view, it is questionable whether it is fair and equitable to reject a claimant's request for further information merely because his or her claim has failed in another jurisdiction where a different set of laws and legal principles may apply. Consider for instance the case of the heirs of the Russian collectors Sergei Shchukin and Ivan Morozov, whose private collections were nationalised at the time of the Bolshevik Revolution in 1917. The heirs' claims for compensation have failed or been withdraw in several jurisdictions, including in France and, most recently, before the US District Court in a claim against the Los Angeles County Museum of Art. One of the main legal obstacles for the heirs was that the collections they were claiming were appropriated by a Russian "act of nationalisation" in 1918, under which property of Russian citizens was taken in accordance with Russian law. But is it right on ethical and moral grounds that a

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[18] In addition, museums will be required to send a copy of the information to the Acquisitions Export and Loans Unit of the Museums, Libraries and Archives Council (MLA), on or as soon as practicable after the day on which the information is made available on its website. This is so that there will be a central record on the website of the MLA containing links to the museum websites so that potential claimants do not have to research a number of individual websites. The links will also be available on the DCMS's cultural property advice website.

[19] Such as type, artist, title, dimensions, date of creation, a photograph of the object ('if created before 1946 and acquired by the lender after 1932', i.e., during the Nazi era), its appearance, any identifying marks or inscriptions, and, in the case of antiquities, the area where the object was found.

[20] Including the date on which, the place at which and the person from whom it was acquired by its current owner or, where not known, the circumstances in which the object was acquired and, specifically, a statement indicating whether or not the borrowing museum possesses a complete history of its ownership between 1933 and 1945.

[21] Such as the title of the exhibition, the address where it is to be held, and the period for which the object will be on display.

[22] Such as a description in writing of the enquiries it made into the provenance and ownership history of the object, as well as any information which it obtained as a result of those enquiries that the museum may lawfully disclose to the claimant.

UK museum or gallery would be entitled to refuse the heirs' request for disclosure of further information in these circumstances?

PROTECTED OBJECTS

An object is protected under the Act from the moment it enters the UK provided a number of conditions are met. Some of these conditions raise a number of important issues on which the legislation is presently silent and which should therefore to the extent possible be expressly addressed in a written loan agreement.

Firstly, protection is only provided in respect of objects which are usually kept outside of the UK and which are owned by someone who is not ordinarily resident in the UK.[23] In other words, the law only applies to cross-border loans into the UK and does not extend to artworks loaned by institutions and individuals within the UK. This provision raises a number of important questions. For example, if a claimant of a protected artwork is a UK resident, could he ask the court to set aside the protection on the basis that the purported owner, i.e. the claimant, is a UK resident and immunity from seizure is not therefore applicable? What about the situation where an artwork is co-owned by a number of individuals and one of the co-owners is a UK resident or institution - should immunity protection apply in this instance? Or consider the hypothetical case of an owner who sells his protected artwork to a UK resident during the course of the exhibition. Would immunity protection still apply following the sale? The legislation does not address these issues and it is likely we will have to wait for a UK court to clarify the position at some future date.

Secondly, the object must be brought to the UK in order to be publicly displayed at a temporary exhibition at a museum or gallery. The law will not therefore protect artworks on long term loan to borrowing institutions. The protection only applies for as long as the object is in the United Kingdom for the purposes of a temporary exhibition and for not more than 12 months beginning with the day when the object enters the United Kingdom. The period of protection will however be extended without limitation beyond the 12 month period if the object has suffered damage while protected and is undergoing repair in the UK or is leaving the country following repair. In so far as the period of protection is extended without limitation in this instance, the writer is of the view that the legislation should have specified a limited period of protection after the repair has been completed.

Thirdly, the import of the object must comply with the law on the import of goods. For instance, any import which is contrary to the Iraq (United Nations) Sanctions Order 2003, or any other protective order pertaining to cultural property

[23] According to s. 137.6, a person is resident in the United Kingdom if he is ordinarily resident in the United Kingdom for the purposes of income tax or would be if he were receiving income on which tax is payable. According to s.134.3, a person owns an object whether he owns it beneficially or not or whether alone or with others.

in force in the UK, would be prohibited, as would any violation of the Customs and Excise Act 1979.

Lastly, the museum or gallery must comply with the Regulations concerning the publication of information about the object on its website (which is set out in detail above).

The legislation is silent on the question of whether a borrowing institution could disregard any anti-seizure protection in force and return a claimed artwork to the claimant with or without the agreement of the lender of the work. Furthermore, the legislation does not specify whether the protection would bar recovery claims by lenders seeking to recall the artwork before the expiry of the loan period or to persons deriving title from lenders.

EFFECT OF PROTECTION

While an object is protected, any judicial measures which might affect the custody or control of the object in the course of civil or criminal proceedings or investigations in the UK (against the owner, the museum or gallery or any other person) are prohibited. It follows therefore that claims by creditors of the lender, title claims (such as Holocaust victims and their heirs) and non title-related claims (such as those by indigenous peoples to sacred material on the grounds of inappropriate exhibition) could not be pursued in the UK courts if and insofar they had as their objective to achieve the delivery-up or return of the object to the Claimant. There is one important exception to this rule. A protected object can be seized under a UK court order which the court is obliged to make pursuant to an EU obligation or any international treaty. Accordingly, a request from another EU member state for the return of an object on loan to the UK under the 1993 EU Directive on the Return of Illegally Removed Cultural Property would be permitted to proceed, as would a claim from a State which is a signatory of the 1970 UNESCO Convention[24] or the 2001 UNESCO Convention.[25] Other cultural property instruments which might at some future date become relevant in this context are the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects 1995, although neither of these Conventions have yet been ratified by the UK.

Although a qualifying object may be protected, this does not affect liability for any offence which may have been committed by someone importing, exporting or otherwise dealing with the object. For instance, a lender or borrowing institution will still commit an offence under section 1.1 of the Dealing with Cultural Objects Offences Act 2003, if it lends or borrows a tainted cultural object knowing or believing that it is tainted. An institution that borrows material illegally removed from Iraq after 6th August 1990 (or material which it suspects, but does

[24] UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.
[25] UNESCO Convention on Underwater Cultural Heritage 2001.

not know, to be so illegally removed) with the honest intention of returning it to its source would also still commit the offence of dealing and the further offence of failing to cause the transfer of the object to a constable under sections 8.2 and 8.3 respectively of the Iraq (United Nations) Sanctions Order 2003. But any power of arrest or otherwise to prevent such an offence is not exercisable so as to prevent the object leaving the UK.[26] Although the police may not be able to seize the object, they will be able to examine it at the museum and record all necessary evidence found on it (including any due diligence enquiries made and information obtained by the borrowing institution before the object arrives in the UK).

ALTERNATIVE FORMS OF LEGAL REDRESS

In general, while immunity from seizure laws ensure the safe return of an artwork to the lender, they do not necessarily preclude a claimant filing a claim for alternative legal relief. For instance, immunity laws do not generally preclude a claimant from proceeding against the borrowing institution for (a) damages in conversion after the artwork has left the borrowing state, (b) an order for the payment of a reasonable hiring charge during the period of the borrower's unlawful possession and/or (c) a declaration that the claimant is in fact the owner[27]. However, one of the more controversial aspects of the UK legislation is that it may go too far by depriving claimants of their ability to pursue these alternative legal rights and remedies.

In the UK, a claim in conversion is the usual method for recovering personal property from a party in possession who unlawfully detains it. Such a claim can be brought against any person in possession of the object by any person who has possession or an immediate right of possession of the object. It is arguable that the Act as currently drafted deprives the claimant of his or her immediate right of possession during the prescribed period. If the claimant is thus deprived, and so precluded from pursuing most actions in tort for damages, the Act would operate not only anti-seizure but also anti-suit. While obviously attractive to lenders, this would undoubtedly lead to the Act being objected to on moral and ethical grounds in circumstances where a claimant may be unable to obtain effective relief in the country where the object is usually located. Furthermore, if this were the case, the Act would be less likely to withstanding testing under certain provisions of national and European human rights legislation.

The Act does not address the issue and again it is likely we will have to wait for a UK court to clarify the position at some future date. However, in the writer's view, it is unlikely that if this issue was tested by a UK court, it would conclude

[26] s.135.2.

[27] For instance, in the US case of Malewicz v City of Amsterdam, (No 05-5145, United States Court of Appeals for the District of Columbia Circuit, U.S. App, LEXIS 615, January 10, 2006), which involved the loan of a set of 12 paintings by the artist Kazimir Malewicz from the Stedelijk museum in Amsterdam to cultural institutions in the United States, the heirs of the artist commenced proceedings to contest ownership but instead of seeking seizure of the works (which were immune from seizure under Federal law), they sought damages and a declaration of rights.

that it was Parliament's intention to deny a claimant access to other forms of legal relief.

CONCLUSION

Where does the Act leave museums, lenders and claimants and will it be effective to provide borrowers and lenders with the protection they require?

From the borrowing institutions' perspective, now that the Act is in force in the UK, it is highly probable that they will receive more loans of artworks from abroad for temporary exhibitions. This is particularly so in respect of temporary loans from Russia and other Central and Eastern European countries. This will assist in the success of UK museums and galleries in presenting first class exhibitions on a consistent basis. It is noteworthy that the Act has already been successfully invoked to ease diplomatic tensions over a proposed loan of art works from Russia for an exhibition at the Royal Academy in London in December 2007. Russia's dramatic last minute threat to halt the release of major artworks for the exhibition was due to its fear that the paintings would become embroiled in legal battles over their rightful ownership as some of the works had been nationalised and seized from private collections after the 1917 revolution. A mere nine days after the new provisions of the Act came into force in England, the Russian government gave permission for the paintings to travel to the UK and the exhibition went ahead on 9 January 2008. However, it remains to be seen whether the Act's unique procedure for granting immunity which places the administrative and budgetary burden on the borrowing institution (to apply for approved status by demonstrating that its due diligence procedures are fit for purpose and to publish the required information), leads to fewer borrowing institutions availing of the protection afforded by the new Act than might have been expected.

From the claimant's perspective, the wide disclosure and publication requirements may well provide them with key information to learn the whereabouts of a work of art that may have been lost or stolen from one of their ancestors. Claimants may be less satisfied with the fact that where an object is deemed, in the opinion of the borrowing institution, to be of questionable provenance, there is no obligation on the borrower to bring this information into the public domain. They might argue that, in this regard, the Act does not go far enough in assisting them in their pursuit of justice. On the other hand, it remains to be seen whether the Act goes too far in depriving claimants of legal rights and remedies by removing the basis for most actions in tort and thus stifling not only claims for recovery of the objects but also claims for damages during the relevant period. Again we will have to wait until the UK courts have an opportunity to adjudicate on this point.

As far as lenders are considered, the Act is likely to overcome their reluctance to send their works of art to the UK and thus facilitate the lending of their

artworks to its borrowing institutions for temporary exhibition. However, as far as private lenders are concerned, the requirement that detailed information concerning the lender (or his agent), the object and the circumstances in which it was acquired, be published on the borrowing institution's website may lead to a reluctance on their part to lend their works for security, confidentiality and tax reasons. Furthermore, it will need to be made clear to lenders that the Act does not necessarily preclude a claimant from proceeding against them for alternative legal relief such as a claim in conversion for damages or a declaration of rights. Although, as stated above, this aspect of the legislation may be tested by a UK court at some future date.

Lastly, both borrowing institutions and lenders will need to continue to draft and manage loan agreements very carefully. It would be advisable for any confidentiality agreement which a borrowing institution might enter into with a lender to be made subject to the institution's statutory disclosure obligations under the new law. There are also a number of important legal issues on which the Act is presently silent concerning in particular the conditions which must be met in order for an object to be protected from seizure. This undoubtedly leaves the Act vulnerable to challenge on several key points and lenders and borrowing institutions will need, to the extent possible, to expressly address these issues in a written loan agreement.