



# HOUSE OF LORDS

Select Committee on the Constitution

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15 June 2016

*Dear Lucy,*

## **Cultural Property (Armed Forces) Bill [HL]**

The Constitution Committee considered the Cultural Property (Armed Forces) Bill [HL] at its meeting on 15 June.

### *Immunity from seizure and forfeiture*

We note that the immunity from seizure and forfeiture conferred by clause 28 is very broad. Indeed, it is wholly unqualified in scope: the term “legislation” in clause 28 explicitly extends to “primary legislation”, including “Act[s] of Parliament”. Clause 28 therefore renders inoperable all seizure and forfeiture powers in all other such Acts (or at least all Acts of Parliament enacted prior to the current Bill).

Clause 28 might profitably be compared to relevant provisions of the Tribunals, Courts and Enforcement Act 2007. Under that Act, ‘protected objects’—i.e. objects that are usually kept outside the UK, not owned by those normally resident in the UK and being loaned to museums or galleries in the UK—are granted *qualified* immunity from forfeiture and seizure. Specifically, while forfeiture or seizure “under any enactment or rule of law” is proscribed, an exception is made whereby forfeiture or seizure is ordered by a court that is required by EU law or an international treaty to make such an order.

In the absence of any equivalent caveat in this Bill, clause 28 elevates the UK’s obligation under the Hague Convention concerning immunity from forfeiture and seizure above not only every provision of domestic law, but also above every other obligation that the UK has under EU and international law.

**The Committee would be grateful for an explanation of why the Government feel it is necessary for clause 28 to prioritise compliance with article 14 of the Hague Convention over compliance with every other legal obligation that the UK has under EU and international law.**

### *Applicability of legislation to Parliament*

We also note that the Bill provides that, under a warrant issued by a Justice of the Peace, a constable can enter premises, search them and seize property that he has grounds for believing to be unlawfully exported cultural property. This search and seizure power extends to ‘premises’ as defined in the Police and Criminal Evidence Act 1984, according to which the term ‘premises’ includes “any place”. There is nothing in the Bill or the 1984 Act that

provides guidance, one way or the other, as to whether the search and seizure power contained in the Bill is intended specifically to apply to the Palace of Westminster.

In December 2015 this Committee wrote to the Leaders of both Houses drawing their attention to issues relating to the applicability of legislation to Parliament:

“It is a principle of legislative drafting that legislation does not apply to Parliament unless either by necessary implication or it states expressly that it applies. When bills contain provisions that could apply to Parliament, the authorities in each House are meant to be consulted at an early stage. This was set out in guidance from the Treasury Solicitor in 2002 and again in 2014 by the then-Leader of the House of Lords during a debate on this issue.”

In response, the two Leaders stated that “We agree that it is important that Departments consider at an early stage how legislation may apply in relation to Parliament and consult the House authorities in appropriate stages. We will remind Departments about the need to do this.”

**We trust that appropriate consultation has been undertaken with the authorities of the two Houses on these provisions.**

*Yours ever,  
Alan*

The Rt Hon. the Lord Lang of Monkton, DL  
Chairman of the Constitution Committee