



Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

Baroness Neville-Rolfe DBE, CMG
Parliamentary Under Secretary of State
Department for Culture, Media and Sport
1 Victoria Street
London
SW1H 0ET

29 June 2016

Dear Lucy,

As you will be aware, the Joint Committee on Human Rights is currently scrutinising the Cultural Property (Armed Conflicts) Bill [HL], in the light of the requirements of human rights law. The Committee considered the Bill at its meeting on 15 June.

I am writing to you today to highlight two particular concerns in relation to matters addressed by the Bill, namely: the penalties that can be imposed under Part 2 of the Bill and the immunity from seizure provision under Clause 28.

On the first point, the maximum penalty for offences that would amount to a serious breach of Article 15 of the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Convention) is to be set at 30 years. While serious breaches of the Second Protocol to the Convention, such as attacks on cultural property, theft, pillage or vandalism are clearly grave offences, the penalty would also apply to offences ancillary to such offences (and indeed offences that are ancillary to ancillary offences). The Explanatory Notes to the Bill gives, as an example, a person who had destroyed evidence to conceal an attempt by a friend to steal property protected under the Convention.

While a maximum penalty does not imply that such a penalty should be imposed, we question whether the application of a 30 year maximum sentence to all ancillary offences is proportionate. If a manifestly disproportionate sentence was imposed in respect of a minor ancillary offence, it is possible that this could raise issues under Article 3 of the European Convention on Human Rights. Moreover, with an unusual offence of this kind, we would also ask whether the Government plans to request that the Sentencing Council issue guidelines (and if not, why not?)

The second issue relates to the immunity from seizure provision under Clause 28 of the Bill. This is an extremely broad provision that would appear to place compliance with Article 14 of the Convention above any international law obligation owed by the United Kingdom (including under the European Convention on Human Rights and the EU Charter of Fundamental Rights).

The Clause provides that "while a thing is protected under this section it may not be seized or forfeited under any legislation or rule of law". The only precedent the Committee is aware of for such a provision is to be found at section 135 of the Tribunals, Courts and Enforcement Act 2007. However, that provision is subject to the proviso that it has no effect where a court is required to make an order under, or under provision giving effect to, an EU obligation or any international treaty. We question why this form of words has not been used in the current Bill to avoid any inadvertent breach of international human rights law. We understand that a similar concern has also been raised by the House of Lords Select Committee on the Constitution and note your response of 27 June.

It would be helpful if we could have your reply by 11 July.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Harriet Harman". The signature is written in a cursive, flowing style.

Rt Hon. Harriet Harman

Chair of the Joint Committee on Human Rights