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British Art Market Federation

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TACKLING KNIFE CRIME – A CONSULTATION

The British Art Market Federation (BAMF) was founded in 1996 to represent the leading organisations in the UK's £4.2 billion art and antiques market. Its members are the British Antique Dealers' Association; The Society of London Art Dealers; LAPADA The Association of Art & Antiques Dealers; The Antiquities Dealers' Association; The Antiquarian Booksellers' Association; The Society of Fine Art Auctioneers and Valuers; The Royal Institution of Chartered Surveyors; Christie's; Sotheby's and Bonhams.

Question 1

Should a licence be needed to sell non-domestic knives?

BAMF supports the Scottish Government's fight against knife crime. However, it is concerned that steps taken to reduce the incidence of knife crime should not inadvertently suppress or damage the legitimate trade in antique knives and weapons.

The Government has already considered and acknowledged that most domestic knives are used properly and safely and has excluded domestic knives from the licensing scheme, many of which, if they are to suit their function, are extremely sharp. If it is decided that a licensing system should be introduced, BAMF believes that a clear exception should be established for the sale of knives and swords as curiosities or collectors items for display. In this way there would be no inhibition on the trade in objects which are acquired or collected for reasons of cultural or historic interest. In fact the antique nature of many of the objects we are trying to protect would put them beyond the price range of young criminals.

The legislation should exempt antique weapons (defined as those which were manufactured more than 50 years before the date of any alleged offence) and/or other more modern collectible examples costing in excess of £400 (eg. Skean Dhus worn as part of Highland regalia).

Whilst we support any measures to cut crime in principle, (BAMF) does not support the idea of a licensing system without a clear exemption, as we believe it would adversely affect the legitimate trade in antique arms and armour and other historic artefacts. We believe that the cost and administration of implementing a blanket licensing policy would be disproportionate to any significant gains in reducing knife

crime especially as the antique nature of the majority of objects sold would put them beyond the price range of young criminals.

Looking at the First Minister, Jack McConnell's five point plan, (*page 5 Consultation document*) points 1-3 below, these clearly show a targeted approach to criminal activity and sensible measures that it would seem, could be implemented in a relatively straight forward manner and we understand that action has already been taken on these;

- *Doubling the maximum penalty for the possession of a knife in a public place, from 2 to 4 years*
- *increasing the use of stop and search powers by the police, and enhancing police powers of arrest(on suspicion of carrying an offensive weapon)*
- *increasing the minimum age at which a knife can be sold to someone from 16 to 18 years old*

Whilst we understand that point 4 – *a licensing scheme for the sale of non-domestic knives* is aimed at deterring criminals from purchasing knives and we are fully supportive of the motivation behind implementing such a system, we fear that in practice it may prove disproportionately damaging to the legitimate market than the other targeted suggestions outlined in points 1-3. If a blanket licensing system is brought in to force in Scotland without exemptions, it is likely to be burdensome on genuine businesses selling knives to legitimate purchasers, whilst those intent on acquiring knives for criminal activities will simply find other sources for their supplies.

We believe that increasing penalties, giving the police more power to search and arrest, increasing the minimum age for acquiring knives in addition to looking at the root of such behaviour through research, education, health and social work (as outlined on page 4 & 5 in No.9 &10) would be the most targeted and effective approach to reducing knife crime statistics without the implementation of a blanket licensing system.

Question 2

What should be covered by a definition of a non-domestic knife?

As we are not experts on the wide range of non-domestic knives available, BAMF believes that the definition of non-domestic knives should focus specifically on the type of knives most commonly used for criminal activity. There is no specific information provided that identifies which types of knives are most commonly used for violent crime or murder.

From an art market perspective, we have no information to suggest that the murders reported were committed using antique knives (knives over 100 years old) or 20th century knives such as skean dhus and dirks many examples of which are generally post 1920 and represent an important part of Highland regalia.

The most satisfactory solution for us would be to exempt such knives from the proposed licensing scheme on the grounds that they are sold, transferred, purchased,

acquired or possessed as curiosities or ornaments and not the kind of weapons employed in violent attacks or murders that you are concerned with. Specifically, the scheme should exclude knives and weapons that are:

- more than 50 years old and
- cost more than £400 and / or
- collectibles with historic and cultural interest

In addition to limiting the scheme to cover only certain types of non-domestic knives, it would be important to consider the type of seller. BAMF respectfully suggests that there should be special exemptions for those businesses that satisfy each of the following requirements:

- dealers in antique knives who are also members of reputable national trade associations for art and antique dealers¹, and
- who own or lease premises; and
- who are VAT registered.

Question 3A

Are the conditions of license reasonable?

We do not believe that any conditions should be applied to those selling non-domestic knives however if a licensing system is decided upon by the government then we would recommend that it is as flexible as possible and not too onerous on the retailer.

Assuming that the exemptions in terms of non-domestic knives and the limiting of the types of retailers to be regulated are adopted, BAMF would not generally oppose the suggestions set forth below. However, if the suggested exemptions in 2 above were not adopted in their entirety, BAMF comments as follows:

- Requiring retailers to keep records of those to whom they sell non-domestic knives - BAMF would not object to this requirement as it is already required of VAT registered companies and these records are already kept by reputable dealers.
- Requiring retailers to obtain photographic evidence of the purchaser's identification – Very often clients do not have or do not carry with them photographic identity. It should be sufficient to request some form of confirmation of residential and work address. Photographic identity should only be required for new clients or for those about whom the trader is uncomfortable or suspicious.
- Regulating the display of knives on licensed premises eg. Blacked out windows; locked cases – Drastic measures such as these would only be

¹ The national trade associations that could qualify for this exemption would be those trade associations that are members of the British Art Market Federation and possibly others that met certain standards and criteria set by the Government.

supported by BAMF if there were clear and convincing statistical evidence that knives on retail display were being stolen and used to commit violent crime.

- Requiring a “cooling off” period between any initial approach to purchase, and finalising of a sale – A drastic measure such as this would only be supported by BAMF if there were clear and convincing statistical evidence that a cooling off period were a successful deterrent to violent knife crime. In the absence of such evidence, this restriction would risk seriously adversely affecting the legitimate trade in antique and collectible knives. Moreover, a cooling off period would undermine sales at auctions or antique fairs. This would be difficult to implement and not recommended by BAMF.
- Requiring retailers to obtain a statement from (é.g.) a Justice of the Peace, Member or Parliament or professional person, confirming purchaser’s ID – Again this would be too burdensome and time consuming for the business, a disproportionate measure that is unlikely to assist in achieving the stated goal.
- Requiring retailers to record transactions on CCTV – This is not practical, because many traders conduct legitimate business outside their main premises or do not have a shop. It would be of little or no benefit during an auction. Finally, if the purchasers had otherwise confirmed their home and business address, this would be an unnecessary measure.
- Requiring retailers to record a description of the type of knife sold- Yes, this would be a sensible measure and is practiced already by most reputable retailers.
- OR: ID numbers or other means to identify their merchandise with a shop “marker” – This suggestion should be required only if the marker did not in any way risk damaging the condition or value of the item, and it is not unduly costly or burdensome to implement.

Question 3B

Should there be any additional conditions of licence?

No

Question 4

What would be the cost for businesses of licensing the sale of knives?

The cost to businesses would obviously depend on exactly how the system was implemented by the local authorities and how many of the conditions described on page 9 were actually required as a condition of license.

As stated on page 10, no.32, "*the costs to local authorities should be recovered by charges made for licences*" so evidently businesses would need to consider an annual cost for the licence and even if this was kept to an absolute minimum it would inevitably contribute to the mounting financial and administrative burdens of legislation on small and medium sized businesses.

There would be untold costs to businesses in terms of time and effort of keeping the relevant records (unless VAT records would suffice) and the cost would depend on how many of the conditions outlined on page 9 no.26 were applied.

If the conditions of licensing were too restrictive and expensive then it could jeopardise the future viability of dealers' and auction houses' businesses. Similarly, if the verification process was too onerous many collectors could be discouraged from buying knives and swords resulting in a very significant loss of earnings for dealers and auction houses specialising in this area.

Question 5

Should it be a criminal offence to purchase a (non-domestic) knife from a unlicensed seller?

We do not think that the regulations licensing the sale of knives should be accompanied by the creation of an offence of purchasing a non-domestic knife from an unlicensed retailer. We believe that if a licensing system is to be adopted by the government then the legal onus should fall on the retailer alone. The proposed additional control on the purchaser would require primary legislation and we feel that the expected benefits of reducing knife crime would be disproportionate to the time and resources required to implement such a measure.

Question 6

Should shops require a licence to sell swords?

No, BAMF does not believe that shops should be required to hold a licence to sell swords as we think that a blanket licensing policy would have an adverse effect on the legitimate market, the reduction in the illicit market would be disproportionate to the proposed legislation with criminals simply finding other sources from which to acquire swords. As with antique knives, we feel that the swords used in crimes are probably cheap replicas and not antique swords or more modern examples of cultural or historical significance. It would seem sensible to apply the same exemption analysis as described above for knives and as stated in our answer to Q1 with an exemption for swords older than 50 years and costing more than £400.

Question 7

Should the sale of swords by shops be restricted to require them to sell only to members of approved organisations?

Many people who buy swords for legitimate reasons do not belong to approved organisations, for example collectors or dealers. This does not seem to be an entirely satisfactory or workable safe guard. As mentioned above, from an art market perspective the cost of such collectors' items is also likely to be a deterrent to most criminals.

Again, to enact primary legislation to identify "approved organisations" would appear to be a disproportionate measure and engender an enormous amount of unpopular red tape for innocent participants in such activities as highland dancing or antique collecting.

Question 8

Should the sale of all swords be banned?

We believe that the ban of all swords with clear exemptions for antique weapons would be preferable to a licensing scheme so long as the definition for antique weapons was extended to include 20th century and contemporary swords of cultural or historic importance even though this would go beyond the existing statutory defences and would require primary legislation.

The arbitrary definition "antique" as specified on p.15 No.51 as an object "manufactured more than 100 years before the date of any alleged offence" provides us with various difficulties in the case of the proposed legislation as there are many swords and knives from the 20th century that are collectable and of historic and cultural interest.

We therefore would suggest following by example the 2001 amendment to Section 58(2) of the Firearms Act 1968 which exempts from the provisions of the Act – "antique firearms which are sold, transferred, purchased, acquired or possessed as curiosities or ornaments. The Act does not define the term 'antique', and it is for the chief officer of police and for the Courts to consider each case on its merits." *

** The change to the guidance given by the Home Office to the Police about antique firearms that came in to effect 12th January 2001. Author: Graham Widdlecombe*

Question 9

If so, should there be any groups who are exempted from that ban (ie: should there be any reasons/uses for which it remains legitimate to sell swords)?

From an art market perspective, we would ask that exemptions are such that they do not affect the legitimate trade in antique arms and armour and other historic artefacts up to and including modern times. So we would recommend the exemption of:

Antique swords together with 20th century and contemporary swords that are of ceremonial, historic or cultural relevance.

The same exemption as defined in Q 1 could be employed.

The legislation should exempt antique weapons (defined as those which were manufactured more than 50 years before the date of any alleged offence) and/or other more modern collectible examples costing in excess of £400 (eg. Skean Dhus worn as part of Highland regalia).

It is also worth noting that a very large percentage of antique or 20th century swords are ceremonial or dress swords and as such they do not have a cutting edge and are unlikely to be a chosen weapon for criminal activity.

Question 10

Should the sale of only samurai swords be banned?

Page 3, No.5 of the Consultation paper points out that, "*Advice from the police suggests that the concealability, portability and availability of samurai swords in particular, make them the weapon of choice for growing numbers of young men with criminal intentions*", however we imagine that these are most likely to be contemporary reproduction samurai swords and not antique or collectable examples, the cost of which is likely to be prohibitive to most young criminals.

Samurai swords are some of the major works of art to come out of Japan and are represented in many major museums in the world, to ban dealing and collecting in this area would be very damaging and a great cultural loss. Period samurai swords are very collectable and valuable and a ban on the sale of such examples without making provision for an exemption relating to antique samurai swords and 20th century samurai swords of ceremonial, cultural or historic relevance would greatly damage this specialist area of trade in antique arms and armour. The above exemption should help to reduce trading in replica samurai swords which we suspect are those used by young criminals without damaging the legitimate trade.

Question 11

If so, should any groups of people be exempt from that ban (i.e. should there be any reasons / uses for which it remains legitimate to sell samurai swords)

From an art market perspective there is a very real and legitimate reason for auction houses and dealers to trade in samurai swords which are sold to collectors and museums interested in Japanese culture. For over a thousand years the sword has played a critical role in Japanese society. Even today it remains a ubiquitous and venerated object, whether cherished as a work of art, admired as a feat of technology, or wielded in one of the many schools of fencing that have survived Japan's feudal era.

Question 12

How should a samurai sword be defined?

One of the best known of the East Asian swords is the Japanese samurai sword, consisting of a curved single-edged tempered steel blade set in a long handle and traditionally used by the Japanese Samurai.

Or as defined on p.17 no.58 of the Consultation document

Question 13

Is there a case for individual licences for the purchase of swords?

If a total ban is not possible with exemptions for antique swords and those of historic or cultural importance then we are not in favour of a licensing system or complete ban for purchasers as this would unnecessarily restrict the scope of the buying public and diminish the potential market in Scotland for dealers and auction houses. Whilst, specialist collectors might be prepared to take out a licence, there is also a sector of the buying public who may be interested in an impulse buy or single purchase and who would be dissuaded by the additional cost and bother of a purchaser's licence.

The Consultation paper notes (64) that "individual licences for sword ownership is likely to be expensive to establish and operate". Again we feel it is a disproportionate use of public funds and an unnecessary restriction of legitimate trade and activity for the collecting public.

Trade in antique arms and armour is very much an international business so the exemption for those wishing to purchase swords for export from Scotland as outlined on page 19, no.63, would need to be included in the proposed legislation so as not to adversely affect business for dealers and auctioneers with unlicensed customers living outside of Scotland.