

The National Museum Directors' Conference Response to the Government consultation *Gifts of pre-eminent objects and works of art to the nation*

Introduction

1. The [National Museum Directors' Conference](#) (NMDC), which represents the leaders of the UK's National Collections and major regional museums, welcomes the opportunity to respond to the Government's consultation on *Gifts of pre-eminent objects and works of art to the nation*. Whilst this response is primarily related to museums the broad views contained herein were formulated with, and represent the agreement of, a range of partners across the cultural sector. This response is also part of wider work in which the NMDC and other members of cultural bodies are involved around the philanthropy agenda - going back past the Green Paper on Giving¹ and the Budget 2011, to 2008, when a number of these bodies produced the document [Private Giving for the Public Good](#) and further back to work around the Goodison Review. We have also responded to the Government consultations: *A new incentive for charitable legacies* and *Reform of the taxation of non-domiciled individuals* as part of this work.
2. At a time of economic recovery museums are more important than ever. They deliver world-class public services, build confidence in Britain and stimulate the creativity and innovation that will help drive economic success. Last summer saw a record number of visitors to the UK's national museums, with over 5.7 million visitors in August 2010. This represents an increase of 11% from August 2009. Our museums are committed to ensuring their extremely diverse collections can be cared for, shared and enjoyed by all and will be passed on as a legacy for future generations. The majority of their beneficiaries are yet to be born and museums hold collections in trust for future generations who are not now in a position to contribute financially to the museum sector.
3. The Government's fresh approach to cultural philanthropy is very welcome, and we are encouraged by the range of Government activity and the concrete proposals in this area in the last few months. The announcements in the Budget 2011, which support and encourage philanthropic giving, are very important. This proposed scheme to encourage gifts of pre-eminent objects and works of art to the nation in particular, if it is well designed, will crucially help to support the formation of long-term and life-time relationships between individual and corporate donors and cultural organisations.
4. It is with this in mind that we strongly welcome this consultation; it reflects NMDC's requests as part of our Green Paper response and we are very grateful that these have been taken forward. We are encouraged to see the DCMS, HMRC and HMT jointly owning these proposals and are pleased to see that the scheme is to be applied to a full range of 'cultural objects'.
5. More specifically, we wish to respond to this consultation in two ways. Firstly, we have a number of key suggestions, comments or concerns. These are shared by a range of organisations across the cultural sector and we feel that it is of fundamental importance that these are addressed as part of this consultation process and in the design of the

¹ Our response is at:
http://www.nationalmuseums.org.uk/media/documents/what_we_do_documents/giving_green_paper_response_march2011.pdf

scheme. Secondly, we have views on each of the consultation questions and we will respond to each of these in turn.

Key issues

6. We believe that it is of utmost importance that the new scheme does not in any way prejudice or damage the very successful AIL scheme. Our main concern is, therefore, the level of the cap proposed. Whilst we understand and accept the need for a cap, the proposal that there will be a ceiling of £20m on both the AIL and the new scheme is very disappointing given that this year the AIL panel has over £30m of offers on its books (£14.9m already approved and £17.4m under consideration). With this in mind, we are concerned about how the balance of the two schemes will be achieved when the inevitable conflict arises over access to a limited pool of funds. We hope that the Government is able to make available a higher ceiling to accommodate the new scheme in this important initial stage.² If this is not possible, we believe that there is a danger that the two schemes will be in competition with each other, with the new scheme being successful at the expense of AIL. This could ultimately defeat the principle of increasing charitable giving in the UK and cause friction between traditional AIL on inheritance tax and lifetime giving, probably to the detriment of both, since donors may be dissuaded from making offers if they fear delay arising from an extended process of negotiation. Therefore, the ambition to encourage (and so increase) the transfer of pre-eminent works of art and historical objects to the nation could be compromised. We are also concerned that the £20m 'cap' in the current AIL scheme was never a ceiling but a nominal figure which could be exceeded if necessary. The consultation implies that under the new combined scheme, the £20m will now be treated as a limit, with the Secretary of State ensuring that it is not exceeded. This seems, therefore, to add a more restrictive element to the AIL scheme than is currently in place. There is also no indication if, or when, the proposed limit may be subject to review.
7. There is also significant concern about the proposal that the Government will own the works and lend these to museums. It is not clear from the consultation document why the new scheme proposes a different system from that used successfully for AIL objects, particularly as our institutions are already the custodians of the national collection. This appears to introduce another layer of administration at a time when Government is seeking to streamline and make efficiencies. This approach could also risk the important aim that the scheme should encourage owners and institutions to form close relationships during the lifetime of the owner – potential donors develop close and trusting relationships with those institutions which they support and may be dissuaded from giving a work of art if the end destination is uncertain.³ It is believed that the way in which the AIL scheme operates, with a system of allocation and transfer, is much more practical and desirable. Some museums have been working hard to convert some of the long term loans to their institutions to gifts (partly also to address the cost of repetitive loan administration costs to the public purse). It therefore seems paradoxical, in the absence of a clear explanation in the consultation document for the proposal, for museums to be trying to convert important long term loans to gifts to the nation, only to find that those gifts when they enter the museum are once again loans. There is also a question about the cost of conservation and cataloguing work to host institutions who will not actually own the works – some of our members are concerned that an object may be allocated elsewhere after it has undergone expensive conservation treatment. Indeed many institutions are unable to undertake conservation work on objects that they do not own, yet without this work, short and long-term access cannot always be guaranteed, potentially discouraging donors from considering the scheme. There are also questions

² There is no cap on the gift aid scheme for example.

³ The National Gallery of Scotland has made the important point that in the devolved administrations the proposal that donated objects remain the property of the UK Government brings an additional disincentive to donors where the first loyalty of potential donors is likely to be a local or regional institution rather than a UK-wide one which seems more distant or abstract. This point may be equally relevant for specific types of collections or regional collections in England.

about responsibility for IP rights, indemnity, depreciation and other issues under the current proposals, and whether institutions could use the items for marketing and commercial purposes. Our members believe that it is in the best interest of the pre-eminent objects that a sense of responsibility within a single institution develops to ensure the long-term care and knowledge for that object.⁴ Museums could then lend these objects to other institutions wherever possible.

8. There is strong agreement amongst our members and also across the cultural sector that the tax reduction offered should be higher than 25%, and should be the same as that for cash and shares. Views from a number of tax advisers, philanthropists and potential donors, in response to the proposals in this consultation⁵, indicate that there is a strong degree of consensus that donors will only be encouraged to give if there is a level playing field; and that works of art and cultural objects are treated in the same way as other items. There is still a significant element of philanthropy in this and it would reduce the number of potential donors who decide to take a risk and choose the auction route. Under current proposals, donors may prefer to make a donation of cash or shares because of the tax benefit, rather than a gift in lieu, which could result in that object being placed in the open market and lost to the nation. A lower tax reduction is also more likely to confirm an individual's existing wish to donate material to the nation rather than to provide an incentive for those who had not previously considered donation. As such the new scheme would not fulfil the Government's wish to encourage new donations of works.
9. We also believe that the scheme would be more beneficial and attractive if the UK tax benefit could be spread over a number of years. The Australian scheme, for example, allows the tax break to be spread for up to 5 years.⁶ We believe that limiting tax remission on offers to the tax year of the offer will severely limit the quality of offers (especially of the most valuable works of art) and may mean that the only people who may take advantage of the scheme are those who were going to donate objects to a museum anyway. It will also penalise those who are asset rich and cash poor, and who would not be able to gain enough benefit from one tax year to make the donation worthwhile. There is some concern that a lack of carry over could lead to pressure on museums to deal with items as 'hybrid' cases, in which the museum is asked to cover the balance/some of the balance between the value and the tax remission. We also believe that it is important that there is an element of carry back to ensure that the scheme can take into account donations made at the end of a financial year or into the new financial year when accounts have been completed and it is decided that a donation can be made for the previous year.
10. We strongly agree that the scheme should be available to as many donors as possible and are encouraged that this appears to be the intention. The scheme should include income, capital gains and corporation tax, and be open to both individual and corporate donors.
11. Finally, it will be important that measures are put in place to ensure that all the countries of the UK are fairly represented in the administration and outcomes of the new scheme, and that there is support for gifts to regional museums. It will also be important to evaluate the scheme as a whole and examine the impacts, and for Government to be open to making further changes that may be needed to support and encourage donations. Similarly it will be important that guidance produced as part of this scheme, and the new policies within it, are simple to understand and implement; complexity is a major deterrent for donors and for charitable organisations (especially those with a small or no development team).

⁴ When objects are donated they are often accompanied by an informal deed of covenant relating to display, conservation etc... It would be difficult for any Government to provide such agreements.

⁵ Evidence from the Art Fund

⁶ The Australian scheme also gives the donor 100% of the value of the object set against their marginal tax rate.

Individual Answers

Question 1: Should the new scheme accept gifts only from individual donors? If so, why? Or should the new scheme be open to other donors including corporate bodies? Why?

As stated above, we strongly agree that the scheme should be available to as many donors as possible. There are significant opportunities in including corporate donors as well as individual donors and we are very encouraged to see that this is included as an option in the paper. We believe that this could lead to gifts rather than sales from corporate collections and offers an excellent opportunity to build relationships between corporate and UK cultural institutions.⁷

Some of our members have also emphasised that the definition of donor must include the creator him/herself, to allow for the transfer of pre-eminent objects that do not habitually circulate in the market (e.g. archives) before finding an institutional home. With this in mind, it is especially important to take a donor's wishes into account when confirming the allocation of an object as creators have the greatest stake in the final location of their creative inputs.

In the future we would also encourage Government to consider extending this incentive to corporate donations of cash towards the purchase of pre-eminent works, following the relatively new French practice that has been highly effective in bringing major works to museums. Since 2002 the French Government has allowed companies to donate money or help museums buy works of art in return for a deduction in corporation tax. This has led to a number of partnerships being formed – for example AXA now helps buy around €11m of art for the Louvre each year – and a large number of very significant items have passed into public ownership which otherwise might have been sold. This proposal could help fund major appeals such as the recent examples of Titian, the Blue Rigi or the Staffordshire Hoard.

Question 2: How many donors do you think might be interested in the new scheme?

There has been a high level of interest in the current AIL scheme, with the only reservation being that it does not enable lifetime giving. One of NMDC's members has pointed out that the focus here should not be so much about the numbers of interested donors but the type of donor and the works that could be gained through the scheme. Whilst we cannot offer any coherent quantitative evidence in response to this question, particularly as the level of incentives are not yet clear, we can offer some examples:

- In fields in which the British Library is already active, such as contemporary archives, there is clear evidence of writers wanting to be able to make arrangements for their archives during their lifetimes, in order to resolve questions of financial planning and permanent allocation themselves, rather than leaving the task to their estates;
- One of our member museums has already had a preliminary enquiry about a gift which could be donated under this scheme;
- The National Gallery of Scotland estimates that, from their own circle of donors and supporters, the scheme could appeal to several hundred potential benefactors. They also note that many larger companies and smaller firms in Scotland have significant collections and they are convinced that there is potential for them to benefit if the right incentives were in place.
- There is no clear evidence base as to the potential appetite from donors for this scheme in relation to archives and manuscript collections, however, a significant number of collections are given to archive repositories each year (mostly of limited financial value). Some 20% of current AIL cases involve offers of archives or manuscripts.

⁷ However, if the cap is set too low this could hinder the benefits of the range of donors. For example, gifts of business archives (whilst very significant) could take up a substantial percentage of the allocation.

Question 3: Do you agree that pre-eminent objects should be defined for the new scheme in the same way as for the existing IHT AIL scheme? If you don't agree, what criteria or guideline would you add to, or exclude from, the list, and why?

Question 4: What kind of objects might persons be interested in donating under this new scheme?

We feel strongly that the definition of pre-eminent objects and works of art should be as broad as possible. The definition of 'pre-eminent' currently used within the AIL scheme – which allows for pre-eminence in an international, national or regional context, and includes modern and contemporary art and objects – works well and should also be the criteria applied in this scheme. There is also an appetite amongst some NMDC members to include the works of living artists, authors and creators of archival collections within the scope of the scheme and ensure that items such as archives and books should be included in both physical and digital form. It has been suggested that it may be sensible to apply a lower limit for the value of objects offered through the scheme so that the administrative costs in establishing pre-eminence are not disproportionate to the value of the material gifted.

Question 5: If you think the new scheme should not be operated on a first come, first served basis, please explain why. If not on a first come, first served basis, how do you think the expert panel should prioritise the offers of gifts of pre-eminent objects if the value of gifts is over the annual limit?

We disagree with the proposal to operate the scheme on a first come, first served, basis and we would prefer an approach which looks at applications at various points in the year, perhaps with the money available in tranches with set application closure dates. If the scheme operates on a first come first served basis, is oversubscribed and has reached its limit part way through the year, owners may instead take their works to auction and some of the best items could be lost to the nation. The AIL scheme is determined by mortality, and therefore randomly distributed. This scheme will have different drivers. We believe that a number of donors will look to donate around the end of the financial year.

Similarly, if the cap has been reached before the end of a given year, the opportunity may be lost for donors to buy works to donate that have, for example, been export stopped – and these similarly may be lost. Flexibility is important – quotas by type or value of object would be undesirable. Both options of first come first served and decisions in tranches run the risk of there being insufficient funds for the accommodation of high-value objects. It will be important to ensure that the tax benefits of these objects could be spread over a number of sessions/years to ensure that they are not lost to the nation.

Question 6: Which institutions should the objects be loaned to? Should this differ from the institutions that can currently be allocated objects under the existing IHT AIL scheme, and if so, why?

Such loans should be to any body currently able to be allocated any object accepted under S230 IHTA 1984 in lieu of tax. The qualifying bodies are defined in S 2A of the National Heritage Act 1980 which can be accessed at <http://www.legislation.gov.uk/ukpga/1980/17/section/9> . This has the merit of being already in statute, is broader than Accreditation and fully embraces the archival world as well as a few bodies which don't fit into the normal rules such as the British Film Institute. As noted above, there is a strong feeling that institutions should be able to own (in perpetuity with a claw-back option if they should close), not just borrow these works. As with AIL we believe that the donor should be able either to nominate an institution or express a non-binding wish regarding the destination of their item.

Question 7: Do you agree the expert panel should follow the AIL process when it asks for applications from interested institutions for the allocation of an object? If not, what processes should be used?

For reasons of consistency, efficiency and clarity, there is strong support that the review of objects being offered should be undertaken by the ALL panel, not a new body, and that the panel should follow a similar process as it does for AIL. This will be particularly important if the two schemes are to operate within one cap. The scrutiny of a well qualified committee will be essential if we are to ensure that the objects accepted by the scheme are of the requisite quality and interest, and a fair value is agreed. We suggest that this approach will require investment in, and strengthening of, the ALL secretariat, a broader team of advisors⁸, perhaps more meetings of the panel and some extra administrative resource. At present the ALL Committee members give freely of their time to spend a day a month considering AIL offers. If they have to consider offers made under the new scheme as well there may be challenges on their time.

Question 8: What other conditions should be attached to the lending of objects? What level of public access should there be? How should public access be ensured?

We agree that public access is important and can be achieved through either display or access/personal visit depending on the fragility of the item. The increasing developments in digital and virtual access will also need to be considered as part of this definition. 100 days or more per year sounds reasonable in normal circumstances, although museums with large collections cannot always guarantee permanent display of objects and this should not disadvantage them in the process if the object is most appropriate for their collection. Fragile items will also need to be treated differently. We suggest that institutions are given a 'preservation override' for deciding on such items on a case by case basis. Any suggestion that items would be loaned for exhibition only effectively excludes archival collections, manuscripts, printed books, and similar, which are exploited most fully through both exhibition and individual study. We would recommend that a register of material accepted through the scheme is maintained on a publicly accessible website.

Paradoxically, the loaning of an object from Government rather than its transfer to an institution may limit the ability of an institution to provide access, which is often dependent on preservation, cataloguing or processing work. Many organisations seek external funding to support these activities, but funders such as HLF have not necessarily welcomed bids to support preservation and access costs for loaned items. Public access can best be ensured by transferring title to the allocated institution (as with AIL).

Question 9: What rate of an object's value do you think would be sufficient to encourage donors to give objects to the nation, and why?

A lower % tax reduction is likely to be a disincentive to donors, especially as some will be aware of more generous rates available in other countries. There is a general feeling that the rate should be the same rate as applied to cash and shares. Given the proposed rates on offer, an individual might feel that they and their Estate would benefit more substantially if they were to either sell their archive on the open market or wait until after their death for an AIL settlement.⁹

By way of example, the National Archives believe that it is doubtful that the scheme would attract many additional donations of historical papers from private individuals at 25% tax reduction, as most of these owners are likely to be paying a marginal tax rate of 40 or 50%. They are also particularly concerned that prominent living individuals such as writers can sell their papers abroad without restriction as they require no export licence. A higher relief rate would be needed to incentivise some of these donors who may be relying on gaining

⁸ Including representation from across the UK and the regions.

⁹ The National Library of Scotland has noted, for example, that compared to art works such as paintings, items such as books, manuscripts, authors' notes, sketches, and so on, generally have relatively low financial value in the market place. They may however have a high 'cultural value'. It is important that the rules of the scheme do not discourage or ignore the possibility of the donation of such items to the nation. This could be a result, for example of the potential '25% rule'; a tax allowance of £10,000 for a manuscript with a market value of £40,000 may not be a great incentive.

enough value on these assets to provide a 'pension'. **Please see paragraphs 8 and 9 above for a full explanation of our views in this area.**

Question 10: If people other than individuals are eligible to make a donation under the new scheme, for example corporate bodies, should a different rate of reduction be used? If so what should the rate or rates be, and why?

The rate should mirror the treatment of cash and shares. If there are instances where it is more lucrative for corporations to donate their work under Corporation Tax provisions they should be encouraged to do this instead (making way for others to use this proposed scheme).

Question 11: Should the tax reduction available on each individual object be capped? If so, what should the cap be, and why?

Question 12: Should a cap be placed on the amount of tax reduction available per donor? If so, what amount?

Question 13: What difference do you think it would make if there was no cap on the overall relief available under the new scheme?

Question 14: Are there any other ways of accommodating gifts of very high value?

There is a concern about how high-value gifts will be dealt with and accumulated. The scheme should not act as a disincentive for donations of gifts of importance or high-value. This issue also links to that at paragraph 6 above regarding the cap. It is clearly desirable, and an important aim of the scheme, that the best objects and art can be brought into public view and ownership. If the scheme is too restrictive, or the benefits capped for a certain donation or item (which we would oppose), there is a risk that important works will be missed for the nation. Similarly it is very important for some valuable objects, and for donors who may be asset rich but cash poor, that the tax benefits of a donation can extend over a number of years – for example, the Australian Cultural Gifts Program allows donors to spread the tax reduction over 5 years, which works well. Similarly in the Republic of Ireland and Canada, tax relief (tax credit) can be carried forward for a minimum of five years (and in the case of Ireland, indefinitely). We would encourage consideration of a similar mechanism in the UK. It has also been suggested that donors may wish to offer objects which form part of a coherent collection over a number of years, and this will need to be considered in the design of the scheme.

Question 15: Impact on individuals and households - the Government would welcome information from advisers or their representative groups about how likely they are to promote this measure and what they expect the take up and the value of the objects donated might be.

The scheme is very welcome and has the potential to be as successful as the AIL scheme for all concerned if it is well designed. If the objects and works of art were transferred to institutions as with AIL, this would certainly strengthen existing relationships between owners and institutions and bolster the climate of philanthropy. A number of NMDC members will be very keen to promote the scheme via donor communications and marketing (as with other tax incentives) and as a key part of dialogue with major collectors. However, institutions are also generally more likely to invest in the promotion of this scheme if they were likely to obtain permanent additions to their collections as a result.

Question 16: Impact on business and the third sector – the Government would welcome information from advisers or their representative groups on the impact of this measure on charities, museums and other institutions.

If the cap were set at a higher level, it is reasonable to assume that the range and quality of objects and art available for the public to enjoy would increase and be significant. Amongst many other benefits, in the longer term this would increase the attractiveness of the UK as a cultural tourism destination, with associated benefits for the economy. If the value of the scheme is capped too low, however, this could lead to an increase in the number of high

value items that have to be purchased through appeals so they are not lost to the nation. This could cause a problem for museums.

The scheme will also provide an additional means of persuading collectors to donate rather than sell works to museums so long as the % tax benefit is reasonable. There is however a risk that there could be an initial decline in straightforward donations of works to collections as people apply for this scheme and it will be therefore be crucial that the scheme is designed in such a way that it does not put-off donors by being too restrictive in nature.

Finally, the National Archives has noted that in the archival sphere, for example, ALL allocations have been linked to conditions which have levered up standards of care, particularly in terms of storage accommodation, and they hope that this scheme would have a similar impact.

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