

## EXPLANATORY MEMORANDUM TO

### THE IVORY PROHIBITIONS (EXEMPTIONS) (PROCESS AND PROCEDURE) REGULATIONS 2022

2022 No. 94

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument makes detailed provision for the operation of the exemptions under the Ivory Act 2018 ('the Act'). The Act will prohibit 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 containing less than 20% ivory, and e) acquisitions by qualifying museums.
- 2.2 The instrument prescribes institutions which will assess items for which applications for exemption certificates have been made. It also details the process for applications for exemption certificates and further dealing in items which have an exemption certificate, including the fees payable. The instrument also sets out process and procedure in relation to appeals against a refusal to issue, or revocation of, an exemption certificate.
- 2.3 This instrument sets out the additional information which must accompany an application to register items under the standard exemptions (b to e, above) and prescribes the fees payable.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### 5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### 6. Legislative Context

- 6.1 These Regulations are made in exercise of the powers conferred by sections 2(5), 3(1)(g) and (h), 4(7)(b) and (8), 5(5), 10(1)(f) and (g), and 39(1)(a) and (b) of the Ivory Act 2018 and make provision for procedure in relation to the categories for

exemption under the Act. Sections 2 to 11 of the Act provide exemptions from the prohibition on dealing in ivory i.e. that the item is pre-1918 and of outstanding artistic etc., value and importance and is awarded an exemption certificate (section 2 of the Act), or that it meets one of four categories for exemption specified in sections 6 to 9 (other exemptions) and is registered under section 10 of the Act. Sections 2 to 11 are being commenced in advance of the prohibition on dealing in ivory in order to allow time for applications for exemption and registration to be made.

- 6.2 This instrument sets out process and procedure for the operation of the exemption categories in the Act. Regulations supplementing the civil enforcement regime are intended to be laid before Parliament in early Spring so as to come into force at the same time as the prohibition on ivory dealing.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The policy objective of the Ivory Act (2018) 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. The intention is to prevent transactions involving ivory items contributing, including inadvertently, to markets which create a demand for ivory, driving poaching and the illegal trade in ivory.
- 7.2 The Act is also a clear demonstration that the UK does not consider commercial activities in any ivory that could fuel poaching to be acceptable. The Act demonstrates UK leadership in international conservation efforts and setting an example at home to encourage similar actions globally.

### *Explanations*

#### *What did any law do before the changes to be made by this instrument?*

- 7.3 Current restrictions concerning commercial activities in ivory are applied internationally through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international conservation agreement which aims to ensure that trade in endangered species does not threaten their survival. The CITES is currently implemented in Great Britain through a suite of regulations known collectively as the UK Wildlife Trade Regulations (WTR) which are retained EU legislation. As a result of the Northern Ireland Protocol, Northern Ireland continues to operate under the EU WTR. The ivory ban will sit alongside the existing regulatory regime for the trade in endangered species (CITES), which covers elephant ivory.

#### *What will it now do?*

- 7.4 Once the Act is fully in force, people who want to deal in ivory will only be able to do so if their item falls into one of the categories for exemption and is either covered by an exemption certificate or is registered as falling under one of the other categories for exemption. This instrument provides the additional requirements to enable the effective operation of the exemption provisions in the Act (sections 2 to 11). These sections are being brought into force before the prohibition on dealing in ivory in order to allow applications for exemption and registration to be made in advance. The prohibition and the provisions of the Act dealing with enforcement and civil and

criminal sanctions will be brought into force in Spring 2022, together with regulations dealing with civil sanctions, which are due to be laid in early Spring.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 No consolidation of legislation is being carried out.

## **10. Consultation outcome**

- 10.1 Public consultation took place between 9 March and 4 May 2021 on a UK wide basis, as agreed with the Devolved Administrations. It set out the Government's proposals for the implementation of the Act in relation to the commencement of the Act, implementing the standard exemptions, and implementing the exemption for pre-1918 items of outstanding artistic etc value and importance ('rare and most important items').
- 10.2 Public consultation took place between 9 March and 4 May 2021 on a UK wide basis, as agreed with the Devolved Administrations. It set out the Government's proposals for the implementation of the Act in relation to the commencement of the Act, implementing the standard exemptions, and implementing the exemption for pre-1918 items of outstanding artistic etc value and importance ('rare and most important items').
- 10.3 The Government's proposed approach received the support of a majority of respondents, but two additional provisions have been included in this instrument in response to concerns expressed during the consultation, as follows:
- 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.
- 10.4 The summary of responses to the consultation on implementing the Ivory Act can be found here [implementing-ivory-act-2018-summary-of-responses-government-response.pdf](https://publishing.service.gov.uk/government/uploads/attachment_data/file/948227/Implementing-ivory-act-2018-summary-of-responses-government-response.pdf) ([publishing.service.gov.uk](https://publishing.service.gov.uk))

## **11. Guidance**

- 11.1 We are producing administrative guidance on the Act which will be published on or ahead of this instrument coming into force on the 24 February 2022.
- 11.2 We 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.

## **12. Impact**

- 12.1 There is no significant, impact on business, charities or voluntary bodies.

- 12.2 The fees established for registering or certifying an exempted item of ivory will recover the development and updates of the digital registration/certification service. We are keeping fees under review.
- 12.3 An Impact Assessment has not been prepared for this instrument because the costs are below the cost impact threshold requiring an impact assessment to be produced.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses
- 13.3 The basis for the final decision on what action to take to assist small businesses was made on the basis of an open consultation on implementation of the Ivory Act and the first consultation on the proposed ivory ban, and its published full impact assessment ([IA182205\\_01.pdf \(parliament.uk\)](#)). In view of the structure of the antiques and auction industry, we would expect the majority of businesses affected to be small and micro businesses. We considered the burden on small businesses was not disproportionate and the targeted exemptions are not based on criteria related to business size. A full exemption to small businesses from a ban on ivory sales, given their level of presence in the trade, is not compatible with achieving a large part of the intended benefits of the measure.

### **14. Monitoring & review**

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Goldsmith has made the following statement:  
  
“I have decided that it is not appropriate to make provision for review in this instrument. A review would also be disproportionate when taking into account the economic impact of the regulatory provision on the qualifying activity.”

### **15. Contact**

- 15.1 Graeme Osborn at the Department of Environment, Food and Rural Affairs  
Telephone: 02080265758 or email [graeme.osborn@defra.gov.uk](mailto:graeme.osborn@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rachel Bailey, Deputy Director for Environmental Governance, at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Goldsmith at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.