EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

19th Meeting, 2009 (Session 3)

Wednesday 17 June 2009

The Committee will meet at 10.00 am in Committee Room 2.

1. Broadcasting in Scotland The Committee will take evidence from—

   Mark Thompson, Director-General, BBC;

   Ken MacQuarrie, Director, and Donalda MacKinnon, Head of Programmes and Services, BBC Scotland.

2. Holocaust (Return of Cultural Objects) Bill (UK Parliament legislation): The Committee will take evidence on legislative consent memorandum LCM(S3) 21.1 from—

   Michael Russell MSP, Minister for Culture, External Affairs and the Constitution, and David Seers, Team Leader, Cultural Excellence Branch, Scottish Government.

3. Holocaust (Return of Cultural Objects) Bill (UK Parliament legislation): The Committee will consider the legislative consent memorandum lodged by Alex Salmond MSP (First Minister) (LCM(S3) 21.1).

4. Schools (Consultation) (Scotland) Bill (in private): The Committee will consider a revised draft Stage 1 report.

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The papers for this meeting are as follows—

**Agenda item 1**

Paper by the Clerk  
ELL/C/S3/09/19/1

**Agenda items 2 and 3**

Paper by the Clerk  
ELL/C/S3/09/19/2
Education, Lifelong Learning and Culture Committee

19th Meeting, 2009 (Session 3), Wednesday, 17 June 2009

Broadcasting in Scotland

Introduction

1. The evidence session with the BBC is part of a number of sessions the Education, Lifelong Learning and Culture Committee has held relating to broadcasting in Scotland. This paper updates members on the background context to this evidence session.

Background

Scottish Broadcasting Commission

2. The Scottish Broadcasting Commission (SBC) was established by the First Minister to conduct an independent investigation into the current state of television production and broadcasting in Scotland and define a strategic way forward for the industry. This was also to take account of the “economic, cultural and democratic importance of broadcasting to a modern, outward looking Scotland and its creative industries.”

3. The SBC published its final report *Platform for success* on 8 September 2009. The report made a number of recommendations, including three which fall to the Scottish Parliament and Scottish Government. The report recommended that:

   • The Scottish Parliament takes an active role in considering the broadcasting industry and services audiences in Scotland receive, in order to provide a visible and public forum for debate (page 53);
   • Scottish Ministers should have greater responsibility, within the UK framework, for those operational functions of broadcasting directly affecting Scotland (page 53); and

4. The SBC gave evidence to the Committee at a number of points during the investigation, including at the Committee’s meeting on 24 September 2008 following the publication of the final report.

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1 Scottish Broadcasting Commission. Available at: http://www.scottishbroadcastingcommission.gov.uk/about


Ofcom’s second public service broadcasting review
5. Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

6. Ofcom is obliged to review Public Service Broadcasting (PSB) at least once every five years and make recommendations about how to maintain and strengthen it. On 10 April 2008, Ofcom published its consultation document Ofcom’s Second Public Service Broadcasting Review – Phase One: The Digital Opportunity⁴, which included a section on “scenarios for Scotland”. Ofcom Scotland gave evidence to the Committee on its review at its meeting on 11 June 2008.

7. The recommendations of the review were published on 21 January 2009.⁵ Of particular interest to the Committee are the recommendations:

- To plan how to ensure the supply of high quality news alongside the BBC in the devolved nations; and

- Government should consider [...] the case for specific approaches in each of the devolved nations for the delivery of public service content other than news.

8. The Committee took evidence from Ofcom Scotland on the review at its meeting on 11 June 2008.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee

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Introduction

1. This paper seeks to inform members’ consideration of the legislative consent memorandum (LCM) for the Holocaust (Return of Cultural Objects) Bill (“the Bill”).

Holocaust (Return of Cultural Objects) Bill¹

2. The Bill was presented to the House of Commons as a Private Members’ Bill by Andrew Dismore MP on 26 January 2009. The Bill has subsequently been supported by the UK Government.

3. The House of Commons web site summarises the purpose of the Bill as to “give the trustees of various public museums in Britain the power of de-accession of any artefacts or cultural objects currently held in their collections which had been stolen by or on behalf of the Nazi regime between 1933 and 1945, so that these artefacts could be returned to the lawful owners or their heirs. The Bill provides that this power could only be exercised where the return is recommended by an advisory body established by the Secretary of State and where the Secretary of State accepts that body’s recommendation.”²

4. The body is the Spoliation Advisory Panel, which was established in 2000 to resolve claims from people, or their heirs, who had lost property during the Nazi era that is now held in UK national collections.³

5. Currently, various public museums and galleries are prevented by legislation from returning artefacts or cultural objects and, in these cases, the only option is for institutions to make an ex gratia payment. The Bill seeks to amend this position by enabling these institutions to return such property.

Relevance of Bill to Scotland

6. The Bill’s provisions apply to a specific list of bodies (listed in clause 2 of the Bill). This clause was amended at committee stage, on 10 June 2009, to include the National Galleries of Scotland, National Library of Scotland and National Museums of Scotland. The Bill was also amended so that, where these bodies are affected by a claim, the Secretary of State must consult the

1 House of Commons. Holocaust (Return of Cultural Objects) Bill. Available at: http://services.parliament.uk/bills/2008-09/holocauststolenartrestitution.html
2 House of Commons. Holocaust (Return of Cultural Objects) Bill.
3 Department for Culture, Media and Sport, UK Government. Spoliation Advisory Panel. Available at: http://www.culture.gov.uk/what_we_do/cultural_property/3296.aspx/
Scottish Ministers before accepting the Spoliation Advisory Panel’s recommendation.

7. As the Bill now relates to devolved matters, a LCM has been lodged by the First Minister. A copy of the LCM is attached at Annexe A.

Procedure for consideration of the legislative consent memorandum

8. Chapter 9B of Standing Orders sets out the procedures for parliamentary consideration of a LCM for a “relevant Bill”. Rule 9B1.1 states that a “relevant Bill” is a Bill that is under consideration in the UK parliament, which makes provision applying to Scotland for any purpose within the legislative competence or the executive competence of the Scottish Ministers.

9. Rule 9B.3.3 sets out the information which a LCM shall contain. This includes a draft legislative consent motion and a statement explaining why the member lodging the LCM considers it appropriate for that provision to be made and for it to be made by means of the Bill.

10. Rule 9B.3.5 states that the Parliamentary Bureau will refer a LCM to a lead committee. It expected that the LCM will be referred to the Education, Lifelong Learning and Culture Committee at the Parliamentary Bureau meeting on 16 June 2009. This Rule also provides that the lead committee will consider and report on the LCM.

11. The Subordinate Legislation Committee is required to consider a LCM where it confers delegated legislation powers. The Holocaust (Return of Cultural Objects) Bill does not confer any delegated legislation powers and has not, therefore, been considered by the Subordinate Legislation Committee.

12. Standing Orders also state that the Parliament will not normally take the legislative consent motion earlier than the fifth sitting day after the day on which the lead committee’s report is published. The Scottish Government has indicated that it wishes the Parliament to take the motion before the summer recess. The Committee’s report will, therefore, have to be published no later than Thursday 18 June 2009.

Action

13. Members are invited to:

- Take oral evidence on the LCM from the Minister for Culture, External Affairs and the Constitution (Agenda item 1); and then

- Consider the issues to include in the Committee’s report (Agenda item 2).

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
LEGISLATIVE CONSENT MEMORANDUM

Holocaust (Return of Cultural Objects) Bill

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the First Minister, is:

“That the Parliament agrees that the relevant provisions of the Holocaust (Return of Cultural Objects) Bill, introduced in the House of Commons on 26 January 2009, relating to the return from public museum and gallery collections of cultural objects stolen during the Nazi era, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by the First Minister, under Rule 9.B.3.1(b) of the Parliament’s standing orders. The Holocaust (Return of Cultural Objects) Bill was introduced in the House of Commons on 26 January 2009. The Bill can be found at:

http://services.parliament.uk/bills/2008-09/holocauststolenartrestitution.html

Content of the Holocaust (Return of Cultural Objects) Bill

3. The purpose of the Bill is to enable the trustees of specified national museum and gallery collections to return to their rightful owners, or to their heirs, cultural objects stolen during the Nazi era. The legislation is required because those institutions named in the Bill are currently prevented by statute from taking such action. The power to return objects in such circumstances would be exercisable following the finding of an advisory body established by the Secretary of State that the object in question was “spoliated” in the Nazi era, and the acceptance of that finding by the Secretary of State. The panel for such purposes, established in 2000, is the Spoliation Advisory Panel, chaired by Sir David Hirst.

Provisions which relate to Scotland

4. With the agreement in principle from the Scottish Government, amendments to the Bill were agreed at committee stage on 10 June to bring the National Museums of Scotland, the National Galleries of Scotland and the National Library of Scotland into the scope of the Bill. These institutions are currently prevented from returning objects accepted as having been stolen during the Nazi era because of their general statutory duties to preserve their collections. These duties are contained in, respectively, the National Heritage (Scotland) Act 1985, the National Galleries of Scotland Act 1906 and the National Library of Scotland Act 1925.

5. The agreed amendments to the Bill also require the Secretary of State to gain the agreement of the Scottish Ministers prior to approving decisions regarding any recommendations from the advisory body in relation to these three institutions in Scotland. The Secretary of State will commence provisions in so far as they apply to
Scotland but only after consultation with the Scottish Ministers as to such commencement.

**Reasons for seeking a Legislative Consent Motion**

6. Overall the Bill is a small and uncontroversial proposal and it would be difficult to justify taking up the Scottish Parliament’s time with a separate Bill. Allowing the UK Parliament to legislate for Scotland in this area would enable the Bill’s provisions on this important moral issue to come into force in different parts of the UK at the same time and on the same basis.

**Consultation**

7. The UK Government’s Department for Culture, Media and Sport issued a consultation paper in 2006, seeking views on whether to lift the statutory and other legal restrictions relating to the return of objects lost during the Nazi era. There was general agreement that this would be the appropriate way forward. The consultation paper and responses received are available at the following link:


**Financial implications**

8. The financial implications of the Bill in Scotland are likely to be very limited. In the current absence of a power to return objects to their owners, the national collections in Scotland could, in theory, face claims for ex-gratia compensation payments, were any items in their collections to be identified as having been stolen in the Nazi era.

9. The national collections have, in any case, undertaken significant work in recent years to establish the provenance of their collections, with only a small number of items identified for which a full past history could not be satisfactorily established.

**Conclusion**

10. Scottish Ministers accept the important moral arguments for changing the law in relation to national collections’ ability to return cultural objects stolen during the Nazi era. The proposals in the Holocaust (Return of Cultural Objects) Bill achieve this and the motion provides a simple and effective means for Scottish institutions to be included.

Scottish Government
June 2009