

HOLOCAUST (RETURN OF CULTURAL OBJECTS) ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Holocaust (Return of Cultural Objects) Act 2009, which received Royal Assent on 12 November 2009. They have been prepared by the Department for Culture, Media and Sport with the consent of Andrew Dismore MP and the Noble Lord, Lord Janner, in order to assist the reader in understanding the Act. The explanatory notes do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Spoliation Advisory Panel was established by the Government in 2000 to consider claims for the return of cultural objects lost during the Nazi era (1933-1945) and to advise museums and claimants on what might be an appropriate solution. It does so in accordance with the Washington Principles, adopted in 1998 by 44 states, including all EU member states, to assist in resolving issues relating to the return of cultural objects lost during the Nazi era.
4. The national institutions specified in the Act are all publicly funded institutions established by statute. These institutions are governed by Boards of Trustees whose powers are set out in primary legislation. The legislation currently prohibits the Trustees from disposing of items in their collections, except in very limited circumstances, and does not permit the Trustees to transfer an object following a recommendation by the Spoliation Advisory Panel. These statutory prohibitions lead to inconsistency in the powers of institutions to return an object to a claimant, following a recommendation of the Spoliation Advisory Panel.
5. In general, where an item is in the collection of a University or local authority museum, the authorities responsible for the collections are not prohibited by primary legislation from returning the object to claimants. The National Museum of Wales, the National Library of Wales, the Ulster Museum, the Ulster Folk and Transport Museum, the Ulster American Folk Park and the Armagh County Museum are not subject to a similar, statutory bar on disposal. Where the national museums are prohibited by legislation from transferring an object, claimants are offered an ex gratia payment instead.
6. The purpose of this legislation is to remedy this inconsistency by giving the governing bodies of the listed national museums an additional power to return an object to a person who claims it, where this follows a recommendation by the Spoliation Advisory Panel and Ministers agree.

OVERVIEW

7. Where two conditions are met the Act gives the governing bodies of the national institutions named in the Act a power to transfer an object from their collection and return it to the person who claims it. The first condition is that the Advisory Panel recommends that the object should be returned to the claimant. The second condition is that the Secretary of State approves the Panel's recommendation. Scottish Ministers must give their consent before the Secretary of State can approve a recommendation that relates to an object in the collection of one of the Scottish bodies specified in the Act. The Act will expire on the tenth anniversary of the day on which it received Royal Assent.

Territorial Extent

8. The provisions of the Act extend to England and Wales, and Scotland.
9. This Act contains provisions that trigger the Sewel Convention that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The consent of the Scottish Parliament was given on 25 June 2009.

COMMENTARY ON SECTIONS AND SCHEDULES

Section 1: Bodies to which this Act applies

10. *Section 1* lists the bodies to which the Act applies.

Section 2: Power to return victims' property

11. *Section 2* sets out the power to return an object given to the Trustees of bodies listed in *section 1* and the two conditions that must be met before the power can be exercised. The conditions are:
 - firstly, that the return of the object to a person has been recommended by the Advisory Panel (*subsection (2)*); and
 - secondly, that the Secretary of State has approved the Panel's recommendation (*subsection (3)*).
12. The consent of Scottish Ministers must be given before the Secretary of State can approve the recommendation if it concerns an object in the collection of a Scottish body, that is the Board of Trustees for the National Galleries of Scotland; the Trustees of the National Library of Scotland or the Board of Trustees of the National Museums of Scotland.
13. The power to return an object to a victim does not override any trust or condition subject to which an object is held.

Section 3: "Advisory Panel"

14. *Section 3* explains that the term "Advisory Panel" means a Panel designated by the Secretary of State. The Government intends to designate the Spoliation Advisory Panel. *Subsection (2)* provides that a Panel may be designated only if its functions are limited to the consideration of claims to objects and relating to events occurring in the Nazi era; defined as the period from 1 January 1933 to 31 December 1945.

Section 4: Short title, extent, commencement and sunset

15. *Section 4* deals with extent, commencement and duration. The Act extends to England and Wales and Scotland. However, no institution to which the provisions of the Act apply is located in Wales. *Subsections (2) to (4)* provide for the Act to be brought into

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force by a commencement order made by the Secretary of State. The Secretary of State must consult Scottish Ministers before making an order in respect of a Scottish body. *Subsection (7)* specifies that the Act will expire 10 years after the day on which it is passed.

COMMENCEMENT

16. *Section 4* provides for commencement. The provisions of the Act will be brought into force on the day appointed by the Secretary of State. Before making an order that relates to a Scottish body, the Secretary of State will consult Scottish Ministers. Commencement is planned to take place two months after Royal Assent.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

| <i>Stage</i> | <i>Date</i> | <i>Hansard reference</i> |
|--|--|---|
| House of Commons | | |
| Introduction | 26 January 2009 | Vol. 487 Col. 22 |
| Second Reading | 15 May 2009 | Vol. 492 Cols. 1165-1173 |
| Committee | 10 June 2009 | Hansard – Holocaust (Stolen Art) Restitution Bill Committee |
| Report and Third Reading | 26 June 2009 | Vol. 494 Cols. 1043-1050 |
| House of Lords | | |
| Introduction | 29 June 2009 | Vol. 712 Col. 10 |
| Second Reading | 10 July 2009 | Vol. 712 Cols. 903-918 |
| Third reading | 27 October 2009 | Vol. 713 Col. 1105 |
| Royal Assent – 12 November 2009 | House of Lords Hansard Vol. 714 Col 918 | |
| | House of Commons Hansard Vol. 499 Col 418 | |