

## Procedure for Considering Requests for the Permanent Transfer of Collection Objects to Non-UK Claimants

### Document Control

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### Version Control

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0.1 (Draft)	23/02/2021	Draft	John Giblin and Chanté St Clair Inglis	
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## 1. Introduction

- 1.1 National Museums Scotland's founding Act has a presumption against the deaccession and disposal of objects from its collection. This includes a presumption against the direct, permanent transfer of objects from its collection.
- 1.2 National Museums Scotland's collections reflect its diverse history and multidisciplinary nature, spanning the arts, humanities, natural and social sciences. Each of the five collections departments contains some objects that originate from outside of the United Kingdom.
- 1.3 In exceptional circumstances, National Museums Scotland will consider a request made by claimants located outside the United Kingdom to transfer a specific object or group of objects where the request meets certain criteria. This document outlines what these criteria are and, when they are met, how requests will be considered and managed.
- 1.4 In all instances, if a legal basis for the transfer of an object(s) to a claimant is established, National Museums Scotland will deaccession and transfer the object(s) to the claimant.
- 1.5 This procedure is informed by:
  - 1.5.1 The National Heritage (Scotland) Act, 1985, section 8, which sets out the legal powers to dispose of objects from the National Collection as amended by the Museum Galleries Scotland Act 1992.
  - 1.5.2 Established sector policies and codes of ethics including: ICOM Code of Ethics for Museums (Section 2.15); Collections Trust Spectrum 5.0 (Object Exit, Deaccessioning and Disposal); Cultural Property Advice (Restitution and Repatriation, Ethical Contexts); Museums Association: Code of Ethics for Museums (Sections 2.7-2.8); Combating Illicit Trade: Due Diligence Guidelines for Museums, Libraries and Archives on collecting and borrowing of Cultural Material (DCMS, 2005).
  - 1.5.3 Relevant international instruments including the 1970 UNESCO Convention, the 1954 Hague Convention, the 1995 UNIDRIOT Convention on Stolen and Illicitly Exported Cultural Objects, and the 2007 United Nations Declaration on the Rights of Indigenous Peoples.
  - 1.5.4 National Museums Scotland's policies, strategies, and procedures specifically the Collections Development Strategy 2017-2022, Collections Disposal Procedure 2020, Human Remains Policy 2021, and the Due Diligence (Provenance) for Collection Acquisitions and for Incoming Loans, 2019.
- 1.6 This procedure is guided by the following key principles:
  - 1.6.1 Requests made for the permanent transfer of object(s) in National Museums Scotland's collection to a claimant outside the United Kingdom will be considered on a case-by-case basis.
  - 1.6.2 Where a request fulfils the criteria outlined at point 3, it will be considered and assessed on its own merits. National Museums Scotland seeks to ensure this assessment is rigorous, transparent, respects claimant communities and institutions, and aligns with the legal framework National Museums Scotland is required to operate within as outlined at point 2.

- 1.7 This procedure does not relate to the following activities:
- 1.7.1 The transfer of human remains which is considered under National Museums Scotland's Human Remains Policy 2021.
  - 1.7.2 The spoliation of works of art during the Holocaust and World War II period, which are dealt with under Section 7.7 of National Museums Scotland's Collections Development Strategy 2017-2022.
  - 1.7.3 The disposal of objects initiated by National Museums Scotland's own collection teams in the delivery of their work to develop and care for the collection. This procedure is managed in line with National Museums Scotland Collections Disposal Procedure 2020.
  - 1.7.4 Requests for the transfer of objects to claimants based in the United Kingdom.

## **2. Legal Framework**

- 2.1 National Museums Scotland is bound by the specific restrictions on the ownership, transfer and disposal of objects as set out in its founding Act, the National Heritage (Scotland) Act 1985 as amended by the Museums and Galleries Act 1992.
- 2.2 Section 8(3)(d) of the National Heritage (Scotland) Act 1985 as amended by the Museums and Galleries Act 1992 section 8(14) (2) allows the Board of Trustees to deaccession objects from the permanent collection and transfer them directly to another body, provided each deaccessioning and transfer is approved by the Secretary of State (or the Scottish Minister to whom the power has been devolved).
- 2.3 Approval of the Secretary of State (or the Scottish Minister to whom the power has been devolved) is needed for both the objects that are to be deaccessioned and for the recipient of the transfer. Approval of a recipient for one transfer does not guarantee that they will be approved for future transfers.
- 2.4 In addition to the founding Act, National Museums Scotland is obliged to comply with any other UK or international legislation which is pertinent to the transfer. This may include (but is not limited to):
- Legal conditions placed on objects by donors or funders.
  - Obligations under UK charity law, particularly Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act') as amended by the Public Services Reform (Scotland) Act 2010 and regulated by the OSCR.
  - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
  - International sanctions.
- 2.5 Not all legislation will be relevant to all transfers, and not all relevant legislation will prevent transfers taking place. Consideration of any legal obligations will form part of the assessment of the potential transfer.

### 3. Request Criteria

- 3.1 National Museums Scotland's Board of Trustees will consider those requests meeting all three of the following criteria:
  - 3.1.1 The request is submitted by a recognised National Agency (e.g. a National Museum, National Gallery, National Archive, or National Library) proposing to take the object(s) into their ownership, both legally and physically.
  - 3.1.2 The request is supported by the relevant National Government. This cannot be a level of government below National Government.
  - 3.1.3 The request is endorsed by a community descended from those to whom the objects are demonstrably ancestral.
- 3.2 Requests should be submitted in writing to the Director of National Museums Scotland. A request should set out the claim clearly and give as much information and supporting evidence as possible. The following information and evidence is required:
  - 3.2.1 The registration numbers and description of object(s) included in the claim.
  - 3.2.2 The place of origin of object(s) included in the claim.
  - 3.2.3 Written endorsement from the National Government, the recognised National Agency (e.g. Museum) as well as the descended community.
  - 3.2.4 The endorsing descendent community's place of origin (territory and country) and relationship to object(s) in question.
  - 3.2.5 Evidence from the endorsing descendent community that it is the closest living descendants of the people that originally made and used the objects under claim and/or that it continues to share the same culture (spiritual beliefs, cultural practices) attributed to that community.
  - 3.2.6 Identification of other potential stakeholders.
  - 3.2.7 Evidence from the descended community of the importance of the object(s), including cultural, historical, sociological, spiritual and/or political, and identifying the strength of their connection and the consequences of their return.
- 3.3 In addition, in order to set out the claimants' grounds for the requested transfer of items, the request should provide evidence of one or more of the following:
  - 3.3.1 The removal of the object(s) from the endorsing descendent community did not conform to the legislative framework and/or established practices at the time of removal in the United Kingdom and/or the country of origin.
  - 3.3.2 The removal of the object(s) from the endorsing descendent community supporting the request was not voluntarily permitted by the endorsing descendent community.
  - 3.3.3 The object(s) were originally acquired from an individual or individuals that did not have the cultural, spiritual, or political authority to agree to that transfer on behalf of the endorsing descendent community.

- 3.4 The request should also evidence and provide details of the outcome of consultation with other potential claimant groups where these are known to exist.

#### **4. Evaluation**

- 4.1 When a request that meets the criteria outlined above is received, the Director will acknowledge receipt with an initial response and indicative timetable. The Director will then be the single point of contact and correspondence should be directed to the Director.
- 4.2 National Museums Scotland will provide regular updates on the progress of claims to claimants throughout the evaluation procedure.
- 4.3 Access to object(s) that are the subject of a request for transfer shall not be permitted while the request is being considered. This will not affect objects that are already on display unless the claim establishes the existence of sensitivities that caution against the object being displayed, in which case object(s) will be removed from display and held in secure storage at National Museums Scotland while the request is being considered.
- 4.4 The request will undergo a preliminary evaluation overseen by the Director with advice from the Director of Collections and the relevant Keeper to assess the nature of the request and the current evidence. After this preliminary review, additional information may be sought, and National Museums Scotland may consider the use of outside experts to help evaluate the claim.
- 4.5 The request and evidence will be brought to the Board of Trustees for rigorous evaluation and decision, taking into consideration any justifications put forward by the claimants for the permanent transfer of objects and weighing the balance of the case for retention against that for transfer. Questions to be considered by the Board of Trustees will include but not be limited to:
- 4.5.1 What is the significance of the object(s) to the claimants and other stakeholders, including cultural, historical, sociological, spiritual and political importance, and rarity?
  - 4.5.2 How was the object(s) removed from its place of origin or its original owners?
  - 4.5.3 Does the spiritual significance of the object(s) to the claimants and other stakeholders restrict the potential for public display and/or research?
  - 4.5.4 In addition to the legislative framework and National Museums Scotland's policies and procedures, are there any other constraints, legal or otherwise, on transfer?
  - 4.5.5 Is the claim for part of a larger but discrete collection of objects within National Museums Scotland and if so would its transfer be detrimental to that collection?
  - 4.5.6 What is the importance of the object(s) to National Museums Scotland as demonstrated by its use, including its display, since it entered the National Collection?
  - 4.5.7 Are there competing claims for transfer or could it be reasonably assumed that there will be in the future?

- 4.5.8 Does the claim outweigh the national significance of the objects in terms of the history and culture of Scotland?

## **5. Requests Declined**

- 5.1 If the request is declined either by the Board of Trustees or by the Secretary of State (or the Scottish Minister to whom the power has been devolved), the decision and the reasons for this decision will be conveyed to the parties in writing and published on the National Museums Scotland website.
- 5.2 If the request is declined either by the Board of Trustees or by the Secretary of State (or the Scottish Minister to whom the power has been devolved), National Museums Scotland may consider alternative options for claimants to access the object(s), including but not limited to loans.
- 5.3 If the request is declined either by the Board of Trustees or by the Secretary of State (or the Scottish Minister to whom the power has been devolved), there will be no right to appeal within five years of the decision. Future appeal after five years will not be considered unless significant new supporting evidence is included in the appeal.

## **6. Requests Agreed**

- 6.1 When the Board of Trustees supports a request, National Museums Scotland will seek agreement from the Secretary of State (or the Scottish Minister to whom the power has been devolved) to deaccession and physically transfer the object(s) in accordance with the National Heritage (Scotland) Act 1985 section 8, clause 3 (d) as detailed at point 2 above.
- 6.2 When the transfer of the object(s) is agreed by the Secretary of State (or the Scottish Minister to whom the power has been devolved), the decision will be conveyed to the parties in writing and published on the National Museums Scotland website.
- 6.3 Once a request has been agreed by the Board of Trustees and the Secretary of State (or the Scottish Minister to whom the power has been devolved), discussions will take place to determine how the transfer can be most effectively transacted as well as any future protocols required to manage access to associated research material, research data and information relating to the object(s) which National Museums Scotland will retain.
- 6.4 All direct costs associated with the transfer, including transport, will be the responsibility of the claimants, although National Museums Scotland may offer specialist advice without charge.
- 6.5 The claimants will also be responsible for making any provisions necessary to meet any legislation or regulations pertinent to the transportation and ownership of the object(s), such as acquiring export or CITES licences. National Museums Scotland may provide specialist support to facilitate transfer without charge.
- 6.6 The transfer will be made to the National Agency named in the request – both in terms of transfer of title and in terms of delivery.