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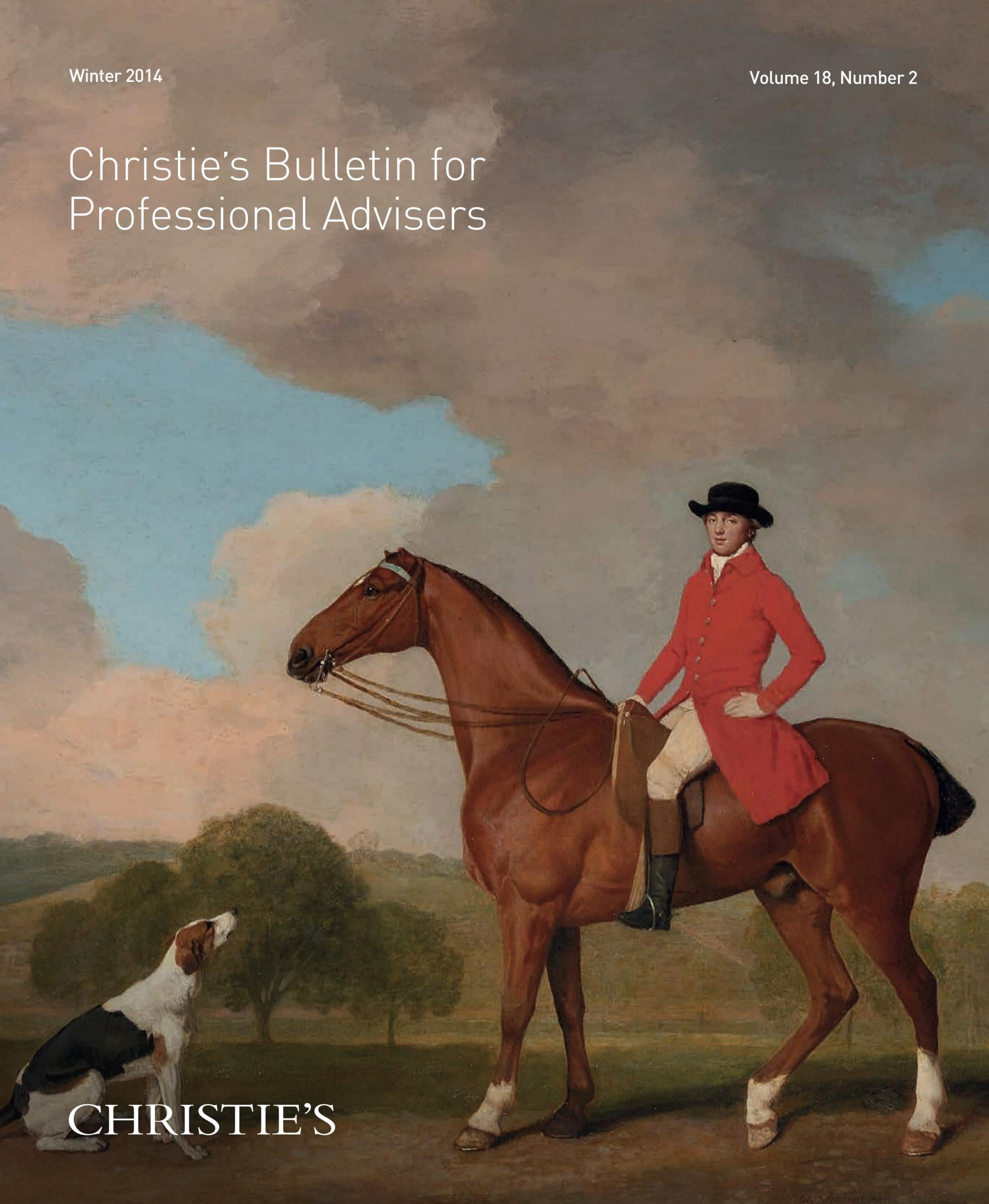

CHRISTIE'S

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SIR HENRY RAEBURN, R.A (1756–1823)
Portrait of Sir James Montgomery, Bt., Lord Chief Baron of Exchequer (1721–1803), aged 80, full-length, seated, in black robes, the mace on a desk nearby
oil on canvas · 90 x 58 ½ in.

Negotiated by Christie's and accepted in lieu of inheritance tax, temporarily allocated to the Scottish National Portrait Gallery

Negotiated Sales · Heritage Exemptions · Lease of Objects · Cultural Gifts Scheme
Pre- and Post-Sale Tax Advice · Other Tax Valuations

CHRISTIE'S

The Art People christies.com/heritage

Frances Wilson
Christie's Heritage and Taxation Advisory Service

Index

2
Heritage News
Ruth Cornett

5
Privileged Wills
Nicola Wallace

8
Gallantry Awards: Exemption from Inheritance Tax
Robert Suttle

12
Movement of Artwork: Key Considerations
Michael Parkinson

16
The Export Reviewing Committee: Recent Developments in Procedure and Practice
Frances Wilson

20
Centenary Stories: Remembering the First World War
Lucy Brown
and Claudia Dilley

Editorial

Although the 100th anniversary of the outbreak of the First World War on 4 August is now behind us, events to mark the centenary continue throughout 2015 and beyond. This issue of *The Bulletin* contains two further articles in keeping with the military theme of the summer issue. The first is on the taxation of awards for valour and gallant conduct, by Robert Suttle of HMRC Inheritance Tax team. The second, by Nicola Wallace, is on privileged wills — a subject less likely to be encountered by practitioners but just as important to be aware of.

We also have a feature by Lucy Brown and Claudia Dilley on an exhibition curated by Christie's earlier this year as part of the charity event Heroes at Highclere. The exhibition, *Centenary Stories: Remembering the First World War*, included a range of artefacts from countries affected by World War I. It was on display at Highclere Castle throughout the charity event and digital images of the artifacts are still available to view on our website www.christies.com/centenarystories.

Christie's Heritage and Taxation Advisory Service is building strong links with the Society of Trust and Estate Practitioners (STEP). In September 2014 we hosted an event for the STEP Cross-Border Estates Special Interest Group on Art Assets: The Challenges Facing Trust & Estate Practitioners. One of the subjects touched upon during the discussions was the movement of artwork across borders, an important one given that increasing numbers of private clients hold properties in multiple jurisdictions. In his article for this *Bulletin* Michael Parkinson considers some of the issues relating to the movement of artwork, including imports and exports both within and outside of the EU.

Ten years have passed since the export of art last featured as a subject in *The Bulletin*. In the Winter 2004 issue Richard Harwood provided a comprehensive overview of the work of the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest. For this issue I have compiled a review of developments in the Committee's procedures and practices since then.

Speaking of significant dates, I am pleased to say that it is now 20 years since the first issue of *The Bulletin* was published in winter 1994. Wish us a Happy Birthday!

Frances Wilson
Editor

Cover
GEORGE STUBBS, A.R.A. (1724–1806)
Equestrian Portrait of John Musters on his favourite hunter, Pilgrim, in the Park at Colwick
oil on mahogany panel
33 x 40 in. (84.4 x 102 cm.)
In a contemporary reeded giltwood frame

Comments and Suggestions
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Heritage News

In the last edition of *The Bulletin* I reported on a number of developments across the heritage world which were, if not stalled, making slow progress. Perhaps the most high profile of these was the case of the Wedgwood Museum and the implications of the decision that its contents and other assets were available to the trustees of the Wedgwood pension fund for the benefit of its members.

The issues surrounding this case have been the subject of much comment in the press during the last few years and especially since the court's decision that the collection could be sold. A public campaign to raise the remaining sum to purchase the collection as a whole was launched in summer 2014. It is now understood that as part of an arrangement struck with the Victoria and Albert Museum (V&A) in London, through the Art Fund, the Wedgwood collection is likely to become a satellite of the V&A. This will enable the collection to be preserved in its entirety, while giving the trustees of the pension fund a cash payment. The preservation of the collection has been generally welcomed by the heritage world.

Museum directors to retire

Announcements that first Sandy Nairne and then Nicholas Penny were to retire from the directorships of the National Portrait Gallery and the National Gallery respectively were made during the summer. Both directors have witnessed significant rises in attendance figures and been responsible for major acquisitions by their institutions during their directorships. In the case of Sandy Nairne, the recent acquisition of the Van Dyck *Self-Portrait* is a major achievement. For Nicholas Penny, perhaps it is the paintings by Titian formerly owned by the Duke of Sutherland for which he will be most remembered. The acquisitions of both the Van Dyck and the 'Sutherland' Titians have been covered in earlier editions of *The Bulletin*. While the search for the replacement directors is on-going, each remains in post. Outside London, the new director of the Ashmolean Museum, Alexander Sturgis, took over on 1 October from Professor Christopher Brown and we wish him every success in his new role. We also wish a long and happy retirement to Christopher Brown and in due course to Sandy Nairne and Nicholas Penny.

Charging for conditional exemption claims

Archives have been the subject of offers in lieu of inheritance tax with increasing popularity over the last decade. There is also no doubt that local Records Offices are under increasing financial pressure. With these facts in the background, HMRC announced that Records Offices could charge for the costs of cataloguing and any other work necessary to maintain any archives on loan to them. There must be a question over the involvement of HMRC in loan arrangements, given that these are negotiated between the parties themselves. In addition, many local Records Offices are keen to retain archives relating to relevant estates and properties even when such archives are still in private hands. Any costs arising from making a loan would be a considerable disincentive for owners contemplating making them. More worryingly, if the proposals were to be extended to cover archives offered in lieu of inheritance tax, there might be a drop in the number of such offers. It remains to be seen whether the charging proposals will be taken up by local archivists and local authorities.

Following a donor's request

In the last edition of *The Bulletin*, we reported that the Burrell Collection Trustees were attempting to amend the deed of gift of its founder to permit it to lend its collection abroad. The deed stated that the Trustees were prohibited from lending works from the collection if a loan involved sending the object 'across water', no doubt arising from concerns over shipping losses during World War II. The concern that Sir William Burrell expressed through the Burrell's deed has prevented the Trustees from lending to foreign institutions. Interestingly, with the ability to travel under the English Channel by train, the Burrell could in fact lend to European institutions provided that the journey by road did not cross water. The deed has now been amended, thus paving the way for the international transport of works from the Collection while the fabric of the building undergoes much needed repairs. The schedule for repairs and the scope of any loans or travelling exhibitions has not yet been made public. There also remains the fundamental question of how far a museum or gallery should adhere to the wishes of a founding donor when circumstances have changed.

Scotland

Although the result of the referendum in Scotland in September was a victory for the 'no' vote there are major changes anticipated in the ownership of land across the country as a result of 'community empowerment'. Many of the new proposals derive from a report into land ownership across Scotland and a desire to raise revenue from land. As a result of the Scotland Act 2012, the Scottish Parliament already has the power to change the rate of income tax applicable to Scottish residents, and the new rates of tax applicable to property transactions (replacing stamp duty on Scottish property) have been announced. It is a worrying development for the heritage sector that the top rate of tax on property transactions will be 12% and that the security of ownership of land could be undermined by the land reform. Currently there are no changes announced to the offer in lieu scheme or claims for conditional exemption from inheritance tax, but commentators on Scottish matters remain concerned that threats to land ownership will inevitably lead to the break-up of historic estates. Heritage groups are watching developments closely and there will doubtless be more to report on this in the run-up to the election next May.

VAT on listed building repairs

The heritage sector in general and The Historic Houses Association in particular continue to press for a reversal or reduction of the rate of VAT on repairs to historic houses. The case has been made that the additional burden of paying VAT on repairs deters many owners, who are almost invariably asset rich and cash poor, from undertaking essential works to the fabric of buildings. This in turn means that the Treasury does not receive tax revenues from those engaged to carry out the work. It remains to be seen whether there will be any change to the position as a result of the heritage sector's efforts.

A new home for Spanish art

The Fitzwilliam Museum, Cambridge recently announced that it had been successful in raising the necessary funds to purchase a 17th century Spanish painted wooden sculpture, *The Virgin of the Sorrows* by Pedro de Mena. The UK is comparatively rich in paintings of the same period by Spanish artists, but sculpture of this type is poorly represented in UK collections, partly due to the subject and partly because the original institutions have tended to retain these very devotional sculptures. This sculpture is an important addition to the museum. For the first time the campaign to raise money for an acquisition was publicised through an online 'Justgiving' page. Meanwhile, the financier Jonathan Ruffer has confirmed that he will be funding a new museum dedicated to Spanish art to open at Auckland Castle, the former palace of the Bishop of Durham. The completion of the project is some way off, but the project team has said that it hopes foreign institutions such as the Prado in Madrid will be prepared to lend to the new gallery. The building will house the collection of paintings by Zurbarán, *Jacob and his Twelve Sons*, which Mr Ruffer was instrumental in securing on a sale by the Church of England.

Cultural Gifts Scheme

During the summer Arts Council England announced that a fourth gift under the cultural gifts scheme (CGS), a painting by the pop artist Sam Walsh, had been accepted. The painting has been allocated to the Walker Art Gallery, Liverpool, reflecting the artist's connections with the city. Since its introduction last year, the CGS has not been widely used. For donors and practitioners alike there must be a question of its tax efficiency, given the inflexibility of the rules applying to it and the uncertainty of future tax liabilities. Were the CGS to allow carry-back of relief, rather than only carry-forward, it would no doubt generate greater interest.

Anniversary of the Heritage Lottery Fund

In autumn 1994 the then prime minister John Major launched the National Lottery, and from the outset part of the proceeds were to be allocated to good causes. Responsibility for the UK-wide distribution of lottery proceeds allocated to heritage was given to the Trustees of the National Heritage Memorial Fund (NHMF). The lottery-distribution arm of the NHMF became known as the Heritage Lottery Fund (HLF). Since then, the funds have provided significant support for the heritage and culture sectors. In the current year the HLF has approximately £375 million to spend on good causes, a significant proportion of which is allocated to heritage in

the widest sense, including heritage landscape and buildings. Over the years the HLF has supported a significant number of major heritage projects, including the recent restoration of the last two First World War ships in existence.

English Heritage report on heritage at risk

In October English Heritage (EH) published its annual Heritage at Risk Register. It is 15 years since the first register was launched and as a result there is a better understanding of the state of heritage across England.

Sadly, EH reports that 72 historic buildings or structures have been added to this year's register. Eastbourne Pier, which was devastated by fire earlier this year, is among them. The shipwreck *Hazardous*, an 18th-century British warship beached in Bracklesham Bay in Sussex during a storm in 1706, is another new addition.

More evidence of the popularity of museums and galleries

In October the Museums Journal reported the results of a Visit England survey on the popularity of museums and galleries. The survey looked at the number of visitors to art galleries and museums in England and reported that visitor numbers rose 4% in 2013 compared to a 2% rise in the previous year. Visits to historic properties increased by 10% and visits to heritage centres rose by 6%. The four most visited free attractions across the UK were all London museums: the British Museum, the National Gallery, the National History Museum and Tate Modern. The Tower of London was the most visited paid attraction in 2013. Interestingly, Tate Modern in London reported that by extending its exhibition of 'cut-outs' by Matisse to five months (instead of the usual three months) attendance figures had increased dramatically. Indeed, this exhibition proved to be the most popular exhibition in the history of Tate Modern, with attendance figures in excess of 560,000. The Tate's director, Sir Nicholas Serota, has also announced that as part of its outreach programme, the gallery will be putting some of its most well-known objects on tour across the UK, including works as diverse as Tracey Emin's *My Bed* and Matisse's *The Snail*.

Museum funding

While the popularity of museums and galleries continues to rise, funding for them remains under threat. In October there were pickets outside some of the national institutions protesting against the untying of the wage structure at the national museums from the rest of the public sector. This is clearly a controversial point, some seeing it as a new freedom for the institutions to set their own pay structure, others considering it to be privatisation and a threat to job security.

Re-opening of the Picasso Museum

Finally, it is welcome news that on 25 October President Hollande of France re-opened the Musée Picasso in Paris after five years of renovation which, it is reported, went significantly over budget. The museum has announced that the renovation, indeed almost transformation, was essential, as it expects to receive over one million visitors per year at the newly-restored building; further proof, if it were needed, of the increasing appeal of art.

Ruth Cornett
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Taxation Advisory Service

Privileged Wills

Wills made by those on active service do not need to meet the formal requirements of section 9 Wills Act 1837, as Nicola Wallace explains.

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After a successful 15 year career as a solicitor and partner specialising in family law, Nicola transferred to the Bar in 2006. With broad experience in all family matters, her practice now centres on financial remedy matters, including high net worth and international cases, together with private law children matters. Nicola is currently studying for an M.Sc. in Art History, Law & Business at Christie's Education, accredited by the University of Glasgow.

'If anything happens to me and I stop a bullet, everything of mine will be yours...'[1]

Since Roman times the making of a Will has required certain formalities.[2] Today the evolution of laws has resulted in prescribed requirements for valid Wills, strictly interpreted, and as set out in section 9 of the Wills Act 1837. Practitioners will be familiar with the need for a Will to be in writing, to be signed by the testator (or signed on the testator's behalf by another in his presence, to his direction) and to be attested and signed by two witnesses in the testator's presence. It is also crucial that it appears that the testator intended, by his signature, to give effect to the Will.

Similarly, since the times of Julius Caesar there has been an entitlement for soldiers, and later seamen, to make a will without any of the requisite formalities.[3] This 'special privilege' continues today,[4] and those who qualify (any soldier in actual military service, mariners or seamen and members of Her Majesty's naval or marine force in actual military service or being at sea) remain entitled to make a will without formality. In short, this means that for qualifying persons a Will can be oral; if written it can be unsigned, undated and without the requisite witnesses. Further, the general requirement that a testator or testatrix has to be over 18 years of age is also not insisted upon.[5] Notwithstanding the above, the requirements of *animus testandi*[6] (intention to make a will), mental capacity, knowledge of the content of the Will and approval of the same remain. The historic rationale for the 'privilege' has rested on the view that low levels of education, illiteracy and restricted access to legal assistance meant that those in service — away for many months and, by the very nature of their work, 'in the line of fire' — may not have had the opportunity to execute a Will in the usual manner. The requirement for the Privileged Will to have been effected *in extremis*, usually in the testator's dying moments, has over time been relaxed. The current requirement for the privilege is simply to be 'in service', as statutorily defined.

Perhaps unsurprisingly, an assertion of Privileged Wills has given rise to litigation over the years and courts have had to rule on a wide range of difficult factual circumstances.

The 2009 case of *In the Estate of Ashley Edward Servoz-Gavin*[7] tasked the court with deciding whether Ashley Servoz-Gavin had given instructions for the disposal of his estate in circumstances which brought him within s.11 of the Wills Act 1837. Letters of administration had been obtained on the basis of intestacy, when the question of earlier nuncupative (oral) instructions arose. It was asserted by the claimant ('Aunt Anne') that Servoz-Gavin had twice said to his cousin (in 1985 and again in 1990) that if anything happened to him, he wished his estate to go to his Aunt Anne. Aunt Anne was 98 years old at the date of trial. She confirmed in evidence that her estate was left to her great niece, Emma, who was also the personal representative of the deceased and daughter of the cousin to whom the instructions for the disposal of the estate had allegedly been given.

In setting out the issues that fell to be decided, Langan J remarked that the case had 'involved a forensic journey along which most lawyers, counsel and myself included, never travel after our student days'.

The circumstances required the Judge to make findings, *inter alia*:

i) as to questions of fact regarding the making of the asserted Wills. This required an assessment of the credibility and reliability of witnesses, in particular the deceased's cousin, the fourth defendant to the action and to whom it was asserted the deceased had given his instructions;

ii) as to whether the words used by the deceased were sufficient to show he had the requisite intention to make a privileged will;

iii) as to the extent to which the privilege was granted to 'any mariner or seaman' as per s.11 Wills Act 1837. When the alleged wills were made, the deceased was about to join ships registered in the Netherlands (1985) and Panama (1990);

iv) as to whether the deceased was 'at sea' within the statutory definition.

The Defendants argued (*inter alia*):

i) that the niece had been less than forthcoming with regard to the administration of the estate;

ii) that the court should proceed with caution when dealing with witnesses who are recalling conversations from many years previously, and further, that a seeming firmness of recollection is no guarantee of accuracy;

iii) that there were aspects of the cousin's evidence that appeared both incongruent and odd – particularly the fact that the deceased had not mentioned the question of his estate to her after 1990. Further, that it was questionable whether the cousin could remember conversations verbatim, which had taken place 19 and 25 years previously. It was asserted that her reliability was seriously undermined by an apparent confusion of dates and times;

iv) that the words of the deceased were merely passing comment as opposed to an instruction to act in any way upon them.

Giving judgment for the claimant, Langan J commented at the beginning of the case: 'I did not expect the evidence to be overwhelming in favour of either side: but at the end, I find it so to be'.

The Judge held that:

i) it is not necessary for the validity of a Privileged Will that the deceased knew that he was making a will – rather he has to deliberately intend to give expression to wishes as to what should be done with his property in the event of his death.[8] Quoting Salter J: '... not merely imparted to his audience as a matter for information or interest, but... intended by him to convey to that audience a request, explicit or implicit, to see that his wishes are acted upon'[9];

ii) the cousin had answered cogently and convincingly and that in spite of her story 'developing', the central feature of the conversations with the deceased had not changed;

iii) the test of intention was easily satisfied. The oral instruction in 1985 to leave everything to Aunt Anne was referred to in the subsequent oral instruction;

iv) the privilege accorded to mariners and seamen was provided for in s.11 of the 1837 Act and s.2 of the Wills (Soldiers & Sailors) Act 1918. There was nothing to restrict the definition 'any mariner or seaman'. The plain meaning extended to all mariners and seamen;

v) the phrase 'being at sea', for the purposes of s.11, extended not just to persons who had actually boarded the ship on which they were sailing or to sail but also to those 'under orders' to join their ship[10];

vi) the evidence showed that the deceased was 'on orders' to join a ship and was preparing for the voyage in that he had telephoned the ship owners for instructions and all recorded activity thereafter was in preparation for travel – his own record of expenses, obtaining a visa for India, etc.;

vii) this evidence, his words in 1985 but more particularly by his repeated instruction in 1990 showed that the deceased had intended deliberately to give expression to his wishes upon his death and since he had at that time been a 'mariner or seaman being at sea', he had therefore made a Privileged Will within the meaning of s.11.

The anniversary of World War I, and the current deployment of members of the armed forces worldwide, makes this an appropriate time to remind ourselves as practitioners of the existence of this privilege and advise clients accordingly. Servoz-Gavin is a very useful example of the importance of the evidential basis of any claim.

Practitioners with a potential Privileged Wills claim should take time to critically analyse the following:

- the employment status of the testator at the time of giving the asserted instructions;
- the precise detail of the words spoken or written;
- the credibility of any witnesses to the actual words spoken or written;
- as much detail as possible of the circumstances in which the instructions were given;
- independent evidence collated from every available source to support the assertion;
- the cogency of that evidence.

There has been debate as to whether the privilege remains appropriate and relevant.[11] Arguments run that in a world of literate and educated workforces, ubiquitous and instantaneous means of communications, the tendency towards shorter deployment periods, general ease of access to legal advice and the low cost of having a will prepared, the privilege is no longer appropriate or relevant. Those in favour of its abolition frequently cite the inequity for other occupations of equal danger and of equal public service. In 1980, the matter was considered by the Law Reform Committee.[12] It concluded that even if few Privileged Wills are submitted for probate at present, circumstances can be envisaged when the privilege might again be needed. Even in peacetime, occasional cases arise where servicemen make Privileged Wills in the course of certain military operations.

On a related but separate point, the taxation position in respect of servicemen and women upon death should not be overlooked. Practitioners are reminded that pursuant to s.154 of the Inheritance Tax Act 1984, if a serving, or former, member of the Armed Forces dies from (or death can be shown to have been hastened by) an injury sustained or disease contracted on active service against the enemy or other service of a warlike nature (such as operations against hostile forces in peace time or anti-terrorist operations), a complete exemption from inheritance tax may be granted on their estate. The exemption is not of right. Each application is considered on its own merits.

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The content of this article is for general information purposes only. As all Privileged Wills cases are fact sensitive, recourse to independent legal advice will be required in each individual case.

1. *Re Stable deceased. Dalrymple v Campbell* [1918] p. 7.
2. Schultz, F: *Classical Roman Law*, Clarendon Press 1951 at pp. 240–243. (cited: Lang, A: *Privileged Will – A Dangerous Anachronism?* University of Tasmania Law Review, 1985: Volume 8, Issue 2).
3. Lee R. W: *Elements of Roman Law*, Sweet and Maxwell 1986 (cited Lang, A (supra)).
4. s.11 Wills Act 1837 – extended to include members of the Royal Air Force pursuant to s.5(2) Wills (Soldiers and Sailors) Act 1918.
5. ss.1–5 Wills (Soldiers and Sailors) Act 1918.
6. *Re Stable deceased* (supra).
7. *In the Estate of Ashley Edward Servoz-Gavin deceased. Ayling v Summers* [2009] EWHC 3168 (Ch).
8. Re Stable deceased (supra); *In the Estate of Knibbs deceased, Flay v Trueman* [1962] 1 WLR 852.
9. *In the Estate of Beech deceased* [1923] p.46.
10. *In the Goods of Sarah Hale* [1915] 2 IR 362; *In the Goods of Newland, deceased* [1952] p.71; *In the Goods of Wilson, Wilson v Coleclough* [1952] p.92; *Re Rapley, deceased* [1983] 1 WLR 1069 distinguished (where the deceased had been discharged from one ship and at the date of the Will had not been notified where and when he was to join another ship).
11. See for example Critchley, P: *Privileged Wills and Testamentary Formalities: a time to die*, CLJ, 1999.
12. Report 22, 1908 Cmnd 7902.

Gallantry Awards:
Exemption from Inheritance Tax

Awards for valour and gallant conduct are exempt from inheritance tax in certain circumstances. Robert Suttle summarises the legislation with reference to specific examples.

Robert Suttle
HMRC
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Robert joined HMRC's Inheritance Tax Office in 1992, spent 15 years as a specialist in the Heritage Team and graduated from Southampton Institute (now Southampton Solent University) with a B.A. (Hons) in Fine Arts Valuation. He currently spends his time examining Inheritance Tax returns.

Introduction

The centenary of the beginning of the First World War is as good a reason as any to remember the heroism of people during this and the many other conflicts before and since — as well as similar bravery demonstrated by civilians in non-military contexts. The vast majority of acts of heroism go by without any official recognition. However, some examples are so extraordinary and remarkable that they elicit full recognition from a grateful nation — usually, but not always, in the form of a medal, order or badge. Who can fail to be roused by, for example, the 'six VCs before breakfast' awarded to members of 1st Battalion, The Lancashire Fusiliers during the Gallipoli campaign in August 1915 or the George Cross awarded to the people of Malta in 1942?

Right
The George Cross
Introduced in 1940
IMAGE COURTESY OF SPINK AND SON LTD.

The Exemption

While it may seem reasonable to tax the transfer of capital during life or on death, governments have long recognised that there are some things which should not be taxed. Gallantry awards fall squarely into that category.

The argument is sometimes made that all medallic awards for military service, including campaign medals and General Service Medals, should be exempt. For example, being present during a battle could be seen as brave enough to warrant an exemption for the resulting medal. However, with any exemption a line has to be drawn somewhere and government has decided to draw it to include only gallantry awards. The high prices currently commanded by many gallantry awards can make this a very valuable exemption indeed.

Under s.6(1B) Inheritance Tax Act 1984 (IHTA 1984), a decoration or other award is excluded from the charge to Inheritance Tax (IHT) if it:

- was awarded for valour or gallant conduct — s.6(1B)(a) IHTA 1984; and
- has never been the subject of a disposition for a consideration in money or money's worth — s.6(1B)(b) IHTA 1984.

This seems to be a very straightforward piece of legislation, but it gives rise to a number of questions and misconceptions. Perhaps the first question it raises is: what is an award for valour or gallant conduct?

At its simplest, this could be taken to be an official medal instituted by the government specifically to recognise valour or gallant conduct. However, while this country has

Right
The Order of the Bath
Introduced in 1725

IMAGE COURTESY OF
SPINK AND SON LTD.

been involved in various wars over the centuries, it was only during the Crimean War that the first British award purely for gallantry appeared – the Victoria Cross, in January 1856. That's not to say that valour or gallantry didn't exist before then – it's just that there was no specific medallic recognition for them.

A number of other gallantry awards followed including, during the First World War alone, the introduction of The Distinguished Service Medal and The Military Cross in 1914; The Military Medal in 1916; and The Distinguished Flying Cross, The Air Force Cross, The Distinguished Flying Medal and The Air Force Medal in 1918.

From the point of view of the IHT exemption, deciding whether a certain award was for gallantry is straightforward if it is a Victoria Cross or a recognised gallantry award introduced since then. But what about an award made prior to the introduction of the Victoria Cross? As said above, valour or gallantry certainly existed before then and awards were made to recognise that but, of necessity, they had to be in a form which could also be awarded for an act other than gallantry.

An example of this is The Most Honourable Order of the Bath. Established by King George I in 1725, it was often awarded by a grateful monarch as a thank you or perhaps as a reward for faithful or distinguished service. But it could also be awarded for valour or gallantry. The decision as to whether it was or not will depend upon the evidence available. This might be straightforward or may need some research into the recipient's life and career, perhaps backed up with advice from a curator at one of our military museums. However, as a first step, the Inheritance Tax Office of HMRC would expect those making an exemption claim to carry out any necessary research and present the evidence to back it up.

Evidence for an award of an Order of the Bath for gallantry can be straightforward. For example, in January 1815 the Order was reorganised, at what was then considered to be the conclusion of the Napoleonic Wars, into two divisions – Military and Civil. In the same month it was announced in the London Gazette that the Prince Regent, later King George VI, had ordained that a number of members of the Royal Navy and the Army would be admitted to the Military Order of the Bath. The announcement explained that

Above
Croix de Guerre (Belguim)
Introduced in 1915
IMAGE COURTESY OF SPINK AND SON LTD.

Below
Order of the Medjidie
Introduced in 1851
IMAGE COURTESY OF SPINK AND SON LTD.

the change would acknowledge the 'valour, perseverance and devotion manifested by the Officers of His Majesty's forces by sea and land'. As such, it seems right that any of the orders awarded to those named in the announcement should be regarded as gallantry awards for Inheritance Tax purposes. A number of these have surfaced in recent years.

The legislation makes no mention of the form that a qualifying award should take, but some have suggested it must be a medal, order or badge. This isn't the case: HMRC has allowed exemptions for a number of other items, most notably silverware and presentation swords. This again raises the question of whether or not something actually is a gallantry award, and the answer will depend upon the evidence. For example, an object might be engraved or marked in some other way with wording that makes it clear that it was awarded for gallantry. Alternatively, the piece might be accompanied by paperwork that answers the question or, in the case of some presentation swords, the reasons for their award might have been published. Again, it would be for those claiming the exemption to present evidence to back up their claim.

Misconceptions

It's sometimes suggested that the exemption only applies where the award has passed down through the family of the person to whom it was awarded. The legislation makes no mention of such a requirement and the 'never been transferred for consideration in money or money's worth' requirement only applies up to the point in time at which a charge might otherwise arise. In other words, if a gallantry award is exempted on a death and the beneficiary then sells it, the exemption still applies on that death. But if the exemption were to be claimed on the subsequent death of the buyer, it would no longer be available in the way it would be had the first beneficiary decided to give it away rather than sell it. This is designed to deny collectors what can be a very valuable exemption.

The legislation makes no mention of the nationality of the awarding country, or organisation, or of the recipient and so the exemption is not restricted to UK awards. Many foreign gallantry awards have been made to UK recipients by grateful allies during many wars, including both World Wars. Notable examples, often found in medal groups awarded to UK recipients, include the Croix de Guerre (French and Belgian), the French Légion d'Honneur and the Turkish Order of the Medjidie.

Furthermore, as the exemption is not restricted to UK awards, it's conceivable that a successful exemption claim could be made for a gallantry medal awarded by an enemy at the time to an individual fighting against the UK. An example, provided it meets the requirements in the legislation, might be an Iron Cross awarded by a German government to a member of the German armed forces fighting in one or both of the World Wars. This might seem odd, but the legislation only mentions valour or gallant conduct – and gallantry is gallantry, whoever the recipient and the circumstances of the award.

There is no requirement for a qualifying gallantry award to have been made in a military context. Many gallantry awards are made to civilians, with the UK's highest non-purely military gallantry award being, of course, the George Cross. A George Cross can also be, and often has been, awarded in a military context — this generally happens when the act of gallantry is not 'in the face of the enemy'.

The questions of who can award a qualifying gallantry award, who can receive it and the circumstances in which the award is made all come together when considering an award made to an animal. There is nothing in the legislation to preclude such an award. Examples include the National Canine Defence League Medal, which was instituted in 1900 and was awarded for acts of bravery in the rescue of dogs from dangerous situations and also to dogs for acts of bravery. There is also the Dickin Medal, which was instituted in 1943 by the People's Dispensary for Sick Animals to recognise acts of bravery by animals in wartime. This award is often referred to as 'the animals' VC', although some have been awarded during peacekeeping operations and after terrorist attacks.

Above
Victory Medal with Mention in Despatches emblem
Introduced in 1919
IMAGE COURTESY OF SPINK AND SON LTD.

Below
The Dickin Medal
Introduced in 1943
IMAGE COURTESY OF SPINK AND SON LTD.

Valuation

Once the decision is made that a particular award qualifies for exemption as a gallantry award, the next point to consider is the value for exemption purposes. When a transfer made during life or on death includes a gallantry award, the open market value of that award, under s.160 IHTA 1984, should be included in the Inheritance Tax return. The claim for exemption should be made on the return and the open market value of the award left out of account when calculating the Inheritance Tax. HMRC's Inheritance Tax Office will then consider the claim. It would help if claimants provided a full description of the award along with, if possible, a good quality, good-sized colour photograph.

If the award is on its own, for example a single medal or presentation sword, the open market value attributed to it in the return may be subject to the exemption. However, medals or orders usually occur as part of a group representing the recipient's military service and a group can contain more than one gallantry award along with other Campaign or General Service Medals. In such a case, an open market value will need to be agreed between those making the return and the Inheritance Tax Office for just the gallantry award(s) – but as a component of the group. This can be complicated, but HMRC isn't dogmatic on this point: as long as a reasonable estimate can be made, agreement should not be difficult. Where the value of the rest of the group is particularly modest, it may be reasonable not to insist on separating out the gallantry award(s) for exemption purposes, but it's important to remember that each case needs to be considered on its merits.

Mention in Despatches

The Mention in Despatches (MID) special certificate was approved by King George V in 1919 and its bronze oak leaves emblem received approval in 1920, with retroactive effect for MIDs received during the First World War. In those cases the oak leaves would be pinned to the ribbon of the Victory Medal. For an MID received during World War Two, a single oak leaf is generally pinned to the 1939–1945 War Medal. For MIDs received in other campaigns, the emblem should be pinned to the ribbon of the appropriate campaign medal. Relatively recent awards might take the form of a spray of laurel leaves or, for flying, an eagle emblem. The MID is a recognised gallantry award and will also qualify for exemption from IHT. HMRC is also content to accept that this exemption also extends to the medal, not otherwise itself a gallantry award, to which the MID emblem is correctly pinned.

Miniatures

While it could be argued that miniatures of gallantry awards are not themselves gallantry awards, particularly as they are usually purchased by the recipient, it can also be argued that a right to wear them comes with the actual gallantry award. For this reason, and because their value is usually very modest, HMRC is content to accept that the miniatures of gallantry awards may also be exempt from IHT.

Conditional Exemption and Offers in Lieu

Awards which are exempt from IHT, by virtue of their being gallantry awards, cannot then be conditionally exempt from IHT under s.30 IHTA 1984. A gallantry award which qualifies for exemption may still, of course, be offered in lieu of IHT. However, as the award would not attract its own tax, the credit it generates will be its agreed open market value as there would be no notional tax payable to reduce it.

Information and advice

For those completing an Inheritance Tax return, advice on whether an award might qualify for exemption from Inheritance Tax as a gallantry award can be obtained from the author.

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Movement of Artwork:
Key Considerations

Michael Parkinson discusses some of the issues, both tax and practical, to be considered when moving artwork from and to the UK.

Michael Parkinson
Macfarlanes

Michael is a partner in the private client team at Macfarlanes. He advises on a broad range of private client issues including UK inheritance tax and estate planning, wills, trusts, probate and the administration of estates (in particular estates with a cross-border element). He frequently acts as an executor and is a trustee of a number of private UK trusts. Michael is one of the editors of *Butterworths' Wills, Probate and Administration Service*.

Introduction

The original title to this article was to be 'Art and Movement' but rather than disappoint readers hoping for an insight into the ideals, style and technical approach of a particular art historical movement, I thought it was best to be honest from the outset. This article summarises the key points for consideration when advising clients on the movement of artwork from and to the UK.

We have seen an increasing number of clients seeking advice on the movement of artwork. For the most part, this advice has not stemmed from clients who are moving to the UK to become resident here, but from international clients with properties in several jurisdictions or art collector clients considering which jurisdiction offers the most attractive storage and management arrangements for their collection.

The note falls into the following sections:

- the tax and practical implications of importing artwork into the UK from outside the EU;
- the tax and practical implications of bringing artwork into the UK from another EU member state;
- the tax and practical implications of exporting artwork from the UK; and
- reminders on remittances and the conditional exemption.

I hope that you will reward my honesty by reading on!

Importing artwork into the UK from outside the EU

Import VAT

Import VAT is levied on all imported goods (including works of art). Goods are treated as imported when they arrive in the UK directly from outside the EU and are entered into free circulation in the UK (i.e. they are not held in a 'suspensive arrangement' such as a customs warehouse or free zone). The general rule is that import VAT is charged at 20% on the value of the object in question.

Different rules apply to relieve individuals of import VAT on the permanent importation of personal belongings to the UK as part of a transfer of residence.[1]

Customs duty may be charged on the importation of goods produced outside the EU although no duty would normally be payable in respect of works of art (due to the commodity codes assigned to them).

Reduced effective rate of VAT for artwork

Certain works of art, antiques and collector's items are taxed at a reduced value (25% of their actual value), giving an effective rate of import VAT of 5%. To qualify, the piece must not have been exported from the UK less than 12 months before the date of importation.

Objects that qualify for this reduced rate include paintings, drawings, original engravings and original sculptures executed by hand by the artist.

For VAT purposes, the value of the imported artwork must be calculated using one of five methods to be attempted in descending order:

- the transaction value;
- the customs value of identical goods exported to the EU;
- the customs value of similar goods exported to the EU;
- the selling price of the goods in the EU; and
- the cost of production of the goods.

Unfortunately, the majority of these methods are not appropriate for valuing artwork, in particular high value pieces. For example, similar goods for valuation purposes must be 'commercially interchangeable'.

For import VAT, the value of imported goods is also deemed to include:

- all taxes, duties and other charges levied either outside or, by reason of importation, within the UK (except VAT);
- all incidental expenses, such as commission,[2] packing, transport and insurance costs, up to the goods' first destination in the UK; and
- any expenses associated with transportation of the goods to their known destination within the UK or EU.

Temporary admission ('TA') relief

Relief from VAT can be obtained on works of art temporarily admitted into the UK from outside the EU provided that they:

- are in the UK for no longer than 24 months; and
- are imported for exhibition with a view to a possible sale; or
- are imported for exhibition at a public event without a view to sale.

To qualify for TA relief, a declaration must be made at the time of entry into the UK (or other EU country in which the works are to be exhibited). Records on the works of art that qualify for TA relief should be kept in the event that HMRC requests them. Records for these purposes would include evidence of ownership, use of the work of art (e.g. for a public exhibition) and how that work of art is identified.

Import licence

Most goods, including works of art, do not require an import licence to enter the UK from outside the EU. However, the export requirements of the country from which the work of art is arriving will need to be complied with.

Practical points

As a general rule all goods imported into the UK must be declared to customs using the form C88. Goods may be subject to examination and checks may be carried out to discern whether:

- the value declared for VAT is correct;
- the rate of VAT is correct for that item; and
- the importers are eligible for any VAT relief claimed.

We often recommend that clients appoint a shipping agent to oversee the freight formalities on their behalf. An agent can advise on the best procedure for packing and shipping works of art (i.e. by air, sea or road) as well as deal with any customs formalities.

Further, where clients have an existing relationship with an international art house such as Christie's, and particularly in cases where works of art are being imported under the TA procedure for a sale, the art house may well be able to manage all the practical aspects of the import.

Bringing artwork into the UK from another EU member state

The single market within the EU means that, strictly, a work of art coming into the UK from another member state is not treated as an import but as an 'arrival'. Consequently, import VAT and customs duty are not payable on the movement of artwork to the UK from within the EU.

Goods coming into the UK from the EU do not require an import licence, although the export requirements of the country from which the work of art is arriving will still need to be complied with.

As a result of this freedom of movement of goods within the EU, there are normally no requirements for formal customs documentation.

Exporting artwork from the UK

The single market means that exports from the UK to another EU country are classed as 'removals'. As the export and removal regimes are similar, this section deals with them together. However, for the purposes of this article removals from the UK to any destination are referred to as exports.

Export VAT

VAT and customs duty are not payable on works of art exported from the UK to other member states. Export VAT may be payable on the export of works of art from the UK to a non-EU country if the owner is a VAT registered person conducting commercial activity. Although no customs duty is payable on exports from the UK to non-EU countries, the destination country may impose its own import customs levies that will need to be complied with.

Export licence

All works of art and other cultural objects created more than 50 years ago will require a UK export licence before being exported from the UK.[3] This involves a relatively straightforward application to Arts Council England. The type of licence required depends on whether the work of art is destined for the EU or elsewhere. Applicants are required to provide information on the provenance of the object (including when it was acquired and previous owners) and photographs of the object itself. Once a licence is granted, it is valid for 12 months. Complications can arise if the licence application is referred to an expert adviser for scrutiny as to that piece's 'national importance'.

This is defined by the Waverley Criteria:

- Waverley 1: an object so closely connected with UK history and national life that its departure would be a misfortune;
- Waverley 2: an object of outstanding aesthetic importance: and/or
- Waverley 3: an object of outstanding significance for the study of some particular branch of art, learning or history.

A work of art need only meet one of the above criteria to be deemed as an object of national importance.

If the work of art arrived in the UK in the last 50 years, the Arts Council is less likely to refer the licence application to an expert adviser. It is therefore advisable (where possible) to submit evidence alongside a licence application that the work of art in question only arrived in the UK within the last 50 years. In the case of a relatively recent import, copies of commercial shipping documents and other customs documentation will be acceptable as evidence. If the expert adviser does object to the application it will then be referred to the Reviewing Committee on the Export of Works of Art. The exporter and the expert adviser will then submit written arguments as to why the work of art does/does not meet the Waverley Criteria and the reasons why it should/should not remain in the UK.

Practical points

As with import formalities, a shipping agent or international art house may be able to help with logistics and customs formalities.

1. This is not covered in this article. For more information please see HMRC's Notice 3 'Bringing your belongings to the United Kingdom from outside the European Community'.

2. For works of art that have been temporarily brought into the UK to be sold at auction, the commission paid to the auctioneer will not be included in the value for import VAT if that work of art is subsequently imported back into the UK on a permanent basis. The commission will instead be taxed at the full rate of 20% as a standard rated domestic supply.

3. There is an 'open general export licence' for works with a value below a certain threshold (approximately £180,000 for oil paintings but this varies depending on the category of the object). An open licence allows export without an individual licence from Arts Council England.

Remittance Issues

Below is a quick reminder for UK resident individuals domiciled outside the UK ('RNDs') who have elected to pay tax on the remittance basis. In very broad terms, the effect of the remittance basis is that non-UK income and capital gains accruing to an RND are not taxable in the UK unless they are 'remitted' to the UK. The rules as to what constitutes a remittance are extremely wide but in broad terms, the enjoyment in the UK of the relevant income or gains, or assets which derive from such income or gains, will be a taxable remittance.

Example
A client (an RND) purchases a picture at an auction in New York. The client does not have sufficient clean capital to fund the purchase, so he uses foreign investment income in order to do so. The client then brings the picture to the UK to hang on the walls of his house for an extended period. The importation of the picture is treated as a remittance of the income used to purchase the picture and is taxable accordingly.

There are a couple of important exemptions. Property brought into the UK for repair, or for the purposes of public viewing (referred to as 'public access' in the legislation), or property which is only 'temporarily imported' (which means for a total period of 275 days or fewer, not counting days of public access, personal use or repair) will not give rise to a remittance if the property is purchased out of foreign income or gains. These are known as the 'exempt property' rules.

The public access rule is probably the most important exemption for these purposes. It is designed to exempt works of art etc. brought for public display in museums (termed 'approved establishments') or the like. The fact that the property in question must be displayed at an 'approved establishment' means that individuals bringing works of art to the UK which are not available for public viewing will not benefit from the relief.

Further, exempt property may be sold in the UK without a remittance accruing as long as the proceeds are promptly removed from the UK. This would, for example, allow a work of art purchased out of overseas income to be sold at an auction in the UK.

Conditional Exemption

The Conditional Exemption Scheme is designed to preserve and protect national heritage (including outstanding or pre-eminent works of art) for the benefit of the public. Works of art and other objects that qualify under the scheme are exempt from inheritance tax and capital gains tax as long as certain conditions are met. In particular, the owner must undertake to: (i) preserve the item; (ii) make it available to the public; and (iii) keep the item in the UK. If any of these conditions are breached, the exemption is withdrawn. Withdrawal of the exemption may result in an immediate tax liability or, in the case of capital gains tax, liability on a future sale or gift.

For example, the temporary export of a conditionally exempt object for public display in a foreign exhibition would breach the conditions (unless prior approval is obtained from HMRC).

Conclusion

None of the points discussed above are ground-breaking new law. Nevertheless, I hope that this article provides a useful summary of the key issues involved in the movement of artwork and in relation to the points made on remittances and the conditional exemption, a reminder of easy traps for the unwary.

My experience of advising clients in this area has led me to believe that it is a combination of legal advice and practical guidance from an international art house, such as Christie's, that results in top quality client service.

Michael Parkinson
Macfarlanes

The Export Reviewing Committee:
Recent developments in procedure and practice

Frances Wilson reviews developments in the Committee's procedure and practice over the past 10 years.

Frances Wilson
Christie's Heritage and Taxation Advisory Service

Ten years have passed since the work of the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA) has featured as a subject in *The Bulletin*. In the Winter 2004 issue, Richard Harwood of 39 Essex Street Chambers provided a comprehensive overview in his article 'The Work of the Reviewing Committee on the Export of Works of Art' (as the Committee was then called — in 2005–2006 its name was updated to include 'Objects of Cultural Interest'). The RCEWA's procedures and practices have remained largely unchanged since then, but there have been some minor developments and this seems a good time to review them.

The RCEWA is a non-departmental advisory body and as such is subject to regular reviews by its parent department, the Department for Culture, Media and Sport (DCMS). These used to take place once every five years (Quinquennial Reviews), though the requirement is now for Triennial Reviews. As well as outlining the scope of the RCEWA's work, Richard Harwood also mentioned some of the recommendations that had been made by the most recent Quinquennial Review in December 2003. DCMS's response to the Review was not published until December 2004, after his article had gone to press. Some of the recommendations were subsequently adopted, and are noted below.

As procedural changes are adopted they are announced either in the RCEWA's annual report, or at the annual meetings of the Advisory Council on the Export of Art. This is an advisory body to the RCEWA and comprises members with an interest in the export of cultural objects, including museums, funding bodies and the art trade. Below is a summary of developments in the work of the RCEWA since 2004, in chronological order according to the reporting year in which each arose.

Transfer of Export Licensing Functions and RCEWA Secretariat (2004–2005 and 2011–2012)

At the time of Richard Harwood's article in 2004, the responsibility for processing export licences, and for providing Secretarial support to the RCEWA, lay with the Department for Culture, Media and Sport. As a result of recommendations made in the Goodison Review, the RCEWA Secretariat was transferred to the Museums, Libraries and Archives Council (MLA) in April 2005, followed by the Export Licensing Unit shortly thereafter. Both functions were subsequently transferred to Arts Council England (ACE) in October 2011, where they now sit within the Acquisitions, Exports, Loans and Collections Unit.

Procedures regarding an applicant's willingness to accept a matching offer (2004–2005)

Following recommendations made by the Quinquennial Review (Recommendations 2.11.18 and 2.11.19) procedures were tightened up to avoid situations where owners refused matching offers. If an owner has indicated prior to, or at, the hearing that they will not accept a matching offer, the RCEWA recommends that a licence is refused. At the hearing the applicant is asked whether the owner would be willing to accept a matching offer, and the implications of saying 'no' are explained if he/she declines. In addition, the owner is asked to sign a form either at the end

of the first deferral period, or upon receipt of a firm offer to purchase, to confirm that they are prepared to accept a matching offer. If they will not accept such an offer, refusal of the export licence will be recommended.

A sub-committee of The Quinquennial Review also recommended the introduction of a specific binding 'offer and undertaking' procedure (Recommendation 2.11.20) which would require an applicant to commit to a binding agreement to accept a matching offer at the end of the first deferral period. This recommendation was not adopted on the grounds that it would be disproportionate, given the relative infrequency with which matching offers were refused during the deferral period.

In its report of 2007–2008 the RCEWA stated that it reserved the right to recommend to the Secretary of State that such a stipulation could be imposed in an individual case, where it was justified and proportionate, for example in relation to an applicant who had persistently breached undertakings in the past.

Terms of reference of the RCEWA (2005–2006)

As stated by Richard Harwood, the RCEWA's terms of reference as at 2004 were:

a) To advise on the principles which should govern the control of the export of works of art and antiques etc.;
b) To consider all cases where refusal of an export licence for a work of art or antique is suggested on grounds of national importance;
c) To advise in cases where a Special Exchequer Grant is needed towards the purchase of an object that would otherwise be exported;
d) To supervise the operation of the export control system generally.

Following a recommendation made by the Quinquennial Review in 2003 (Recommendation 6.2.1), the fourth term was removed. The reason given for the recommendation was that the supervision of the operation of the export control system was considered to be an executive function belonging within DCMS. At the same time, the first term of reference was revised to include 'the operation of the export control system generally' within the scope of the RCEWA's general advisory function.

Update to the rubric accompanying the Waverley criteria (2005–2006)

The Quinquennial Review recommended some clarifications to the rubric accompanying the Waverley Criteria as it had been originally set out in the RCEWA's annual report of 1988–1989, including the association of an object with an important collection, and the provision of more up to date examples under each criterion (Recommendation 6.11.2). A revised interpretation, as set out in the report, was subsequently adopted and incorporated into *Export Controls on Objects of Cultural Interest: Statutory Guidance on the Criteria to be taken into consideration when making a decision about whether or not to grant an Export Licence* which was published by DCMS in November 2005.

Presentation of Waverley criteria in new tabular format (2008–2009)

In its annual report for 2008–2009 the RCEWA announced that it had decided to present the three Waverley criteria in a tabular format rather than as a list, in order to make it clear that they are not mutually exclusive and that no one criterion is any more important than the others.

The practice of withdrawing licence applications and refusing matching offers (2010–2011)

Over the years the RCEWA has repeatedly expressed its concern about the practice of a few applicants for export licences who indicate at the time of the hearing that they are willing to accept a matching offer to purchase, but subsequently change their minds and withdraw their export licence application. In its report for 2010–2011 the Committee explained that it had submitted a proposal to the Secretary of State to the effect that 'those who have made a serious expression of interest and raised funds to make a matching offer, only to be thwarted by an owner's change of heart about agreeing to sell [...] should be compensated for all "loss and damage" they have suffered as a result of relying on the owner's undertaking, just as if a binding contract to sell were in place'. At the time of writing this article, the proposal remains under consideration.

Discontinuation of 'starring' items found to meet the Waverley criteria (2011–2012)

The RCEWA announced in its annual report of 2011–2012 that it had discontinued the practice of 'starring' particular items to indicate that every effort should be made to keep them in this country. Starring had been introduced in 1987–1988 to denote objects which were felt to be supremely important. The first case to be the subject of 'the strongest recommendation that every effort should be made to raise the necessary funds' was that of the Clifford Papers relating to the Secret Treaty of Dover (Case 11 1987–1988), though the accolade was not referred to specifically as 'starring' until the annual report of the following year, when two further cases were also starred. The practice of starring was discontinued during the reporting year 2011–2012 because, as the RCEWA explained in its annual report, it appeared too frequently and, in some people's eyes, had tended to undermine the significance of those objects which had not been starred. The last items to be starred were an albumen print and a glass negative by Charles Lutwidge Dodgson, pseudonym 'Lewis Carroll' (Cases 9 and 10 2011–2012). A review of the statistics for the number of objects deferred between 1987–1988 and 2011–2012 does not demonstrate any correlation between those that were retained within the UK and those that had been starred.

The 'Ridley' Procedure (2011–2012)

In May 1990 The Rt. Hon. Nicholas Ridley MP, the then Secretary of State for Trade and Industry, announced that in considering whether or not to grant an export licence for heritage items he proposed to take account of an offer to buy the object during the deferral period from any source, whether public or private. He stated that he would take any private offer into account on a case by case basis, even one where there was no corresponding offer of public access.

In 1997, following consultation, the 'Ridley Rules' were varied so that private offers could only be taken into account by the Secretary of State if they were accompanied by a signed undertaking with a public institution to guarantee reasonable public access to the object (normally a minimum of 100 days per year), to provide satisfactory conservation conditions and to not sell the object for a specified period. Where a private offer combined with such an undertaking was refused by the owner, an export licence application would normally be refused.

The Quinquennial Review of 2003, while regarding the existing rules as reasonable, recommended further changes to ensure sufficient public benefit (Recommendation 6.11.10). In particular, it recommended that the undertaking should include an agreement not to part with ownership of the object within a period of time, say five years.

This remains the policy today, as set out in the guidance document *UK Export Licensing for Cultural Goods* Issue 5 2014, paras. 56–59). In 2011–2012, the minimum period of retention in the UK was extended from five years to ten. The first item to be bought by a 'Ridley purchaser' under the new ten-year rule was a collection of seven silk works depicting views of the Temple of Solomon (Case 15 2013–2014), which was purchased by the Rothschild Foundation for display at Waddesdon Manor for ten years.

Since the introduction of the Ridley Rules in 1989–1990 there have only been 12 private purchases, though seven of these have occurred within the past decade. Ridley purchases occur rarely but the procedure has been criticised by some as unfair on the grounds that it gives private individuals within the UK an advantage over public bodies located abroad. The extension of the access requirement from five years to ten may go some way to addressing this perceived imbalance.

Consultation on the Open General Export licence and procedures for Temporary licences (2012–2013)

In May 2012, DCMS launched a public consultation on two aspects of the export control system: the Open General Export Licence (Objects of Cultural Interest); and procedures for dealing with applications for temporary export licences for cultural goods. The purpose of the consultation was to seek views on two proposals:

1. To amend the Open General Export Licence (Objects of Cultural Interest) (OGEL) so that it will include cultural objects which are i) not in free circulation or ii) have been recommended by the Spoliation Advisory Panel to be returned to the claimant, which will remove the need for exporters to apply for an individual UK licence in these circumstances. The proposal also included amending the OGEL to reflect a more effective procedure, already being used in practice, with regard to objects relating to: (i) any British historical personage and (ii) articles of clothing, footwear or manufactured textiles.

2. To set out a policy for temporary licences in written guidance in the interests of good practice and consistency and to close the loophole that leads to the long-term or indefinite loss to the UK of cultural goods of 'outstanding national importance'. In particular, the proposal will introduce a separate policy for cultural objects found to be national treasures by the RCCWA and the applications for which were withdrawn by the applicant or for which a permanent licence had been refused, as a result of the owner refusing a valid matching offer from a UK purchaser or indicating their intention to do so. In such cases, a temporary licence will only be issued if the purpose of the export is to enable the object to be publicly displayed, as already happens in practice.

The closing date for the consultation was 1 August 2012 but, according to a note on the government website, the feedback is still being analysed.

Triennial review of the RCEWA (2012–2013)

As mentioned above, the RCEWA is subject to regular reviews by its parent department, DCMS, as part of the Government's commitment to conduct reviews of all its non-departmental public bodies. The most recent Triennial Review of the RCEWA was announced on 15 December 2011 and ran from 13 January to 10 February 2012.

There were two stages to the review. The aim of the first stage was to provide evidence on the continuing need for the Committee in term of its functions and form. Stakeholders were invited to respond to the following questions:

1. Do the key functions of the Export Reviewing Committee continue to be appropriate in terms of delivering the Government's objectives?

2. If so, are these functions most effectively and cost-efficiently provided at arm's length from Government and, more specifically, through an advisory NDPB?

3. Is the current location of the body (with support provided by the Acquisitions, Exports, Loans and Collections Unit at Arts Council England) the most appropriate?

The second stage of the review considered whether the RCEWA operates in accordance with the recognised principles of corporate governance by being open, transparent and accountable. The outcome of stage one of the review was that 'there is a continuing role for the Reviewing Committee on the Export of Works of Art as an Advisory Non-Departmental Public Body, sponsored by DCMS and administered by the Arts Council'.

A number of recommendations came out of stage two, mostly most of which were administrative rather than procedural. These included setting out in writing the duties, roles and responsibilities of the Chairman and the Committee Members, and developing a Freedom of Information Policy, a Complaints Procedure, a Code of Conduct, and a Register of Gifts and Hospitality.

Confidentiality – information provided to the RCEWA (2012–2013)

At its policy meeting on 5 December 2012 the Committee considered its then current practice of allowing the applicant for an export licence to disclose the name of a prospective purchaser of an item only to the Chairman and RCEWA Legal Adviser, but to withhold it from the other Committee Members. According to the minutes of that meeting, it was agreed that as the identity of the prospective purchaser is potentially relevant to the issues before the Committee, this practice should be discontinued and the information should be provided to all Committee Members as standard practice.

Fair matching price and compensating offer (2012–2013)

In its annual report of 2012–2013 the RCEWA announced that it would henceforward be asking applicants to provide information regarding the amount of tax which is payable on any particular sale at an earlier stage in the process. Previously, this information was requested only if and when a museum had expressed an interest in purchasing an item, but is now requested at the time a case comes before the Committee, or as soon as possible thereafter.

The reason given for this change was that the RCEWA considers it to be critical for a public body to know, as soon as it begins the process of trying to raise the funds necessary to make an offer, how much it needs to raise. If there is a tax remission available on a sale to a UK public body, that body can make a compensating offer, representing the fair matching price reduced by the amount of tax that would be payable by the seller on the sale price had the object gone abroad. Delays in providing this information could prejudice the museum's chances of successfully concluding the purchase and may give grounds for considering whether the deferral period should be extended.

Summary

The above notes demonstrate that the work of the Reviewing Committee has changed little over the past decade. This is notable considering the rapidly evolving context in which the RCEWA operates, particularly in relation to legislative developments, economic factors (including the financial crisis of 2008), and the general climate for funding of acquisitions by UK public bodies (especially as affected by the London 2012 Olympics).

I hope that this summary, when read in conjunction with Richard Harwood's article of 2004, will provide practitioners with an up-to-date overview of the work of the RCEWA.

Frances Wilson
Christie's
Heritage and Taxation Advisory Service

Centenary Stories: Remembering the First World War

As part of the Heroes at Highclere charity event in August, Christie's curated an exhibition of artefacts from countries affected by World War I. Lucy Brown and Claudia Dilley describe the exhibition and the associated online auction.

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As depicted in ITV's Downton Abbey, Highclere Castle played a significant role in World War I. Lady Almina, the 5th Countess of Carnarvon, turned Highclere into a military hospital during the War, just as Downton Abbey opens its doors to wounded soldiers. This summer Highclere Castle commemorated the start of the First World War in August 1914 and offered an opportunity to help victims of war today.

As part of the Heroes at Highclere charity event on 3 August 2014, Christie's curated an exhibition at Highclere Castle showcasing a range of artefacts from countries affected by World War I. The exhibition – *Centenary Stories: Remembering the First World War* – told the human story of men and women involved in the war, at home and abroad, through letters, photographs and artefacts from a host of countries. The *Centenary Stories* exhibition will be available to view on our website christies.com through January 2015. The exhibits themselves were loaned from a variety of museums, embassies and private collections.

As one of the themes for Heroes at Highclere was to acknowledge remembrance of the First World War without boundaries, the stories and objects tell of the experiences of those people affected across Europe and beyond. From Canada to Belgium, to Austria and New Zealand, the exhibition has given people the chance to reflect on the human stories that we all share, then as now.

Christie's was also pleased to present a special online-only auction – *Heroes at Highclere: Experience the Real Downton Abbey*. The auction, which ran from 1–14 August on christies.com, featured 12 items and experiences that offered a taste of life at Highclere Castle, home of the real Downton Abbey. Experiences included a dinner for eight, an overnight stay for a group in Lady Sybil's, Lady Edith's, and Lady Cora's quarters, a lesson from the Highclere butler in how to set the table, a sterling silver sautoir necklace designed and created by Andrew Prince, and a behind-the-scenes tour of the House of Lords plus afternoon tea with Baroness Jenkin.

The online auction was a huge success, surpassing its pre-sale estimates as both fans of the show and international buyers keen to get behind the scenes of the castle itself bid furiously against each other to win the prizes. The sale achieved 159% of its low estimate and every single lot sold, totalling just over £40,000. All proceeds raised by the auction went to the following eight Armed Forces charities which support both veterans and victims of war: The Royal British Legion, The Institute for Veterans & Military Families, The Army Benevolent Fund, The Nursing Memorial Appeal, The Florence Nightingale Foundation, Families of the Fallen, Oxfam and Combat Stress.

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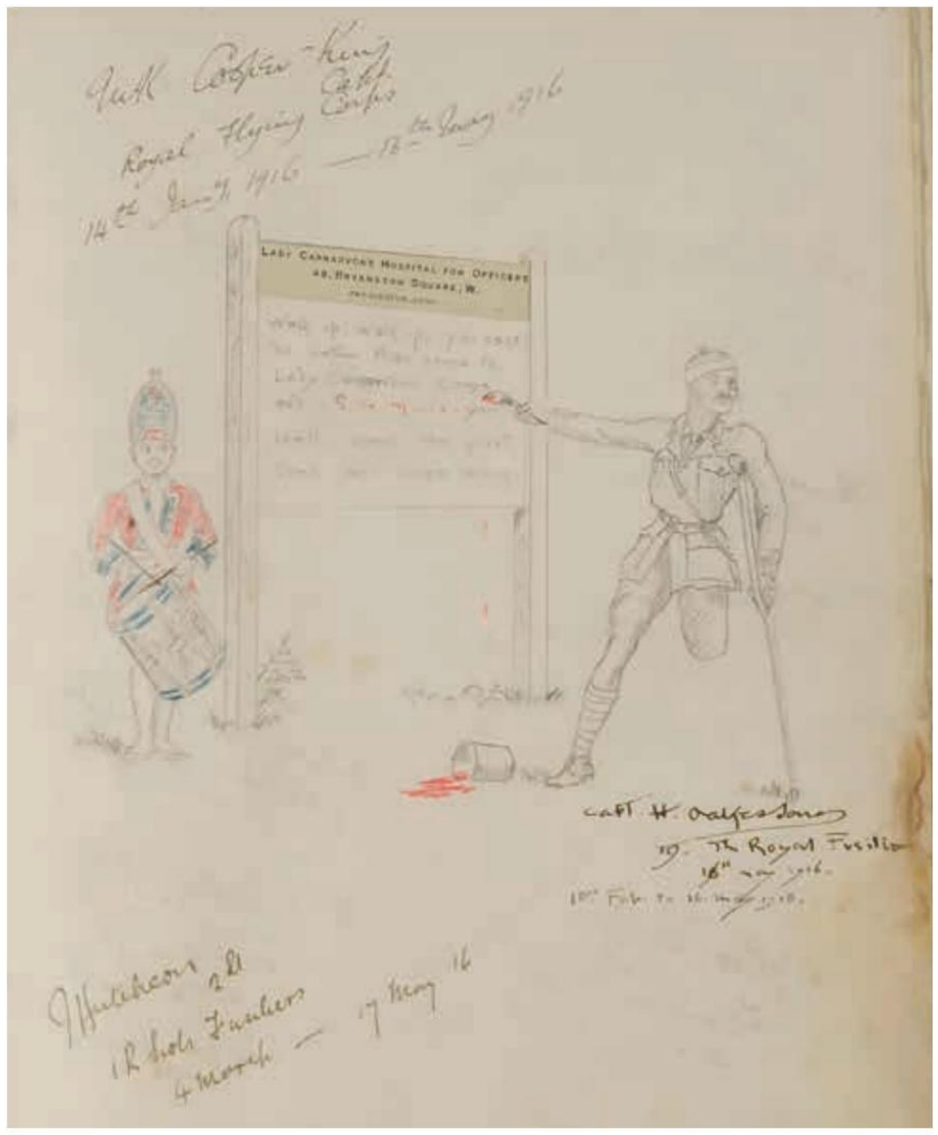
2.



3.

1.
British Expeditionary Force Vegetable Show Medal
Awarded for growing the best vegetables in the trenches.
Courtesy of the Garden Museum

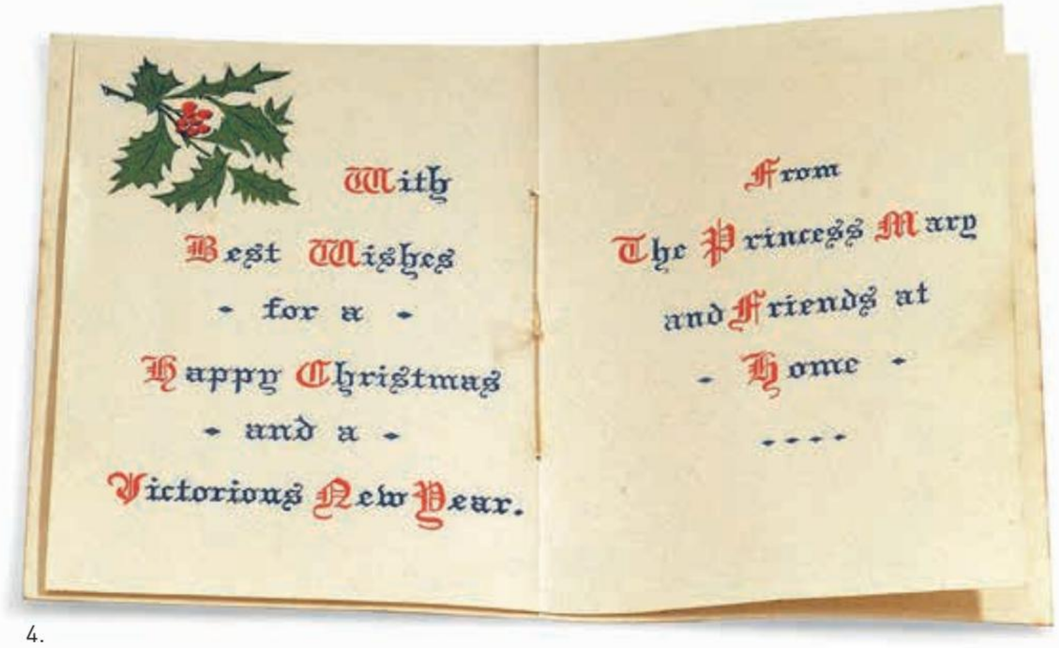
2.
A Patriotic Postcard
Titled *Always in our Thoughts*, a poem by H. B. Cohen.
Courtesy of Mr Mark Eynan

3.
Soldiers' Guest Book from Bryanston Square
This page includes a sketch in which the address from a piece of the hospital's headed writing paper has been made to look like a signboard, by Captain H. Oakes-Jones of the 19th Royal Fusiliers.
From Highclere Archives

4.
Chocolate Box and Christmas Card
Princess Mary was the eldest daughter of King George V and Queen Mary. In 1914, she was just 17 years old but had the idea 'every Sailor afloat and every Soldier at the front' should receive a Christmas present. She organised a public appeal which raised the funds to ensure that the Princess Mary Christmas Box containing a combination of pipe, lighter, tobacco and cigarettes was ready to be sent overseas in time for Christmas.

The tins were filled with various items including tobacco, confectionery, spices, pencils, a Christmas card and a picture of the princess.
Photo courtesy of Mr & Mrs Dormer

5.
Soldiers Signing a Shell
'Christmas Greetings from Canada'.
Photographer unknown



4.

5.

WALTER KOCH (1875–1915)
Wintersport in Graubünden
lithograph in colours, 1906
£3,000–5,000

The Ski Sale, Travel in Style
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Viewing
17–21 January 2015
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