HOLOCAUST MEMORIAL BILL

HOUSE OF LORDS SELECT COMMITTEE

PROMOTER'S NOTE ON THE RELEVANCE TO THE COMMITTEE'S PROVISIONAL RULING AS TO SCOPE OF THE 'RAM' DOCTRINE REFERRED TO IN WRITTEN SUBMISSIONS OF LORD CARLILE DATED 22 NOVEMBER 2024

1. This note has been prepared on behalf of the Secretary of State for Housing, Communities and Local Government, Promoter of the Holocaust Memorial Bill (**the Bill**) relating to the proposed Holocaust Memorial and Learning Centre (**HMLC**) in Victoria Tower Gardens (**VTG**). It is provided in response to written submissions made by Lord Carlile dated 22 November 2024[1] (**the Carlile Scope Submissions**) following the Committee's provisional ruling as to the scope of the matters that fall within its remit.

2. For the reasons set out below, the Promoter submits that the "Ram doctrine" or common law powers of the Crown are not relevant to the scope of the Bill.

The Ram doctrine and spending authority

3. The Carlile Scope Submissions refer (at paragraphs 5 to 7) to the Ram doctrine, as well as citing materials which discuss where the statutory authority for a spending power in a Bill comes from.

4. The Ram doctrine is a reference to a memorandum drafted by Sir Granville Ram, then First Parliamentary Counsel, in 1945 which contained legal advice to the government of the day about whether legislation was necessary to extend the powers of government departments.[2] It states (in relevant part) that as far as ministerial power under the common law is concerned:

> *"A minister of the Crown is not in the same position as a statutory corporation. A statutory corporation … is entirely a creature of statute and has no powers except those conferred upon it by or under statute, but a minister of the Crown, even though there may have been a statute authorising his appointment, is not a creature of statute and may, as an agent of the Crown, exercise any powers which the Crown has power to exercise, except so far as he is precluded from doing so by statute. In other words, in the case of a government department, one must look at the statutes to see what it may not do."*

5. The Ram doctrine is therefore often used as a shorthand way to refer to the Crown's common law powers to do things which are ancillary or incidental to the ordinary business of central government.

6. However, as the Committee is aware, there are a number of constraints on the use of such powers, and one such constraint is the rules on financial propriety set out in the 1932 Concordat (the "**Baldwin Concordat**").[3] It seems to be these rules that the Carlile Scope Submissions are referring to at paragraphs 6 and 7.

7. The Baldwin Concordat arose following concerns raised by the Public Accounts Committee in 1932 at the possibility of significant expenditure being incurred without express Parliamentary authority. Payment out of the Consolidated Fund requires the authority of an Appropriation Act, but such Acts are framed by references to groups of activity and it can be difficult to trace spending to a particular new function. [4]

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[1] See document PET-010 '*A submission in relation to the provisional scope ruling by the Committee from Lord Carlile*', a copy of which can be downloaded here

[2] A full transcription of the *Ram* Memorandum may be found here; see also the commentary thereon in Chapter 3 of the House of Lords Constitution Committee's 13th Report of Session 2012-13 here which notes (at paragraphs 59 and 60) the limitations on the use of the phrase "Ram doctrine" to describe the common law powers of the Crown.

[3] See Erskine May para. 33.11

[4] For a more detailed discussion of the background to the Baldwin Concordat see *Craies on Legislation* paragraphs 1.75 to 1.7.8.

8. The Baldwin Concordat therefore reflects an undertaking by government that new heads of significant expenditure which are to be financed out of money to be provided by Parliament through the annual Appropriation Acts should be authorised by specific Act, supported by a financial resolution, and not by the Appropriation Act alone.

The Promoter's response to the Carlile Scope Submissions

9. Insofar as the Promoter understands the points advanced at paragraphs 8 to 11 of the Carlile Scope Submissions, Lord Carlile's argument appears to be that:

9.1 clause 1 of the Bill provides statutory authority for the Promoter to incur expenditure in relation to the HMLC out of money provided by Parliament on "*any land*", i.e. not just in VTG;

9.2 the Bill does not itself vote that money and there is no pre-existing appropriation;

9.3 in purported reliance on the Ram doctrine, the Bill does not therefore form statutory authority for the payment of the expenditure concerned and amounts to no more than an expression of intention; and

9.4 this means that the question of whether, where and on what the Promoter may incur expenditure in relation to a HMLC is within scope and, accordingly, such matters are also within scope for the purposes of clause 2 of the Bill.

10. The Promoter submits that the Ram doctrine is not relevant here. The purpose of clause 1 of the Bill is to provide the necessary spending authority to ensure that the Government is observing the rules of financial propriety. So, in this way, the Carlile Scope Submissions appear to be misguided in suggesting that clause 1 of the Bill can be reopened for debate, being only an expression of intention with no real function. Whilst it is true that the flow of money will come from the Appropriation Acts, without the statutory spending authority provided by clause 1 the Government would not be acting consistently with this important and accepted rule on managing public money.

11. Given that clause 1 clearly embodies part of the principle of the Bill, and also does not affect the private interests that the Committee has been established to consider, it is not correct to suggest that whether or not there should be any funding for a HMLC can be called into question by the Committee.

12. Furthermore, and in any event, the Promoter submits that if Lord Carlile's submissions on this issue were to be accepted by the Committee, this would in effect be allowing petitioners to attack the principle of clause 2 of the Bill – which clearly envisages the construction of a HMLC specifically in VTG, not simply on "*any land*" – by the back door.

13. The Promoter accordingly respectfully invites the Committee not to accept the Carlile Scope Submissions.

04 December 2024