

LEGISLATIVE CONSENT MEMORANDUM

CULTURAL PROPERTY (ARMED CONFLICTS) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Cultural Property (Armed Conflicts) Bill (the “Bill”) was introduced in the House of Lords on 19 May 2016. The Bill can be found at: http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0003/lbill_2016-20170003_en_1.htm

Policy Objective

3. The UK Government’s stated policy objective is to enable the UK to implement the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (“The Hague Convention”), to make a strong statement about the UK’s commitment to protecting cultural property in times of armed conflict.
4. The Hague Convention, adopted following the massive destruction which took place during 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 Hague 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.
5. It was followed by two Protocols. The first, in 1954 (the “First Protocol”), deals with obligations in relation to cultural property in occupied territory on both the occupying power, and countries who find cultural property which has been exported from occupied territory in their jurisdictions. The second in 1999 (“the Second Protocol”) extends, and clarifies the obligations under the Hague Convention. In particular, it identifies five acts, each a serious violation of the Second Protocol, which are to be considered an offence under the First Protocol.

Summary of the Bill

6. The Bill is sponsored by the Department for Culture, Media and Sport.

7. The Bill makes provision to introduce a number of measures that would enable the UK to implement the Hague Convention and its two Protocols as follows:

- Introduction of offences designed to protect cultural property in the event of an armed conflict at home and abroad. These include an offence of making such property the object of attack.
- Introduction of the Blue Shield as an emblem that signifies cultural property protected under the Hague Convention and its two Protocols.
- Introduction of an offence of dealing in cultural property that has been illegally exported from occupied territory and a provision for such property to be seized and returned to the occupied territory after the close of hostilities, where appropriate.
- Introduction of immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between two or more other states.

Provisions in the Bill for which consent is required

8. The consent of the National Assembly is sought for Parts 2, 3 and 5 of the Bill.

9. Part 2 of the Bill makes it an offence to commit a serious breach of the Second Protocol, either in the UK or abroad and extends criminal liability to commanders and their superiors who fail to prevent the commission of an offence in certain circumstances. Serious breaches, which are set out in the Second Protocol, include:

- making cultural property the object of attack;
- using cultural property in support of military action;
- extensive destruction or appropriation of cultural property; and
- the vandalising, theft, pillage or misappropriation of cultural property in the context of armed conflict.

Ancillary offenses such as assisting or conspiring to commit an offence, are also covered. The maximum penalty for these offences is 30 years imprisonment.

10. Part 3 of the Bill prohibits the unauthorised use of the Blue Shield, the cultural emblem created by the Hague Convention to identify cultural property which is protected. It will be an offence to use the emblem otherwise than as authorised by, or under the Bill. The Bill identifies authorised uses of the emblem, and gives the appropriate national authority power to designate further authorised uses. Crucially clauses 12 and 15 provide that the Welsh Ministers are the appropriate authority for

this Part, and may grant permission for the use of the cultural emblem in Wales.

11. 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 Hague Convention because it is being transported to the UK, or through the UK to another destination, for safekeeping during a period of armed conflict.
12. Consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to cultural property under the provisions of paragraphs 2 and 3, Part 1 of Schedule 7 to the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Cultural Property (Armed Conflicts) Bill

13. Making these provisions for Wales in the Bill will ensure that the UK as a whole can strengthen its commitment to the protection of its own heritage, and highlight respect for the cultural property of other nations. The Bill fulfils a long-standing commitment made by the UK in 2004 to implement the Hague Convention and its Protocols at the first opportunity.
14. The Bill should be seen in the context of recent international events and acts of cultural heritage destruction in the Middle East. UK implementation, through the Bill, is fundamental to the UK's credibility in taking the cultural protection agenda forward.

Financial implications

15. There are no financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales.

Conclusion

16. It is the view of the Welsh Government that it is appropriate to deal with the provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. It is important that this is taken forward on a UK wide basis to demonstrate a coherent approach to protection of cultural property across the UK. The implementation of the Hague Convention will strengthen the UK's commitment to the protection of its own heritage and that of other nations.

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June 2016