

## **Guidance on the export of cultural goods brought into the United Kingdom (UK) from outside the European Union (EU) but not released into free circulation**

In the past there has been some confusion about the type of licence required to export or re-export<sup>1</sup> cultural goods brought into the UK from outside the EU which have not been released into 'free circulation' within the EU. The purpose of this guidance is to provide clarification on the issue. This guidance supplements and does not replace the MLA publication '*UK Export Licensing for Cultural Goods: Procedures and guidance for exporters of works of art and other cultural goods*' to which applicants should refer and which can be found on the MLA's website at [http://www.mla.gov.uk/what/cultural/export/export\\_licensing](http://www.mla.gov.uk/what/cultural/export/export_licensing).

### Summary

This advice explains that under EU licensing requirements, cultural goods which are 'Community goods'<sup>2</sup> and meet the relevant EU thresholds need an EU licence for export outside the EU, but cultural goods which are 'non-Community goods' do not.

However, with four exceptions<sup>3</sup>, all objects of cultural interest manufactured or produced more than 50 years before the date of exportation require a UK licence under domestic export legislation. This means that non-Community goods (re-) exported outside the EU will need to be exported under a UK licence. Items under the UK financial thresholds will be covered by the Open General Export Licence (OGEL).

In circumstances where both an EU licence and a UK licence are required and an EU licence is granted, the exporter can rely on the OGEL to satisfy the UK requirements.

### The principle of free circulation

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<sup>1</sup> Technically, when referring to the EU export licensing regulations, it is only correct to refer to the 'export' of goods outside the UK when referring to Community goods, i.e. those in free circulation. The correct technical term for non-Community goods from outside the UK which have not been released into free circulation is 're-export'.

<sup>2</sup> See paragraph 3 for the definition of 'Community goods'.

<sup>3</sup> These exceptions are: (a) postage stamps and other articles of philatelic interest;

(b) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;

(c) letters or other writings written by or to the exporter or the spouse of the exporter; and

(d) goods exported by, and being the personal property of, the manufacturer or producer thereof, or the spouse, widow or widower of that person.

1. The principle of 'free circulation' enables the free circulation of 'Community goods' throughout the EU. This principle applies not only to goods wholly obtained or produced in the EU but also to 'non-Community goods' which have been imported from outside the EU and 'released' into free circulation in the EU after the payment of any import duties and taxes to which they might be liable.

#### EU export licensing requirements for Community goods and non-Community goods

2. EU export licensing requirements require an EU export licence for the export of cultural goods outside the customs territory of the EU<sup>4</sup> if the goods are Community goods (see below) and they are above the EU thresholds.<sup>5</sup> However, if the cultural goods are non-Community goods, an EU export licence will not be required for export outside the customs territory of the EU, irrespective of whether the threshold limits have been met.
3. 'Community goods' have the meaning given in article 4 of the Community Customs Code<sup>6</sup> and are defined as goods:
  - wholly obtained or produced in the customs territory of the Community under the conditions referred to in Article 23 of Council Regulation (EEC) No 2913/92 of 12 October 1992 and not incorporating goods imported from countries or territories not forming part of the customs territory of the EU,
  - imported from countries or territories not forming part of the customs territory of the EU which have been released into free circulation,
  - obtained or produced in the customs territory of the EU, either from goods referred to in the second indent alone, or from goods referred to in the first and second indents above.
4. This means that cultural goods which:
  - i) have been imported from countries or territories which do not form part of the customs territory of the EU; and
  - ii) have not been released into free circulation;

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<sup>4</sup> The purpose of the customs territory of the EU is to apply a common customs code and trade policy in relations with countries outside the EU. The customs territories of the EU are listed in article 3 of Council Regulation EEC 2913/92.; and are also referred to at Appendix B of MLA's 'UK Export Licensing for Cultural goods: Procedures and guidance for exporters of works of art and other cultural goods'.

<sup>5</sup> The cultural good must be above the relevant age and financial thresholds specified in Council Regulation (EC) No 116/2009.

<sup>6</sup> Council Regulation EEC No 2913/92 of 12 October 1992 establishing the Community Customs Code (as amended).

will not require an EU export licence for export outside the EU (even if they are being exported to a different territory outside the EU from the territory from which they were brought into the UK).

5. Non-Community goods (goods imported from a jurisdiction outside the customs territory of the EU) may be imported into the UK under a Temporary Admission procedure and subsequently re-exported outside the EU. In such cases they are not 'released' into free circulation in the EU, import duty and/or VAT is suspended and the goods remain non-Community goods. Examples include goods imported under Customs Procedure Codes 53 00 D 25 (goods for exhibition) and 53 00 D26 (goods for auction). However, where non-Community goods are imported into the UK for exhibition at a museum or gallery approved by the National Import Relief Unit (NIRU) of HM Revenue & Customs under Customs Procedure Code 40 00 C12, they are 'released' into free circulation even though they are relieved from payment of any import duty and/or VAT. Such latter goods therefore are Community goods.
6. Payment of any import duty and VAT are also suspended while non-Community goods travel 'in transit' from one member state to another within the EU without being released into free circulation. Where this happens, the goods retain their status as non-Community goods and do not need an EU licence to leave the UK.
7. In some cases, cultural goods may be imported under the Temporary Admission procedures even though they have come from a jurisdiction within the EU customs territory. This is because various territories of the EU are treated as special cases because they are outside the EU for fiscal purposes<sup>7</sup>, but inside the EU for customs purposes. These territories are listed in Annex A. Cultural goods from these territories may be held on Temporary Admission, but because they are from a jurisdiction from within the customs territory of the EU, they are Community goods for the purposes of EU licensing requirements. For example, cultural goods from the Channel Islands which are held on Temporary Admission are Community goods (because the Channel Islands are within the customs territory of the EU) and therefore will need an EU export licence if they are exported outside the EU and are above the EU thresholds.
8. Community goods (whether they enjoy that status either as a result of being wholly obtained or produced in the EU or because they were originally non-

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<sup>7</sup> The purpose of the fiscal territory of the EU is to require those territories to transpose EU legislation on indirect taxation (i.e. VAT and excise taxation) into their national legislation.

Community goods but were subsequently brought into free circulation) will generally become non-Community goods if they leave the customs territory of the EU on a permanent basis, accompanied when necessary by the appropriate export licence. In certain circumstances, however, Community goods could retain their status if exported on a temporary basis, with a temporary licence if required, such as when sent abroad for exhibition under cover of an ATA carnet. Applicants who are unclear whether items they wish to export are Community goods or non-Community goods should telephone the HM Revenue & Customs helpline on 0845 010 9000.

### UK export licensing requirements

9. Cultural goods which do not require an EU licence, because they are non-Community goods, will still require a UK export licence if they meet the requirements of the UK legislation (The Export of Objects of Cultural Interest (Control) Order 2003). This requires a licence for the export outside the UK of any object of cultural interest manufactured or produced more than 50 years before the date of exportation subject to four exceptions.<sup>8</sup> This is irrespective of whether such goods are Community or non-Community goods and irrespective of whether they have been released into free circulation or not.
10. The UK licensing requirements can be satisfied by one of the following licences:
  - (i) Open General Export Licence (OGEL) - this can be used if the value of the object is below the UK financial thresholds;
  - (ii) Open Individual Export Licence (OIEL) - the consignor of the object must hold a valid OIEL at the time of export and the conditions of that OIEL must be satisfied;
  - (iii) Individual Export Licence - this is needed if the value of the object is above the UK financial thresholds and the consignor does not hold an OIEL (or the conditions of that OIEL have not been satisfied).
11. Applicants who need a UK individual licence to export non-Community cultural goods outside the EU should send in a covering letter with their

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<sup>8</sup> These exceptions are: (a) postage stamps and other items of philatelic interest:

(b) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter;

(c) letters or other writings written by or to the exporter or the spouse of the exporter; and

(d) goods exported by, and being the personal property of, the manufacturer or producer thereof, or the spouse, widow or widower of that person.

application confirming that the goods in question are non-Community goods.

Export licensing requirements for items brought into the UK as non-Community goods which are subsequently released into free circulation

12. Cultural goods which are brought into the UK as non-Community goods will become Community goods if they are released into free circulation as a result of any import duty and VAT being paid (for example when an item has been purchased outside the EU and the intention is for it to stay in the UK). Where a cultural good is brought into the UK as a non-Community good but subsequently becomes a Community good as a result of being released into free circulation, it becomes subject to the requirements of the EU licensing regime. In practice, this means that it will require an EU licence for export outside the EU if it is above the relevant EU age and financial thresholds. Goods that require an EU licence do not also require an individual UK licence. Where an EU licence is granted the exporter can rely on the OGEL to satisfy the UK requirements.

Practical examples of how the requirements operate

13. Mr Brown brings five oil paintings from the USA to the UK to try and sell them at auction. All five paintings were produced more than 50 years previously, originate from outside the EU, were painted by American artists and were legitimately exported from the USA. Paintings A, B and C are each valued at £150,000, painting D is valued at £190,000 and painting E is valued at £200,000. Mr Brown brings in all five paintings under the Temporary Admission procedures and so payment of import duties and import VAT is suspended.
14. At auction Mr Brown sells painting A to a French purchaser, M. Vert, for £150,000 and painting B to an Australian, Mr Black, for £150,000. Paintings C, D and E fail to sell.
15. M. Vert and Mr Black want to know whether they need individual export licences to take the paintings to France and Australia respectively. Mr Brown wants to know whether he needs an individual export licence to return paintings C and D to the USA, and whether he needs an individual export licence to take painting E to France.
16. M. Vert has bought painting A for £150,000 and will export the painting to France. As the painting will remain in the EU, import duty and VAT must be paid and as a result of these duties being paid, the painting will be released into free circulation and will be classified as Community goods. An EU licence is not required to export cultural goods (Community or non-

Community) from one member state to another. However, M Vert needs a UK licence to export the painting outside the UK to France. As it has sold for a value below the UK threshold (which is £180,000) he can export it from the UK to France under the OGEL<sup>9</sup>.

17. Mr Black has bought painting B for £150,000 and will re-export the painting outside the EU (to Australia). As the painting will be re-exported outside the EU following the sale at auction, the painting remains a non-Community good and no EU licence is therefore required. Liability for the import duty and VAT relieved under the Temporary Admission procedure will be discharged when the painting is re-exported to Australia. However, Mr Black needs a UK licence to re-export the painting outside the UK. As the painting has sold for a value below the UK threshold (which is £180,000) Mr Black can re-export it to Australia under the OGEL and so does not need to obtain an individual UK licence.
18. Paintings C and D did not sell at auction and will be re-exported to the USA. As the paintings will be re-exported outside the EU they will remain non-Community goods so import duty and VAT will not be payable. An EU licence is not required to re-export non-Community cultural goods outside the EU, so Mr Brown does not need to apply for an EU licence to take back either painting to the USA. However, Mr Brown needs UK licences to re-export both paintings outside the UK. As painting C (valued at £150,000) is under the UK threshold for oil paintings (£180,000), he can re-export it under the OGEL. As painting D (valued at £190,000) is over the UK threshold for oil paintings (£180,000) he will need to apply for an individual UK licence to take it back to the USA.
19. Painting E did not sell at auction and Mr Brown decides to move it to France to see if he can sell it at auction there. As the painting has not been released into free circulation, it remains in transit and so remains a non-Community good. It will need a UK licence for export outside the UK. As painting E is valued at £200,000, over the UK threshold for oil paintings (£180,000), Mr Brown will need to apply for an individual UK licence.

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<sup>9</sup> The UK Open General Export Licence (OGEL) permits the export of certain cultural objects valued at or below specified financial thresholds without the need to obtain an individual UK licence.

## Special Territories of the European Union

Aland Islands

Andorra<sup>10</sup>

Canary Islands

Channel Islands

French Overseas Departments

- French Guiana
- Guadeloupe
- Martinique
- Reunion

Mount Athos (Agion Oros)

San Marino<sup>11</sup>

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<sup>10</sup> Excludes the trade of goods belonging to chapters 1-24 (animal products, vegetable products and foodstuffs) of the Harmonised System.

<sup>11</sup> Excludes the trade of goods belonging to chapters 72 and 73 (iron and steel) of the Harmonised System.