

# CULTURAL OBJECTS (PROTECTION FROM SEIZURE) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Cultural Objects (Protection from Seizure) Bill as brought from the House of Commons on 31 January 2022 (HL Bill 103).

- These Explanatory Notes have been prepared by Department for Digital, Culture, Media and Sport, with the consent of Lord Vaizey of Didcot, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 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.
- 2 The Bill will amend the 2007 Act to allow the period of protection to be extended for a further period of up to 3 months for objects on loan to approved museums in England and Scotland. The decision to extend a period of protection would be made at the discretion of the Secretary of State for Digital, Culture, Media and Sport and/or Scottish Ministers, depending on the location of the object, and would be considered on a case-by-case basis where need arises and taking account of the circumstances in each case.
- 3 The Bill contains two clauses covering the following matters:
  - Protection of Cultural Objects on Loan
  - Extent, commencement and short title

## Policy background

- 4 The 12-month period of protection from seizure or forfeiture under the current legislation has normally provided a sufficient length of time for museum exhibitions to take place and for objects on loan from abroad to be returned in line with agreed schedules and before the period of protection has expired. However, the disruptions to international travel during 2020 created problems when loaned objects due to be returned to their country of origin were unexpectedly delayed in the UK. Unable to travel out of the UK, these objects were left at risk of being unprotected should the 12-month limit expire before the borrowing institutions could arrange for their return.
- 5 Unforeseen environmental factors have caused major international air travel disruption in the past, and this too posed a risk to the timely return of cultural objects on loan from international lenders, for example, the eruption of the Eyjafjallajökull volcano in Iceland in 2010, which grounded over 100,000 flights.
- 6 In the event that objects on loan are unexpectedly delayed within the UK and are unable to be returned within the 12-month timeframe, the measures to be introduced by the Bill provide a mechanism to extend the length of time an object is protected from seizure or forfeiture whilst in the UK. This will help alleviate concerns from museums and international lenders that cultural objects may be left unprotected should the protection expire before the objects can be returned.
- 7 Whilst the risk of seizure or forfeiture is extremely small, a number of countries place great importance on having this protection. Providing a greater degree of certainty over the protection available and the knowledge that it can be extended at the discretion of the relevant authority will increase the confidence of owners of loaned objects and provide a boost to the UK exhibitions sector.
- 8 A museum or gallery to which an object has been loaned will need to apply to have the period of protection extended. The relevant authority will exercise their discretion to extend the 12 month period in specific cases and where circumstances warrant. Where an extension to the period of protection is granted, approval will be confirmed in writing to the applying museum or gallery.
- 9 Policy guidance for museums will be discussed and issued by the relevant authorities.

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## Legal background

- 10 Section 134(4) of the 2007 Act limits the period of protection to 12 months from the date the object enters the UK. The Bill would allow the 12-month period of protection to be extended for a further period of up to 3 months by the Secretary of State for Digital, Culture, Media and Sport (where the object is in England for any of the purposes listed in subsection (7)(b) to (e), or is in the UK for the purpose of display at an institution in England), or Scottish Ministers (where the object is in Scotland for any of the purposes listed in subsection (7)(b) to (e) or is in the UK for the purpose of display at an institution in Scotland).
- 11 Subsection (4C)(a) provides that the power would be exercisable more than once in relation to a particular object. The circumstances in which it is expected the need to exercise this power might arise will be set out in guidance.
- 12 Subsection (4C)(b) provides that if the power under subsection (4A) is exercisable by the Secretary of State for Digital, Culture, Media and Sport and Scottish Ministers at a particular time in relation to a particular object, it is exercisable concurrently by those authorities.
- 13 Subsection (4D) sets out the definition of the “maximum protection period”. Given that there are three possible periods that could be extended (the 12-month period under subsection (4)(b), the damage period under subsection (5) and any period of extension already granted), these have been grouped into a defined term, the “maximum protection period”. The power under subsection (4A) would therefore enable the extension of any of those periods of protection.
- 14 Subsection (4E) clarifies that any extension of the maximum period of protection can only apply in England or Scotland.

## Territorial extent and application

- 15 The provisions of the 2007 Act extend to England, Wales, Scotland and Northern Ireland. Whilst the extent of the Bill remains UK-wide in line with the 2007 Act, the new provisions will only apply in England and Scotland.
- 16 Currently only museums in England and Scotland have been approved to use Immunity from Seizure protection under the 2007 Act. This Bill will provide the Secretary of State for Digital, Culture, Media and Sport and Scottish Ministers with a further power to agree extensions to the length of time an object on loan to an approved museum in England or Scotland can be protected from seizure.
- 17 Any exercise of the power to extend the length of time an object is protected by either the Secretary of State or Scottish Ministers will have no effect in Northern Ireland or Wales. Welsh Ministers and the Department for Communities in Northern Ireland cannot exercise the power to extend the period of protection afforded to objects on loan in their respective jurisdictions.
- 18 Under the 2007 Act, the Secretary of State for Digital, Culture, Media and Sport approves institutions in England and powers are devolved to Ministers in Scotland, Wales and the Department for Communities in Northern Ireland to approve institutions in those jurisdictions under the 2007 Act. This Bill does not alter the powers of any of the relevant authorities in the devolved administrations to approve institutions under the 2007 Act. Immunity from seizure protection will apply to cultural objects on loan to those institutions for the standard 12 months, providing conditions are met by the borrowing institution when the object arrives in the UK.
- 19 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

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# Commentary on provisions of Bill

## Clause 1: Protection of Cultural Objects on Loan

- 20 Subsection (1) sets out that what follows is an amendment to Part 6 of the Tribunals, Courts and Enforcement Act 2007 (protection of cultural objects on loan).
- 21 Subsection (2) inserts new subsections (4A) to (4E) into section 134 of the 2007 Act.
- 22 New subsection (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.
- 23 New subsection (4B) defines what is meant by 'relevant authority' for the purposes of subsection (4A).
- 24 New subsection (4C) clarifies that the power can be exercised more than once in relation to the same object, and, where it is exercisable by both the relevant authorities at a particular time in relation to the same object, is exercisable by them concurrently. This will, among other things, ensure that an extended period of protection can be provided for an object which is in the UK for the purpose of more than one exhibition in either England or Scotland.
- 25 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: Extent, commencement and short title

- 26 Subsection (1) sets out the territorial extent of the Bill. Whilst the extent of the Bill remains UK-wide in-line with the 2007 Act, the new provisions will only apply in England and Scotland.
- 27 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.
- 28 Subsection (3) provides the short title of the Bill.

## Commencement

- 29 The amendments will come into force at the end of the period of two months after the Act is passed.

## Financial implications of the Bill

- 30 The Bill is not expected to entail major additional public expenditure or changes to public service resources.
- 31 Relevant staff in museums and galleries will need to familiarise themselves with revised guidance and documentation in relation to the legislative change and therefore transition costs will apply in terms of staff time.

## Parliamentary approval for financial costs or for charges imposed

- 32 Not required.

## Compatibility with the European Convention on Human Rights

- 33 As this is a Private Member's Bill, the Secretary of State is not required to make a statement under section 19(1)(a) of the Human Rights Act 1998. However, the Department for Digital, Culture, Media and Sport has examined the compatibility of the provisions of the Bill with the Convention (in particular Article 1 of Protocol 1 (right to property) and Article 6 (right to a fair trial)) and considers that the provisions of the Bill are compatible with the Convention rights.

## Related documents

- 34 The following documents are relevant to the Bill and can be read at the stated locations:
- <https://www.gov.uk/guidance/protecting-cultural-objects-on-loan>
  - <https://www.museumsgalleriesscotland.org.uk/advice/collections/immunity-from-seizure/>

## Annex A – Territorial extent and application in the United Kingdom

| Provision | England                                  | Wales                                  |   | Scotland                         |   | Northern Ireland                         |   |
|-----------|--|--|---|----------------------------------|---|--|---|
|           | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion process engaged? | Extends and applies to Scotland? | Legislative Consent Motion process engaged? | Extends and applies to Northern Ireland? | Legislative Consent Motion process engaged? |
| Clause 1  | Both extends and applies                 | Only extends                           | No  | Both extends and applies         | Yes   | Only extends                             | No  |
| Clause 2  | Both extends and applies                 | Only extends                           | No  | Both extends and applies         | Yes   | Only extends                             | No  |

### Subject matter and legislative competence of devolved legislatures

- 35 The Bill extends to England and Wales, Scotland and Northern Ireland, but applies to only England and Scotland. Clause 1 and Clause 2 make provisions which relate to areas where devolved administrations have legislative competence. For example, the period for which cultural objects can be protected from seizure or forfeiture is not reserved under the Scotland Act 1998. Accordingly, the process to agree a Legislative Consent Motion in the Scottish Parliament is engaged.

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