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Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
The Scottish Parliament
Edinburgh
EH99 1SP

24 April 2024

Dear Finlay

THE IVORY ACT (EXTENSION OF MEANING OF “IVORY”)(TRANSITIONAL PROVISION AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2024 (Defra/ENV/046) – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas and within the competence of the EU at exit day.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance and Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The Ivory Act 2018 (“the Act”) prohibits commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes to and from the UK. Ivory is defined in the Act as “ivory from the tusk or tooth of an elephant.” The Act confers a power on both the UK Government and devolved administrations to, by regulations, amend the meaning of “ivory” to include ivory from an animal or species (whether extant or not) that is not covered by the current meaning.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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In July 2021, DEFRA, on behalf of the UK Government and the Devolved Administrations, published a consultation seeking views on options to extend the Act. The consultation on extending the Ivory Act received 997 responses, including two campaign responses. The overwhelming majority of respondents (93%) stated a preference for extending the Ivory Act to the five CITES-listed species (which then included walrus).

This instrument will extend the Act to four species listed under the Convention on International Trade in Endangered Species (CITES): hippopotamus, narwhal, killer whale and sperm whale. Walrus is not included on this instrument as Walrus are already protected under Part 6 of the Marine (Scotland) Act 2010 which relates to the conservation of seals.

Defra intend to lay this SI on 21 May with a coming into force date 21 days later

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 15 May.

Kind regards



LORNA SLATER

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Ivory Act (Extension of Meaning of “Ivory”) (Transitional Provision and Miscellaneous Amendments) Regulations 2024 (ENV/046)

Is the notification Type 1 or Type 2

Type 1 notification. We consider it appropriate to notify this SI as it is an exercise by UK Ministers of a power to make secondary legislation in a devolved area which was within the competence of the EU at exit day (11pm 31 December 2020)

Details of the provisions that Scottish Ministers are being asked to consent to.

The Act prohibits commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes to and from the UK. The Ivory Act (Extension of Meaning of “Ivory”) (Transitional Provision and Miscellaneous Amendments) Regulations 2024 amend the meaning of “ivory” under subsection 37(1) of the Act and makes some transitional provision and miscellaneous amendments. “Ivory” is currently defined under subsection 37(1) of the Act as “ivory from the tusk or tooth of an elephant.” Subsection 37(2) of the Act confers a power on both the UK Government and devolved administrations to, by regulations, amend the meaning of “ivory” to include ivory from an animal or species (whether extant or not) that is not covered by the current meaning.

Subsection 39(3) of the Ivory Act 2018 (“the Act”) requires that where the UK Secretary of State makes regulations that extend to England *and* other parts of the United Kingdom under the Act that they must have the necessary consent from the devolved administration(s) in question.

Scottish Ministers are being asked to consent to the regulations. The regulations contain provision that extends the meaning of ivory to include ivory from the following four additional species: hippopotamus, narwhal, killer whale and sperm whale. These species are all listed under the Convention on International Trade in Endangered Species (CITES).

The transitional provision relates to the coming into force of the regulations and contracts that are in the course of performance at that time. There is also miscellaneous provision included to update the names of the five prescribed institutions who are designated for the purpose of advising the Secretary of State with advice on applications for exemption certificates. Exemption certificates can be issued in relation to specific items that contain ivory subject to the provisions under section 2 of the Act. Lastly, provision is included that amends the Ivory Prohibition (Civil Sanctions) Regulations 2022 to provide that notices under Part 3 of those regulations can be sent by post or electronically and provides certain conditions for the latter.

The instrument is being made under sections 2(5), 13, 37(2) and 39(1) of the Act . As noted above, subsection 39(3) of the Act 2018 provides that regulations that apply in England and any of the devolved nations may be made by the UK Secretary of State only with the consent of the devolved nations. The regulations extend to England, Scotland, Wales and Northern Ireland. As such, the consent of the Scottish Ministers is required along with that of the other devolved administrations.

Summary of the proposals

The Act was introduced to ban commercial dealing in elephant ivory in the UK. The ban applies to dealings taking place within the UK and to exports from and imports into the UK for commercial purposes.

The Act prohibits dealing in ivory and items made of, or containing ivory, unless they meet one of the narrowly defined exemptions to the ban, these are

- a) pre-1918 items of outstanding artistic etc value and importance,
- b) pre- 1918 portrait miniatures,
- c) pre- 1947 items with low ivory content,
- d) pre- 1975 musical instruments, and
- e) acquisitions by qualifying museums.

The UK Government is proposing to extend the Act to four species listed under the Convention on International Trade in Endangered Species (CITES): hippopotamus, narwhal, killer whale and sperm whale. This is to address the risk of displacement from the ivory trade from elephant ivory to ivory from other species if ivory from other species is not prohibited under the Act.

Does the SI relate to a common framework or other scheme?

No.

Although the definition of ivory within the EU only includes elephant ivory, there are some protections in place for these species at an EU level as they are all listed on CITES appendices. Sperm whale is listed on Appendix I, and is therefore considered an endangered species with controls on international trade.

Three of the species which are being added to the definition of ivory are European Protected Species (narwhal, killer whale and sperm whale) and therefore protected by EU law through the European Union, in the UK these species are listed on the Habitats Regulations 1994.

Hippo is the only species which is not a European Protected Species or listed on CITES Appendix I. Hippo is listed on Appendix II, in recognition of their vulnerable species state and that trade in those species must be tightly controlled. However, there is no import permit necessary for Appendix II species under CITES, though some

countries have legislated more strictly already. In the UK, the import of hippo specimens already requires a permit and any import must meet certain conditions.

While this SI will see some stricter controls for the trade in products from these four additional species when compared to the EU, we do not consider this to be an alignment issue as this is an area where member states can, and in some cases do, have stricter domestic law already.

Summary of stakeholder engagement/consultation

In July 2021, DEFRA, on behalf of the UK Government and the Devolved Administrations, published a consultation seeking views on options to extend the Act.

The consultation on extending the Ivory Act received 997 responses, including two campaign responses. The overwhelming majority of respondents (93%) stated a preference for extending the Ivory Act to five CITES-listed species (which then included walrus). Walrus are not included on this instrument as they are already protected under part 6 of the Marine (Scotland) Act 2010 which relates to the conservation of seals.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Act was introduced to provide additional protection for elephants by banning the commercial sale of ivory within the UK. There are a small number of cases where ivory sales must be exempt, specifically relating to those being acquired by museums for reasons including science and education, and for a small number of instruments and artefacts which are historic in nature.

Extending the Act to the four additional ivory bearing CITES listed species reduces opportunities for laundering ivory under the guise of another species that is not banned. This makes enforcement of the Act simpler and more effective. Furthermore, it sends a strong signal that ivory should not be seen as a commodity for financial gain or status symbol, especially when the ivory trade threatens the survival of a species.

The costs of extending the Act to the four additional ivory bearing CITES listed species is relatively small. UK trade and commercial dealing of items made of non-elephant ivories is limited. DEFRA estimate that less than 1% of ivory items in the UK are made of ivories from the four CITES (hippopotamus, narwhal, killer whale and sperm whale) listed species.

The devolved administrations also have the power under section 37(2) to amend the meaning of ivory to include ivory from other animal species however, to ensure a smooth operation of the Act, given that the administrative regime that underpins the prohibitions and exemptions in the Act is operated by Defra and APHA it is thought that a UK wide approach is sensible.

Intended laying date (if known) of instruments likely to arise

Proposed laying date 18 May 2024 (tbc) and coming into force 21 days after being laid..

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal

The Committee is asked to respond within 28 days.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No broader governance issues

Any significant financial implications?

No significant financial implications

SI NOTIFICATION: SUMMARY

Title of Instrument
The Ivory Act (Extension of Meaning of “Ivory”) (Transitional Provision and Miscellaneous Amendments) Regulations 2024 (ENV/046)
Proposed laying date at Westminster
18 May 2024 (tbc)
Date by which Committee has been asked to respond
28 days
Power(s) under which SI is to be made
The Ivory Act 2018
Categorisation under SI Protocol
Type 1 Notification
Purpose
The Ivory Act 2018 (“the Act”) was introduced to ban commercial dealing in elephant ivory in the UK. When commenced, the Act will ban dealing of items made of or containing elephant ivory, regardless of their age. The ban will apply to dealings taking place within the UK and to exports from and imports into the UK for commercial purposes. The purpose of this SI is to extend the definition of ivory under the Act to include products from four additional species: hippopotamus, narwhal, killer whale and sperm whale.
Other information
N/A
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