

CONFIDENTIAL



Department of Education and Science

Office of Arts and Libraries
From the Minister for the Arts

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15th March 1982

The Rt Hon Francis Pym MC MP
Lord President of the Council and
Leader of the House of Commons
68 Whitehall
LONDON SW1

Dear Francis

*Prime Minister
Mr Ingham
The Chief Whip and
the Lord President have agreed
with Mr Channon that this
should not be released until
after the Hillhead by election.
It will probably now be published
in the week of 29 March.*

*CP
16/3*

GOVERNMENT REPLY TO THE THIRD (INTERIM) REPORT
FROM THE EDUCATION, SCIENCE AND ARTS COMMITTEE:
PUBLIC AND PRIVATE FUNDING OF THE ARTS

The above Committee's interim report on 'Works of Art: Their Retention in Britain and Their Acquisition by Public Bodies' was published on 6 April 1981 and there is now considerable pressure for the Government to reply. The proposed reply has been the subject of intensive consultations between the relevant Ministers concerned with the heritage, which has inevitably taken time.

... I now attach the response which it is proposed that the Financial Secretary to the Treasury and I should present to Parliament as a White Paper in our joint names on 22 March. This will inevitably prove somewhat disappointing to our backbenchers and to the heritage world in general. The Arts Debate on 22 February showed that they (and indeed both sides of the House) hoped for acceptance of more of the Select Committee's recommendations. I have now had a letter to the same effect from Patrick Cormack as Chairman of our Arts and Heritage Committee. But this seems to be the best compromise that can be arrived at.

I should be glad to know whether the proposed publication date is acceptable, and to have authority to proceed accordingly.

Copies of this minute and enclosure go to the Prime Minister, members of the Cabinet, Michael Jopling and Sir Robert Armstrong.

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ams*

Paul

PS. There is some urgency in this as a Select Committee hearing has already been postponed and another one is scheduled to take place before Easter.

CONFIDENTIAL

RETENTION OF WORKS OF ART IN BRITAIN
AND THEIR ACQUISITION FOR THE NATION

OBSERVATIONS BY THE GOVERNMENT ON THE
THIRD REPORT FROM THE EDUCATION, SCIENCE
AND ARTS COMMITTEE SESSION 1980/81

Presented to Parliament
by the Minister for the Arts
and the
Financial Secretary to the
Treasury
March 1982

LONDON
HER MAJESTY'S STATIONERY OFFICE

£ net

(15 MARCH 1982)

GOVERNMENT OBSERVATIONS ON THE THIRD REPORT FROM THE EDUCATION, SCIENCE AND ARTS COMMITTEE SESSION 1980-81: PUBLIC AND PRIVATE FUNDING OF THE ARTS: INTERIM REPORT ON WORKS OF ART: THEIR RETENTION IN BRITAIN AND THEIR ACQUISITION BY PUBLIC BODIES

The Government welcome the Committee's interest in this subject and share their view of the importance of safeguarding those works of art which form part of our national heritage.

Before commenting in detail on the Committee's recommendations the Government believe it would be helpful to set out in general terms their policy on the protection and public enjoyment of outstanding works of art. This starts from the premise that, wherever possible, private owners should be helped through capital tax concessions to retain ownership of outstanding works of art provided that they agree to care for them on behalf of the public and afford reasonable public access to them. Where it becomes necessary for owners to dispose of works of art of heritage quality the Government wish them to have an incentive to sell to a public collection or, where appropriate, to offer them in lieu of tax. This has been seen by successive Governments essentially as a balancing of the interest of the private owner on the one hand and the public benefit on the other. A number of the Committee's recommendations are concerned with where and how that balance should be struck. They raise questions on which different judgements are clearly possible.

The Government further recognise the emphasis throughout the Committee's Report on the need for clear and simple guidance on the measures for protecting works of art. Inevitably there are complexities when individual tax positions are involved but the Government fully acknowledge that the success of their policy for safeguarding works of art depends on private owners and those advising them being aware of the various reliefs available.

The Government have noted with concern that the Committee had received representations casting doubt on the competence and impartiality of the Capital Taxes Office when dealing with cases of conditional exemption. It is difficult to respond to such complaints because of their generalised nature, but the Government will of course look into any specific case which is brought to their attention. Some applications necessarily take time to process. This can arise as much from the need for owners and their legal and other advisers to consider their claims as from the need for the Capital Taxes Office to obtain professional advice from within

a limited circle of experts and advisers. The Government would like to put on record their view that the Capital Taxes Office deal with claims as efficiently and speedily as their limited resources allow and are prepared to go to great trouble in offering help and advice to owners.

The Government's response to the Committee's individual recommendations, as summarised in paragraph 26 of their Report, is set out below. Observations are also made on a number of views expressed in the Report which do not appear in the summary of recommendations.

Recommendation (i)

'The Treasury Memorandum, Capital Taxation and the National Heritage, should be withdrawn forthwith and a new one relating to works of art and heritage objects should be drawn up by the Office of Arts and Libraries, in consultation with the Treasury' (Paragraph 8)

Response

As the Minister for the Arts has already announced, in answer to a Written Question from Mr. Andrew Faulds MP on 26 February 1981, the Office of Arts and Libraries intends to publicise the procedures for acceptances in lieu and private treaty sales in a new document which will be made widely available to the owners of works of art and their advisers. This will describe to owners in simple language the possible advantages of offering their works for sale by private treaty or in lieu of tax. At the same time more detailed information on the reliefs available on heritage property of all kinds will continue to be needed, and this is provided by the Treasury Memorandum. The Memorandum will be kept under review and revised and updated as necessary; a new version will be brought out in the light of the Government's reply.

Recommendation (ii)

'In return for exemption from capital taxes an owner should enter details of his work/works of art, together with appropriate photographs, in the list kept at the Victoria and Albert Museum. The anonymity of owners should be preserved, but any bona fide scholar should have access to the list and opportunity to view the objects. Equally, every museum and gallery should have automatic access to the list, and opportunity to borrow objects for special exhibitions'. (Paragraph 10)

Response

Conditional exemption in respect of works of art is designed to encourage their retention in the United Kingdom in such a way that they can also be publicly appreciated: it is a statutory requirement that the owner of a conditionally exempt work of art must take reasonable steps to secure reasonable access to the public. The terms 'reasonable steps' and 'reasonable access to the public' are not defined in the legislation and the Government accept the Committee's view that the arrangements which fulfil the access requirement should not place an undue burden on the individual owners concerned. No changes in the present procedures are necessary where the object is already in a building open to the public, but the Government propose to modify the existing arrangements in respect of objects which are not in a house which is (or will be) open to the public. In the case of such objects, which account at present for less than 10 per cent of those for which conditional exemption is sought, the owner will in future be able either:

- (a) to arrange to lend objects to public collections on a long-term basis (or to continue such an arrangement if it already exists); or
- (b) to ask the Capital Taxes Office to arrange for details of the object (and of how to contact the owner or his agent) to be entered on the lists of conditionally exempt objects kept at the Victoria and Albert Museum and the National Library of Scotland.

Owners choosing alternative (b) will be required to lend conditionally exempt objects, on request by a public museum or gallery, for one special exhibition of up to 6 months in any two year period (or such longer loan and period as would be reasonable in appropriate cases, subject to the duration of the loan not exceeding 25 per cent of the period). They will also be required to provide reasonable public access by appointment to scholars and other members of the public.

Public museums and galleries will be advised of the arrangements for consulting the list of conditionally exempt objects, which will also be accessible to scholars and members of the general public.

The Government believe that these new arrangements will help to meet two specific criticisms voiced by the Committee: the responsibility at present placed on owners to locate public collections willing to display their objects; and the possibility under the present system that owners can be deprived indefinitely of objects that they own.

The revised arrangements will be set out in detail in a new version of Form 700A on which applications for conditional exemption in respect of works of art are made and in the guide to the national heritage and capital taxation which will be issued shortly by the Office of Arts and Libraries.

Recommendations (iii) and (iv)

'In return for exemption from capital taxes, an owner of a work of art should be under an obligation to give a public institution through the Standing Commission on Museums and Galleries the first chance of acquisition in the event of his/her deciding to sell' (Paragraph 11)

'In the event of an owner wishing to sell a work of art refusing to offer it to the nation, the Export Reviewing Committee should have power to recommend the indefinite withholding of a licence to export' (Paragraph 12)

Response

The Government welcome the spirit of these recommendations. They agree that it would be reasonable to expect an owner who had benefited from conditional exemption for a work of art to give a public institution the first chance of acquiring it if the owner subsequently decided to sell it. Owners of objects exempted after 1 September 1982 will be expected to give three months notice to the Museums and Galleries Commission of any intention to sell such objects. The Government also agree that, where an object which meets the Waverley criteria as being an item of national importance is not offered to the nation, the Reviewing Committee on the Export of Works of Art should take this into account in considering the length of time for which an export licence should be withheld.

The Government already have power to withhold an export licence indefinitely. Under the Reviewing Committee's existing rules an indefinite export stop is already automatically recommended to the Minister for the Arts if an owner of a conditionally exempt item whose export is objected to under the export licensing procedures, and which is judged to meet one or more of the Waverley criteria, refuses or announces an intention to refuse an offer from a public collection. The Government intend to advise the Reviewing Committee that an indefinite stop should similarly be recommended if the Museums and Galleries Commission have not been given three months notice of an intention to sell a conditionally exempt object for which an export licence is sought and which meets one or more of the Waverley criteria. Applicants for an export licence would be advised of the need to fulfil the three months notice condition before an application was heard by the Reviewing Committee.

Recommendations (v) and (vi)

(v) 'In the case of private treaty sales there should be a proper and clearly understood incentive to owners to sell to public institutions'. (Paragraph 16)

(vi) 'Simple and clear rules for private treaty sales free of capital taxes should be officially and unequivocally accepted by the Treasury, and arrangements for offering works of art to Inland Revenue in lieu of tax should be clearly laid down by means of a special clause in the Finance Act'. (Paragraph 17)

The Government have considered these two recommendations carefully, and have consulted widely about them. They accept that the present procedures have not always been clearly understood and that the 'douceur' has in the past been thought by some to have statutory force. As a result, it has been argued, negotiations in private treaty sales have been unduly constrained by the practice of calculating the price to the public institution on the basis of 25 per cent of the tax exemption.

The Government accept the Committee's recommendation that private treaty sales should be based on clear and straightforward rules, and, as indicated previously, the forthcoming document from the Office of Arts and Libraries will set these out. It will also confirm that private treaty sales of works of art to public bodies, as well as acceptances in lieu of tax, do not give rise to capital taxation. Although the legislation is silent about the apportionment of the benefit of the tax exemption between the vendor and the acquiring body, the douceur arrangement, which has been adopted as administrative policy for capital tax purposes, follows the principle recommended by the Waverley Committee on the Export of Works of Art. The Government have noted both the Committee's preference for 'free and unfettered' bargaining and the generally expressed view of museums and galleries that the public collections should have guidelines on the way in which they take account of the tax exemptions in negotiating purchases. In the Government's view there are a number of conflicting considerations, one of which is the incidence of tax. They consider that a reasonable procedure, consistent with the Waverley principles, would be to continue to apply 25 per cent of the value of the tax exemption, but that it should be open to museums and galleries to negotiate above or below this figure. For example, a higher figure may sometimes be necessary to provide an adequate inducement in respect of low value items and a lower figure may well be reasonable in very high value cases. The Government's advice to museums and galleries will therefore be that they should think in terms of 25 per cent but be ready to negotiate above or below this figure where flexibility is appropriate.

The Committee recognised that a museum interested in acquiring an object would need to be fully informed of the vendor's tax position. In general the Government's view is that institutions should not enter into negotiations unless vendors are prepared to agree to allow their tax position to be confirmed by the Capital Taxes Office.

The Government have noted the suggestion in the report (paragraph 16) that a committee on the lines of the Rockley Committee should be set up to arbitrate on valuation in private treaty sales. They take the point that there may be a need for some adjudication where there is a difference over estimates, but they do not favour the establishment of another non-Departmental public body at a time when the Government's policy and the general climate of opinion is directed towards reducing the number of such bodies. However, they will certainly be prepared in cases of disagreement to encourage the parties to seek further independent advice.

The Government have considered whether the arrangements for taking account of the tax exemption in calculating the value at which an object is accepted in lieu of tax should be laid down in a Finance Act, but do not see any advantage in statutory provision, particularly in view of the flexible arrangements now proposed for private treaty sales.

Recommendation (vii)

'The capital transfer tax concession on the surrender of an object of art should be raised from 25 per cent to 75 per cent' (Paragraphs 18-19)

The Government note the suggestion in the report (paragraph 19) that the 25 per cent douceur in acceptance in lieu cases offers insufficient inducement to owners. The number of offers accepted, under consideration and in prospect do not in fact support this argument. In view of this and because for private treaty sales 25 per cent will remain the norm, as discussed in the response to Recommendations (v) and (vi), the Government do not propose to make any increase in the rate in acceptance cases.

The Government note the Committee's suggestion that the independent committee discussed in the response to Recommendation (v) should have a part to play in determining the heritage status of the items concerned and in adjudicating on valuations. Here again the Government do not think it would be right to set up a new non-Departmental public body. They are satisfied that the revised system for obtaining expert advice on the pre-eminence and valuation of objects offered in satisfaction of tax, which was announced by the then Minister for the Arts on 7 August 1980, provides a fair and satisfactory way of proceeding.

The system provides that in cases of doubt expert advisers should consult the Museums and Galleries Commission or the Royal Commission on Historical Manuscripts who would then, if necessary, convene an informal panel of independent advisers which might include a representative of the appropriate Historic Buildings Council. It is, of course, open to the heritage departments at present to consult an independent arbitrator in cases of disputed valuation.

The Committee prefaced their recommendation by deploring the present practice whereby the net cost of property accepted in lieu of tax counts as public expenditure and has to be met from the Vote provisions for the protection of the national heritage. As the Committee recognise, there can be no open-ended commitment on the part of any Government to accept objects in lieu of money. The present arrangement for controlling the allocation of resources for the acceptance of objects in lieu is simple, easily understood and brings the matter within Parliamentary Estimates scrutiny procedures. Under any alternative arrangements which might be devised it would still be necessary to take into account the value of objects being accepted in satisfaction of tax in determining the resources to be made available for heritage purposes generally. It would not result in additional resources being made available for other areas of the heritage. The Government have previously made it clear that reimbursement of the Inland Revenue is an integral part of the acceptance in lieu arrangements, and they do not think it would be right at present to change this.

The Government have also considered whether the administrative arrangements for the acceptance of heritage property in lieu of tax might be improved by making an order to transfer to the National Heritage Memorial Fund those functions currently carried out by the Office of Arts and Libraries, the Department of the Environment, and the Scottish, Welsh and Northern Ireland Offices. The National Heritage Memorial Fund was established comparatively recently and the Trustees have indicated that for practical reasons they would prefer not to take on the additional responsibility of dealing with offers of heritage property in lieu of tax at present. The Government therefore propose that no change should be made now in the existing arrangements. The case for transferring responsibility at a future date will however be kept under review and the Government will be interested to have any further views from the Committee and other interested parties.

Recommendation (viii)

'The Inland Revenue should forgo all interest charges which arise from delays in deciding whether or not to accept property under the in-lieu provision'

(Paragraph 22)

Response

This recommendation is similar to that made by the Expenditure Committee (Environment Sub-Committee) in its Third Report on Session 1977/78 - the National Land Fund - which was carefully considered by the present Government. The Government concluded that interest should not be forgone and this was announced on 24 April 1980 by the then Minister of State, Treasury, in answer to a Written Question from Mr Andrew Faulds. No tax is charged on objects accepted in lieu, and the question of interest therefore arises in respect of tax due on other components of the estate. There is no reason why the interest charge on that liability should depend on whether the tax liability on the remainder of the estate is settled in cash or in kind. In so far as the acceptance in lieu procedure may take longer than other forms of payment, increases in the value of objects since the date on which the tax liability arose will be taken into account in arriving at the amount of tax satisfied, so that any increase in value between the date of liability and the date of acceptance in payment accrues to the offerer, not to the Inland Revenue, and may well exceed any interest included in the overall tax charge. The Government feel that they therefore cannot accept the Committee's recommendation on this point.

Tax Credit Arrangements

In paragraphs 20 and 21 of their Report the Committee saw advantages in a scheme whereby an object could be accepted in lieu of a tax liability which was less than the value at which the work was accepted. The balance would constitute a credit available for settlement of a future capital tax liability. The Committee urged that the practical difficulties inherent in this proposal should be overcome.

Response


The Government recognise the prima facie attractions of such an arrangement. However, they doubt whether any vendor would be prepared to accept a tax credit on the lines proposed by the Committee, which would neither attract interest, nor be capable of encashment, and would be eroded in value through inflation. Nor would the Government consider it right to offer a tax credit arrangement on such terms. A

scheme which did not suffer from these fundamental defects of inequity would give rise to a number of practical difficulties which were set out in a paper submitted to the Committee by the Minister of State, Treasury. Given the option of a private treaty sale to the bodies listed in Paragraph 12 of Schedule 6 to the Finance Act 1975 - which has tax advantages similar to acceptance in lieu for the vendor, who can then use any balance as he wishes - the Government do not consider that there is a sufficiently strong case or demand at present for this facility to justify the necessary legislation and administrative machinery. However, this is a matter which they will continue to keep under consideration.

5 MAR 1982

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Privy Council Office,
Whitehall,

London, SW1A 2AT

With the Compliments
of the
Private Secretary
to the
Lord President of the Council



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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

19 March 1982

CC PRESS
1. WFSR to see
2. RA
Wm 19/3
MP 19/3

Dear Mary

I mentioned to you yesterday that the Lord President of the Council and the Chief Whip had considered your Minister's letter of 15 March concerning publication of the Government's reply to the Third Report of the Education, Science and Arts Committee. I am writing to confirm their judgement that it would be preferable to hold up publication of this White Paper until the week beginning 29 March. I understand that this slight delay would not cause any inconvenience to your Minister in connection with the Education, Science and Arts Committee's intention to hold a further hearing before Easter.

I am copying this letter to Mike Pattison, No 10, David Willetts, HM Treasury and to Murdo Maclean, No 12.

Yours sincerely
Nick Huxtable

N P M HUXTABLE
Private Secretary

Miss Mary Giles
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