

HOLOCAUST (RETURN OF CULTURAL OBJECTS) (AMENDMENT) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Holocaust (Return of Cultural Objects) (Amendment) Bill as brought from the House of Commons on 18 March 2019 (HL Bill 168).

- These Explanatory Notes have been prepared by the Department for Digital, Culture, Media and Sport with the consent of Lord Sherbourne of Didsbury, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill amends the Holocaust (Return of Cultural Objects) Act 2009 (the “Act”) to prevent it from expiring on 11 November 2019.
- 2 The Act received Royal Assent on 12 November 2009. Section 4(7) of the Act contains a sunset clause that causes the Act to expire 10 years from the day on which it was passed. However, this Bill makes provision for the Act to continue to have effect indefinitely. To achieve this, the Bill repeals section 4(7) of the Act.
- 3 The Act confers power on the national museums and galleries listed in section 1 (the “listed institutions”) to return certain cultural objects on grounds relating to events occurring during the Nazi era. It does so by enabling these institutions to give effect to recommendations made by the Spoliation Advisory Panel (the “Panel”) for the return of such objects. The Panel offers advice on claims for the return of cultural objects lost during the Nazi era (1933-1945) and which are now in UK collections. The Bill will allow this power to continue indefinitely.

Policy background

- 4 The Panel was established by the Government in 2000 to consider claims for the return of cultural objects in UK collections lost during the Nazi era. It offers advice to museums and claimants on what might be an appropriate solution in accordance with the Washington Principles on Nazi-Confiscated Art, adopted in 1998 by 44 states, including all EU member states. These Principles aim to encourage the resolution of issues relating to the return of cultural objects lost during the Nazi era. The Panel may also advise on claims for items in private ownership but only where this follows a joint request by the claimant and the owner.
- 5 Prior to 2009, where the Panel found that the return of an item in a national museum or gallery was an appropriate solution, it was unable to recommend this because of legal restrictions in the governing legislation of these institutions. The various pieces of legislation only allow the Board of Trustees of these institutions to dispose of items in very limited circumstances, not including following a recommendation by the Panel.
- 6 With the introduction of the Holocaust (Return of Cultural Objects) Act 2009, the 17 listed institutions may now return items lost during the Nazi era, where this follows a recommendation by the Panel and the Secretary of State agrees. 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 listed institutions. The Act includes a sunset clause which means that it will cease to have effect after 11 November 2019.

Legal background

- 7 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 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. A legislative consent motion was agreed by the Scottish Parliament on 8 May 2018.

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Commentary on provisions of Bill

Clause 1: Holocaust (Return of Cultural Objects) Act 2009: repeal of sunset provision

- 10 Clause 1 amends Section 4 of the Holocaust (Return of Cultural Objects) Act 2009 to remove subsection (7), which provides for the Act's expiry after 10 years. This will prevent the Act from expiring on 11 November 2019.

Clause 2: Extent, commencement and short title

- 11 Clause 2 describes the extent of the Bill, commencement and short title.

Commencement

- 12 Clause 2 provides for commencement. The provisions of the Bill will be brought into force on the day appointed by the Secretary of State. This will need to take place before the Act's expiry. Before making an order that relates to a Scottish body, the Secretary of State must consult Scottish Ministers.

Financial implications of the Bill

- 13 The Bill has no financial implications. The 2009 Act provides an additional discretionary power for the listed institutions to transfer objects from their collection where the conditions specified in the Act are met.

Parliamentary approval for financial costs or for charges imposed

- 14 The Bill has no financial implications. Compatibility with the European Convention on Human Rights
- 15 The Government proposes to make a statement that the provisions of the Bill are compatible with the European Convention on Human Rights (the "Convention"). A formal statement under section 19(1)(a) of the Human Rights Act 1998 is not required because the Bill is a Private Member's Bill. A statement of compatibility was also made for the Act, which stated that the Act engaged a number of Convention rights but strengthened their protection rather than interfering with them. These rights include the right to peaceful enjoyment of property (Article 1, Protocol 1), to a fair trial (Article 6), and to respect for private and family life (Article 8). That statement applies equally to the Bill.
- 16 The Act also engages the prohibition on discrimination (Article 14) in combination with the right to peaceful enjoyment of property (Article 1, Protocol 1) because it allows the listed institutions to return lost cultural objects to their owners and heirs but only in cases where the object was lost during the Nazi era. As a result, it treats owners of cultural objects deprived of the peaceful enjoyment of these objects during the Nazi era more favourably than owners of cultural objects outside this group. This Bill has the same effect by extending the operation of the Act.
- 17 On the passing of the Act, potential interference with Article 14 was considered to be objectively justified and reasonable as it recognised the particular obstacles faced by individuals seeking to recover items lost during the Nazi era and the need to promote special arrangements to assist these victims. The Government remains of the view that limiting the

power of return to the Nazi era is justified. The widespread and systematic deprivation of property in this era and the problems faced by individuals seeking to recover their property have been recognised in international declarations as requiring particular measures to remedy, including the Washington Principles. The Bill recognises the continued need to assist victims of Nazi expropriation and to give effect to international standards in this area.

Annex A – Territorial extent and application in the United Kingdom

The provisions of the Bill extend to England and Wales, and Scotland

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	Yes	No	Yes	Yes	N/A	Yes (S)
Clause 2	Yes	No	Yes	No	Yes	Yes	N/A	

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