



Department for

Communities

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CULTURAL PROPERTY (ARMED CONFLICTS) BILL: LEGISLATIVE CONSENT MOTION

I am writing to lay a Legislative Consent Memorandum as outlined at Annex A. This is in relation to the Cultural Property (Armed Conflicts) Bill, as introduced in the House of Commons on 19th May 2016.

Yours sincerely

**PAUL GIVAN MLA
Minister for Communities**

LEGISLATIVE CONSENT MEMORANDUM
CULTURAL PROPERTY (ARMED CONFLICTS) BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Communities, is:-
“That this Assembly endorses the principle of the extension to Northern Ireland of the Cultural Property (Armed Conflicts) Bill”

Background

2. This memorandum has been laid before the Assembly by the Minister for Communities under Standing Order 42A (2). The Cultural Property (Armed Conflicts) Bill was introduced in the House of Lords on 19th May 2016. A summary of the Bill and a link to the Bill in Full is attached at Annex A1 for ease of reference.

Summary of the Bill and its policy objectives

3. The Cultural Property (Armed Conflicts) Bill is designed to enable the UK to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) and accede to its two Protocols (1954 and 1999). The Convention, adopted following the massive destruction which took place in the Second World War, provides for a system of general and special protection of cultural property in situations of international and non-international armed conflict. Parties to the Convention are required to respect both cultural property situated within their own territory and cultural property within the territory of other Parties, by refraining from using it, or its immediate surroundings, for purposes which are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from committing any hostile act against the property. Under the convention such property bears a “white and royal blue shield” emblem which will carry the same protective status as the Red Cross and Red Crescent.

Reasons for Making the Provisions

4. Having considered the content of the draft Bill, DfC welcomes the wide definition of cultural property to include archives and collections etc as well as works of art, historic monuments and buildings of historical value (a full definition is set out at Annex A2). DfC also welcomes the creation of the “protected cultural emblem” and the proposal that it be given protection equivalent to the Red Cross and the Red Crescent. The emblem will have the additional benefit of enhancing the profile of cultural institutions and help the public to identify the major cultural assets that are part of our heritage.

Reasons for utilising the Bill rather than an Act of the Assembly

5. Although it can be said that the proposed Bill deals in the main with devolved matters – cultural property rather than (or as well as) military matters – DfC is of the opinion that Northern Ireland being included in the Westminster Bill will ensure consistency and coherence across the UK. Both Wales and Scotland have similarly agreed this approach.
6. The Bill contains provisions about customs and excise and enforcement which apply to Northern Ireland, but are not devolved matters so it would not be possible, therefore, to bring forward these provisions by means of an Assembly Bill. It also confers executive functions on DfC in relation to the power to grant permission for the use of the cultural emblem in Northern Ireland, and to designate those people who are entitled to use the cultural emblem as a means of identification.
7. Conferring this additional power on DfC will ensure that the interests of the people and institutions in Northern Ireland are represented in the operation of the Bill. This will enable the legislation to operate in same way across each devolved administration. It would enable a local Minister to influence the operation of the legislation as it relates to Northern Ireland.

Consultation

8. Public consultation on a draft of the Bill was undertaken by DCMS in 2008 and the House of Commons Culture, Media and Sport Committee also conducted pre-legislative scrutiny. The advice that DCMS has received is that, due to the fact the Bill has not changed significantly, the original consultation process and various scrutiny stages that the Bill went through in Westminster in 2007/08 are still relevant and applicable. Hence it intends to rely on the previous process with no further requirement for additional consultation or scrutiny.
9. The Executive was consulted on 29 June 2016 and agreed that a LCM could be taken forward.
10. The Department has also been liaising with the Department of Justice. In addition the proposal has been shared with all other Departments and no substantive issues have emerged to date from this process.

Financial Implications

11. The financial impact on local institutions displaying the Emblem is expected to be minimal. Display is only mandatory in regard to properties with enhanced protection under the convention, which is expected to be a very small number across the UK. Historic Monuments, Museums, libraries and galleries likely to benefit from the Scheme will already have access to all of the necessary premises, staff and equipment to display the Emblem.
12. The costs required to implement the Bill will be low and are mainly related to the need for familiarisation training for affected owners, institutions and local and regional authorities. Based on figures provided by Historic England following discussions with the Historic Environment Division of the Department (HED) this is estimated to cost approximately £8,500 in total.

Equality Impact Assessment

13. DCMS considered the potential equality impacts of this policy and identified no different impact on any equality group. DfC agrees that the extension to Northern Ireland of the relevant provisions contained in the Bill has no implications for equality of opportunity.
14. In addition DfC (formerly DCAL) has carried out an Equality Screening of the proposal. The Department concluded that the policy will create a Scheme that will have no impact on the cultural capital of Northern Ireland, with no impact to the Department's budget or the NI Block.

Human Rights Act 1998

15. The relevant provisions of the Bill are considered to be compatible with the Human Rights Act 1998.

Engagement to date with the Committee for Communities

16. The Minister for Communities wrote to the Chair of the Committee for Communities on 8th June 2016 seeking their views and to alert the Committee to the policy content of the Cultural Property (Armed Conflicts) Bill which extend to Northern Ireland; in respect of power of DfC to grant permission for the use of the cultural emblem in Northern Ireland, and to designate those people who are entitled to use the cultural emblem as a means of identification. It was also indicated that a Legislative Consent Motion (LCM) would be required. The Committee has subsequently indicated its broad support for the Bill and LCM.

Conclusion

17. It is important to note that if the Assembly does not pass an LCM to allow the provisions conferring a role on DfC, in the Bill will have to be amended to confer the power on the British Minister for Culture, Media and Sport to grant permission for the use of the cultural emblem in Northern Ireland, and to designate those people who are entitled to use the cultural emblem.
18. The view of the Minister for Communities is that it is therefore preferable that the provisions of the Bill in respect of conveying additional powers on a Department here should be retained and that so far as these provisions deal with a devolved matter they should be considered by the Westminster Parliament.

Department for Communities
05 September 2016

SUMMARY OF THE CULTURAL PROPERTY (ARMED CONFLICTS) BILL

The Bill is divided into six parts. These parts are as follows:

- Part 1: Key Definitions
- Part 2: Serious Breach of the Second Protocol
- Part 3: Cultural Emblem
- Part 4: Property Exported from Occupied Territory
- Part 5: Property Removed for Safekeeping
- Part 6: General

Part 2 of the Bill incorporates the offence created by Article 15 of the Second Protocol of the Convention into domestic law, making provision in relation to ancillary offences committed abroad, and extending criminal liability to commanders and superiors who fail to prevent the commission of an offence in certain circumstances.

Part 3 of the Bill prohibits the unauthorised use of the cultural emblem, the symbol created by the Convention to identify cultural property which is protected. An offence is created to use it otherwise than as authorised by, or under the Bill. It identifies authorised uses of the emblem, and gives the appropriate national authority power to designate further authorised uses.

Part 4 of the Bill makes provision in relation to cultural property which has been unlawfully exported from an occupied territory. It creates a new offence of dealing in such cultural property, and makes further provision in relation to that offence, providing for the forfeiture of the cultural property concerned and the liability of officers of a body corporate. It gives appropriate bodies power to investigate offences in relation to the importation or exportation of such property. It also provides that unlawfully exported cultural property is liable to forfeiture, and provides powers of search and seizure, and of retention of such cultural property so that it may be returned in fulfilment of our obligation under the First Protocol.

Part 5 of the Bill provides immunity from seizure or forfeiture of cultural property which is entitled to special protection under Article 12 of the Convention because it is being transported to the UK, or through the UK to another destination, for safekeeping during a period of armed conflict.

The Bill also contains four Schedules, reproducing the terms of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, Regulations for the Execution of the Convention, the First Protocol and the Second Protocol.

Definition of Cultural Property

In the Bill 'cultural property' is as defined in Article 1 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. For that purpose 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.