



EXPLANATORY NOTES

Ivory Act 2018

Chapter 30

£17.55

IVORY ACT 2018

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Ivory Act 2018 (c. 30) which received Royal Assent on 20 December 2018.

- These Explanatory Notes have been prepared by Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The purpose of the Act is to prohibit commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes to and from the UK, including intra-EU trade to and from the UK.

Policy background

Public consultation

- 2 On 6 October 2017, Environment Secretary Michael Gove announced a consultation on proposals to ban ivory sales in the UK to help bring an end to elephant poaching, which is driven primarily by consumer demand for ivory and speculative acquisition of ivory items. The Government's proposals for an ivory sales ban were subject to a 12 week public consultation, which ran from 6 October 2017 to 29 December 2017.
- 3 The consultation put forward proposals to implement a ban on ivory sales in the UK, and to prohibit the import and re-export of ivory for sale to and from the UK, including intra-EU trade to and from the UK, where such sales could contribute either directly or indirectly to the poaching of elephants. Four categories of exemption to this ban were proposed, and views sought as to their validity and the parameters of any final exemptions. The consultation also sought evidence from respondents as to the size and value of the market for ivory items in the UK, and the impact of a sales ban on conservation, businesses and private individuals. Views were sought as to the compliance, enforcement and sanctions arrangements the Government should introduce in order to implement a ban. The measures proposed would not affect the ownership of ivory items.
- 4 In total 71,238 responses to the consultation were received and analysed, with 88% of respondents supporting a ban on ivory sales. The evidence received through the consultation exercise, as well as that received through other sources and engagement with stakeholders, informed the final scope of the UK ivory ban to be implemented through the Ivory Act 2018 ("the Act").

Aim of the Act

- 5 The aim of the Act is to help conserve elephant populations, specifically by reducing poaching, through significantly limiting the legal market for ivory items in the UK. This is intended to reduce demand for ivory both within the UK and overseas through the application of the sales ban to re-exports of ivory items from the UK. This aim is in line with the 2017 Conservative Manifesto commitment to "protect[ing] rare species".¹
- 6 The Act also aims to remove the opportunity to launder recently poached ivory as old ivory items through legal markets, and for it to be re-exported to "demand" markets, i.e. those markets where ivory continues to be a desirable commodity. Such markets are also the primary destinations for newly poached and illegally-sourced ivory. This is intended to prevent products from the UK contributing, including inadvertently, to markets which create a demand for ivory, driving

¹ The Conservative Party Manifesto 2015: <https://www.conservatives.com/manifesto2015>

poaching and the illegal trade in ivory. Finally, the ivory ban will demonstrate the UK does not consider commercial activities in any ivory that could fuel poaching to be acceptable and it sends a message that similar actions should be taken globally.

- 7 The previous Government had announced it was developing proposals for an ivory ban before the 2017 General Election, in keeping with the 2015 Conservative manifesto commitment to “press for a total ban on ivory sales”² and the 2010 Conservative manifesto commitment to “press for a total ban on ivory sales and the destruction of existing stockpiles”³.
- 8 At the 17th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Resolution 10.10 (Rev COP17) on Trade in Elephant Specimens was agreed⁴. This non-binding resolution recommended that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory items that is contributing to poaching or illegal trade should take all necessary measures to close their domestic ivory markets as a matter of urgency. The resolution also recognised that narrow exemptions to this closure for some ivory items may be warranted, but that any exemptions should not contribute to poaching or illegal trade.
- 9 The Government, through the Act, is addressing its domestic and international commitments by adopting a ban on commercial activities in ivory. Section 1 of the Act provides for this prohibition and defines commercial dealing as follows:
 - buying, selling or hiring ivory;
 - offering or arranging to buy, sell or hire ivory;
 - keeping ivory for sale or hire;
 - exporting ivory from the United Kingdom for sale or hire; or
 - importing ivory into the United Kingdom for sale or hire.

This definition is in line with the EU Wildlife Trade Regulations (see paragraph 11 of these Notes). The ivory ban will not affect ownership of items made of, or containing ivory, including, inheriting, donating or bequeathing.

Existing restrictions

- 10 Existing restrictions concerning commercial activities in ivory are applied internationally through CITES, an international conservation agreement which aims to ensure that trade in endangered species does not threaten their survival. The Convention entered into force in 1975 and the UK ratified it in 1976. CITES has prohibited trade in new ivory, except in exceptional circumstances, from Asian elephants since 1975 and from African elephants since 1990.

² The Conservative Party Manifesto 2015: <https://www.conservatives.com/manifesto2015>

³ <http://conservativehome.blogs.com/files/conservative-manifesto-2010.pdf>

⁴ <https://www.cites.org/eng/res/index.php>

- 11 CITES is implemented within the European Union (EU) through four EC Regulations (338/97 as amended, 865/06 as amended, 792/2012 and 2015/736), which are more commonly referred to as the EU Wildlife Trade Regulations.^{5 6 7 8} These Regulations implement CITES in a stricter manner than is required by the Convention. The EU (Withdrawal) Act 2018 allows for the full conversion of these regulations into UK law. The UK Control of Trade in Endangered Species (Enforcement) Regulations 2018 (COTES) make provision for enforcement of the European Regulations.⁹
- 12 The Government has made clear its intention for the UK ivory ban to build upon and go further than current rules on ivory. Under the current regulations, items of worked ivory made prior to 3 March 1947 may be subject to commercial activities within the UK or the EU without a permit.¹⁰ A permit, issued by the UK's CITES Management Authority, the Animal and Plant Health Authority (APHA)¹¹ is required for the commercial use of worked ivory items made after 1947 and for the import or re-export of ivory of any age to third countries outside the EU. In line with EU guidance, the UK's policy is not to issue documents authorising the sale of, or other commercial trade in, raw African elephant ivory of any age.
- 13 The Act prohibits dealing in ivory and items regardless of their age, with the exception of items meeting one of the five categories of exemption. This will mean that the current date-based restrictions will become obsolete. "Backstop dates" are applied to the exemptions included within the Act to make sure modern ivory items are not permitted under the exemptions and that the UK ivory ban is at least as strong as or stronger than existing EU regulations.
- 14 The EU Wildlife Regulations will continue to apply to the import and export of ivory to and from the UK, and alongside the exemptions in the Act. As a result, if the owner of an item of pre-1947 worked ivory wishes to sell it, or engage in another form of commercial use with it, to a country outside of the EU, they must: (i) ensure the item satisfies the conditions of an exemption under the Act; and (ii) meet existing requirements under the EU Wildlife Trade Regulations on the import and export of ivory. The UK is a Party to CITES in its own right and will continue to be bound by the obligations of the Convention on exiting the EU. The Government will ensure continued compliance with CITES on EU exit by amending both EU retained CITES legislation and UK CITES legislation under the powers in the European Union (Withdrawal) Act 2018 to address deficiencies arising from the withdrawal of the UK from the EU.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01997R0338-20170204&rid=1>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R0865&from=EN>

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0792&from=EN>

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R0736&from=EN>

⁹ <https://www.legislation.gov.uk/ukxi/1997/1372/made>

¹⁰ Worked specimens are defined as specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to affect their purpose.

¹¹ The APHA is an executive agency of the Department for Environment, Food and Rural Affairs.

Exemptions to the ban

- 15 As part of its consultation, the Government made clear its intention to create exemptions to the ivory ban where the commercial use of an item does not contribute directly or indirectly to the ongoing poaching of elephants. This is in line with CITES Resolution 10.10 and with other examples of domestic ivory trade bans applied globally¹². Strictly-defined exemptions therefore apply where a ban on dealing is unwarranted. This is considered to be the case when it is understood that either the continuation of sales or the hiring of certain categories of items would not contribute either directly or indirectly to ivory poaching, and the intrinsic value of that item is not due to its ivory content.
- 16 The consultation proposed exemptions for: musical instruments, items containing a small amount of ivory – “*de minimis*”, items of historic, cultural or artistic significance, and sales to and between museums. Based upon recommendations and evidence provided in response to the consultation, all exemptions have been defined, an exemption for portrait miniatures has also been included and the exemption for items of historic, cultural or artistic significance has been refined as an exemption for the rarest and most important items of their type.
- 17 Sections 2 to 5 and Sections 6 to 11 of the Act set out the exemptions to the prohibition for:
- ivory items produced before 1 January 1918 which are assessed by an independent advisory institution as being of outstandingly high artistic, cultural or historical value;
 - portrait miniatures with a surface area of no more than 320cm² (excluding the frame) produced before 1 January 1918;
 - items containing only a small proportion of ivory (known as a “*de minimis*” exemption) comprising less than 10% ivory by volume and produced before 3 March 1947;
 - musical instruments comprising of less than 20% ivory by volume, and produced before 1 January 1975; and
 - dealings in ivory items to, and between, accredited museums.
- 18 Sections 3 to 5 and sections 10 and 11 of the Act provide for the compliance processes by which a person wishing to engage in the commercial use of an item under one of these exemptions must abide. A certification process is applied to the exemption for the rarest and most important items of their type, and a self-registration process is applied to the other four categories. The registration and certification processes will be administered on behalf of the Secretary of State.
- 19 Those wishing to register an item as exempt from the ban will do so via an online system, which will be administered on behalf of the Secretary of State. Provisions will be put in place for those unable to use an online system, e.g. for telephone or postal submissions. This online system will be

¹² A number of other countries have already taken actions to restrict their domestic markets, including the United States, France and China. The Government has therefore considered global best practice in defining the scope of the UK ivory ban and the exemptions.

accessible by Government and enforcement bodies. With regard to the certification process for items put forward under the rarest and most important category, the Secretary of State will seek the advice of an institution with recognised specialism in the relevant field to assist it in deciding whether the item meets the criteria of this exemption.

Enforcement

- 20 Sections 12 and 13 of the Act set out the new offences to be created for the purposes of enforcing the UK ivory ban. Existing legislation provides for offences which may be committed in association with illegal trade in ivory and are therefore not duplicated in this Act, for example, offences under the Serious Crime Act 2007. Sections 12 and 13 of the Act provide for a mixed regime of criminal and civil sanctions to be applied to those who have committed an offence under the Act, in line with the existing sanctions regime under COTES. Section 12 allows for a maximum criminal sanction of five years imprisonment and/or an unlimited fine to be applied. Summary convictions up to the statutory maximum allowed in each devolved administration are also allowed for. A range of civil sanctions are also provided for in Sections 12 and 13. Further details are set out in Schedule 1.
- 21 Sections 14 to 21 confer the necessary powers on the police and customs officers in order to enforce the ban. Schedule 2 provides further details with regard to search warrants obtained by police and customs officers in England, Wales and Northern Ireland. The powers of police and customs officers are derived from, and applied in line with, the Police and Criminal Evidence Act 1984. Sections 22 and 23 provide powers for accredited civilian officers of the regulator to enter premises that are not dwellings and examine evidence. Sections 24 to 28 contain further provisions to detail the powers of seizure, entry and search.
- 22 Sections 29 to 33 provide for the necessary processes for the retention and disposal or return of seized items, including the processes by which an application of forfeiture and an appeal against this application can be made.
- 23 Section 35 provides that acquisitions of ivory items in pursuance of an existing contract of insurance are not treated as purchases or sales for the purposes of the Act. If a claim is made by an owner against an ivory item subject to a contract of insurance, and a payment is made by the insurer in respect of that claim, it will not be treated as a purchase or sale for the purposes of the Act. If the item is subsequently recovered and returned to the original owner in return for the repayment of this sum, it will not be treated as a purchase or sale of the purpose of the Act.
- 24 Finally, sections 34 and 36 to 42 provide for general provisions necessary for the operation of the Act.

Legal background

- 25 The ban in the Act covers most of the commercial activities outlined in Article 8(1) of Council Regulation No 338/97 (the “Basic Regulation”). The prohibitions are to:
 - the purchase;
 - the offer to purchase;
 - the use for commercial sale which would mean any form of sale (this includes sale for money and sales in kind such as exchange or bartering) of ivory from African elephants (*Loxodonta Africana*) and Asian elephants (*Elephas Maximus*).

- the offering for sale (which would include advertising, or causing an item to be advertised for sale and invitation to treat), or
 - the keeping for sale and transporting for sale (this includes (i) the selling an ivory item and then transporting it; and (ii) the transporting it with the intention of selling it).
- 26 The scope of the ban includes both physical locations and online fora. In terms of geographical scope, the ban covers dealing concerning elephant ivory within the UK, to and from the UK and the EU and to and from the UK to third countries.
- 27 The ban in the Act does not affect the right to own ivory items for purely personal use, the right to gift, donate, inherit, or the right to bequeath. The regime in CITES and the EU Wildlife Trade Regulations will continue to apply to these activities.
- 28 The prohibition does not apply to ivory from other ivory-bearing species, for instance walrus, hippopotamus or narwhals. Section 37 includes a power to add other ivory-bearing species to the scope of the Act through secondary legislation.

Territorial extent and application

- 29 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 30 In so far as any provision of the Act relates to the import or export of ivory items (described at section 1(2)(d) and (e)) and insurance (see section 35), those provisions are reserved matters. Matters relating to the buying, selling or hiring of ivory items (as described in section 1(2)(a) to (c)) fall within the legislative competence of the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly.

Commentary on provisions of Act

Prohibition

Section 1: Prohibition on dealing in ivory

- 31 This section provides for a ban on dealing in ivory. Subsection (1) states that dealing in ivory is prohibited and subsection (6) states that there are exemptions to this prohibition. The exemptions are provided for in section 2 and sections 6 to 9. As the prohibition is on dealing in ivory, these measures do not affect the right to own, gift, inherit or bequeath ivory.
- 32 Subsection (2) defines dealing for the purposes of the Act and therefore as applied to the prohibition. The definition aligns with the application of “commercial use” under the EU Wildlife Trade Regulations. The definition provided in subsection (2) applies to transactions regardless of where the transaction is taking place, for example, in a physical location or in an online forum. It applies to individuals, groups of individuals, businesses, Crown bodies and other organisations alike. The following dealing activities are included in the prohibition:

a. **Buying, selling and hiring**

- i. Both parties to a transaction, the buyer and the seller, are subject to the prohibition, putting a responsibility on both parties to act responsibly and in accordance with the ban. As such, both parties could be in breach of the prohibition and be liable under the prohibition.
- ii. Subsections (3)(a) and (3)(b) state that buying and selling includes bartering or exchange. As such the prohibition applies to the exchange of ivory for any good or service and, therefore, is not restricted to financial transactions, or exchanges for money.
- iii. Hiring or offering to hire ivory are prohibited activities. For example, temporarily obtaining an ivory item in return for a payment or other exchange of goods.

b. **Offering or arranging to buy, sell or hire ivory**

Activities undertaken prior to a sale, purchase or hire in ivory, in order to offer ivory for dealing or arrange a dealing in ivory, are prohibited. As set out in subsection (3)(c), advertising ivory for dealing and inviting to treat (inviting prospective buyers to purchase, bid, tender or negotiate) are prohibited activities. A person carrying out such an activity would be acting in breach of the prohibition.

c. **Keeping ivory for sale or hire**

Holding ivory which is intended for sale or hire is a prohibited activity. This would, for example, prohibit transporting ivory with the intention to sell it. A person holding ivory for their personal enjoyment or for displaying to the public (e.g. as part of an exhibit that charges an entry fee) would not be covered by the prohibition.

d. Exporting ivory from, and importing ivory to, the United Kingdom for sale or hire

- i. Subsection (2)(d) ensures that exporting ivory from the UK for the purposes of sale or hire is prohibited, and subsection (2)(e) ensures that it is prohibited to import ivory into the UK for the purposes of sale or hire.
 - ii. Subsection (4)(a) states that buying or hiring ivory, or offering or arranging to buy or hire ivory, outside of the UK is not covered by the Act. For instance, it would not be an offence under the Act for an ivory item to be purchased or hired in person, over the telephone or online outside of the UK.
 - iii. Subsection 4(b) states that it is an offence to sell ivory or to hire it as a lender, or to offer to sell or hire ivory as a lender, to a third party outside of the UK. This subsection also, through reference to subsection (2)(b) ensures that it is an offence to offer or arrange to buy ivory from outside of the UK for delivery or import into the UK. In effect, this prohibits remote purchases, for instance those made over the internet, or through telephone auctions.
- 33 Subsection (5) ensures that under the prohibition, “ivory” includes both items made entirely of ivory and items which contain ivory and may be made largely or partly from other substances. Section 37 defines the term “ivory” as applied under the Act. In these explanatory notes, the term “ivory item” is used throughout to capture both items made entirely of ivory and items which contain ivory. Subsection (6) states that there are exemptions to the prohibition on commercial dealings in ivory and references the relevant sections of the Act.

Exemption for outstandingly valuable and important pre-1918 items

Section 2: Pre-1918 items of outstanding artistic etc value and importance

- 34 This Section provides for an exemption from the prohibition for ivory items of outstanding artistic, cultural or historic value which are assessed as the rarest and/or most important items of their type. Subsection (1) permits an item made of or containing ivory to be subject to dealing if a certificate is issued for this item under this exemption, this is hereby referred to as an ‘exemption certificate’. The exemption of ivory items is also subject to section 4(7), whereby dealing cannot take place if the exemption certificate had been issued to a different individual or organisation (e.g. the previous owner) unless the current dealer has satisfied both of the conditions under section 4(7). An exemption certificate is issued by the Secretary of State, in accordance with the certification process provided for in sections 3 and 4. Dealing may only be undertaken if the exemption certificate has been issued, remains valid and has not been revoked. To note, exemption certificates are only applicable to this exemption, not to other exemptions in the Act, which are subject to a registration process.
- 35 Subsection (2) sets out the conditions for the outstanding artistic etc. value and importance exemption. All conditions must be satisfied in order for an exemption certificate to be issued. These conditions are:
- a. The item must be pre-1918, as defined in section 38(2) and (3).
 - b. The item is of outstandingly high artistic, cultural or historical value, which will be assessed in the certification process provided for in sections 3 and 4.
- 36 Subsection (3) supplements subsection (2) and ensures that an item’s rarity, its importance relative to other examples of its type and any other matter specified in regulations will be taken into account when considering if the condition set out in subsection (2)(b) is satisfied for that item. All

of these factors must be considered when assessing an item. Subsection (3)(c) confers a power on the appropriate national authority¹³ to specify in regulations additional matters that should be considered when assessing an item under this exemption.

- 37 Subsection (5) confers a power on the appropriate national authority, through regulations, to prescribe and keep updated the names of institutions which will provide advice to the Secretary of State on whether ivory items meet the criteria for this exemption. These “prescribed institutions” will hold specialist expertise in ivory items, and this expertise will cover a range of disciplines or periods, for example oriental art, medieval art, renaissance art or in scientific, musical and nautical instruments. Subsection (6) ensures that consent from those individuals responsible for the institution is required prior to it being prescribed in the regulations.

An illustrative example of the type of item that may be considered exempt under the rarest and most important items category. Assessments will be subject to the detailed criteria set out in any statutory guidance, to be issued in due course.



Artist/maker unknown, The Crucified Christ c 1275-1300 (made), Origin England or France, materials Elephant ivory. “This is an ivory figure of the Crucified Christ, made in France (Paris) or England, in ca. 1275-1300. This is one of the finest surviving ivory carvings of the crucified Christ from the Gothic era, despite its fragmentary state...The figure is from a large altar cross or retable, it is a rare example of a Gothic ivory crucifix figure.”

© Victoria and Albert Museum, London

Section 3: Applications for exemption certificates

- 38 This section provides for the certification process which applies to the section 2 exemption. Subsection (1) sets out the information an applicant is required to provide when completing an application, including information demonstrating how the item meets the criteria for this exemption. The information required will include both the physical details and description of the item, including photographs, and any additional information that the applicant considers is relevant or specified in regulations, and makes the case for the item meeting the criteria. This could, for instance, include detail of the item having been previously displayed in a museum, cited in an academic work, or evidence of its provenance or historical associations.

¹³ See section 39(2).

- 39 As set out in subsection (2), following the submission of an application this application will be referred, by the Secretary of State, to one of the prescribed institutions, as outlined in section 2(5). This referral is dependent upon the Secretary of State considering the initial application and confirming that the application includes all necessary details. If the application clearly fails to meet the conditions set out in section 2(2), the application would not be accepted by the Secretary of State or put forward for consideration by a prescribed institution.
- 40 If the Secretary of State refuses an application, s/he must inform the applicant of this outcome and the reason/s for refusal. The item would not be exempt from the prohibition.
- 41 If the Secretary of State considers that the application does provide all necessary details, it will be referred to a prescribed institution with relevant expertise. Subsections (3) and (4) ensure that an individual expert within a prescribed institution may be nominated to carry out the necessary assessment subject to that individual expert giving their consent to the nomination. As set out in subsection (3) an expert from a prescribed institution (the 'assessor') must:
- a. undertake an assessment of the information provided in the application against the conditions outlined in Section 2(2);
 - b. based on this assessment, the assessor must provide their advice to the Secretary of State as to whether the item would qualify for the exemption based on the conditions set out in section 2(2); and
 - c. the assessor must provide a reason to the Secretary of State as to why, in the assessor's opinion, the item does or does not satisfy the conditions.
- 42 Subsection (5) ensures that the Secretary of State is able to cover the reasonable costs incurred by the prescribed institution and/or assessor in each instance in which an assessment is carried out. In practice, it is intended that these costs will be recovered through a fee charged to applicants. A power is conferred on the Secretary of State, having consulted the Scottish Ministers, Welsh Ministers and the relevant Northern Ireland department, to set and maintain the level of this fee through regulations. This fee will cover: (i) administrative costs incurred by the Secretary of State in handling the application; and (ii) if the application is referred to an assessor, the reasonable costs incurred by the assessor, for example, the cost to the prescribed institution of an expert assessor's time to assess an item and to submit a report with their recommendations to the Secretary of State for consideration.
- 43 Subsection (6) ensures that the Secretary of State takes the decision to grant or refuse an application for an exemption certificate. This decision will be informed by the advice provided by the expert assessor. If the Secretary of State refuses to issue an exemption certificate, the applicant will be notified, including of the reasons why the item was not considered to meet the criteria. Dealing in that item therefore would remain prohibited. As set out in subsection (7), if the Secretary of State grants the application, an exemption certificate will be issued to the applicant.
- 44 It should be noted that the certification process provided for in section 3 is applied in addition to existing certification and permitting requirements under the EU Wildlife Trade Regulations. For example, for an item of outstanding artistic value and importance to be legally sold to a buyer in another EU Member State or third country, an exemption certificate, as stipulated under the Act, and relevant certificates or permits, as stipulated under the EU Wildlife Trade Regulations, would be required.

Section 4: Further provision about exemption certificates

- 45 This section sets out additional provisions on the certification process. Subsection (1) ensures that an exemption certificate, if issued, will be specific to the item subject to the application. To facilitate buyers and sellers to act in compliance with the ivory ban the certificates will include a date of issue, an identification code and other information, such as photographs, to identify the exempt item. This allows for a potential purchaser to assure themselves that the exemption certificate relates to the item in question.
- 46 Should the purchaser of an item exempted under section 2 wish to deal in it in future, they are not required to apply for a new exemption certificate: an item need only be certified as exempt once under this section. It is intended that the owner will pass on the exemption certificate to the purchaser (e.g. at the point of sale or when taking delivery of the item). Subsequent owners of certified items, however, are required to comply with subsection (7), including any regulations made under subsection (7)(b), should they wish to carry out dealing in the item. Thus, the exemption certificate ‘accompanies’ (i.e. remains valid in respect of) an item when a transaction is made. This differs from other exemptions outlined in sections 6 to 9 of the Act. Subsection (7)(b) allows the Secretary of State to make regulations requiring the seller of an item for which an exemption certificate has been issued to a previous owner to provide further information and/or to require a further fee to be paid prior to dealing in the item by the new owner.
- 47 Subsection (2) confers a responsibility on the owner of the item certified as exempt under section 4, to notify the Secretary of State if any of the information associated with the item or the application for its exemption changes or becomes out of date or if the owner becomes aware that any of the information within the application is incorrect or incomplete. This could be, for instance, if the item is damaged in such a way as is likely to affect its ability to meet the exemption criteria, or should it emerge that any of the information initially provided, such as historical provenance, is proven to be incorrect. Subsection (3) explains that the Secretary of State can revoke an exemption certificate if the Secretary of State believes that:
- a. the exemption conditions outlined in section 2(2) are not met or are no longer met; or
 - b. any other information associated with the item or the application for its exemption is inaccurate, changes or becomes out of date and the owner does not notify the Secretary of State, as set out in Section 4(2).
- 48 Subsection (4) allows the Secretary of State to issue a new exemption certificate with revised information. Such an action would be taken in order to address any issues of inaccurate or incomplete information which may arise over time, where this new information, or altered state or condition of the item does not affect the item’s assessment against the exemption criteria. For instance, if the item incurs damage, but it is the assessment of the Secretary of State that this damage does not affect the rarity, importance or historic, artistic or cultural significance of the item.
- 49 Subsection (5) ensures that the Secretary of State can issue a replacement exemption certificate if one of the following applies: the original certificate has been lost; the owner was unable to obtain the certificate from the previous owner; or the Secretary of State believes there is an appropriate reason to replace the certificate. While it is the responsibility of the seller to pass on the exemption certificate if the ownership of the item changes, subsection (5) addresses such circumstances where this is not possible, for example, this may occur if an exempt item is inherited and the certificate is not available to the beneficiary. Subsection (6) ensures that the application process set out in section 3 would not apply if subsection (5) applies and a replacement certificate is being sought.

- 50 Subsection (7) provides for the situation in which an exempt item transfers ownership from one person to another person (P) and the subsequent owner, P, wishes to carry out dealing in that item. In this situation P must satisfy both of the following conditions prior to carrying out dealing:
- a. P must be in possession of the exemption certificate for the item. It is the intention of the Act that the seller of the item transfers the exemption certificate to the new owner at the point of sale. Equally, the purchaser should request the transfer of the certificate if it is not forthcoming. P may, under subsection (5), apply for a replacement exemption certificate if, for any reason listed under subsection (5), they need to do so. The replacement certificate must be provided prior to commercial dealing being carried out.
 - b. P must also provide any information and pay fee as may be set out in regulations.

Section 5: Fresh applications and appeals

- 51 Subsection (1) provides that if an application for an exemption certificate is unsuccessful, or if an exemption certificate is revoked, the applicant may:
- a. Re-apply for an exemption certificate for the same item. Any such re-application would be considered as a new application. As such, under subsection (2), the application would follow the same process as outlined in Section 3, including being subject to the same fees as set out in Section 3(1)(h);
 - b. Make an appeal to the First-tier Tribunal against the decision to refuse an application or to revoke an exemption certificate.
- 52 Subsection (3) provides the grounds on which an appeal may be made to the First-tier Tribunal. These are that the decision was based on an error of fact, was wrong or law, unreasonable or on any other grounds prescribed by regulations.
- 53 Subsection (4) sets out the powers of the First-tier Tribunal on an appeal. These are to either confirm the decision not to issue or to revoke an exemption certificate, require the Secretary of State to issue an exemption certificate or to cancel the decision to revoke one, or to remit the decision to the Secretary of State for reconsideration.
- 54 Subsections (5) and (6) provide that additional provisions concerning appeals may be made by regulations, including to require an appellant to pay a fee when making an appeal application to the First-tier Tribunal.

Other exemptions

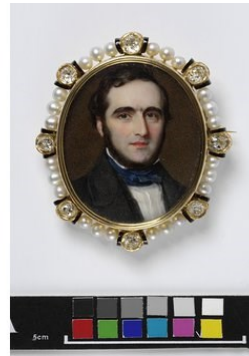
Section 6: Pre-1918 portrait miniatures

- 55 This section provides for an exemption for portrait miniatures to the prohibition on dealing in ivory.
- 56 A portrait miniature is a portrait created in the 18th and 19th centuries and typically painted on a thin sheet of ivory, along with other materials, such as vellum. These ivory sheets were generally 1mm thick prior to the 1760s, after which the sheets could be cut more thinly. With regard to portrait miniatures, the term “miniature” does not indicate size but instead the technique used and as a result these items can range in size. An example is provided below.

Illustrative examples of portrait miniatures which may, subject to any advice which may be published, qualify under the portrait miniature exemption.



1.



2.

(1) Henry Robert, An Unknown girl c 1890-1900, Watercolour on ivory

(2) Sir Ross, William Charles, Portrait of Pandelli C. Ralli, 1856, Watercolour on ivory

© Victoria and Albert Museum, London

57 For an item to qualify under this exemption it would need to meet the following conditions:

- a. the item is a portrait miniature and is pre-1918 as defined in section 37(2) and (3)(a);
- b. the visible surface area of the ivory 'canvas' is no more than 320cm² (excluding the frame); and
- c. the item is registered under section 10.

58 If the conditions outlined in section 6 are met, dealing in that ivory item is permitted. If it does not meet all of those conditions, the item does not qualify as exempt to the prohibition and dealing in the item is prohibited, unless the item qualifies under another exemption (e.g. the exemptions in sections 2, 7 or 9).

Section 7: Pre-1947 items with low ivory content

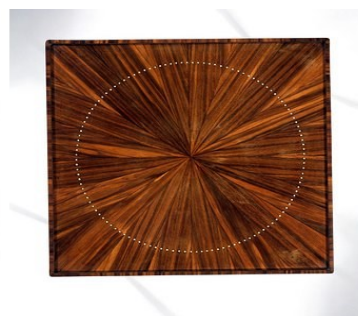
59 This section provides for an exemption to the prohibition on dealing in ivory for items which contain a small amount of ivory – less than 10% by volume – and are largely made of another or other materials. For an item to qualify for this exemption it must satisfy all of the following conditions:

- a. the item must be pre-1947, as defined in section 37(2) and (3)(b));
- b. The ivory is integral to the item and as such is necessary to its overall design and/or construction meaning either that it cannot easily be removed or if removed, that the item as a whole could no longer function as intended. . For instance, this could refer to an ivory inlay or escutcheon on a piece of furniture, or a small ivory handle on a piece of tableware;

- c. the ivory content of the item is less than 10% of the volume of the material of which the item is made. This *de minimis* threshold is intended to further ensure that this exemption applies to items in which the ivory content is incidental, and for which the value of the item does not rest in its ivory content; and
- d. the item is registered under section 10, prior to being subject to dealing.

60 If all conditions outlined in subsection (1) are satisfied, dealing in that ivory item is permitted under the *de minimis* exemption. If one or more of these conditions are not met, that item is not exempt under the prohibition and dealing in the item is prohibited, unless the item qualifies under another exemption.

Illustrative examples of pre-1947 items with low ivory content which may, subject to any advice which may be published, qualify under the pre-1947 item with low ivory content exemption.



1.

2.

(1) English made (ca 1913) rectangular box with an arched lid of mahogany, inlaid with fine bands of ivory

(2) French made (c 1929) Materials and Techniques: Ebony with ivory inlay

© Victoria and Albert Museum, London

Section 8: Pre-1975 musical instruments

61 This section provides for an exemption to the prohibition for musical instruments which contain ivory. The item must satisfy all of the following conditions in order to qualify under this exemption:

- a. The item is a musical instrument. As explained in subsections (2)(a) and (2)(b) the definition of a musical instrument, as applied in the Act, is based on the purpose for which an item was made. Accessories used to play a musical instrument (for example, violin bows) are included in the definition of musical instruments and may also qualify under this exemption, subject to the item satisfying the other conditions of the exemption. A musical instrument is defined as an item that was made primarily for the purpose of playing as opposed to, for example, items intended for decorative purposes, or ivory items which may technically be able to be used for musical or rhythmic purposes, but were not intended for such. An ivory walking cane, for instance, could in theory be used as a drumstick, but was clearly not intended for that purpose.
- b. The instrument is pre-1975, as defined in section 36(2) and (3). 1975 is the date at which Asian elephants were first listed at Appendix I of CITES, thus indicating that they were considered vulnerable to extinction if trade in their ivory or other parts was not severely curtailed.

- c. The ivory content of the instrument is less than 20% of the total volume of the material of which the instrument is made, thus prohibiting items with a significant ivory content. The vast majority of commonly played and traded musical instruments that contain ivory would likely fall within this threshold, for instance pianos, violin bows and other woodwind instruments with ivory components and trims.
 - d. The instrument is registered under section 10.
- 62 If all conditions outlined in subsection (1) are met, dealing in that ivory item is exempt from the prohibition. If any of the conditions are not met, the item is not exempt from the prohibition and dealing in that item is prohibited, unless the item qualifies under another exemption (e.g. sections 2 or 9).
- 63 The Act does not prohibit the use of a musical instrument containing ivory in a paid or unpaid public performance (this is the case regardless of whether the instrument would meet the exemption). The Act also does not prohibit a person from taking a fee to instruct another person in an instrument (e.g. by teaching a pupil to play a piano using one that has ivory keys). The general prohibition is on dealing and as such the use or transport of musical instruments for non-commercial purposes is not affected by the Act. The EU Wildlife Trade Regulations would continue to apply, for example, to non-commercial cross-border movement of musical instruments. Any certificates or permits required under the EU Wildlife Trade regulations would continue to be required in addition to any necessary registration under the Act.

Illustrative example of a musical instrument which may, subject to any advice that may be published, qualify under the musical instrument exemption.



Above is an example of a Grand piano (c 1815 – 1820) with Oak case with mahogany veneer, rosewood cross-banding and brass stringing; Brass collars on the tops of solid mahogany legs; Ivory covered naturals and ebony sharps

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Section 9: Acquisition of items by qualifying museums

- 64 This section provides for an exemption to the prohibition for sales to and between qualifying museums. All dealings undertaken in compliance with this exemption must also be compliant with international and domestic laws on trade in endangered species, as defined under CITES and the EU Wildlife Trade Regulations.
- 65 The exemption only applies in cases where both of the following conditions are satisfied:
- a. the museum must be a qualifying museum, as provided for in subsection (3); and
 - b. the form of dealing to be undertaken must be included in the activities in subsection (1).

- 66 Subsection (1) sets out that the following dealing activities are permitted under this exemption:
- a. **Sale to a qualifying museum:** a sale may be carried out by a private individual, group of individuals or an organisation, as long as the sale is to a qualifying museum. The seller could therefore be another museum, including a non-qualifying museum (see definition in subsection (3)), or an individual.
 - b. **Purchase or hire by a qualifying museum:** a qualifying museum may purchase an ivory item from a seller, as outlined above, or hire an ivory item.
 - c. **Dealing which allows a sale to or purchase or hire by a qualifying museum:** any activity that facilitates dealing to or by a qualifying museum, as defined in subsection (1)(a). This would, for example, include written or verbal offers made to a museum to offer an item for sale or hire at a particular price.
- 67 As set out in subsection (2), the ivory item subject to dealing with a qualifying museum must satisfy one of the following conditions with regards to the seller:
- a. the ivory item is being sold or hired by another qualifying museum; or
 - b. if it is being sold by any other individual, group of individuals or organisations to a qualifying museum, it must be registered under Section 10.
- 68 Under this exemption ivory can only be sold to or purchased or hired by a “qualifying museum”. This is defined as a museum that at the time of the relevant dealing was accredited by or on behalf of one of the following:
- a. for museums in England, the Channel Island or the Isle of Man, the Arts Council England;
 - b. for museums in Wales, the Welsh Government;
 - c. for museums in Scotland, the Scottish Ministers;
 - d. for museums in Northern Ireland, the Northern Ireland Museums Council; or
 - e. for museums elsewhere, the museum is a member of the International Council of Museums (ICOM)¹⁴. A sale or purchase to or from an ICOM member would involve the export or import of ivory from the UK meaning the transaction must also comply with existing EU Wildlife Trade Regulations.
- 69 If a museum meets either of the two criteria of subsection (3), it would be considered to be a ‘qualifying museum’ and therefore may purchase or hire ivory, subject to subsections (1) and (2).
- 70 Subsection (4) provides a power for an appropriate national authority to make consequential changes to the list of organisations listed in subsection (3). This power would only be applicable in the instance whereby a listed organisation undergoes a change of name or the responsibility of accrediting museums is transferred to another organisation. This would ensure that the legislation is kept up to date subject to such changes.

¹⁴ ICOM (<http://icom.museum/>) is an international network of museums and museum professionals, and has consultative status with the United Nations Economic and Social Council. Member museums of ICOM must adhere to its ethical and legal standards, which includes adherence to CITES.

Section 10: Registration

- 71 Section 10 provides for the compliance regime which must be followed by the owner of an ivory item prior to carrying out a dealing that falls under any one of the exemptions provided for in sections 6 to 9. The registration process set out in the subsequent subsections is to be carried out on an online government website, although alternative options, e.g. via telephone and postal methods will also be provided.
- 72 Subsection (1) ensures that an ivory item must be registered with the Secretary of State by the owner of the item or by someone acting on behalf of the owner. This registration must be carried out prior to any dealing in that item being carried out. By registering the item, the owner will confirm that, to their understanding, the item qualifies under the relevant exemption. As such, the owner must carry out the following, for the item to be registered:
- a. make an application for the item to be registered with the Secretary of State, stating the owner's name and address;
 - b. provide a description of the item, including any distinguishing feature which would allow this item to be easily identified when compared to other items of its type, for example a serial number;
 - c. provide a photograph of the item, including photographic evidence of any distinguishing features mentioned in subsection (1)(b);
 - d. declare that the item satisfies the conditions of one of the exemptions: for musical instruments, de minimis items or portrait miniatures;
 - e. provide a brief explanation as to how the item meets the conditions associated with the relevant exemption, as set out under sections 6 to 8;
 - f. provide an explanation of the planned dealing which the item in question will be subject to following registration – for example, would the item be sold, or used for hire, imported or exported;
 - g. provide any other information set out in regulations; and
 - h. pay a fee prescribed in regulations.
- 73 If all of the above conditions are satisfied, the owner has registered the ivory item.
- 74 Subsection (2) sets out where the conditions for each of the relevant exemptions can be found within the Act (e.g. in section 6 for portrait miniatures).
- 75 Subsection (3) allows the regulations to set out exemptions where a registration fee will not be required.
- 76 Subsection (4) ensures that, subject to the requirements of the registration process being fulfilled, confirmation of the registration of the ivory item will be issued. This will permit the owner to engage in dealing with that specific item. To facilitate compliance with the prohibition, the registration will identify the owner of the item, provide a unique number relevant to the specific dealing in the ivory item in question and information to identify the item subject to dealing.
- 77 Subsection (5) allows the Secretary of State to retain a record of information provided as part of the registration process, whether under subsection (1) or under Section 11.

Section 11: Further provision about registration

- 78 This section outlines further details about the registration process. Subsection (1) ensures that the registration of an item would cease to be valid as soon as the owner of the item changes. As opposed to the exemption certificate issued for items under section 2, registration allows the current owner to either (i) sell their item or (ii) engage in other forms of dealing that do not result in a change of ownership, such as hiring out the item once or on multiple occasions. The registration is therefore associated with the individual, and is only valid for a single change of ownership.
- 79 Subsection (2) sets out that once the owner registers an item under section 10, the owner has a responsibility to make sure the information recorded in the registration process remains complete, accurate and up to date. As such, if the owner becomes aware that information included in the application is inaccurate or incomplete, or if any information becomes invalid or changes, the owner must notify the Secretary of State and provide the required information to address the issue. This could be, for instance, because the item is damaged or otherwise altered at some time after registration but prior to dealing, or if, having completed the registration process, the owner subsequently becomes aware of some fact that may invalidate the registration – for instance if the item is a piano which, on the basis of new information, dates to 1978 rather than 1970. If an owner were found to be in possession of such information, but had not informed the Secretary of State, they could be found to be in breach of the Act.
- 80 Subsection (3) allows the Secretary of State to cancel a registration, meaning dealing in that item would be prohibited, for any of the following reasons:
- a. the registered item does not meet the exemption conditions as declared by the owner;
 - b. the owner of the item has changed since the registration was made, as set out in subsection (1); or,
 - c. the owner of the item has not acted in accordance with subsection (2) and has therefore failed to notify the Secretary of State in order to address of any incomplete, inaccurate or out of date registration information.
- 81 The Secretary of State may become aware of any of these reasons as a result of activities undertaken on behalf of the Secretary of State, the regulator or police and customs officers. This could include spot checks of the registration database, or checks on goods for sale in shops, auction houses or on online sales websites.
- 82 Subsection (4) allows the Secretary of State to add or alter information included in the registration if it is or becomes inaccurate or incomplete. This will primarily be applied when the owner has notified the Secretary of State of a change in information, or should a correction be required to a registration.
- 83 Subsection (5) clarifies the meanings of terms used in this subsection, including references to other sections of the Act.

Criminal and civil sanctions

Section 12: Offence of breaching the prohibition or causing or facilitating a breach

- 84 This section sets out the offences associated with breaches of the prohibition on dealing provided for in section 1.

- 85 Subsection (1) outlines that directly breaching the prohibition, causing it to be breached or facilitating it to be breached will all be considered as offences under the prohibition.
- a. **Anyone who directly breaches the prohibition is committing an offence.** This includes carrying out dealing in a prohibited item or carrying out dealing in ivory without an exemption certificate or registration for that ivory item. For example, if an ivory item which meets one of the categories of exemption is sold, but has not been registered or an exemption certificate has not been obtained, then that is an offence under the Act.
 - b. **It is an offence to carry out dealing in an item without meeting all of the conditions required under an exemption to the prohibition.** For example, to sell an item under the musical instrument exemption, the item must qualify as a musical instrument, be pre-1975 and be registered under section 10. If one of these conditions is not met and dealing is undertaken, this is an offence. Actions taken to falsify a registration or certification process, if taken dishonestly and with the intent to defraud, would be considered an offence under the Fraud Act 2006.
 - c. **Anyone who causes a breach of the prohibition is committing an offence.** This applies, for example, to circumstances where the person who breaches the prohibition is acting at the direction of another person or is supported or assisted by another person. In practice, this could apply to a person acting as an auctioneer, or otherwise selling an item on behalf of somebody else.
 - d. **Anyone who facilitates a breach of the prohibition is committing an offence.** This offence would apply to anyone who, whilst not directly engaged in the process of a sale, acted in such a way as to allow that sale, or other form of dealing, to occur. For instance, this could apply to the owners of an online sales forum if they were found not to have taken reasonable steps to ensure that an item was (a) exempt from the ban, and (b) had been registered as such. Further, anyone found to have advertised an item in order to facilitate a sale may be found to be in breach of the offence.
- 86 Subsection (2) outlines how these offences should be applied in situations where mislabelling and/or misidentification of elephant ivory takes place. Efforts have previously been made to circumvent restrictions on elephant ivory trade by deliberately mislabelling elephant ivory, for example as mammoth, hippo or walrus ivory, bone or indeed an inorganic material such as plastic. An offence would be committed if:
- a. the offender knew or suspected the item was made of or contained elephant ivory at the time of the offence being committed; or
 - b. the offender should have, for example based on their experience, information available to them or their professional position, known or suspected the item was made of or contained ivory at the time of the offence being committed.
- 87 Subsection (3) provides that an individual, group of individuals or organisation accused of breaching the prohibition, causing or facilitating it to be breached, can rely on the defence that they took all reasonable actions and exercised all due diligence to avoid an offence being committed. Examples of reasonable actions or due diligence may, on a case-by-case basis, include the following:
- a. a buyer of a prohibited ivory may show they had checked that the item had been registered prior to the purchase, and that registration appeared to them to be authentic;

- b. an organisation which listed a prohibited item for sale, for example online or in a sale room, had taken steps to check the item had been registered and that this registration appeared to them to be authentic; or
- c. an organisation which facilitated the sale of a prohibited item could demonstrate that they had taken actions to make sure a person using their service had confirmed they were not using the service to sell illegal ivory, that they monitor the online or physical locations in their control for sales to ensure that they do not contravene this legislation and to have in place systems for reporting illegal or potentially illegal activity if discovered.

88 Subsection (4) provides for the criminal sanctions which could be applied to the offences associated with breaching the prohibition. The maximum sanction, applied on conviction on indictment, is imprisonment for up to five years and/or an unlimited fine. This sanction is in line with the current sanctions in place for illegal wildlife trade offences, including on ivory, as outlined in the COTES.

89 Subsection (4) specifies that a summary conviction, could be applied to offences under this prohibition. These sanctions cannot exceed the maximum sanctions applicable for summary convictions in each of areas of the Devolved Administrations. The maximum sanctions applied on indictment and on summary convictions are as follows:

| Maximum penalty on conviction on indictment | Maximum penalty on summary conviction in England and Wales | Maximum penalty on summary conviction in Scotland | Maximum penalty on summary conviction in Northern Ireland |
|---|--|---|---|
| 5 years' imprisonment, unlimited fine, or both. | 12 months' imprisonment, fine, or both. | 12 months' imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both. | Six months' imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both. |

90 While section 12 sets out offences relevant to the Act, breaches under other existing legislation may also be committed through the illegal dealing in ivory, in which case existing offences in the relevant legislation should apply. The following are examples of where this could apply, although is not an exhaustive list:

- a. where the appropriate criteria are met, proceeds obtained through illegal sales of ivory items would be confiscated under the Proceeds of Crime Act 2002;
- b. where there is evidence of serious and organised crime involving ivory sales, the Serious Crime Act 2000 should apply; or
- c. where, information is falsified in order to register an item as exempt or to obtain an exemption certificate, or a registration or certificate is altered or falsified, the Fraud Act 2006 should apply.

Another example may be the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

91 Subsection (5) sets out that subsection (4)(a) takes account of section 154(1) of the Criminal Justice Act 2003, which has yet to come into force. Subsection (5) ensures that until section 154(1) of the Criminal Justice Act 2003 comes into force, the maximum term of imprisonment under subsection (4)(a) should be read as six months. Once section 154(1) of the Criminal Justice Act 2003 comes into force the maximum period of imprisonment will be increased to 12 months, and subsection (4)(a) of the Act will be correct.

Section 13: Civil Sanctions

- 92 This section ensures that civil sanctions may also be applied to breaches of the prohibition. A mixed regime of criminal and civil sanctions makes available a range of sanctions which can be applied depending on the severity of the offence committed under the general prohibition. In those cases where a criminal sanction is unwarranted, civil sanctions may be applied. The civil sanctions applicable to offences under the Act are provided for in Schedule 1.

Powers of entry, search and seizure

Section 14: Power to stop and search persons

- 93 Subsections (1) and (2) confer powers on to police and customs officers to stop and search persons. The power is engaged where the officer has reasonable grounds to suspect that a person has committed, or is committing, a relevant offence, as defined in subsection (4).
- 94 The Act does not affect possession of ivory and as such there is no provision for a possession offence and there is no power to stop and search where an officer suspects that a person has in his or her possession an ivory item that is not intended for dealing. The officer will need to have reasonable grounds to suspect that the person has committed or is committing an offence in relation to dealing. This, for instance, may include through intelligence gathered as to a planned sale of ivory items, or information from the registration database that an item has been falsely registered. A police or customs officer may also detain a stopped person for the purpose of carrying out the search.
- 95 The term "police or customs officer" is defined for the purposes of the Act in subsection (4) to include National Crime Agency (NCA) officers designated with the powers and privileges of a constable or officer of Revenue and Customs (see the definition in section 38(1)) and authorised by the Director General of the NCA to exercise the powers of a police or customs officer. The intention is that NCA officers designated with the powers and privileges of a constable and/or the powers of an officer of Revenue and Customs (under section 10 of the Crime and Courts Act 2013) will have access to the powers contained in the Act. The Crime and Courts Act 2013 operates in such a way that an NCA officer designated with the powers and privileges of a constable, officer of Revenue and Customs, or both would automatically be able to exercise the powers of a constable and/or Revenue and Customs officer (as the case may be), as conferred under statute or common law. The reference to an NCA officer in subsection (4) is drafted in such a way as to ensure that it is consistent with that general approach.
- 96 As provided for in subsection (3), the stop and search powers are exercisable in any place to which the police or customs officer has access. This would include any public place and any premises that are the subject of a search warrant issued under section 18.

Section 15: Power to stop and search vehicles

- 97 Subsections (1) and (2) confer powers to stop and search vehicles on to police and customs officers. The power is engaged where the officer has reasonable grounds to suspect that the vehicle contains evidence of a relevant offence, as defined in section 14(4). The power does not apply where the vehicle is a dwelling (subsection (1)(b)); in such circumstances the provisions of section 17 would apply. A dwelling is not defined but is intended to be given its natural meaning; the exclusion would, for example, apply to a residential caravan. The power applies to vehicles whether or not a driver or other person is in attendance of the vehicle. Where it is impractical for a stopped vehicle to be searched in the place it has been stopped, the police or customs officer may require the vehicle to be moved to another place before conducting the search (subsection (3)). This provision would apply, for example, where the vehicle has been stopped on a busy road and it would be safer to conduct the search in another location.

- 98 Subsection (4) places a duty on any person travelling in the vehicle or the registered keeper to facilitate the exercise of a police or customs officer's powers under this subsection, for example, the driver of the vehicle might be required to open a locked glove box or boot.
- 99 These stop and search powers are exercisable in any place to which the police or customs officer has lawful access, this would enable a vehicle parked in a garage on premises that are the subject of a search warrant under section 15 to be searched (subsection (5)).

Section 16: Power to board and search vessels and aircraft

- 100 This section contains powers to board and search vessels or aircraft analogous to those in section 15 in respect of entry and search of vehicles. A vessel is defined in section 38(4) and includes any ship, boat or hovercraft. The powers do not apply where the vessel or aircraft is used as a dwelling, for example, a house boat.

Section 17: Warrants authorising entry and search of premises

- 101 Subsection (1) enables a justice to issue a search warrant to a police or customs officer that authorises that officer to enter premises specified in the warrant and search them for such evidence. A justice is defined in section 38. There is a two-stage test for the grant of a search warrant (subsections (5) and (6)). The first element of the test is that the justice must be satisfied that there are reasonable grounds to suspect that evidence of a relevant offence is to be found on premises covered by the warrant. The second element of the test is that any of the conditions in subsection (6) are met. The nature of those conditions is such that a relevant police or customs officer should, where possible, secure entry into premises or access to items on the premises with the co-operation of the owner or occupier and only seek a warrant where such co-operation is unlikely to be forthcoming or where the purpose of the search would be frustrated or seriously prejudiced if immediate entry to the premises could not be secured using the authority of a warrant.
- 102 Subsection (2) ensures that applications for a search warrant must be made, in England and Wales and Northern Ireland, by a police or customs officer, or, in Scotland, by a police or customs officer or the procurator fiscal.
- 103 Subsection (3) ensures that a police or customs officer applying for the warrant must be an appropriate level of seniority or be authorised by a person of that level of seniority.
- 104 Subsection (4) provides for a search warrant to be issued under this section may either be in relation to a single set of premises (a "specific-premises warrant") or, in England and Wales and Northern Ireland only, an "all-premises warrant" where it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practical to specify all the premises at the time of applying for the warrant. An all-premises warrant will allow access to all premises occupied or controlled by that person, both those that are specified on the application, and those that are not; this allows for follow-up searches where evidence at one premises controlled by the named person identifies a second premises associated with that person.

Section 18: Further provision about search warrants

- 105 Subsection (1) ensures that in addition to an application, supporting information in writing, evidence on oath and a complaint on oath should be provided in support of a warrant application in England and Wales, Scotland and Northern Ireland respectively. Subsection (2) provides for the justice hearing an application for a warrant to seek further information in relation to the application.

- 106 Subsection (3) enables a search warrant to be executed by any relevant police or customs officer and not just the officer who applied for the warrant. If the search warrant so provides, subsection (4) enables authorised persons to accompany a police or customs officer when executing a warrant. Such a person is only permitted if the justice who is issuing the warrant is satisfied that the authorised person would be helpful to the search, for example an officer of the regulator or individuals with expertise in identifying ivory items. Subsection (5) allows a person authorised under subsection (4) to exercise any power conferred onto police or customs officers under a search warrant, but they may only exercise these powers when accompanying, and under the supervision of, a police or customs officer.
- 107 Subsection (6) ensures that police or customs officers applying for search warrants must make reasonable efforts to inform those persons who might be affected by it (for example, the owner or occupier of the premises or the owner of the ivory item in question). Such a warrant would only authorise entry if 48 hours' notice had been given to those persons who might be affected by it. Subsection (6) allows persons applying for search warrants to do so without informing those persons who might be affected by it only in the situation where giving notice would likely undermine the purpose of the search.
- 108 Subsection (7) gives effect to Schedule 2 which makes further provision about applications for, and the execution of, search warrants in England and Wales and Northern Ireland. Scotland has similar provisions in its common law. Failure to comply with the requirements in Part 3 of Schedule 2 in respect of the execution of warrants in these jurisdictions would render the entry and search of premises unlawful (subsection (8)).

Section 19: Powers of examination etc.

- 109 This section enables a police or customs officer, when acting in accordance with a power of search conferred by sections 15 to 18, to examine anything in the vehicle or vessel or on a premises. Such examination may extend to measuring or testing anything that the police or customs officer has the power, under this section, to examine. As part of this measuring or testing, subsection (4) allows the police or customs officer to take a sample from an item as long as such an action causes no, or the least possible, damage to the item. The power to measure or test items, including taking a sample, would, for example, help to determine if the item in question is elephant ivory, and thus subject to the prohibition and if the item needs to be seized and/or an offence has been committed. This would, for example help in avoiding unnecessary seizures. Subsection (6) places a duty on any person in or on the premises to facilitate or assist the exercise of the officer's powers under sections 15 to 18, for example, to open any locked container. If there is no such person on the premises to assist in such manner or that person refuses to do so, subsection (5) confers a power on a police or customs officer to use force to break open a container or other locked thing (for example, a locked store room). This power is restricted to circumstances in which the officer is satisfied that it is necessary to take such an action in order to determine if a relevant offence, as defined under section 14(4) has been committed or in order to investigate a relevant offence.

Section 20: Power to require production of documents etc.

- 110 This section enables a police or customs officer, when acting in accordance with a power of search conferred by sections 15 to 18, to require any person in the vehicle or vessel or on the premises to produce any document or record that is in the person's possession or control. The power is restricted to circumstances in which the officer thinks that such a document may aid understanding as to whether a relevant offence, as defined under section 14(4), has been committed or the investigation of a relevant offence. The power is defined so as to extend to requiring a person to produce information held in electronic form, for example on a computer, so that it can be read.

Section 21: Powers of seizure etc

111 This section enables a police or customs officer to seize and detain any item found in the course of a search they are permitted to carry out under sections 14 to 18. An item may only be detained if the officer reasonably believes it to be relevant evidence, as defined under section 14(4). Items may also be seized for the purpose of determining whether any such offence has been committed. The power also extends to taking copies or extracts of any documents or records, such as invoices, receipts or agreements or offers to sell, found on the premises that could be used as evidence of an offence. The power to seize and detain, remove, or take copies of, or extracts from, a document or record, extends to documents or records produced to the officer under the powers in section 20. These powers apply to a police or customs officer searching a person, vehicle or vessel (with or without a warrant) or any premises (under a warrant) or to a police or customs officer who is lawfully on the premises for some other purpose. The powers of seizure in this section do not extend to excluded items as defined in section 23.

Section 22: Accredited civilian officer: powers of entry

112 This section provides powers for an accredited civilian officer to enter non-domestic premises which they reasonably think may be used in connection with dealing in ivory items in order to assess compliance with the Act. An accredited civilian officer may also enter premises where they have reasonable grounds to suspect that there is relevant evidence on those premises.

113 Subsection (2) defines an “accredited civilian officer” as an officer of the Secretary of State who is authorised for the purposes of the Act. In practice this will be an officer of the regulator authorised by the Secretary of State.

114 Subsections (3) and (4) set out how reasonable notice must be given to an owner or occupier of the premises and the information that must be included in the notice. Subsection (5) limits the powers of accredited civilian officers to entering premises that are not used wholly or primarily as a dwelling. The officer may only enter premises during reasonable times.

Section 23: Other powers of accredited civilian officers

115 This section confers other powers on accredited civilian officers. The officers will be able to use these powers having entered a premises under clause 22 or if they are otherwise lawfully on a premises and have reasonable grounds to suspect relevant evidence. This clause does not confer a power of search onto accredited civilian officers and instead, allows them to examine or measure anything that they believe may be relevant evidence, for example, an item that appears to be made of or contain ivory on display in a shop. This clause also confers on accredited civilian officers a similar power to require the production of documents as provided in clause 20 and similar powers of seizure as those provided for in 21. This means an accredited civilian officer also has the power to request any person on the premises to produce any relevant document, for example an exemption certificate or registration document. If an officer does identify an item or document that is relevant evidence of an offence, or is relevant evidence to an investigation into whether an offence has been committed, the officer would also have the power to seize that item or document.

Section 24: Excluded items

116 This section defines excluded items which fall outside the powers of seizure in section 22. In England and Wales, excluded items are:

- Items subject to legal privilege as defined in section 10 of Police and Criminal Evidence Act 1984 (“PACE”), broadly communications between a professional legal adviser and his or her client in connection with the giving of legal advice to the client or in connection with legal proceedings and for the purpose of such proceedings. Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

- Excluded material as defined in section 11 of PACE, broadly personal records which a person has acquired or created in the course of any trade, business, profession or other occupation and which he or she holds in confidence; or journalistic material (that is, material acquired or created for the purpose of journalism) which a person holds in confidence.
- Special procedure material as defined in section 14 of PACE, broadly material acquired or created in the course of any trade, business, profession or other occupation or for the purpose of any office and held subject to an express or implied undertaking to hold it in confidence or subject to a restriction on disclosure or an obligation of secrecy contained in any enactment; and journalistic material, other than excluded material.

117 Schedule 1 to PACE makes special provision for obtaining judicially authorised access to excluded material or special procedure material for the purpose of a criminal investigation.

118 Subsections (3) and (4) make analogous provision for Scotland and Northern Ireland.

Section 25: Further provision about seizure under sections 21 or 23

119 This section contains an ancillary power to seize any containers in which seized items are stored (subsection (1)). Such containers may be any form of packaging in which items may be sold or boxes containing relevant documents. Subsection (2) provides for the subsequent return of seized containers save where one of the conditions in subsection (3) are satisfied. Subsection (4) caters for circumstances where it is not practicable to seize all items at the time of the search of the premises, for example, because the task proved to be more time consuming than expected or because of the volume of items that needed to be removed. In such cases, the police and customs officer can impose a duty on the person from whom an item is seized, or any person on the premises, to secure the items and not to tamper with them.

Section 25: Notices and records in relation to seized items

120 This section makes provision for the issue of a written notice, where an item is seized under section 22, to affected persons as defined in subsection (2). If no such person is present on the premises subject to a search warrant, a copy of the notice must be left on the premises. This is to ensure that all persons with an interest in the seized items are properly informed of the seizure and of the provisions in sections 28, 29 and 31 in respect of the retention and forfeiture or return of seized items. In addition to the notice of seizure issued at the time of the seizure, a record must be made of the items seized; such a record could be compiled after the search has taken place, for example, once the seized items have been taken to a police station.

Section 26: Powers of entry, search and seizure: supplementary provision

121 Subsection (1) ensures that a police or customs officer exercising a power conferred under sections 14 to 17 must, if asked to do so by a person entitled to make such a request, give his name and, if not a constable in uniform, produce documentary evidence that they are authorized to exercise the power. A person entitled to make such a request is defined in subsection (2). Subsection (3) ensures that that the officer does not need to comply with subsection (1) if it is not reasonably practicable for the officer to do so.

122 Subsections (4) and (5) enable a police or customs officer (or a person authorised to accompany them when executing a search warrant) to use reasonable force, if necessary, when exercising powers under Sections 14 to 24 (or under Sections 18 to 24 for authorised accompanying persons), for example, to search a person or to enter premises to execute a search warrant.

123 Subsection (6) provides that the powers of entry, search and seizure conferred by the Act are without prejudice to the continued operation of any other powers conferred by or under any other enactment or under common law.

Section 28: Offences of obstruction etc

124 Subsection (1) makes it an offence for a person to, without reasonable excuse, intentionally obstruct a relevant enforcement officer in the exercise of his or her powers under sections 14 to 25.

125 Subsection (2) makes it an offence for a person, without reasonable excuse, to fail to comply with a reasonable requirement made, or direction reasonably given, by a police or customs officer under Sections 15 to 25. It is also an offence to prevent another person from complying with such a requirement or direction. Such a requirement or direction may be, for example, to open a locked door of a room within premises subject to a search warrant or to open a locked cabinet.

126 These offences extend to the obstruction of, or failure to comply with a requirement or direction given by, a person authorised to accompany a relevant police or customs officer to effect a search of premises (see section 19(4)).

127 Subsection (4) provides for the maximum penalties for both offences, as follows –

| Maximum penalty on summary conviction in England and Wales | Maximum penalty on summary conviction in Scotland | Maximum penalty on summary conviction in Northern Ireland |
|---|---|--|
| 6 months' imprisonment, a fine, or both. | 6 months' imprisonment, a fine not exceeding level 5 on the standard scale (currently £5,000), or both. | 6 months' imprisonment, a fine not exceeding level 5 on the standard scale (currently £5,000), or both |

Retention and disposal or return of items

Section 29: Retention of seized items

128 This section authorises the retention of items seized under section 21 or 23 for as long as is necessary and, in particular, either for use as evidence in a trial or to enable forensic or scientific examination, or as part of an investigation for an offence under the Act. The retention of items seized under section 21 is not authorised in a situation in which a photo of the item would suffice.

Section 30: Forfeiture of seized items by court on application

129 This section provides for the forfeiture and disposal of seized ivory items and other items where the procedure in section 32 does not apply. Subsection (3) allows a magistrates' court (in England and Wales), a sheriff (in Scotland) or a court of summary jurisdiction (in Northern Ireland) (see subsection (8)) to order the forfeiture of an item if the court is satisfied that a relevant offence has been committed in respect of that item, or the item was used in the commission of a relevant offence. Where the court orders forfeiture, it is for the applicant (namely, the officer who made the application), another officer acting on behalf of the same person as that officer or the Secretary of State to decide on the method of disposal for the forfeited item (subsection (5)). Any action to dispose of the item is stayed pending the outcome of any appeal or until the end of the timeframe in which an appeal can be brought (subsection (6)). Subsection (7) makes further provision for the return of an item under subsection (4), authorising the continued retention of an item, pending the outcome of an application for forfeiture, or any appeal against a decision by the court to order the item to be returned to the person from whom it was seized, or the owner of the item.

Section 31: Appeal against decision under section 30

130 This section confers a right of appeal to the appropriate higher court in each jurisdiction (see subsection (3)) against a decision under section 29 either to order the forfeiture of an item or to order its return to the person entitled to it. An appeal may be brought forward by the person from whom the item was seized, the owner of the item or any party to the proceedings in which the order was made, for example a police officer. An appeal must be lodged within 28 days of the decision by the lower court (subsection (4)). If an appeal is brought forward by a police officer or other authorized person and no persons entitled to the items (defined in subsection (8)) was present or represented at the original hearing, the officer has an obligation to make reasonable efforts to give notice of the appeal to every person who may be entitled to the item. On hearing the appeal, the court will determine the question afresh.

Section 32: Return of item to person entitled to it, or disposal if return impracticable

131 Where the retention of a seized item is no longer authorised under the Act, this section provides for the return of the item to the person entitled to it. Subsection (1)(b) provides that a person entitled to the item may make an application to the appropriate court (as defined in section 29(8)) for a seized item to be returned. In any case where it has proved impossible to find the owner, or it is impractical for some reason to return the item (for example, because the owner refuses to accept receipt), subsection (3) allows for the item to be disposed of by a police or customs officer or the Secretary of State.

Section 33: Forfeiture by court following conviction

132 This section provides that where a person has been convicted of relevant offence under the Act (as defined in section 14(4)) or of a relevant offence related to the illegal trade in ivory items under another Act (for example, the Serious Crime Act 2007), the sentencing court may make a forfeiture order in respect of any item relating to the offence or in respect of other items that were used in the commission of the offence (subsections (3)). For example, in relation to any item that has been used in the commission of a serious offence, the court may order forfeiture of non-exempt ivory that were clearly not for personal use e.g. multiple mass-produced items that was intended for export. The convicted person and any other person who claims ownership of the items are entitled to make representations to the court (subsection (4)), and a forfeiture order does not take effect until the time for lodging an appeal has lapsed or until the outcome of any appeal (subsection (5)). Subsections (6) to (8) enable the court to make supplementary provision to give effect to a forfeiture order.

General

Section 34: Application of Customs and Excise Management Act 1979

133 This section ensures that customs officers can exercise the powers under the Customs and Excise Management Act 1979 (“CEMA”) when they intercept an item being imported or exported in breach of the prohibition entering or leaving the UK. Border Force customs officials routinely rely on CEMA powers to enforce restrictions on the importation and exportation of particular items. A number of the CEMA powers would automatically apply in any event, for example the power in section 159 of CEMA to examine any imported goods, but this section provides that other CEMA provisions are also engaged.

134 Subsection (1) makes an item in breach of the prohibition liable to forfeiture if it is imported to or exported from the UK. This has the effect of engaging other CEMA powers, in particular, the powers in section 139 and Schedules 2A and 3 to detain, seize and forfeit any item that could be “liable to forfeiture”. Section 139 of CEMA provides that goods which are liable to forfeiture may be seized or detained. Schedule 2A to CEMA makes provision in respect of detained goods –

essentially allowing customs officers time to investigate whether the goods in question are indeed liable to forfeiture. Schedule 3 to CEMA governs the process of seizure and forfeiture of goods. The CEMA provisions include similar safeguards regarding the issue of notices of seizure as are included with powers of seizure in the Act and also provide for judicial oversight. In summary, if, after a one month period from the time of seizure there has been no challenge to the legality of seizure, the goods are automatically condemned as forfeit. If someone challenges the legality of seizure, customs officers must bring condemnation proceedings to obtain an order for condemnation of the goods.

135 Subsection (2) applies section 5 of CEMA for the purposes of subsection (1). Section 5 of CEMA defines the time of importation or exportation of goods for the purposes of the powers in CEMA, for example, in the case of items imported by sea, the time of importation is when the ship carrying the item comes within the limits of a port.

Section 35: Contracts of insurance

136 This section provides that the prohibition under section 1 would not apply to a transaction under an insurance policy that is in force at the time that the prohibition under section 1 comes into force. It also ensures that the acquisition or disposal of an ivory item by a regulated insurer as a result of standard insurance activities will not be covered by the prohibition in section 1.

137 This means that insurance agreements between (i) owners of insured ivory items and their insurers and (ii) insurers and other insurers and re-insurers will not be affected by the Act. For example, where an insurer acquires title to an item as a result of paying out on a claim made by an insured person following a loss or theft, this will be exempt from the section 1 prohibition. Where the item is subsequently recovered, and the insurance company “re-sells” it to be insured person in return for the repayment of the consideration paid out, this is also exempt. Transfer of title between insurers and re-insurers also fall outside of the prohibition in section 1 (e.g. when insurers merge or re-insure insurance contracts). An insurer is not, however, permitted to sell an ivory item to which it has acquired the title on to a third party, unless that item is registered or certified as exempt.

Section 36: Liability of corporate officers for offences by bodies corporate etc.

138 In the case of an offence under the Act being committed by a body corporate (an organisation such as a company, corporation or institution) or Scottish Partnership, this section extends liability for the offence to a person who is an officer of the body corporate (as defined in subsection (2)) or an officer of the Scottish Partnership (as defined in subsection (3)) where the offence has been committed with the consent or connivance of that person, (subsection (1)).

Section 37: Meaning of “ivory”

139 Subsection (1) provides the definition of ivory applied under the Act. Ivory from any species of elephant is in scope of the Act and this ivory may be obtained from an elephant tusk or tooth. Subsection (6) further defines “elephant” as any animal or species that is within the family Elephantidae and that is extant, i.e. living, at the time at which the Act is passed. This means in practice that ivory from all species and sub-species of elephants, including any which may be identified in future, are covered by this sales ban. It also means that ivory from extinct species of the family Elephantidae, such as mammoths, is not within scope of these measures.

140 Subsection (2) confers a delegated power to the appropriate national authority to make regulations under the Act in order to amend the definition of ivory in subsection (1). This delegated power could, for example, be applied if the restrictions under the Act inadvertently led to the displacement of ivory trade from elephant ivory to another form of ivory, including from an extinct species (i.e. the mammoth). Displacement, for example, could lead to increases in hippopotamus ivory trade, putting that species at greater risk of extinction, or further poaching of elephants for their ivory if use of ivory from other species fuels demand in ivory generally. In such a scenario

ivory from the hippopotamus and other species could be included within the scope of the prohibition on ivory as outlined within the Act. Subsection (3) specifies that the affirmative resolution procedure would apply.

141 Subsection (4) provides for ivory, which has been proved to be ivory and is relevant to offence proceedings, to be assumed to be elephant ivory unless the accused can prove otherwise. The burden of proof would, therefore, lie with the accused in order to that prove it is not elephant ivory and is instead ivory from a different species. For example, scientific test results could be provided as evidence of origin.

Section 38: Meaning of other expressions

142 This section lists various words or phrases used throughout the Act and, where relevant, the corresponding provision at which their meaning is located. Subsection (2) defines “pre-1918”, “pre-1947” and “pre-1975”, as applied in sections 2, 6, 7 and 8 respectively. An item would qualify if the item was made prior to the relevant date and meets one of the following conditions:

- a. No ivory had been added to the item on, or after, the relevant date, or
- b. Any ivory added to the item on, or after, the relevant date must have been taken from its animal source prior to 1 January 1975 and the ivory must have been added for the purpose of restoring the item, any other purpose would not be valid.

143 Subsection (3) provides the relevant dates for 1918, 1947 and 1975 respectively. The relevant date for pre-1947 aligns with the date used under current EU Wildlife Trade Regulations (which was itself chosen as the date 50 years prior to the introduction of the Regulations), which apply this date to all worked ivory items. The relevant dates for pre-1918 and pre-1975 are set at the first day of the calendar year. 1975 is the year in which Asian elephants were first listed at Appendix I of CITES, thus indicating that they were considered vulnerable to extinction if trade in their ivory or other parts was not severely curtailed.

Section 39 Regulations

144 The section defines what is meant by ‘appropriate national authority’. Most regulations under the Bill that apply in relation to Wales, Scotland or Northern Ireland may be made only by, or with the consent of, the Welsh Ministers, Scottish Ministers or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (‘the department’). Each of the appropriate national authorities would also be able to make their own regulations if, for example, they did not give consent not given for the Secretary of State to make regulations applicable to Wales, Scotland or Northern Ireland. This will enable the Devolved Administrations to exercise their devolved functions using powers in the Act where they consider it appropriate. However, this is not the case for sections 3(1)(h), 4(7)(b), 5(4) and 10(1)(g) which concern the powers to set fees. These regulations will remain exercisable only by the Secretary of State, but will require consultation with the Welsh Ministers, Scottish Ministers and the department. Commencement regulations are unaffected by these amendments.

145 This section provides that where the Act provides for regulations to be made these regulations may make consequential, supplementary, incidental, transitional or saving provisions.

146 Subsection (2) and (3) specify that all regulations under the Act will be made by statutory instrument and that the negative resolution procedure would apply to any such statutory instrument, except under Section 37(2). Regulations under section 37(2) would be subject to the affirmative resolution procedure.

Section 41: Crown application

147 This section provides for the Act to apply to the Crown, including Her Majesty the Queen, the Royal Family, Royal properties and Royal collections. As such the Crown is bound to the prohibition on dealing in ivory unless an exemption certificate or registration has been issued. The Crown would not be subject to any relevant offence, as defined in section 14(4), and would, therefore not be subject to sanctions associated with any offence under the Act. Persons in the service of the Crown, however, could be subject to relevant offences and sanctions under the Act.

Section 42: Extent

148 This section sets out the territorial extent of the provisions of the Act (see Annex A for further details).

Section 43: Commencement

149 This section provides for commencement of the Act, at which point the Act would come into force. The Secretary of State would bring the Act into force by regulations. Subsection (2) enables the Secretary of State, by regulations, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Act. Such regulations are not subject to any parliamentary procedure.

Section 44: Short title

150 This section provides for the short title for this Act.

Schedule 1: Civil Sanctions

Part 1: Monetary Penalties

151 Paragraph 1 provides for a monetary penalty to be served as a sanction to a relevant offence, as defined in section 14(4), where the Secretary of State is satisfied beyond reasonable doubt that such an offence has been committed. Sub-paragraph (2) defines a monetary penalty and sub-paragraph (3) ensures that a monetary penalty up to, but not exceeding, £250,000 could be applied.

152 Paragraph 2 sets out the process by which a monetary penalty may be imposed by the Secretary of State, including service of a notice of what is proposed, and the right of the person on whom the monetary penalty is imposed to appeal the penalty.

153 Paragraph 3 sets out the information which must be included, by the Secretary of State, when serving a notice to the person on whom the monetary penalty is imposed.

154 Paragraph 4 provides that if a person who is served a notice proposing a monetary penalty to be imposed, that person will not be subject to criminal sanctions for the same offence during the period within which liability could be discharged by payment of the sum stated in the notice. It also states that if the person pays the sum stated in the notice, and as such they discharge their liability under the monetary penalty, they cannot be subject to criminal sanctions for the same offence.

Part 2: Stop Notices

155 Paragraph 5 provides for a stop notice to be served as a sanction by the Secretary of State where a person is carrying on with an activity which involves, or is likely to involve, an offence being committed under the Act and the person is likely to carry on further the activity which involves, or is likely to involve, an offence being committed. A stop notice may be served in order to prohibit that person from continuing to carry out a specified activity (for example illegally offering ivory for sale), or to prohibit that person from continuing to carry out a specified activity until that person has taken steps, as defined in the notice, to make the activity compliant with the Act and to stop or prevent an offence being committed (for example, to stop illegally offering ivory for sale until they register that item as exempt or obtain an exemption certificate for that item).

156 Paragraph 6 sets out the information which must be included in a stop notice when served by the Secretary of State on a person.

157 Paragraph 7 provides for completion certificates to be issued by the Secretary of State, only in the case of a stop notice being served which prohibits an activity until the person takes the steps stated in the notice, if the Secretary of State is satisfied the required steps have been taken. The person served a stop notice must apply for a completion certificate and the Secretary of State must take a decision on the application within 14 days. If a completion certificate is issued, the stop notice ceases to have effect and the person may continue to carry out the previously prohibited activity.

158 Paragraph 8 ensures that the person served a stop notice has the right to appeal against that notice being served and provides for the grounds on which that appeal can be made. This paragraph also ensures that, where relevant, a person may appeal the decision taken to not issue a completion certificate and provides for the grounds on which that appeal may be made.

159 Paragraph 9 provides for an offence where a person served with a stop notice who does not comply with that stop notice. Under this paragraph, criminal sanctions on summary conviction are applied to this offence. The maximum sentences on summary conviction, as applied in each of the devolved administrations, are also set out.

Part 3: Enforcement undertakings

160 Paragraph 10 provides for an enforcement undertaking to be applied under the Act subject to the conditions set out in sub-paragraph 1. If the person suspected of committing a relevant offence completes the actions set out in the enforcement undertaking to stop the offence or prevent it from re-occurring (for example, the person offers and completes an undertaking to register an exempt item before continuing to use it for dealing) that person cannot be convicted of a relevant offence and the Secretary of State may not impose a monetary penalty. If that person fails to comply with the enforcement undertaking, they may, in relation to the offence or omission they have committed, be convicted of a relevant offence and face criminal sanctions or may be served a monetary penalty.

Part 4: Enforcement cost recovery notices

161 Paragraph 11 provides for enforcement cost recovery notices to be served by the Secretary of State on a person on whom a monetary penalty notice has been imposed or a stop notice has been served. The enforcement cost recovery notice would require the person to pay back the costs, as outlined in sub-paragraph (3), associated with that monetary penalty or stop notice.

162 Paragraph 12 sets out the information which must be included by the Secretary of State in the enforcement cost recovery notice when it is served to the person.

163 Paragraph 13 provides for the right of the person served with an enforcement cost recovery notice to appeal the decision taken by the Secretary of State to serve that notice. The paragraph specifies on what grounds the appeal can be made.

Part 5: Power to make supplementary provision etc. by regulations

164 Paragraph 14 confers a delegated power on the appropriate national authority to, by supplementary regulations, make supplementary, consequential or incidental provisions to Schedule 1.

165 Paragraph 15 ensures that before making such supplementary regulations, the appropriate national authority must consult any persons that the authority considers appropriate. If, based on this consultation, it is appropriate for the authority to make substantial - rather than supplementary, incidental or consequential - changes to the provisions in Schedule 1, the authority must undertake further consultation as the authority considers appropriate.

166 Paragraphs 16, 17 and 18 provide examples of provisions the Secretary of State may make by supplementary regulations in relation to Schedule 1.

Part 6: General and supplemental

167 Paragraph 19 provides that the Secretary of State cannot serve a monetary penalty on a person for an action or omission if that person has already been served a stop notice in relation to the same action or omission. It also states that a stop notice cannot be served on a person for an act or omission if a monetary penalty has already been imposed on that person for the same act or omission or if the person's liability for that monetary penalty has been discharged as outlined in paragraph 2(2).

168 Paragraph 20 sets out how an unincorporated association must pay any payment required under Schedule 1.

169 Paragraph 21 confers a responsibility on the Secretary of State to publish guidance which will provide details on which sanctions will be applied to a person committing a relevant offence, as defined in section 14(4), in what circumstances and what actions will be taken in relation to the person. The Secretary of State must consult the Welsh Ministers, the Scottish Ministers and the Northern Ireland department and any other persons the Secretary of State considers appropriate, before publishing the guidance (or revised guidance). The Secretary of State must apply this guidance when exercising their functions under Schedule 1. Such guidance must also provide details under each of the sanctions provided for under Schedule 1 as stated in sub-paragraphs (2)-(5). Sub-paragraph (6) confers a responsibility on the Secretary of State to revise guidance where appropriate and to publish revised guidance. All guidance and revised guidance under this paragraph must be subject to consultation of persons the Secretary of State considers appropriate.

170 Paragraph 22 ensures that any consultation undertaken prior to commencement of the Act, which would have satisfied the requirements of paragraph 21, can be considered when meeting the consultation requirements under paragraph 21.

171 Paragraph 24 confers a responsibility on the Secretary of State to publish reports on the use of civil sanctions as provided for under Schedule 1. The paragraph makes clear what information a report must include and when it may be appropriate for not including information.

Part 7: Interpretation

172 Paragraph 25 explains where definitions for terms used in Schedule 1 can be found within the schedule.

Schedule 2: Search warrants: England and Wales and Northern Ireland

Part 1: Preliminary

173 Part 1 of this Schedule limits the application of this Schedule to England and Wales and Northern Ireland.

Part 2: Search warrants: applications and safeguards

174 Part 2 of Schedule 2 sets out the procedure for applying for a search warrant under section 17 and outlines various safeguards. Paragraph 3 sets out the information that must be provided in an application. Paragraphs 4 and 5 set out the information that must be contained in a search warrant, including whether the warrant authorises single or multiple entries into relevant premises. A warrant may authorise entry to, and search of, premises on more than one occasion if, on the application, the justice is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which it was granted, for example, the search of a large warehouse.

175 Paragraph 6 provides for the making of copies.

Part 3: Execution of search warrants

176 Part 3 of Schedule 2 makes provision for the execution of search warrants. Under paragraph 8, where premises are entered and searched in pursuance of an all premises warrant and such premises are not specified in the warrant, entry must be authorised by a senior officer of the appropriate grade, as defined in paragraph 2. Where a warrant authorises multiple entries into a set of premises, any second or subsequent entry must be similarly authorised by a senior officer of the appropriate grade (paragraph 9).

Commencement

177 The Secretary of State will bring the Ivory Act 2018 into force by regulations. The Act will be brought into force no earlier than 6 months after Royal Assent.

Related documents

178 The following documents are relevant to the Act and can be read at the stated locations:

- Delegated Powers and Regulatory Reform Committee Memorandum
https://publications.parliament.uk/pa/bills/cbill/2017-2019/0215/DP180525_01.pdf
- Impact Assessment
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710369/ivory-bill-ia.pdf
- Consultation on banning UK sales of ivory
https://consult.defra.gov.uk/international/banning-uk-sales-of-ivory/supporting_documents/IVORY%20CONSULTATION.pdf
- Consultation on banning UK Sales of Ivory: summary of responses and Government response
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696474/banning-ivory-consult-sum-resp.pdf

Annex A - Territorial extent and application in the United Kingdom

179 This extends and applies to the United Kingdom.

| Provision | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Extends and applies to Scotland? | Extends and applies to Northern Ireland? |
|--|--|--|----------------------------------|--|
| Prohibition Section 1 | Yes | Yes | Yes | Yes |
| Exemption for outstandingly valuable and important pre-1918 items Sections 2 to 5 | Yes | Yes | Yes | Yes |
| Other exemptions Sections 6 to 11 | Yes | Yes | Yes | Yes |
| Criminal and civil sanctions Sections 12 and 13 | Yes | Yes | Yes | Yes |
| Powers of entry, search and seizure Section 14 to 16 and 19 to 23 | Yes | Yes | Yes | Yes |
| Warrants authorising entry and search of premises Section 17 | Yes | Yes | In part | Yes |
| Further provisions about searches, etc Sections 24 to 28 | Yes | Yes | Yes | Yes |
| Retention and disposal or return of items Section 29 to 33 | Yes | Yes | Yes | Yes |
| General Sections 34 and 36 to 44 | Yes | Yes | Yes | Yes |
| Contracts of insurance Section 35 | Yes | Yes | Yes | Yes |
| Schedule 1 | Yes | Yes | Yes | Yes |
| Schedule 2 | Yes | Yes | No | Yes |

These Explanatory Notes relate to the Ivory Act 2018 (c. 30) which received Royal Assent on 20 December 2018

Annex B - Hansard References

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

| Stage | Date | Hansard Reference |
|---|-------------------|------------------------------------|
| <i>House of Commons</i> | | |
| Introduction | 23 May 2018 | Vol. 641 Col. 847 |
| Second Reading | 4 June 2018 | Vol. 642 Col. 91 |
| Public Bill Committee | 12 June 2018 | Col. 1 |
| | 12 June 2018 | Col. 31 |
| | 14 June 2018 | Col. 67 |
| | 14 June 2018 | Col. 93 |
| | 19 June 2018 | Col. 119 |
| | 19 June 2018 | Col. 151 |
| Report and Third Reading | 4 July 2018 | Vol. 644 Col. 359 |
| <i>House of Lords</i> | | |
| Introduction | 5 July 2018 | Vol. 792 |
| Second Reading | 17 July 2018 | Vol. 792 Col. 1144 |
| Grand Committee | 10 September 2018 | Vol. 792 Col. 2103 |
| | 10 September 2018 | Vol. 792 Col. 2139 |
| | 10 September 2018 | Vol. 792 Col. 2185 |
| | 12 September 2018 | Vol. 792 Col.2323 |
| Report | 24 October 2018 | Vol. 793 Col. 868 |
| Third Reading | 13 November 2018 | Vol. 793 Col. 1789 |
| Commons Consideration of Lords Amendments | 11 December 2018 | Vol. 651 Col. 226 |
| Royal Assent | 20 December 2018 | Vol. 794 |

Annex C - Progress of Bill Table

181 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

| Section in the Act | Bill as Introduced in the Commons | Bill as Introduced in the Lords | Bill as amended at Report in the Lords |
|--------------------|-----------------------------------|---------------------------------|--|
| Section 1 | Clause 1 | Clause 1 | Clause 1 |
| Section 2 | Clause 2 | Clause 2 | Clause 2 |
| Section 3 | Clause 3 | Clause 3 | Clause 3 |
| Section 4 | Clause 4 | Clause 4 | Clause 4 |
| Section 5 | Clause 5 | Clause 5 | Clause 5 |
| Section 6 | Clause 6 | Clause 6 | Clause 6 |
| Section 7 | Clause 7 | Clause 7 | Clause 7 |
| Section 8 | Clause 8 | Clause 8 | Clause 8 |
| Section 9 | Clause 9 | Clause 9 | Clause 9 |
| Section 10 | Clause 10 | Clause 10 | Clause 10 |
| Section 11 | Clause 11 | Clause 11 | Clause 11 |
| Section 12 | Clause 12 | Clause 12 | Clause 12 |
| Section 13 | Clause 13 | Clause 13 | Clause 13 |
| Section 14 | Clause 14 | Clause 14 | Clause 14 |
| Section 15 | Clause 15 | Clause 15 | Clause 15 |
| Section 16 | Clause 16 | Clause 16 | Clause 16 |
| Section 17 | Clause 18 | Clause 18 | Clause 17 |
| Section 18 | Clause 19 | Clause 19 | Clause 18 |
| Section 19 | Clause 20 | Clause 20 | Clause 19 |
| Section 20 | Clause 21 | Clause 21 | Clause 20 |
| Section 21 | Clause 22 | Clause 22 | Clause 21 |
| Section 22 | - | - | Clause 22 |
| Section 23 | - | - | Clause 23 |
| Section 24 | Clause 23 | Clause 23 | Clause 24 |
| Section 25 | Clause 24 | Clause 24 | Clause 25 |
| Section 26 | Clause 25 | Clause 25 | Clause 26 |
| Section 27 | Clause 26 | Clause 26 | Clause 27 |
| Section 28 | Clause 27 | Clause 27 | Clause 28 |
| Section 29 | Clause 28 | Clause 28 | Clause 29 |
| Section 30 | Clause 29 | Clause 29 | Clause 30 |
| Section 31 | Clause 30 | Clause 30 | Clause 31 |
| Section 32 | Clause 31 | Clause 31 | Clause 32 |
| Section 33 | Clause 32 | Clause 32 | Clause 33 |

These Explanatory Notes relate to the Ivory Act 2018 (c. 30) which received Royal Assent on 20 December 2018

| | | | |
|------------|------------|------------|------------|
| Section 34 | Clause 33 | Clause 33 | Clause 34 |
| Section 35 | - | - | Clause 35 |
| Section 36 | Clause 34 | Clause 34 | Clause 36 |
| Section 37 | Clause 35 | Clause 35 | Clause 37 |
| Section 38 | Clause 36 | Clause 36 | Clause 38 |
| Section 39 | Clause 37 | Clause 37 | Clause 39 |
| Section 40 | Clause 38 | Clause 38 | Clause 40 |
| Section 41 | Clause 39 | Clause 39 | Clause 41 |
| Section 42 | Clause 40 | Clause 40 | Clause 42 |
| Section 43 | Clause 41 | Clause 41 | Clause 43 |
| Section 44 | Clause 42 | Clause 42 | Clause 44 |
| Schedule 1 | Schedule 1 | Schedule 1 | Schedule 1 |
| Schedule 2 | Schedule 2 | Schedule 2 | Schedule 2 |

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