

OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – THE UNITED KINGDOM (AS OF 13 DECEMBER 2016)

CONTENTS

- A. OVERVIEW
- B. BIBLIOGRAPHY

A. OVERVIEW

After Nazi Germany invaded Poland, the United Kingdom ended its policy of political appeasement. On 3 September 1939, the UK declared war against Germany. With the exception of the Channel Islands (where the Nazis established a number of forced labor camps, one of which (on Alderney) became a sub-camp of Neuengamme concentration camp), the UK successfully resisted invasion efforts by Nazi Germany, including the extended July-October 1940 air raid known as the Battle of Britain. As a result, Jewish property in the UK was not looted or seized and British Jews (except in German-occupied Channel Islands) were not persecuted. However, property in the UK belonging to persons defined as “enemy” persons (including fleeing Jews from continental Europe) was frozen by the UK government pursuant to the 1939 **Trading with the Enemy Act**.

During the war, London was home to a number of governments in exile from across the European continent, including: Belgium, Czechoslovakia, Denmark, France, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia.

Shortly after Hitler’s rise to power in 1933, Jews and non-Jews attempted entry into the UK. Britain had a longstanding history of assisting those in need, but its immigration policy did not make any distinction between refugees and immigrants. Thus, those fleeing persecution were not afforded any preferential treatment. ([Yad Vashem – Shoah Resource Center, “Great Britain”](#).) However, British aid organizations were quickly established to provide assistance to Jewish refugees and “until the end of 1939, British Jewish organizations fully supported the thousands of Jewish refugees that entered Britain, with money, housing, education, job training, and help with further emigration.” (*Id.*, p. 1.) Between 1938 and 1939, Britain eased its immigration policy for certain Jewish refugees, and by September 1939, Britain had admitted approximately 70,000 Jewish refugees. This included children under the age of 17 from Germany and German-annexed territory who arrived via the so-called “*Kindertransport*” (Children’s Transport). ([United States Holocaust Memorial Museum – Holocaust Encyclopedia, “Kindertransport, 1938-1940”](#).) The **Central British Fund for Germany Jewery** (now **World Jewish Relief**) was instrumental in bringing the unaccompanied, mostly Jewish, children to the UK through the *Kindertransport*. ([World Jewish Relief, “History”](#).) The children were afforded temporary visas, provided that private citizens or organizations guaranteed financial support for the children and they would return to their families after the war.

When World War II began in 1939, there were roughly 370,000 to 390,000 Jews in the United Kingdom. However, from this period onwards, Britain banned emigration from Nazi-controlled regions ([Yad Vashem – Shoah Resource Center, “Great Britain”](#), pp. 1-2.) Beginning in 1940, as Germany invaded other Western European countries, Britain adopted a policy of interning “enemy aliens” (i.e., Austrians and Germans in Great Britain). This included Jewish refugees from Austria and Germany and more than 1,000 children from the Kindertransport program. (*Id.*; [United States Holocaust Memorial Museum – Holocaust Encyclopedia, “Kindertransport, 1938-1940”](#).) Prisoners were released once the threat of a German invasion subsided.

According to the 2011 census, there are 269,568 Jews living in the UK.

We are unaware of the estimated Roma population in the UK during the war. The Council of Europe estimates that as of 2012, there are approximately 225,000 Roma living in the UK. Many other national estimates of the Roma population vary between 100,000 and one (1) million.

The UK was a member of the “Allied and Associated powers” involved in peace treaties with the former Axis powers including the [1947 Treaty of Peace with Italy](#), [1947 Treaty of Peace with Bulgaria](#), [1947 Treaty of Peace with Finland](#), [1947 Treaty of Peace with Hungary](#), and [1947 Treaty of Peace with Romania](#) (collectively known as the Paris Peace Treaties). The treaties addressed, in part, how confiscated immovable property belonging to members of the United Nations or citizens of the former Axis countries would be treated.

Following the war, the UK entered into lump sum agreements, bilateral indemnification agreements or memoranda of understanding with at least seven (7) countries. These agreements chiefly pertained to claims arising out of war damages or property that had been seized by foreign states after WWII (i.e., during nationalization under Communism). They included claims settlements reached with: **Bulgaria** (22 September 1955); **Czechoslovakia** (28 September 1949 and 1982); **Federal Republic of Germany** (9 June 1964); **Hungary** (27 June 1956); **Poland** (11 November 1954); **Romania** (10 November 1960); **Yugoslavia** (23 December 1948). (Richard B. Lillich and Burns H. Weston, *International claims: Their Settlement by Lump Sum Agreements* (1975), pp. 328-334.) The UK also concluded an agreement with Estonia in 1992 regarding the settlement of outstanding claims and financial issues, including property.

The United Kingdom became a founding member of the Council of Europe in 1949 and ratified the European Convention on Human Rights in 1953. As a result, suits against the UK claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Additionally, cases against the British government and other public bodies can also be heard in UK courts under the Human Rights Act (passed 1998, came into force 2000) which incorporated the Convention into British law. The UK became a member of the European Union (EU) in 1973, but in a referendum in June 2016 voted by simple majority to leave the EU. It is presently unknown when the UK will officially leave the EU.

The UK is one of only a few countries with a government office dedicated to Post-Holocaust Issues. The post was first created in 2010 with Sir Andrew Burnes holding the post as the first Special Envoy for Post-Holocaust Issues. Sir Eric Pickles was appointed Special Envoy for Post-Holocaust Issues in September 2015.

The UK endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. The UK submitted a response in June 2016.

Private Property Restitution

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II ("Terezin Best Practices") for the purpose of restitution, is:

property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

As World War II began in 1939, Britain reestablished its [Trading with the Enemy Act](#) that had been in place during World War I. The law froze assets located in Britain belonging to the "enemy". This included the assets of persons from countries who had been invaded by the Axis powers. At the end of the war, Britain had frozen more than GBP 400 million in "enemy" assets. (Stephen Ward & Ian Locke, "'Ex-Enemy Jews': the Fate of the Assets of Holocaust Victims and Survivors in Britain", in *The Plunder of Jewish Property during the Holocaust: Confronting European History* (Avi Beker, ed., 2001) ("Ward"), p. 212.) However, most confiscated assets related to bank account balances, share holdings, the contents of safety deposit boxes (including personal items such as jewelry), works of art, and other financial assets based in the UK. (UK Government Response to ESLI Immovable Property Questionnaire (23 June 2016), p. 2.) According the UK government, less than 10 percent of frozen assets relate to "physical items, and less to real estate." (*Id.*)

After the war, the UK released assets from occupied countries but assets from belligerent countries, with the exception of assets belonging to victims of Nazi persecution, were distributed to UK creditors whose assets had been seized by enemy governments.

([Department for Business Innovation & Skills, “The Future of the Enemy Property Payments Scheme and the Baltic States Scheme – Consultation Document”, February 2015 \(“Future of the Enemy Property Payments Scheme”\), p. 7.](#))

1. The Board of Trade Scheme

Between 1948 and 1957, the UK offered an *ex gratia* scheme to compensate victims of Nazi persecution from Germany, Hungary, Romania and Bulgaria, whose property had been taken by the government under the 1939 **Trading with the Enemy Act**. According to historians, however, “the policy was deliberately not enshrined by statute, because government lawyers advised that if it was kept ad hoc, there could be no challenge to interpretation in English courts.” (*Ward*, p. 216.)

The scheme placed the burden of proof on the victim to demonstrate they had suffered Nazi persecution. The claimants had to demonstrate they had been deprived of liberty, they had departed from “enemy” territory, they did not act against the Allied powers, and they did not enjoy full rights of citizenship. (*Id.*) Incarceration in a ghetto or labor camp was not accepted as evidence of such persecution. The scheme provided for compensation without interest, minus a two percent (2%) administration charge.

The UK government reports that out of more than 1,000 claims, 84 percent were successful and that GBP 2 million was paid out. (UK Government Response to ESLI Immovable Property Questionnaire (23 June 2016), p. 8.)

2. Enemy Property Payments Scheme

The treatment of possible unreturned assets was revisited in the 1990s. (Future of the Enemy Property Payments Scheme, p. 7.) UK government publications on the topic state that the “then Government acknowledged and responded to these concerns and apologised to victims of Nazi persecution and to their relatives and descendants as those who dealt with claims following the war were ‘sometimes insensitive’ to the plight of Nazi victims.” (*Id.*, p. 8 (quoting Enemy Property Press Release, 3 April 1998, Margaret Beckett (President of the Board of Trade)).)

In 1997, the British government created a database of more than 30,000 records of property seized from residents the UK deemed belligerent and technical enemies during World War II. The [database](#) can be searched to find seized assets and their value at the time of the seizure. However, in the intervening years between the end of the war and the 1990s, many of the records were destroyed and it is difficult to determine who the rightful owners of assets are and whether they have been previously compensated. (*Id.*)

In 1999, the **Enemy Property Payments Scheme (EPP)** was launched. It provides compensation for residents of “enemy” countries whose Britain-based property was confiscated during the war under the terms of the 1939 **Trading with the Enemy Act**, but who suffered persecution themselves by the Nazis or their collaborators.

In order to successfully claim property under the **EPP**, the claimant must provide evidence of persecution – either through discriminatory legislation or action in pursuance of de facto state policy by the enemy state. Under the **EPP**, no distinction is made between property belonging to Jews and property belonging to members of other groups persecuted by the Nazis.

Claims are submitted by form for consideration by the independent **Enemy Property Compensation Advisory Panel (EPCAP)**. The panel of four (4) assessors meets quarterly or twice a year to assess claims. If a claim is rejected, the claimant has two (2) months to appeal to an appeals adjudicator who can affirm or overturn the panel's decision. (*Id.*, p. 9.)

Compensation under the **EPP** is based on the original value of the property adjusted for inflation by the Retail Price Index. Compensation awards are tax-exempt. ([The Association of Jewish Refugees, "Tax & Benefit: Tax Exemption on Holocaust bank restitution"](#).)

The **EPP** was closed to new claims in **August 2004**. Under certain circumstances, if a good reason can be shown why a claim was not submitted earlier, it is still possible to lodge a claim. The **EPCAP** then decides whether to accept the late claim.

3. **Baltic States Scheme**

The **Baltic States Scheme** was launched in 1969. According to the UK government:

The **Baltic States Scheme** exists to compensate residents of the Baltic States, which during the period of Nazi occupation were 'technical' enemies of the UK, whose property was confiscated. After the war agreements were settled with the Governments of most countries to compensate their own citizens for property confiscated in the UK. However, as the Baltic States had no governments the UK recognised after the war – owing to their annexation by the Soviet Union – residents of these countries had no mechanism to seek compensation. The **Baltic States Scheme** was created to provide compensation for them.

(UK Government Response to ESLI Immovable Property Questionnaire (23 June 2016), p. 2 (emphasis added).)

The **Baltic States Scheme** operates just like the **Enemy Property Payments Scheme (EPP)**, with the **Enemy Property Compensation Advisory Panel (EPCAP)** evaluating claims. The chief difference with the **Baltic States Scheme** is that it does not require that the claimant have been a victim of Nazi persecution. If the claimant *is* a victim of Nazi persecution, he or she can apply to the **Enemy Property Payments Scheme** instead.

The average successful claim from both the **EPP** and the **Baltic States Scheme** between 1999 and 2014 is GBP 46,409. (*Id.*, p. 7.) As of 2015, 1319 claims have been made, with all 1319 being finalized. A total of 510 claims have resulted in a favorable ruling for the claimant and GBP 23.7 million had been paid by the government in compensation. Since

2014, 37 claims (under both schemes) have been lodged and 8 were successful. (Future of the Enemy Property Payments Scheme, p. 9.). It costs UK taxpayers GBP 65,000 to keep the scheme open but the **EPCAP**'s status was confirmed in 2015 by public consultation. (*Id.*)

Communal Property Restitution

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution is:

property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.

(Terezin Best Practices, para. b.)

As far as we are aware, no communal property was confiscated in the UK during World War II. (*See also* UK Government Response to ESLI Immovable Property Questionnaire (23 June 2016), p. 11.)

Heirless Property Restitution

The Terezin Declaration states “that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.” (Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices also “encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators.” Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.

(Terezin Best Practices, para. j.)

There is no current special heirless property scheme in the UK. According the UK government, it is unclear whether there actually is any heirless property in the UK. (UK

Government Response to ESLI Immovable Property Questionnaire (23 June 2016), p. 11.)

However, in 1959, following the conclusion of the **Board of Trade Scheme**, the remaining GBP 250,000 in funds, comprising German property that was not practicable to distribute to creditors, was turned over to a **Nazi Victims Relief Trust**. Funds from the Trust were to be distributed to persons who “‘had been persecuted before 1945 on racial, religious, or political grounds in European countries at war with the UK’ and ‘were in fact suffering’”. (*Ward*, p. 220.)

Awards of up to GBP 1,500 were given, with the majority being GBP 500. (*Id.*) For those who later had *ex gratia* payments awarded, the amount previously received from the **Nazi Victims Relief Trust** was deducted from that award. (*Id.*) All awards were subject to income tax, with Germans subject to double taxation. (*Id.*) Compensation was paid out until 1961.

B. BILIOGRAPHY

Articles, Books, and Papers

2012 Green Paper on Immovable Property Review Conference 2012 (http://shoahlegacy.org/wp-content/uploads/2014/06/Green_paper_on_the_immovable_property_review_conference_2012.pdf) (last accessed 13 December 2016).

The Association of Jewish Refugees, “Historical Archive of PDF Journals” (<http://www.ajr.org.uk/pdfjournals>) (last accessed 13 December 2016).

The Association of Jewish Refugees, “Tax & Benefit: Tax Exemption on Holocaust bank restitution” (<http://www.ajr.org.uk/taxbenefit>) (last accessed 13 December 2016).

“British policy towards enemy property during and after the Second World War”, Historian in Library and Records Department of the Foreign & Commonwealth Office No. 13, April 1998 (<http://www.enemyproperty.bis.gov.uk/fcoreport.pdf>) (last accessed 13 December 2016).

Department for Business Innovation & Skills, “Enemy Property” (<http://www.enemyproperty.bis.gov.uk/>) (last accessed 13 December 2016).

Department for Business Innovation & Skills, “The Future of the Enemy Property Payments Scheme and the Baltic States Scheme – Consultation Document”, February 2015 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399616/bis-15-12-future-of-enemy-property-payments-and-baltic-states-schemes-consultation.pdf) (last accessed 13 December 2016).

Marcus Dysch, “Vince Cable backs down over proposed closure of Holocaust fund”, The Jewish Chronicle Online, 11 February 2015 (<http://www.thejc.com/news/uk-news/129820/vince-cable-backs-down-over-proposed-closure-holocaust-fund>) (last accessed 13 December 2016).

European Holocaust Research Infrastructure (EHRI), “Country Reports – United Kingdom” (<https://portal.ehri-project.eu/countries>) (last accessed 13 December 2016).

The European Union and Roma – Factsheet: United Kingdom”, 4 April 2014 (http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2014/united-kingdom_en.pdf).

David Fraser, *The Jews of the Channel Islands And The Rule Of Law, 1940-1945* (2000).

Mathew Holehouse, “Vince Cable proposes cutting Holocaust compensation scheme in austerity drive”, The Telegraph, 10 February 2015

(<http://www.telegraph.co.uk/news/politics/liberaldemocrats/11404035/Vince-Cable-proposes-cutting-Holocaust-compensation-scheme-in-austerity-drive.html>) (last accessed 13 December 2016).

The National Archives, “Department of Trade and Industry Enemy Property Claims Assessment Panel Database of Seized Property” (<http://discovery.nationalarchives.gov.uk/details/r/C15723>) (last accessed 13 December 2016).

“Spoliation Advisory Panel” (<https://www.gov.uk/government/groups/spoliation-advisory-panel>) (last accessed 13 December 2016).

United States Holocaust Memorial Museum – Holocaust Encyclopedia, “Kindertransport, 1938-1940” (<https://www.ushmm.org/wlc/en/article.php?ModuleId=10005260>) (last accessed 13 December 2016).

Stephen Ward & Ian Locke, “‘Ex-Enemy Jews’: the Fate of the Assets of Holocaust Victims and Survivors in Britain’, in *The Plunder of Jewish Property during the Holocaust: Confronting European History* (Avi Beker, ed., 2001).

UK Government Response to ESLI Immovable Property Questionnaire (23 June 2016).

World Jewish Congress, “Communities – United Kingdom” (<http://www.worldjewishcongress.org/en/about/communities/GB>) (last accessed 13 December 2016).

World Jewish Relief (<https://www.worldjewishrelief.org/about-us/history>) (last accessed 13 December 2016).

Yad Vashem – Shoah Resource Center, “Great Britain” (http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%206312.pdf) (last accessed 13 December 2016).

Individuals

The Association of Jewish Refugees

Michael Newman, Chief Executive, Association of Jewish Refugees, London.

Holocaust Educational Trust

Martin Winstone, Education Officer, Holocaust Educational Trust, London.

O'Melveny & Myers LLP

George Dye, Associate, O'Melveny & Myers LLP, London.

Fergus Grady, Associate, O'Melveny & Myers LLP, London.

David Lash, Partner, O'Melveny & Myers LLP, Los Angeles.

Dorota Maj, Associate, O'Melveny & Myers LLP, London.

Ed Mason, Associate, O'Melveny & Myers LLP, London.