

NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

The Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2021

Is the notification Type 1 or Type 2

Type 1 notification. We consider it appropriate to notify this SI as it is likely that the subject matter was within the competence of the EU at exit day.

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

Provisions to partially implement the Ivory Act 2018 ("the Act"). The Provisions prescribe the institutions able to carry out expert assessment of applications for exemption certifications and make provision for the operation of the exemptions regime under the Act.

The instrument is being made under sections 2(5), 3(1)(g) and (h), 4(7)(b) and (8), 5(5), 10(1)(f) and (g) and 39(1)(a) of the Ivory Act 2018. The Ivory Act 2018 provides that regulations that apply in Scotland may be made only with the consent of the Scottish Ministers.

Summary of the proposals

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. It will sit alongside the existing regulatory regime for the trade in endangered species (CITES) which covers elephant ivory.

Before the prohibition on ivory dealing in the Act can be commenced it is necessary to establish the detailed legislative provisions for the operation of the civil sanctions regime (by means of secondary legislation). Regulations supplementing the civil enforcement regime are to be laid before the UK Parliament in Spring 2022 when the prohibition on ivory dealing is also due to come into force. This instrument is being made in order to allow for applications for exemption and registration to be made in advance of the prohibition on dealing ivory coming into force. The coming into force date of the instrument is still to be confirmed by Defra.

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 instrument prescribes institutions which will assess items for which applications for exemption certificates have been made (the listed institutions in Scotland are the Glasgow Museum and the National Museum Scotland). It also details the process for applications for exemption certificates, the information to be included in the applications and further dealing in items which have an exemption certificate, including the fees payable.

The instrument sets out the process and procedure in relation to appeals against a refusal to issue or revocation of an exemption certificate. It also sets out the additional information which must accompany an application to register items under the standard exemptions and prescribes the fees payable.

Defra had originally planned to lay this SI on 26 October. Unfortunately due to a combination of the date on which we received a near-final draft of the SI (15 September 2021), combined with the scheduled recess dates which run 9 October to 24 October this would breach the 28 day period set out in the protocol. Discussions are currently ongoing to delay the laying date in order to meet the twenty-eight day period set out in the protocol. I will write to you again to confirm the outcome of these discussions.

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

No

Summary of stakeholder engagement/consultation

Defra held a full public consultation on implementing the Act which ran from 9 March 2021 to 4 May 2021. The consultation was UK wide and Defra sought agreement from the devolved administrations on the content of the consultation. Defra received over 100 responses to their consultation from both individuals and organisations. They intend to publish a full response to that consultation shortly. However, Defra have advised that the proposed approach in the consultation received the support of a majority of respondents but three additional provisions have been included in this instrument in response to concerns expressed during the consultation as follows:

- Adding a 28 day transitional period from the date the prohibition on dealing in ivory comes into force to allow for the completion of contracts underway on that date;
- Requiring owners of items for which an exemption certificate has been issued to a different owner to declare that the item is the same item for which the certificate was issued, that it continues to meet the exemption and that the relevant information on the certificate remains accurate and complete.
- The addition of the Horniman Museum to the list of prescribed institutions.

Defra have produced administrative guidance on the Act which will be published on or ahead of this instrument coming into force. Defra will also be running an awareness raising campaign on the Ivory Act which will contain information about the implementation of the ban, the exemptions and how individuals and businesses can ensure they comply with the law.

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. It is necessary to allow these exemptions so as not to have any unintended consequences. The legislation is required to enable the effective operation, across the UK, of the exemption provisions in the Act.

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

To be confirmed, discussions currently ongoing with Defra.

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

Discussions are currently ongoing to delay the laying date in order to meet the twenty-eight day period set out in the protocol.

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 Prohibitions (Exemptions) (Process and Procedure) Regulations 2021 (ENV/032)
Proposed laying date at Westminster
26 October 2021 (draft affirmative procedure, Defra content for timescale for debate to allow for consent process agreed with the Scottish Parliament)
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 prescribe the institutions able to carry out expert assessment of applications for exemption certificates and make provision for the operation of the exemptions regime under the Act.
Other information
N/A
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