

HOLOCAUST (RETURN OF CULTURAL OBJECTS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Holocaust (Return of Cultural Objects) Bill as brought from the House of Commons on 29th June 2009. They have been prepared by the Department for Culture, Media and Sport with the consent of Lord Janner of Braunstone, the Lord in charge of the Bill, in order to assist the reader of the Bill. The explanatory notes do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Spoliation Advisory Panel was established by the Government in 2000 to consider claims for the return of cultural objects lost during the Nazi era (1933-1945) and to advise museums and claimants on what might be an appropriate solution. The Spoliation Advisory Panel offers advice to museums and claimants on what might be an appropriate solution in accordance with the Washington Principles, adopted in 1998 by 44 states, including all EU member states, to assist in resolving issues relating to the return of cultural objects lost during the Nazi era.
4. The national institutions specified in the Bill are all publicly funded institutions established by statute. These institutions are governed by Boards of Trustees whose powers are set out in primary legislation. The legislation currently prohibits the Trustees from disposing of items in their collections, except in very limited circumstances and does not permit the Trustees to transfer an object following a recommendation by the Spoliation Advisory Panel. These statutory prohibitions lead to inconsistency in the powers of institutions to return an object to a claimant, following a recommendation of the Spoliation Advisory Panel.

5. In general, where an item is in the collection of a University or local authority museum, the authorities responsible for the collections are not prohibited by primary legislation from returning the object to claimants. The National Museum of Wales, the National Library of Wales, the Ulster Museum, the Ulster Folk and Transport Museum, the Ulster American Folk Park and the Armagh County Museum are not subject to a similar, statutory bar on disposal. Where the national museums are prohibited by legislation from transferring an object claimants are offered an ex gratia payment instead.
6. The purpose of this legislation is to remedy this inconsistency by giving the governing bodies of the listed national museums an additional power to return an object to a person who claims it.

OVERVIEW

7. Where two conditions are met the Bill gives the governing bodies of the national institutions named in the Bill a power to transfer an object from their collection and return it to the person who claims it. The first condition is that the Advisory Panel recommends that the object should be returned to the claimant. The second condition is that the Secretary of State approves the Panel's recommendation. Scottish Ministers must consent before the Secretary of State can approve a recommendation that relates to an object in the collection of one of the Scottish bodies specified in the Bill. The Bill will expire on the tenth anniversary of the day on which it receives Royal Assent.

Territorial Extent

8. The provisions of the Bill extend to England and Wales, and Scotland.
9. This Bill contains provisions that trigger the Sewel Convention that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The consent of the Scottish Parliament has been sought.

COMMENTARY ON CLAUSES AND SCHEDULES

Clause 1: Bodies to which this Bill applies

10. *Clause 1* lists the bodies to which the Bill applies.

Clause 2: Power to return victims' property

11. *Clause 2* sets out the power to return an object given to the Trustees of bodies listed in *clause 1* and the two conditions that must be met before the power can be exercised. The conditions are:

- firstly, that the return of the object to a person has been recommended by the Advisory Panel (*subsection (2)*); and
- secondly, that the Secretary of State has approved the Panel's recommendation (*subsection (3)*).

12. The consent of Scottish Ministers must be given before the Secretary of State can approve the recommendation if it concerns an object in the collection of a Scottish body, that is the Board of Trustees for the National Galleries of Scotland; the Trustees of the National Library of Scotland or the Board of Trustees of the National Museums of Scotland.

13. The power to return an object to a victim does not override any trust or condition subject to which an object is held.

Clause 3: "Advisory Panel"

14. *Clause 3* explains that the term "Advisory Panel" means a Panel designated by the Secretary of State. The Government has indicated that its intention is to designate the Spoliation Advisory Panel. *Subsection (2)* provides that a Panel may be designated only if its functions are limited to the consideration of claims to objects and relating to events occurring in the Nazi era; defined as the period from 1 January 1933 to 31 December 1945.

Clause 4: Short title, extent commencement and sunset

15. *Clause 4* deals with extent, commencement and duration. The Bill extends to England and Wales and Scotland. However, no institution to which the provisions of the Bill apply is located in Wales. *Subsections (2) to (4)* provide for the Act to be brought into force by a commencement order made by the Secretary of State. The Secretary of State must consult Scottish Ministers before making an order in respect of a Scottish body. *Subsection (6)* specifies that the Act will expire 10 years after the day on which it is passed.

FINANCIAL EFFECTS OF THE BILL

16. Nil. The Bill provides an additional discretionary power for trustees to transfer an object from their collection where the conditions specified in the Act are met.

PUBLIC SERVICE MANPOWER IMPLICATIONS

17. None of the Bill's provisions has significant implications for public service manpower.

EUROPEAN CONVENTION ON HUMAN RIGHTS

18. The effect of the Bill is to confer, on the Trustees of the bodies to which the Act applies, a power to return an object lawfully owned by them in their capacity as Trustees to a claimant, following a recommendation by the Advisory Panel.
19. The Spoliation Advisory Panel established in 2000 provides a form of voluntary, non binding mediation. The remit of the Panel permits the Panel to take account of the moral strength of a claim in recognition that people who lost property in the Nazi era face many obstacles in proving legal ownership in the civil courts. Referral to the Panel does not prevent a claimant bringing a civil claim.
20. In so far as Article 6 applies to the non binding recommendations of the Panel, this Bill will further the rights of individuals and will not adversely affect them. In considering whether to approve the recommendations of the Panel, the Secretary of State will be bound to act in accordance with the Human Rights Act.
21. In so far as Article 8 rights and rights under article 1 of the First Protocol may be engaged, the Bill will further an individual's rights and will not adversely affect them. The rights and duties of the Trustees are preserved as the return of the object is voluntary and a matter for the discretion of the Trustees.
22. The power to return an object to a victim who lost possession of the object in the Nazi era applies to a particular class of victim and is therefore within the ambit of Article 14. The widespread and systematic deprivation of property in the Nazi era and the problems faced by individuals seeking to recover their property has been recognised in international declarations as requiring particular measures to remedy. For example, the Inter- allied Declaration against Acts of Dispossession Committed in Territories under Enemy occupation or control, January 5 1943; the 1998 Washington Conference on Holocaust Era Assets and the Vilnius Forum Declaration in 2000. A comparator would be an individual who lost possession of an object in similar circumstances in another period. The Government is not aware of individual claims of this sort except

in relation to individuals who lost possessions in the period 1933 to 1945. The measure is proportionate and justifiable in so far as it enables trustees to return an object to a particular class of victim in response to an identified problem.

SUMMARY OF THE IMPACT ASSESSMENT

23. The impact assessment concludes that there is no impact from these proposals on business, the third sector or the environment. The assessment also considers the effect of the proposals on different groups. Many, though not all, of the claims dealt with by the Spoliation Advisory Panel concern the family treasures of Jewish families, who suffered more than most during the Nazi era. Such widespread and systematic seizure of cultural property in territories occupied by or under the control of the Nazis from 1933 to 1945 has been recognised internationally as warranting particular recognition and deserving of special treatment. The impact assessment concludes, therefore, that limiting the power of return to the Nazi era is justified, given the extreme circumstances of that period.

COMMENCEMENT

24. *Clause 3* provides for commencement. The provisions of the Act will be brought into force on the day appointed by the Secretary of State. Before making an order that relates to a Scottish body, the Secretary of State must consult Scottish Ministers.

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*Ordered to be Printed,
29th June 2009*

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LONDON: THE STATIONERY OFFICE

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