

## **CULTURAL PROPERTY (ARMED CONFLICTS) BILL**

### **Memorandum concerning the Delegated Powers in the Bill**

#### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Cultural Property (Armed Conflicts) Bill (“the Bill”). The Bill was introduced in the House of Lords on 19 May 2016, and moved to the House of Commons on 13 September 2016.
2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected. The Delegated Powers and Regulatory Reform Committee considered this memorandum. In its report published on 17 June 2016 the Committee concluded that there was nothing in this Bill that they wished to draw to the attention of the House. No amendments were made to the Bill during its passage through the House of Lords that would impact on delegated powers, so the substance of this memorandum has not been amended.

#### **B. SUMMARY OF THE BILL**

3. The Bill is designed to enable the United Kingdom to ratify the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on 14 May 1954 (“the Convention”), and to accede to its two Protocols (First Protocol 1954 and Second Protocol 1999).

##### *The Convention and its Protocols*

4. The Convention was adopted following the widespread destruction of cultural property which took place during the Second World War. It provides for a system of general and special protection of cultural property during armed conflicts.

5. Parties to the Convention must respect cultural property situated within their own territory as well as cultural property situated within the territory of other Parties to the Convention, by not using cultural property (or its immediate surroundings) for purposes that are likely to expose it to destruction or damage in the event of armed conflict, and by refraining from committing a hostile act against the property.
6. The Convention was followed by two Protocols, which supplement and strengthen the Convention. The first, in 1954, imposes duties on an occupying power in relation to cultural property in occupied territory, and also on any country discovering cultural property within its jurisdiction which has been exported from an occupied territory. The second, in 1999, extends and clarifies the Convention. Article 15, in particular, identifies five acts which are to be considered an offence. The Convention is also supplemented by the Regulations for Execution for the execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Regulations).

#### *The Bill*

7. Part 1 of the Bill sets out the key definitions, including the definition of Cultural Property.
8. Part 2 of the Bill incorporates the offences in Article 15 of the second Protocol into domestic law, making provision in relation to ancillary offences committed abroad. In particular, criminal liability is extended (in certain situations) by clause 5 to military commanders and superiors who fail to prevent the commission of an offence by forces under their effective command and control.
9. Part 3 of the Bill prohibits the unauthorised use of the 'cultural emblem', a symbol which was created by the Convention to identify cultural property protected under its terms. By clause 9, it is a criminal offence to use the cultural emblem except as authorised by or under the Bill.

10. A number of authorised uses for the cultural emblem are given in Part 3, including when its use is to identify a person designated by an appropriate national authority as being engaged in the protection of cultural property in the relevant part of the United Kingdom: clause 12(1)(b).
11. The term “appropriate national authority” is defined in clause 15 as the Secretary of State (for England), the Welsh Ministers (for Wales), the Scottish Ministers (for Scotland) and the Department for Communities (for Northern Ireland).
12. Part 4 of the Bill contains provisions which seek to suppress the trade in cultural property unlawfully exported from occupied territory, and to enable the United Kingdom to fulfil its obligations under the first Protocol to take any such cultural property into its custody and return it to the competent authorities of the territory concerned. A criminal offence of dealing in unlawfully exported cultural property is created. Any such cultural property is liable to forfeiture, and justices of the peace are given powers both to authorise the police to search for and seize, and to authorise the continued retention of, such cultural property.
13. 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 United Kingdom, or through the United Kingdom, for safekeeping during a period of armed conflict. It also provides that the United Kingdom will act as a depository for cultural property in the circumstances provided for by Article 18 of the Regulations.
14. Part 6 of the Bill deals with general matters.

### **C. ANALYSIS OF DELEGATED POWERS BY CLAUSE**

15. The Department believes that the limited, very common delegated powers in the Bill deal with matters which, in the circumstances, cannot be otherwise addressed. It is the view of the Department that the impact of both of these provisions is limited and is not related to either the substance or policy of the Bill's provisions.

**Clause 31, subsection (2): extent**

*Power conferred on:* Her Majesty

*Power exercised by:* Order in Council

*Parliamentary Procedure:* none

Context and purpose

16. Clause 31(1) provides that the Bill extends throughout the United Kingdom. By clause 31(2), its provisions may be extended (with or without modifications) by Order in Council to the Isle of Man and any British overseas territory. As the power to make such an Order in Council is conferred by statute, such an Order in Council would be a statutory instrument: section 1 of the Statutory Instruments Act 1946.

Justification for taking the power

17. The power is included in the Bill to facilitate the extension of its provisions to the Isle of Man or any British overseas territory, should an extension be agreed in future. The ability to modify the provisions of the Bill as part of any such extension ensures that the mechanism will be sufficiently flexible given the number of separate legal jurisdictions to which the provisions of the Bill may be extended.

Justification for the procedure

18. Orders in Council are typically considered the most appropriate means by which an Act of Parliament may be extended to Crown territories outside the United Kingdom. Such Orders in Council are not generally subject to any specific or particular Parliamentary procedure; see, for example, section 12(4) of the Intelligence Services Act 1994 and section 411 of the Communications Act 2003.

## **Clause 32: commencement**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* none

### **Context and purpose**

19. Subsection (2) of clause 32 confers a power on the Secretary of State to make regulations bringing the provisions in Parts 1 to 5 of the Bill into force. Subsection (3) permits, in this regard, the appointment of different days for different purposes.
  
20. Subsection (4) also confers a power to make transitional and saving provision in connection with the commencement of any such provision.

### **Justification for the procedure**

21. Regulations commencing the provisions of an Act are not generally subject to any specific Parliamentary procedure. The power in clause 32(4) is limited to transitional and saving provisions connected to the commencement of provisions in the Act, and does not extend to consequential, incidental or supplementary matters.

## **Administrative authorisation and designation under clauses 10 and 12(1)(b)**

22. Clauses 10 and 12 do not contain any delegated powers, but do make provision for administrative authorisation and designation respectively, so may be of interest to the Committee.
  
23. Clause 10 provides that the appropriate national authority may grant permission for the use of the cultural emblem, which may be specific or general. Clause 12(1)(b) enables the appropriate national authority to designate persons engaged in the control and protection of cultural

property, thereby authorising them to use the emblem as a means of identifying themselves.

24. The Department believes it is appropriate that both the permission under clause 10, and the designation of any person under clause 12(1)(b) by the appropriate national authority should be an administrative matter. Non-legislative permission and designation mechanisms would enable the authorities to act swiftly in the event of war or armed conflict, to authorise the use of the cultural emblem, and to designate persons engaged in the protection of cultural property.
25. The identity of the most suitable designee depends on the particular circumstances of each case, and the question of ongoing suitability is something that may change rapidly. As such, it is vital that designations can be made quickly, and amended as necessary. Furthermore, authorised persons may, in certain circumstances, only be authorised for a purpose which is very limited in both scope and time.
26. For these reasons, the Department believes that it would not be desirable to have to grant permission or identify authorised persons in secondary legislation. The appropriate national authority will, in any event, be accountable to Parliament for each designation it decides to make.

**Department for Culture, Media and Sport**

**13 September 2016**