

**BRIEFING FOR CULTURE, ARTS & LEISURE COMMITTEE ON THE  
DONATION OF CULTURALLY VALUABLE OBJECTS IN LIEU OF TAX -  
FINANCE BILL 2012 - LEGISLATIVE CONSENT MOTION (LCM)**

**Detail**

The Westminster Government is proposing to introduce several schemes which are intended to encourage a culture of philanthropy and charitable giving. There are several aspects to this work, some of which relate to reducing tax for people or organisations that give to charity.

2. The Finance Bill (2012) includes provision for a Scheme (at Schedule 14) that will reduce tax liabilities for people who gift 'pre-eminent property to the nation' at sections 22 & 23 (Part 4). The Bill started its passage through the Westminster Parliament (as taxation is a reserved matter) when it was formally laid on 26<sup>th</sup> March.
3. The laying of the Bill at Westminster will require the Department to seek Executive and Assembly approval for a Legislative Consent Motion (LCM) as a matter of urgency. Before Executive Approval is sought, and in line with the relevant procedures, the Minister would welcome the views of the CAL Committee on the matter.

**The Proposed Cultural Gifts Scheme**

4. The proposal is similar to an existing scheme where culturally significant objects can be gifted 'to the nation' in lieu of inheritance tax. Individuals or organisations (including corporations) that gift items to institutions where they will be held in trust for the public (for example NMNI, PRONI, the National Trust or a local museum) will have their tax liability reduced by a proportion of the value of the item donated. For individuals this may off-set Capital Gains or Income Tax and for organisations it can be applied to Corporation Tax.

5. 'Pre-eminent property' (s.22) is defined as any picture, print, book, manuscript, work of art, scientific object or other thing (or collection of these) that the relevant Minister is satisfied is 'pre-eminent' in the context of Northern Ireland the object is of national, scientific, historic or artistic interest or particularly associated with a significant building (s.23). The relevant sections of the draft Finance Bill are attached at **Annex A**. It should be noted that this list does not include land or property.

### **'The Relevant Minister'**

6. If the object in question is purely or partly of 'Northern Ireland interest'<sup>1</sup>, the draft legislation proposes that the 'Relevant Minister' is the NI Minister for Culture, Arts and Leisure. In other words the DCAL Minister would decide if the object was significant enough for it to be accepted under the scheme. A NI Executive Minister having this responsibility is consistent with the existing scheme for accepting property in lieu of Inheritance Tax and is essential in ensuring this scheme benefits organisations here.
7. Accompanying the legislation is the proposed scheme which gives practical details on how the process would operate. The scheme proposes that the DCAL Minister, in addition to determining the 'pre-eminence' of an object, would have a further function at the end of the process in arranging the transfer of the object from the donor to the recipient institution. This may involve temporary transfer to the Minister. The relevant section is attached at **Annex B**.

### **Legislative Consent Motion**

8. A Legislative Consent Motion (LCM) is a motion which seeks the agreement of the Assembly to the Westminster Parliament considering provisions of a Bill which deal with:
  - a. a transferred matter; or
  - b. a change to –

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<sup>1</sup> e.g. if the item is located here, or if the person making the donation says they want it to be kept here, or if it has a particular relevance to our history or lives.

- i. the legislative competence of the Assembly;
- ii. the executive functions of any Minister;
- iii. the functions of any Department.

9. Given that this is Westminster legislation (on a reserved matter) which is giving an additional function to a NI Executive Minister, this part of the Finance Bill requires a LCM to be brought to the Assembly. This will enable the Scheme to operate in the same way across each devolved administration.

#### **Westminster Timetable**

10. The Finance Bill was published on 29 March (while Westminster was in recess) and formally laid on 26 March. Usual protocols require that a Legislative Consent Memorandum (including an Assembly Motion) is laid before the Assembly within ten working days of the Bill being laid in Westminster however this will not be possible in this case, due to the accelerated Westminster timetable, Executive Business, the Assembly recess and the required process for consultation.
11. There will be further opportunities as the Bill progresses through the Westminster process to make amendments to reflect the wishes of the Assembly if required, however the whole LCM Process will need to be completed by the first week in July, at the latest.

#### **Consultation**

12. Public consultation on the Proposal for a Cultural Gifts Scheme was undertaken by HMRC between June 2011 and September 2011. Further public consultation on the draft Scheme itself was carried out by DCMS between December 2011 and February 2012. In addition DCAL has carried out an Equality Screening of the Proposal.

[http://www.hm-treasury.gov.uk/consult\\_gifts\\_art.htm](http://www.hm-treasury.gov.uk/consult_gifts_art.htm)

<http://www.culture.gov.uk/publications/8667.aspx>

**Finance Bill 2012 - Charity and Philanthropy measures – extract from  
Schedule 14 - Sections 22 & 23 which relate to the duties of the DCAL  
Minister.**

**PART 4**

**GENERAL PROVISION**

***Orders***

- 21 (1) An order under Part 2 or 3 of this Schedule is to be made by statutory instrument.**
- (2) It may include transitional and saving provisions.**
- (3) A statutory instrument containing an order under Part 2 or 3 of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.**

***Pre-eminent property***

- 22 (1) In this Schedule, “pre-eminent property” means –**
- (a) any picture, print, book, manuscript, work of art, scientific object or other thing that the relevant Minister is satisfied is pre-eminent for its national, scientific, historic or artistic interest,**
  - (b) any collection or group of pictures, prints, books, manuscripts, works of art, scientific objects or other things if the relevant Minister is satisfied that the collection or group, taken as a whole, is pre-eminent for its national, scientific, historic or artistic interest, or**
  - (c) any object that is or has been kept in a significant building if it appears to the relevant Minister desirable for the object to remain associated with the building.**
- (2) A “significant building” is any building falling within section 230(3)(a) to (d) of IHTA 1984 (acceptance of property in lieu of tax).**
- (3) “National interest” includes interest within any part of the United Kingdom.**
- (4) In determining whether an object or collection or group of objects is pre-eminent, regard is to be had to any significant association of the object, collection or group with a particular place.**

***The relevant Minister***

- 23 (1) For the purposes of paragraph 22, “the relevant Minister” is –**
- (a) for items with a purely Scottish interest, the Scottish Ministers,**
  - (b) for items with some Scottish interest but with no Northern Irish interest and no Welsh interest, the Secretary of State and the Scottish Ministers concurrently,**
  - (c) for items with a purely Northern Irish interest, the Northern Ireland Department of Culture, Arts and Leisure,**
  - (d) for items with some Northern Irish interest but with no Scottish interest and no Welsh interest, the Secretary of State and the Northern Ireland Department of Culture, Arts and Leisure concurrently,**

- (e) for items with a purely Welsh interest, the Welsh Ministers,
  - (f) for items with some Welsh interest but with no Scottish interest and no Northern Irish interest, the Secretary of State and the Welsh Ministers concurrently, and
  - (g) for any other items, the Secretary of State.
- (2) If an item within sub-paragraph (1)(g) has more than one devolved interest, the Secretary of State must consult the appropriate Minister for each such interest before making a decision under paragraph 22 affecting the item.
- (3) An item has a purely Scottish interest if –
- (a) it is located in Scotland, and
  - (b) the offer contains –
    - (i) no wish about where the item is to be displayed, or
    - (ii) a wish that it is to be displayed in Scotland.
- (4) An item has some Scottish interest if it does not have a purely Scottish interest but –
- (a) it is located in Scotland, or
  - (b) the offer contains a wish that it is to be displayed in Scotland.
- (5) An item has no Scottish interest if it does not have a purely Scottish interest and it does not have some Scottish interest.
- (6) References to items with a purely Northern Irish or purely Welsh interest, to items with some Northern Irish or some Welsh interest and to items with no Northern Irish interest or no Welsh interest are to be read in accordance with sub-paragraphs (3) to (5), but replacing references to Scotland with references to Northern Ireland or, as the case may be, Wales.
- (7) A “devolved interest” is some Scottish interest, some Northern Irish interest or some Welsh interest.
- (8) “The appropriate Minister” is –
- (a) if the item has some Scottish interest, the Scottish Ministers,
  - (b) if the item has some Northern Irish interest, the Northern Ireland Department of Culture, Arts and Leisure, and
  - (c) if the item has some Welsh interest, the Welsh Ministers.
- (9) “Item” means an object or collection or group of objects.

**Extract from the draft Scheme****CULTURAL GIFTS SCHEME (the “CGS” or the “Scheme”)  
A Scheme for the Gifting of Pre-Eminent and Associated Objects in  
Exchange for Tax Reductions****Purpose of this document**

1. The provisions contained in [Schedule [X] to the Finance Act 2012] sets out how a tax reduction will be applied to an individual's or company's tax liability when an object has been successfully donated to be held for the benefit of the public or the nation. The donation must be made in accordance with a scheme set up by the Secretary of State for Culture, Olympics, Media and Sport. This document constitutes the Scheme for the purposes of that Schedule and aims to provide a practical guide as to how to make an application to donate an object under the Scheme.

**Overview of the Scheme**

10. The CGS will work as follows:
  - A person (an individual acting in their private capacity or a company) with a tax liability in the UK who wholly owns an object or collection of objects, considered to be pre-eminent or associated with an historic building in public ownership, offers to donate the object or collection to the nation. Jointly-owned property will not be considered under the CGS;
  - Offers to donate an object which is pre-eminent or associated with an historic building should be made to the Arts Council and will be registered in accordance with the Scheme as set out in this document. Applications will be considered by the Acceptance in Lieu Panel (the “Panel”) on a first come, first served basis;
  - Objects which the Panel assesses as not being pre-eminent or not clearly associated with an historic building will be declined. Applications may also be declined at this stage where acceptance would cause the annual limit for AIL and the CGS to be exceeded or if the Panel otherwise considers that the offer should not be accepted. The Arts Council will write to the applicant informing them if the application has been declined and explaining the reasons;
  - Where the Panel considers that all the requirements have been met, including that an object is pre-eminent or associated with an historic building, the object's fair market valuation has been agreed by the Panel and the Panel considers that the object should be donated for the benefit of the public or the nation, the Panel will then make a **recommendation to the relevant Minister** (being the Secretary of State for Culture, Olympics, Media and Sport, the Welsh Ministers, the Scottish Ministers or the Northern Ireland Department for Culture, Arts and Leisure);

- If the relevant Minister agrees with the recommendation, the applicant will be informed by the Arts Council and will receive a letter of acceptance containing the agreed valuation and, where appropriate, a schedule of how the tax reductions will be applied. The applicant will need to accept the offer within 30 days of the date of the letter of acceptance. The terms in the letter of acceptance, once accepted by the donor, are the “agreed terms” for the purposes of the Scheme;
- The gift will then be made pursuant to the agreed terms and the object will transfer from the donor to be held for the benefit of the public or the nation. The title to the object will transfer from the donor to the relevant Minister who will arrange for title to the object to transfer to an eligible institution or, if appropriate, for the object to be lent to an eligible institution. In practice the relevant Minister may agree that title to the object can transfer directly from the donor to the eligible institution;
- The Panel will inform HMRC of the donation, including details of how the tax reduction is to be applied, where the donor is an individual. HMRC will not apply the tax reduction to a person’s tax liability unless and until the Panel has confirmed to HMRC that the relevant conditions for the tax reduction have been met;
- As set out in the [Schedule [ ] to the Finance Act 2012], the maximum value of the tax reduction is [30]% of the agreed value of the object that is being donated where the donor’s liability is to income tax and capital gains tax, and [20]% of the agreed value of the object where the donor’s liability is to corporation tax. For individuals, the tax reduction can be spread across a maximum of five tax years, beginning with the year in which the offer is registered by the Panel. Companies will not be able to spread the tax reduction: the tax reduction can be used only to offset the company’s corporation tax liability generated in the accounting period in which the offer was registered by the Panel;
- Subject to the detailed rules and exceptions contained within [Schedule [ ] to the Finance Act 2012], the donor will not be liable for capital gains tax or inheritance tax on the donation. Schedule [ ] also contains provisions relating to objects which have previously been made conditionally exempt from inheritance tax or where estate duty has been deferred. HMRC Guidance Manuals contain further detailed guidance on this point. (*guidance to be drafted*).

### **Transfer of objects to eligible institutions**

37. The object will transfer from the donor to be held for the benefit of the public or the nation. The title to the object will transfer from the donor to the relevant Minister who will make arrangements for title to the object to then be transferred to an eligible institution or, if appropriate, for the object to be lent to an eligible institution to hold the object. In practice

the relevant Minister may agree that title to the object can transfer from the donor to the eligible institution instead of being transferred first to the relevant Minister. It is not intended that an object should physically transfer to the relevant Minister or to a Government department or body.

38. For the purposes of the Scheme, an eligible institution is an institution or body that is willing to accept an object and which falls within categories (a) or (b) below:
- a) any museum, art gallery, library or other similar institution having as its purpose or one of its purposes the preservation for the public benefit of a collection of historic, artistic or scientific interest; or
  - b) any body having as its purpose or one of its purposes the provision, improvement or preservation of amenities enjoyed or to be enjoyed by the public.

#### **Devolved administrations**

53. While the Panel will make a recommendation on whether an object is pre-eminent or associated with an historic building and whether it should be accepted, the final decision is for the Secretary of State for Culture, Olympics, Media and Sport, the Scottish Ministers, the Welsh Ministers or the Northern Ireland **Department for Culture, Arts and Leisure**. The criteria for determining who makes the final decision is set out in [Schedule [X] to the Finance Act 2012] and explained below.
54. When recommending a pre-eminent object, the Panel will determine which is the relevant Minister according to the location of the object at the time of the application (i.e. whether it is located in England, Wales, Northern Ireland or Scotland) and whether the applicant has expressed any wish about where the object is to be displayed (i.e. whether there is a wish that it be displayed in England, Wales, Northern Ireland or Scotland). In cases where an object does not have a purely Scottish, Welsh or Northern Irish interest, the decision of whether an object is pre-eminent is exercised by the **relevant Minister** and the Secretary of State concurrently. When recommending an object associated with an historic building in public ownership, the Panel will determine which is the relevant Minister according to the location of the building.

Full draft Scheme at: <http://www.dcms.gov.uk/publications/8667.aspx>