

The Welsh Government's Legislative Consent Memorandum on the Cultural Objects (Protection from Seizure) Bill

March 2022



1. Background

The UK Government's Cultural Objects (Protection from Seizure) Bill

1. The Cultural Objects (Protection from Seizure) Bill¹ (the Bill) was introduced into the House of Commons on 16 June 2021 as a Private Member's Bill. It is sponsored by Mel Stride MP.
2. The Explanatory Notes to the Bill provide the following overview:

"Under section 134 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"), cultural objects on loan from abroad to UK museums and galleries approved under the 2007 Act are protected from seizure or forfeiture 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."²

3. They further explain that the decision to extend a period of protection will be made at the discretion of the relevant authority; in Wales, this is the Welsh Ministers.³
4. The Bill completed its passage through the House of Commons on 28 January 2022, and had its First Reading in the House of Lords on 31 January 2022. At the time of writing this report the date for the Second Reading was yet to be confirmed.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
6. On 10 December 2021, Dawn Bowden MS, Deputy Minister for Arts and Sport, and Chief Whip (the Deputy Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

¹ Cultural Objects (Protection from Seizure) Bill, as introduced (Bill 24 2021-22)

² Cultural Objects (Protection from Seizure) Bill: Explanatory Notes, paragraphs 1–2

³ Cultural Objects (Protection from Seizure) Bill: Explanatory Notes, paragraph 2

⁴ Welsh Government, Legislative Consent Memorandum, The Cultural Objects (Protection from Seizure) Bill, September 2021

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and Culture, Communication, Welsh Language, Sport and International Relations Committee should report on the Memorandum by 10 March 2022.⁵

Provisions for which the Senedd's consent is required

8. Paragraph 8 of the Memorandum sets out the Welsh Government's assessment of the provisions in the Bill which require the Senedd's consent, namely those contained in both clauses of the Bill: 'Clause 1: Protection of cultural objects on loan' and 'Clause 2: Extent, commencement and short title'.

9. Clause 1 inserts new subsections (4A) to (4D) into section 134 of the 2007 Act. According to the Memorandum, the new subsections provide as follows:

- (4A) provides that the relevant authority has the power to extend the existing maximum period of protection for a further period of up to 3 months;
- (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;
- (4C)(a) provides that the power can be exercised more than once in relation to the same object;
- (4C)(b) provides that 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.
- (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).⁶

10. Clause 2 sets out the territorial extent, commencement and short title of the Bill.

⁵ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Cultural Objects \(Protection from Seizure\) Bill](#), December 2021

⁶ Memorandum, paragraph 8

11. The UK Government and the Welsh Government agree that consent of the Senedd is required for both clauses of the Bill.

The Welsh Government's position

12. Paragraphs 13 and 14 of the Memorandum set out the reasons why the Deputy Minister believes it is appropriate for the Bill to make provision for Wales:

"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. [...]"

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."

13. However, the Deputy Minister objects to the current drafting of the concurrent power contained within proposed new subsection (4C)(b) of section 134 of the 2007 Act, to be inserted by clause 1 of the Bill. She states in paragraph 11 of the Memorandum:

"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."

14. As outlined in paragraph 12 of the Memorandum, the Deputy Minister has requested an amendment to the Bill which would enable a carve out from the restriction in paragraph 11(1)(a) of Schedule 7B to the *Government of Wales Act 2006* (the 2006 Act). The Memorandum explains that this request was in line with principle 8 of the Welsh Government's Cabinet Principles on concurrent powers.⁷

⁷ Welsh Government, [Letter from the Minister for Climate Change, 6 August 2021](#), Annex B, pages 3–4

15. Paragraph 19 of the Memorandum confirms that the Deputy Minister is reserving the decision on recommending consent to the concurrent power provision, (to be inserted as subsection (4C)(b) of section 134 of the 2007 Act by virtue of clause 1), following the outcome of discussions with UK Government.

16. The Deputy Minister concludes in paragraph 18 of the Memorandum:

"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."

2. Committee consideration

17. We considered the Memorandum at our meeting on 31 January 2022, and we agreed our report on 28 February 2022.⁸

Our view

18. We note the Deputy Minister's assessment that both clauses of the Bill require the Senedd's consent. We also note her reasons as to why, in her view, making provision for Wales in the Bill is appropriate.

19. We note the Deputy Minister's concerns regarding the concurrent power provision to be inserted as subsection (4C)(b) of section 134 of the 2007 Act by virtue of clause 1 of the Bill. Accordingly, we note her request for the UK Government to table an amendment to the Bill which would enable a carve out from the restriction in paragraph 11(1)(a) of Schedule 7B to the 2006 Act (a carve out-amendment).

Conclusion 1. We share the Deputy Minister's concerns regarding the concurrent power provision contained within clause 1 of the Bill. We have regularly raised similar concerns in relation to other Bills subject to legislative consent memoranda.⁹ In this case, we agree that the concurrent power provision 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 power. We welcome her request to the UK Government for a carve-out amendment to be tabled to the Bill.

Recommendation 1. The Deputy Minister should, in advance of the Senedd's debate on the relevant consent motion, provide an update on her discussions with the UK Government in relation to the concurrent power provision contained within clause 1 of the Bill.

⁸ [Legislation, Justice and Constitution Committee, 31 January 2022](#) and [Legislation, Justice and Constitution Committee, 28 February 2022](#)

⁹ See Legislation, Justice and Constitution Committee reports on: [The Welsh Government's Legislative Consent Memorandum on the Professional Qualifications Bill](#) (paragraphs 21–24); [The Welsh Government's Legislative Consent Memorandum on the Animal Welfare \(Kept Animals\) Bill](#) (paragraphs 23 – 25); [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Professional Qualifications Bill](#) (paragraphs 27–30)
