



DEPARTMENT FOR CULTURE, MEDIA AND SPORT
HOME OFFICE

Government Response to
'Cultural objects: developments since 2000' (HC 59)
Report of the Culture, Media
and Sport Select Committee
Session 2003–2004

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport and the
Secretary of State for the Home Department
February 2004*

© Crown Copyright 2004

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be addressed to The Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

GOVERNMENT RESPONSE TO THE CULTURE, MEDIA AND SPORT SELECT COMMITTEE REPORT ON ‘CULTURAL OBJECTS: DEVELOPMENTS SINCE 2000’ (HC 59) SESSION 2003–2004

Conclusions and Recommendations

Introduction

1. The Government welcomes the Committee’s 4th Report, which is a helpful contribution to the continuing debate about the best means to counter the trade in illegally obtained cultural goods. It also welcomes further discussion of various restitution issues.
2. The Government has put in place the overall regulatory framework for countering the illicit trade in cultural goods in this country, having acceded to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and having supported the enactment of the Dealing in Cultural Objects (Offences) Act 2003. The Government will now be focusing on co-ordinated implementation of this sound framework through the delivery of improved intelligence and the necessary enforcement tools.

National due-diligence database for stolen and unlawfully removed cultural objects

3. In its 4th report, the Committee concluded:
 - **(1) The Government’s reply to the Committee in March 2001 referred to a Home Office working party being given the proposed national database of stolen cultural objects to consider “urgently” in January of that year. We do not consider those terms of reference to have been implemented in any way. (Paragraph 27)**
 - **(2) Illicit Trade Advisory Panel (ITAP), reporting on progress in 2002, stated that: “Information retrieval [i.e. a national database] is perhaps the field in which progress has been least satisfactory and in which the reasons for delay are least persuasive.” (Paragraph 32)**
 - **(3) The British Art Market told us that its reaction to absence of progress on a national database was “to sum it up in a word – frustration”. Mr Browne said that “I think it is lost in discussion somewhere in departments, but it is to be regretted.” (Paragraph 32)**
 - **(4) We would draw attention to a target set for a reduction in vehicle crime by the Prime Minister and recommend that he gives consideration to a similar performance objective for the theft of cultural objects. (Paragraph 36)**
 - **(5) We regard the lack of progress made on a national database of illegally removed cultural objects to be lamentable. This is especially true given the existence of analogous systems in the commercial sector and elsewhere, as well as precedents for public/private co-operation in other areas where law enforcement is working alongside legitimate commerce to suffocate illicit markets. We welcome the Home Office’s recognition of the unsatisfactory progress made to date and the new commitment to ensuring that the project now comes to fruition along the lines, and within the timetable set out by Ministers. We will return to assess the implementation of the Government’s latest undertakings in March 2004. (Paragraph 40)**

4. The Government accepts that progress has been slower than hoped but the issues that we have had to deal with have been more complex and difficult to overcome than anticipated. Whilst not a top Home Office priority, for reasons already stated in written and oral evidence to the committee, the Government is determined to reach a conclusion on this issue. And we have made significant progress in the last year.

5. We have now appointed consultants to assess the two options we have available and recommend a way forward and officials at both the Home Office and the DCMS are working closely with them:

- The first phase of their work will involve producing a specification for what the database must offer, obtaining firmer and more detailed information for each option (including the likely costs and how these might be met), analysing the options available and recommending a way forward. This will be due by the end of March.
- Given our competing priorities, we shall need to decide on the best way forward in the light of the consultants' report and on the grounds of cost effectiveness and value for money.
- The second phase, due for completion in April, will produce a detailed strategy for the development of a pilot project.

6. If the Government decides to pursue the public/private partnership (PPP) option, we have been advised that a formal tender process will be required. The Government will need to adhere to EC rules and publish the invitation to tender in the Official Journal of the European Communities (OJEC). The requirements of this procedure will mean that the pilot will not be able to commence before October 2004.

7. At this stage, we anticipate a relatively short pilot of 6-9 months. This is a maximum; should the pilot prove itself before that time, then we would want to bring it to an early conclusion. We are also considering options that would allow a smooth and seamless transition from the pilot phase to a full service.

8. We do not accept the Committee's recommendation that a target be set for the reduction in theft of cultural objects:

- Whether thefts involve cultural items is not currently recorded by all police forces and would be difficult to do in a consistent way.
- It would add to the bureaucratic demands on forces for little, if any, benefit.
- We are looking to minimise the number of targets on forces to allow them more flexibility to focus on their own local problems and priorities.
- The Home Office considers that driving down the theft of cultural items is just one means to the ends of reducing organised crime and drug trafficking, rather than a target in itself.

9. The Committee makes the point that the Government should draw on comparable databases such as the ones used in vehicle crime. As stated in our last Joint Memorandum to the Committee at paragraph 8, the Government is aware of these databases and appreciates that they may hold some valuable similarities that we will be able to use. However, the comparisons that one can make are limited. In particular:

- The companies referred to by the Committee in their report, do not receive data directly from the Police National Computer. The information comes from monthly downloads from the Driver and Vehicle Licensing Agency (DVLA) and from extracts from the PNC. In the context of illicit trade in cultural items, there is no equivalent organisation to the DVLA that could provide this service.

- If the DVLA and the Police agreements are breached in any way, and any data is used contrary to the terms in the contract, they can stop providing updates because they own the data. It is questionable how any DVLA type organisation would use a power to withhold data as leverage to enforce a contract when currently the database providers in the art and antiques field collect their own data.

10. The idea of developing a public/private partnership, which is the most useful analogy that we can take from the vehicle databases, is not new to the Government and is one of the options that the consultants are looking into.

11. Although not specifically mentioned in the Committee's conclusions and recommendations, we wish to address the Committee's comments at paragraph 38; that the Government should undertake work to determine the extent of the link between the illicit trade and organised crime.

12. We fully acknowledge that the extent of the link is not clear, but we are happy to proceed on the basis that links have been made, albeit through individual cases. Carrying out an exercise of the sort recommended by the Committee would delay the development of a national database and we are not convinced that it would be cost-effective, given the competing priorities facing those tackling organised crime.

Database of international legislation on cultural property

- **(6) We welcome indications of progress by UNESCO on a database of relevant international legislative provisions, past and present, but we regard this as of secondary importance compared to a national database of stolen and illegally removed objects. (Paragraph 42)**

13. On the question of the electronic database of international legislation on cultural property, the Government draws the attention of the Select Committee to the statement on progress made in the DCMS memorandum to the Committee of 28 November 2003 (paras 29-32). It is widely agreed that the United Nations Educational, Scientific and Cultural Organisation (UNESCO) is the best organisation to take the lead on this initiative. Such a resource would have the most extensive possible dissemination through publication in its original language and automatic translation into the two official languages of UNESCO.

14. At its 32nd General Conference in October 2003 UNESCO voted a budget for launching at the earliest possible date an electronic cultural property legislation database "bringing together all national legislation applicable in Member States of UNESCO concerning the import, export and transfer of ownership of cultural property and also including models of the export and import certificates for cultural property in use in Member States". The UK was among the States Parties registering support for the necessary amendment to the budget vote on major programmes and projects relating to crosscutting cultural property themes for 2004-05. UNESCO has now issued a letter (undated) to Member States of the 1970 Convention requesting electronic copies of the relevant documentation. The Government has already put this in hand.

15. DCMS officials visited UNESCO counterparts on 27 January 2004 in order to discuss the most effective management of the project. They will be holding a follow up meeting with UNESCO within six months.

16. The Government regards the provision of improved intelligence for due-diligence purposes as fundamental to its long-term strategy to assist the art market in policing itself. It considers a regularly updated database of international cultural property legislation to be a vital part of the package of measures designed to stem the illicit trade, indeed complementary to and no less important than the database for stolen and unlawfully removed cultural objects. Besides being an improvement in the provision of due-diligence services for the art market, web-based translations of the cultural property laws of other countries will be of significant benefit to UK police and HM Customs officers working in front-line enforcement roles.

Export controls

- **(7) We regard the inability of DCMS to refuse export licences for tainted objects as a serious weakness in arrangements and are very concerned at this further potential for the UK's accession to the UNESCO Convention and the Dealing in Cultural Objects Act 2003 to be undermined by gaps in practical arrangements. It hardly matters whether the UK accedes to multilateral instruments in this area if our import system is not strengthened and our export arrangements are open to abuse confounding the very purposes of international agreement. (Paragraph 45)**

17. This is a complex area. The possibility of a conflict with European Union (EU) legislation came to light during the first meeting (in February 2003) of the DCMS Illicit Trade Advisory Panel's (ITAP) sub-group. This group had been constituted to consider the detail of how the export licensing regime might be used as a tool to help curb UK dealing in cultural objects that have been unlawfully removed from non-EU countries of origin. An EU Regulation already provides that checks must be made on objects despatched from another EU member State in order to ensure that the despatch was lawful.

18. Since the meeting in early 2003, the Department for Culture, Media and Sport has been considering this issue in detail, undertaking research and consulting others in order to move the issue forward. In particular, the Department is exploring the position with the European Commission. If appropriate the Department will seek any necessary amendment to the EU Regulation to enable us to take this policy forward, following the normal three-month consultation period with interested parties. In this, the Department is strongly supported by HM Customs & Excise, who also wish to see any legislative gaps closed so that the factor of tainting can be dealt with as part of the export licensing process.

19. The new Dealing in Cultural Objects (Offences) Act 2003 has given HM Customs and Excise new powers of seizure under the Police and Criminal Evidence Act (PACE) for cultural objects they suspect to be tainted at the time of import. HM Customs and Excise can also rely on their seizure powers under the Customs and Excise Management Act 1979 where the import of any cultural objects also involves the commission of a Customs offence.

Remedial action/role of ITAP

- **(8) The Secretary of State said that if the Government wished to take comprehensive action on the import of illicit cultural objects it should form part of government legislation. We agree whole-heartedly and recommend that, after an appropriate period, ITAP review the impact of the new Act (achieved via a Private Member's Bill) and the extent to which it has contributed to the UK's fulfilment of its obligations under the UNESCO Convention. However, the Government should commit itself now to introducing remedial legislation – backed up by adequate and appropriate resources – if this is found to be necessary. (Paragraph 46)**

20. DCMS will work closely with other Government Departments to monitor the application and effect of the new Dealing in Cultural Objects (Offences) Act, and particularly with regard to its reinforcement of UK obligations under the 1970 UNESCO Convention. The Department is currently engaging with the Police and HM Customs on the enforcement of the Iraq (UN Sanctions) Order 2003, which implements UN Security Council Resolution 1484 prohibiting the dealing in and possession of cultural objects unlawfully removed from Iraq after May 1990.

21. The Government will ensure that the scope and effectiveness of the new regulatory framework for preventing the use of the UK as a marketplace for the illicit trade are kept under regular review. To crystallise the process of collaborative working across

Government, the DCMS will shortly establish, under its chairmanship, a steering group of officials with representation from HM Customs and the Metropolitan Police to review policy issues, operational strategies and intelligence sharing and to progress specific cases, so as to ensure the most effective working of the new framework. Should loopholes be identified in our provision, the group will work together on remedial measures to ensure comprehensive protection against criminal activity in the marketplace.

22. The Government continues to value the advice of ITAP – the membership of which is drawn from across the art trade and heritage sectors – in the policy development process. It has implemented the key recommendations of the Advisory Panel with regard to collective international action (accession to the 1970 UNESCO Convention) and the introduction of a new criminal offence, and is now concentrating on the improved intelligence and enforcement part of the package. To this end, the DCMS will focus its attention on working closely with law enforcement agencies and HM Customs (as outlined above). At its next meeting this spring, ITAP will be reconsidering its terms of reference. The Government's intention is that the Advisory Panel will make its final report towards the end of 2004. It is envisaged that the Government will conduct a further review of the operation of the new measures against the illicit trade at an appropriate time in the future.

Government strategy

- **(9) The Government does at last seem to have elements of a strategy in place, or under consideration, with regard to tackling the illicit trade in cultural objects. However, the differential pace at which these elements are developing, and apparent weaknesses in the practical arrangements on the ground, detracts from a sense of a coordinated, robust and effective approach. (Paragraph 47)**

23. The Select Committee has recognised the value of ITAP in developing policy and recommendations for new legislative action in collaboration with the sector. Now the criminal offence is in force, the Government is focusing its attention on delivering improved intelligence for due diligence purposes and the necessary enforcement tools to make the new systems work. The project management strategy employs a deliberately staged approach, whereby DCMS has completed the policy development phase and is now concentrating on testing and enforcing the policy. To this end, it is developing a more structured approach to inter-Departmental working on this issue, creating a new framework for collaboration between policy officials and law enforcement counterparts. The new steering group, as outlined above, represents a key strand of this strategy.

British Museum Application to the Attorney General

- **(10) We recommend that the DCMS liaise with the Attorney General on the relationship between the statutes covering museum governance and charitable status respectively. It should include a definitive answer in any reply to this Report to the British Museum's query over its ability to respond to moral claims for the return of objects. (Paragraph 52)**
- **(11) We welcome the prospective change to the absolute ban on national museums returning human remains in response to claims validated by, as yet unknown, systems and principles. The potential to respond at all is the first, and vital, step. We look forward to considering the results of the DCMS' consultation on the principles and methodology that will underlie this new permissive regime. As we have said above, the results of the Attorney General's consideration of the British Museum's query over the potential effect of charity law in this field are also relevant. It would be ideal if the Attorney General's conclusions were made part of the consultation, if at all possible, to avoid different strands of this debate confusing the issue and damaging the prospects for genuine progress. (Paragraph 55)**

24. The DCMS's lawyers are liaising with the Legal Secretariat to the Law Officers, assisting in any way they can, to ensure that the Attorney has all relevant information to enable him to resolve the British Museum's question as speedily as possible. It has been necessary for the Attorney to await receipt of submissions from the parties with an interest in this matter before coming to a view on the question. Submissions from all those parties have only just been received and the Attorney expects to be able to provide an answer shortly. It may be, in any event, that a definitive answer is not possible without referring the matter to the courts. It is hoped to launch the forthcoming consultation on the recommendations from the Working Group on Human Remains within the next few weeks. Given that the Human Tissue Bill will enable the national museums specified to de-accession human remains, any answer from the Attorney General should not affect the consultation.

- **(14) We regard the Government's position on spoliation as a regrettable retreat from the consensus achieved amongst the museums and galleries community following our predecessor's Report. We urge the Department to reconsider. We note the potential for an alternative route to be found via the British Museum's consultation of the Attorney General over the effect of charity law. However, while we commend this initiative by the Museum, we regret that the Government has not had clarification of this point on its own agenda. We recommend that the DCMS make efforts to encourage a speedy and positive outcome to the British Museum's query. (Paragraph 62)**

25. It is, of course, for the trustees of a charity (and not the DCMS) to decide, having regard to the circumstances of any issue before them, whether to make an application to the Attorney General or the Charity Commissioners for guidance on the extent to which they may act in ways that might otherwise conflict with the terms of their trust. The Trustees of the British Museum have made a request for the Attorney's guidance on the extent of his powers to sanction them to give effect to a moral claim arising from holocaust spoliation. The DCMS's lawyers are making every effort to assist the Attorney General so that he is in a position to resolve the question put to him by the Trustees.

Maqdala Treasure

- **(12) It is difficult to imagine a clearer example of a moral claim to which a charity's trustees might wish to give effect than that of Ethiopia for the return of its most sacred artefacts. (Paragraph 58)**

26. If the Attorney General were to decide in principle that the British Museum could give effect to moral claims, it would be for the Trustees of the Museum to apply to the Attorney General to seek his sanction in respect of a particular object in its collection. The Government has no power to intervene.

Spoliation

- **(13) The DCMS should not wait for a valid spoliation claim to be made (that cannot be satisfied by compensation) to start to seek a change in the law. The lead-in time is simply too long. (Paragraph 61)**

27. It has not yet been established that the existing means of achieving a settlement for spoliation cases are inadequate. The Attorney General is being consulted as to the extent of his powers to sanction the return of objects. The Spoliation Advisory Panel was established as the expert advisory body on this matter, and it has an express power, when advising the Secretary of State in specified circumstances, to direct her attention to the need for legislation to alter the powers and duties of any institution. To date, the Panel has not exercised that power. There have only been five cases before the Panel. In the present circumstances, the Government has decided that it would be disproportionate to seek to legislate.

Conclusion

28. As the Committee itself recognized in its first report on this issue published in July 2000, there are three major elements of the strategy: the national database; accession to an appropriate international agreement and the criminalisation of dealing in tainted cultural objects¹.

29. The Government is pleased to record first that it acceded to the UNESCO Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in October 2002; second that the future progress of the database has now been clearly mapped out; third that the Dealing in Cultural Objects (Offences) Act, which makes it an offence for anyone to deal dishonestly in cultural objects which have been unlawfully removed from their country of origin, came into effect on 30 December 2003. Taken together, these elements, as well as those described above, will ensure that now that the framework for the prevention of the illicit trade has been put in place, co-ordinated action between Departments, assisted by the establishment of the new steering group, will achieve the implementation of this policy.

Tessa Jowell – Department for Culture, Media and Sport

Caroline Flint – Home Office

¹ Report *Cultural Property: Return and Illicit Trade* July 2000 page Ii.



Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline *Lo-Call* 0845 702 3474

Fax orders 0870 600 5533

Email book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers

ISBN 0-10-161492-6



9 780101 614924