LEGISLATIVE CONSENT MEMORANDUM

HOLOCAUST (RETURN OF CULTURAL OBJECTS) (AMENDMENT) BILL

1. This memorandum has been lodged by Fiona Hyslop, Cabinet Secretary for Culture, Tourism and External Affairs, under Rule 9B.3.1(b) of the Parliament’s Standing Orders. The Holocaust (Return of Cultural Objects) (Amendment) Bill was introduced in the House of Commons on 13 March 2018. The Bill can be found at:

https://services.parliament.uk/bills/2017-19/holocaustreturnofculturalobjectsamendment.html

Background

2. The Holocaust (Return of Cultural Objects) Act 2009 (“the 2009 Act”) allows the United Kingdom’s national museums and galleries to transfer cultural objects out of their collections on grounds relating to events occurring during the Nazi era (defined in the Act as 1933 to 1945), i.e. to return to their rightful owners works of art which were looted before and during World War II.

3. The 2009 Act was introduced, as a Private Member’s Bill, in order to enable the national institutions to give effect to recommendations made by the Spoliation Advisory Panel (“the Panel”). The Panel was established in 2000 in order to consider claims from anyone who had lost possession of a cultural object in circumstances relating to events during the Nazi era and to advise on a “fair and just solution” in each case. Its recommendations are non-binding on the parties but, in practice, they have always been followed. Until the 2009 Act, national institutions were unable to implement any recommendation to transfer an object from their collections.

4. With the agreement of the Scottish Parliament, the National Museums of Scotland, the National Galleries of Scotland and the National Library of Scotland were included in the provisions of the 2009 Act. These institutions are otherwise prevented from releasing objects because of their general statutory duties to preserve their collections. These duties are contained in, respectively, the National Heritage (Scotland) Act 1985, the National Galleries of Scotland Act 1906 and the National Library of Scotland Act 2012 (which reformed the Library’s original governance under the National Library of Scotland Act 1925).

5. The 2009 Act also requires the Secretary of State to obtain the agreement of the Scottish Ministers prior to approving decisions relating to recommendations of the Panel which relate to the institutions in Scotland.

6. The institutions covered by the 2009 Act are set out in section 1 of that Act (as amended by the National Library of Scotland Act 2012). They are all statutory bodies which would otherwise be prevented by their governing legislation from returning such objects.
7. Section 2 of the 2009 Act gives the named institutions a power to transfer objects out of their collection where such transfer has been recommended by the Panel and that recommendation has been approved by the Secretary of State.

8. However, section 4(7) of the 2009 Act is a sunset clause which provides that:

“This Act expires at the end of the period of 10 years beginning with the day on which it is passed.”

9. The 2009 Act received Royal Assent on 12 November 2009, so it will expire at the end of 11 November 2019 under the provisions of section 4(7) of the Act. The original sunset clause is thought to have reflected an expectation that only a finite number of such claims for cultural objects would materialise.

Content of the Holocaust (Return of Cultural Objects) (Amendment) Bill

Proposed policy

10. The UK Government wishes the 2009 Act to continue to have effect indefinitely. Its view is that:

- it remains an absolute imperative to correct the wrongs that took place during the Nazi era when it comes to cultural property;
- this principle is not affected by the passage of time - arguably, the need is strengthened as memories start to fade;
- the completion of reports by national institutions into items with incomplete provenance during the relevant period is ongoing;
- as such, potential claimants may be unaware of the location of objects which used to be in the possession of their families; and
- owing to limitation laws, claimants are unlikely to be able to pursue a claim for return of their property through the courts. Referral to the Spoliation Advisory Panel is often the sole remaining route for pursuing the return of such an object.

11. The Scottish Ministers agree with the proposal and that this policy should have effect in Scotland.

12. The UK Government considers that the most straightforward way to achieve the above policy aim is to repeal section 4(7) of the 2009 Act.

Extent and application

13. The 2009 Act extends to England and Wales and Scotland (section 4(2)). A number of the institutions specified in section 1 are located in Scotland, and the consent of Scottish Ministers is required before a Scottish institution may transfer an
object (section 2(4)). It is intended that the extent of the Act should remain the same and a legislative consent motion is therefore required.

Provisions which relate to Scotland

14. The Bill consists of only two clauses. The first clause amends the wording of section 4 of the 2009 Act to remove subsection (7). This has the effect of repealing the sunset clause. The second clause defines the extent of the Bill, which extends the Bill to Scotland, sets out provisions relating to the Bill’s commencement and establishes the short title of the Bill, when enacted.

Reasons for seeking a Legislative Consent Motion

15. Overall it would be difficult to justify taking up the Scottish Parliament’s time with a separate Bill to implement these proposals. As a Bill amending an Act of the UK Parliament, it is in any case more appropriate to allow the UK Parliament to legislate for Scotland in this area. This also has the effect of enabling the Bill’s provisions on this issue to come into force in different parts of the UK at the same time and on the same basis.

Consultation

16. The UK Government’s Department for Culture, Media and Sport issued a consultation paper in 2006, seeking views on whether to lift the statutory and other legal restrictions relating to the return of objects lost during the Nazi era. There was general agreement that this would be the appropriate way forward. The consultation paper and responses received are available at the following link: http://www.culture.gov.uk/reference_library/consultations/1116.aspx

17. Until recently, it was intended that the UK Government should issue a further consultation paper on whether to extend the 2009 Act and, if so, for how long (for example, whether there should be a further sunset period of 5-10 years). However, UK Ministers took the view that it should continue indefinitely and decided to pursue that policy without public consultation. The institutions affected by the proposals in Scotland have been consulted and welcome the proposals.

Financial implications

18. The financial implications of the Bill in Scotland are likely to be very limited. In the absence of a continuing power to return objects to their owners, the national collections in Scotland could, in theory, face claims for ex-gratia compensation payments, were any items in their collections to be identified as having been stolen in the Nazi era. The national collections have undertaken work over years to establish the provenance of their collections with a view to establishing a full past history.
Conclusion

19. Scottish Ministers accepted the arguments for changing the law in relation to national collections’ ability to return cultural objects stolen during the Nazi era, and accept that these provisions remain relevant and should not come to an end. The proposals in the Holocaust (Return of Cultural Objects) (Amendment) Bill achieve this and the motion provides a simple and effective means for Scottish institutions to be included.

Draft Legislative Consent Motion

18. The draft motion, which will be lodged by the Cabinet Secretary for Culture, Tourism and External Affairs, is:

“That the Parliament agrees that the relevant provisions of the Holocaust (Return of Cultural Objects) (Amendment) Bill, introduced in the House of Commons on 13 March 2018, relating to the repeal of section 4(7) of the Holocaust (Return of Cultural Objects) Act 2009, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
March 2018
This Legislative Consent Memorandum relates to the Holocaust (Return of Cultural Objects) (Amendment) Bill (UK legislation) and was lodged with the Scottish Parliament on 15 March 2018.

HOLOCAUST (RETURN OF CULTURAL OBJECTS) (AMENDMENT) BILL – LEGISLATIVE CONSENT MEMORANDUM