

LEGISLATIVE CONSENT MEMORANDUM

CULTURAL OBJECTS (PROTECTION FROM SEIZURE) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2.(ii). SO29 prescribes that a legislative consent motion must be laid before Senedd Cymru in relation to a UK Private Member’s Bill that was a relevant Bill on introduction and remains a relevant Bill after the first amending stage in the House in which it was introduced. A “relevant Bill” means a Bill under consideration in the UK Parliament which makes provision in relation to Wales: for any purpose within the legislative competence of the Senedd or which modifies the legislative competence of the Senedd.
2. The Cultural Objects (Protection from Seizure) Bill (“the Bill”), a Private Members’ Bill, was introduced in the House of Commons on 16 June 2021. Committee Stage in the House of Commons concluded on 17 November. The laying of this Legislative Consent Memorandum has been delayed to enable consideration of the implications of the concurrent power within the Bill and the associated discussions with UK Government. The Bill can be found at: <https://bills.parliament.uk/bills/2906>.

Policy Objective(s)

3. The UK Government’s stated policy objectives are to amend the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”) to enable the extension of protection from seizure or forfeiture for approved cultural objects on loan from abroad to UK museums and galleries. Under the 2007 Act approved cultural objects are protected for a period of 12 months from the date the object enters the UK. The Bill will provide an amendment to the 2007 Act to allow the period of protection to be extended for a further period of up to 3 months.
4. This amendment will alleviate concerns from museums and international lenders that cultural objects may be left unprotected from seizure or forfeiture, should the existing protection of 12 months expire before the objects can be returned due to unexpected delays within the UK.
5. This reflects lessons learned from disruptions to international travel during the 2020 Covid-19 pandemic and previous environmental events (eg. the eruption of the Eyjafjallajökull volcano in Iceland in 2010) when loaned objects due to be returned to their country of origin were unexpectedly delayed in the UK, risking or preventing their timely return to international lenders.

Summary of the Bill

6. The Bill is a hand-out Bill, introduced as a Private Members’ Bill by Mel Stride MP. It is sponsored by the UK Government Department for Digital, Culture, Media and Sport (DCMS).
7. The Bill amends section 134 of the 2007 Act, to enable an extension of the protection from court-ordered seizure for cultural objects on loan from abroad to UK

museums and galleries for up to three months. The decision to extend a period of protection will be made at the discretion of the relevant authority. The relevant authorities are the Secretary of State for Digital, Culture, Media and Sport in relation to an institution in England, the Welsh Ministers, in relation to an institution in Wales, the Scottish Ministers, in relation to an institution in Scotland, and the Department for Communities, in relation to an institution in Northern Ireland.

Provisions in the Bill for which consent is required

8. The legislative consent of the Senedd is required for the following provisions of the Bill because they make provision with regard to devolved matters:
 - Clause 1 (Protection of cultural objects on loan) inserts subsections 4A to 4D to section 134 of the 2007 Act;
 - a. New subsection 4A provides that the relevant authority has the power to extend the maximum protection period for further period of up to 3 months.
 - b. New subsection 4B defines 'relevant authority' for the purposes of subsection 4A. The Welsh Ministers are the relevant authority in relation to an object that is in Wales for the prescribed purposes.
 - c. New subsection 4C(a) provides that the power can be exercised more than once in relation to the same object.
 - d. New subsection 4C(b) where the power is exercisable by more than one relevant authority at a particular time in relation to the same object, it is exercisable by them concurrently.
 - e. New subsection (4D) clarifies that any extension granted under subsection (4A) is in addition to the 'maximum protection period', which comprises the initial 12-month period under subsection (4)(b) together with any additional period of protection arising under subsection (5) where the object has suffered damage, and any period of extension already granted under subsection (4A).
 - Clause 2 makes provision in relation to extent, commencement and short title;
 - a. Subsection (1) sets out the territorial extent of the Bill.
 - b. Subsection (2) sets out that the amendments under Clause 1 will come into force at the end of the period of two months after the Act is passed.
 - c. Subsection (3) provides the short title of the Bill.
9. The purpose of the provisions identified above, insofar as they relate to Wales, concern the protection of cultural objects on loan to museums and galleries in Wales from abroad from seizure. The provisions do not relate to any reserved matters under the Government of Wales Act 2006. We therefore consider these provisions, including to the extent that they confer functions on the Welsh Ministers, to be within the legislative competence of the Senedd. As such, it is considered that the Senedd's consent is required in respect of the above provisions.

Concurrent Power

10. Subsection (4C)(b) clarifies that the power to extend the protection is exercisable concurrently by multiple 'relevant authorities' in relation to the same object. Under the existing provisions of the 2007 Act, the object would be protected while it was anywhere in the UK for the initial 12 months period. However, as the measures in this Bill relate to devolved matters, the relevant authority can only extend this UK-wide protection where the object is connected to their territory. Where the object is

connected to more than one territory, subsection (4C)(b) provides that the power could be exercised concurrently to ensure that the object is protected across the UK.

11. As drafted, the concurrent power impacts upon the Senedd's powers to make future legislation in this area due to the fact that Minister of the Crown consent will be required to remove the Secretary of State's concurrent function. It would engage the restriction in paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006, which requires the Senedd to obtain a Minister of the Crown's consent to legislate to remove or modify, in a Senedd Act a function of a Minister of the Crown that relates to qualified devolved function.
12. The concurrent power in the Bill ensures that the object can be protected throughout the UK and minimises any risk of an object being unprotected whilst in Wales. We have requested an amendment to the Bill, in accordance with the Cabinet Principles (principle 8) on concurrent powers (see above) and discussions are ongoing. The amendment would enable a carve out from the relevant restrictions in Schedule 7B of the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Cultural Objects (Protection from Seizure) Bill

13. Ensuring that the provisions in the Bill apply to Wales will safeguard parity of cultural access to international loans for the public across all four nations of the UK. Without these provisions, it is likely that Welsh museums and galleries will be placed at a disadvantage in terms of preventing international lenders from lending objects for display in touring/temporary exhibitions in Wales. Without these provisions, it is possible:
 - a. UK touring exhibitions will be unable to be displayed in Wales
 - b. If UK touring exhibitions are displayed, some items from abroad are likely not to be included in the exhibition during its stay in Wales, resulting in a lower quality exhibition in Wales than in other nations
 - c. Museums and cultural institutions from some countries might not lend artefacts to Welsh venues
 - d. Possibility of reputational damage if an item on loan to a Welsh venue is seized due to lack of extension of protection.
14. It is reasonable to utilise this UK Bill to make these provisions to ensure consistency across the UK in relation to protection placed on an object, and to also ensure that protection can be placed on the object in all countries of the UK.

Financial implications

15. The Bill is not expected to entail major additional public expenditure or changes to public service resources.
16. We will consult with officials in DCMS, Scottish Government and Northern Ireland Executive to create guidance, procedures and documentation necessary to administer the provisions under the Bill. It is envisaged that the administration of

the provisions would become part of Welsh Government's UK Cultural Property Scheme responsibilities and would therefore be covered by existing staffing.

17. Relevant staff in museums, galleries and other organisations will need to familiarise themselves with revised guidance and documentation in relation to the legislative change and transition costs will apply in terms of staff time. This is likely to be low cost.

Conclusion

18. I recommend that the Senedd consents to the clauses contained in the Cultural Objects (Protection from Seizure) Bill, with the exception of subsection 4C(b) on which we are seeking an amendment. It is my view that it is appropriate to deal with these provisions in this UK Bill as:
 - a. It will ensure a UK-wide approach and allows provisions to come into force at the same time across the UK.
 - b. It will ensure Welsh museums, galleries and other organisations are not placed at a disadvantage compared with other nations in the UK.
 - c. The Bill will make sensible and important changes to the protection from seizure scheme far sooner than could be achieved by separate legislation for Wales.
19. I reserve the decision on recommending consent to the concurrent power provision 4C(b) following the outcome of discussions with UK Government.

Dawn Bowden MS
Deputy Minister for Arts and Sport, and Chief Whip
10 December 2021