

2022 No. 311

TRADE

WILDLIFE

The Ivory Prohibition (Civil Sanctions) Regulations 2022

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| <i>Made</i> - - - - | <i>15th March 2022</i> |
| <i>Laid before Parliament</i> | <i>16th March 2022</i> |
| <i>Coming into force</i> - - | <i>6th June 2022</i> |

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 13 and 39(1) of, and paragraphs 2(5)(b), 10(1)(c), 14(1), 16(1)(c) and (3), 17 and 18 of Schedule 1 to, the Ivory Act 2018(a) and, in accordance with section 39(3) of that Act, with the consent of the Welsh Ministers, the Scottish Ministers and the Northern Ireland department(b).

The Secretary of State, in accordance with the requirements of paragraph 15(1) of Schedule 1 to that Act, has consulted those persons it appeared appropriate to the Secretary of State to consult before making supplementary regulations.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Ivory Prohibition (Civil Sanctions) Regulations 2022 and come into force on 6th June 2022.

Interpretation

2. In these Regulations—

“the Act” means the Ivory Act 2018(c);

“item” means an item made of ivory or an item which has ivory in it;

“monetary penalty notice” means a notice imposing a monetary penalty under paragraph 2(4) of Schedule 1 to the Act;

(a) 2018 c. 30. Section 39(2) and (3) of that Act contains a definition of “the appropriate national authority”. Paragraph 25 of Schedule 1 to that Act contains a definition of “prescribed” and (together with paragraph 14 of Schedule 1) a definition of “supplementary regulations”.

(b) The definition of “the Northern Ireland department” is given by section 38(1) of that Act.

(c) 2018 c. 30.

“P” means, as the case may be, a person—

- (a) on whom a proposal notice or a monetary penalty notice has been served,
- (b) on whom a stop notice(a) has been served, or
- (c) with whom the Secretary of State may agree, or has agreed, an enforcement undertaking(b);

“proposal notice” means a notice proposing the imposition of a monetary penalty served under paragraph 2(1) of Schedule 1 to the Act.

PART 2

Monetary penalties

Calculation of period within which liability for a monetary penalty may be discharged

3.—(1) This regulation applies where the Secretary of State—

- (a) has served a proposal notice on P,
- (b) has received, within the period specified in that notice, written representations and objections from P in relation to the proposed imposition of the monetary penalty, and
- (c) has sent a notice to P stating that, having considered P’s representations and objections, the Secretary of State still proposes to impose the monetary penalty on P.

(2) Where this regulation applies, the period for discharge of P’s liability for the monetary penalty by payment of the sum specified in the proposal notice must be calculated as if it began with the day on which the Secretary of State sent to P the notice referred to in paragraph (1)(c).

Circumstances in which a monetary penalty may not be imposed

4.—(1) The Secretary of State may not impose a monetary penalty on P if—

- (a) after the service on P of a proposal notice, the Secretary of State becomes aware of new matters relating to the amount of financial benefit accruing to any person as a result of the offence, and
- (b) having considered the new matters, the Secretary of State is of the opinion that the sum specified in the proposal notice does not properly reflect the amount of financial benefit likely to have accrued to P as a result of the offence.

(2) Where paragraph (1) applies, the Secretary of State—

- (a) must withdraw the proposal notice, and
- (b) may, in respect of the same offence, serve a new proposal notice on P specifying a sum different to that specified in the original proposal notice (‘the original sum’), which may be higher or lower than the original sum.

Payment of a monetary penalty by instalments

5.—(1) This regulation applies where—

- (a) a monetary penalty notice has been served on P, and
- (b) P is not reasonably able to pay the amount of the monetary penalty within the period for payment specified in the notice (‘the specified period’).

(2) Where paragraph (1) applies, P may request the Secretary of State to—

- (a) extend the specified period;

(a) The definition of “stop notice” is given by paragraph 5(1) of Schedule 1 to the Act.

(b) The definition of “enforcement undertaking” is given by paragraph 10(1) of Schedule 1 to the Act.

- (b) allow payment of the monetary penalty by instalments.
- (3) A request made under paragraph (2) must be—
- (a) made in writing,
 - (b) sent to the Secretary of State before the end of the specified period, and
 - (c) accompanied by evidence relating to P’s circumstances, including in particular information related to—
 - (i) P’s assets, income and expenditure;
 - (ii) where P is a business, annual turnover.
- (4) On receiving a request made under paragraph (2), the Secretary of State must consider the request and the evidence submitted by P and, if of the opinion that P is not reasonably able to pay the monetary penalty within the specified period, the Secretary of State may—
- (a) extend the specified period;
 - (b) permit the monetary penalty to be paid by instalments of specified amounts, on or before specified dates.

Payment of sum to discharge liability and payment of a monetary penalty

6. Where P has—
- (a) discharged liability for a monetary penalty by payment of the sum referred to in paragraph 2(2) of Schedule 1 to the Act specified in a proposal notice served on P, or
 - (b) paid to the Secretary of State the full amount of the monetary penalty specified in a monetary penalty notice served on P,

the Secretary of State must confirm to P in writing that the sum specified in the proposal notice, or as the case may be, the monetary penalty notice, has been paid.

Power to recover a monetary penalty

7.—(1) After the end of the period for payment of a monetary penalty specified in a monetary penalty notice served on P, the Secretary of State may recover from P the monetary penalty—

- (a) as a civil debt, or
- (b) on the order of a court, as if payable under a court order.

(2) This regulation is subject to any arrangements made under regulation 5(4) (payment of a monetary penalty by instalments or over an extended period).

PART 3

Enforcement undertakings

Actions which may be specified in an enforcement undertaking

8. The actions prescribed under paragraph 10(1)(c)(ii) of Schedule 1 to the Act (enforcement undertakings) are those which have the aim of securing that—

- (a) the offence ceases at the earliest possible opportunity, and
- (b) matters in relation to the suspected offence referred to in paragraph 10(1)(a) of Schedule 1 are, so far as is possible, restored to the position that existed before the offence occurred.

Procedure for entering into an enforcement undertaking

9.—(1) An offer of an enforcement undertaking to the Secretary of State under paragraph 10(1) of Schedule 1 to the Act must—

- (a) be made in writing;
- (b) where the Secretary of State has informed P by a notice in writing that an offer of an enforcement undertaking may be considered, be made within the period of 28 days beginning with the day on which the Secretary of State sent the notice to P.

(2) If, having considered the circumstances of the suspected offence to which an offer of an enforcement undertaking relates and the terms of the undertaking offered by P, the Secretary of State decides—

- (a) that it is appropriate to accept P's offer, or
- (b) that it may be appropriate to accept P's offer if made in revised terms,

the Secretary of State must, within the period of 28 days beginning with the day on which P's offer was received, send a notice informing P of the Secretary of State's decision.

(3) Where the Secretary of State informs P that an offer of an enforcement undertaking may be accepted if made in revised terms, P must, within the period of 28 days beginning with the day on which the Secretary of State sent the notice referred to in paragraph (2) to P—

- (a) offer an enforcement undertaking in revised terms to the Secretary of State, or
- (b) inform the Secretary of State in writing that no further offer of an enforcement undertaking will be made.

(4) Where—

- (a) P has failed, within the period specified in paragraph (1)(b), to offer an enforcement undertaking in response to a notice sent by the Secretary of State inviting P to make such an offer,
- (b) the Secretary of State has decided to refuse P's offer or revised offer of an enforcement undertaking,
- (c) P has informed the Secretary of State in accordance with paragraph (3)(b) that no further offer will be made, or
- (d) P has failed to offer an enforcement undertaking in revised terms within the period specified in paragraph (3),

the Secretary of State must send a notice informing P that the suspected offence will not be dealt with by agreeing an enforcement undertaking and indicating any action which the Secretary of State proposes to take in relation to the suspected offence.

(5) The notice referred to in paragraph (4) must be sent to P—

- (a) where the Secretary of State has decided to refuse P's offer or revised offer of an enforcement undertaking, within the period of 28 days beginning with the day on which the Secretary of State received the relevant offer;
- (b) where P has notified the Secretary of State that no offer of an enforcement undertaking in revised terms will be made, within the period of 28 days beginning with the day on which the Secretary of State received P's written notification;
- (c) where P has failed to offer an enforcement undertaking in response to an invitation to offer an enforcement undertaking or to offer an enforcement undertaking in revised terms, within the period of 30 days beginning with the day on which the Secretary of State sent the relevant invitation to P.

Terms of an enforcement undertaking

10. An enforcement undertaking must—

- (a) specify the date on which the suspected offence referred to in paragraph 10(1)(a) of Schedule 1 to the Act ceased, or where that suspected offence is continuing, specify the date by which it must cease, which must be the earliest possible date,
- (b) include details of each of the actions which P intends to take as part of the enforcement undertaking, and

- (c) specify the date by which P intends to complete each action.

Publication of enforcement undertaking

11. The Secretary of State may publish details of enforcement undertakings agreed, including, but not limited to—

- (a) the name of any relevant business of P;
- (b) the terms of the undertaking;
- (c) the period within which the undertaking must be completed;
- (d) information about any certificate of compliance issued in relation to an undertaking.

Variation of an enforcement undertaking

12.—(1) Where an enforcement undertaking has been agreed, P may at any time before a certificate of compliance is issued, request that the Secretary of State vary the terms of the undertaking.

(2) The request referred to in paragraph (1) must—

- (a) be made in writing, and
- (b) include details of the reason for the request to vary the enforcement undertaking.

(3) The Secretary of State may—

- (a) if satisfied that it is appropriate to do so, vary the terms of the undertaking, including by extending the period specified for compliance;
- (b) if not satisfied that it is appropriate to vary the terms of the undertaking, refuse P's request.

(4) The Secretary of State must inform P of the result of the request for variation within the period of 28 days beginning with the day on which the Secretary of State receives P's request.

Circumstances in which a person may be regarded as having complied with an enforcement undertaking

13.—(1) Where, for reasons beyond P's control, it becomes impossible for P to comply with or to comply fully with the terms of an enforcement undertaking, P may request that the Secretary of State regard P as having complied with the undertaking.

(2) The request referred to in paragraph (1) must—

- (a) be made in writing,
- (b) include details of the terms of the undertaking which have not been complied with,
- (c) give the reasons why, in P's opinion, it is impossible to comply with or to comply fully with the terms of the undertaking, and
- (d) be sent before the end of the period specified for compliance with the undertaking.

(3) The Secretary of State may—

- (a) if satisfied that for reasons beyond P's control it is impossible for P to comply with or to comply fully with the terms of the undertaking—
 - (i) vary the terms of the undertaking, including by extending the period specified for compliance;
 - (ii) determine that P should be regarded as having complied with the undertaking;
- (b) if not satisfied that for reasons beyond P's control it is impossible to comply with or to comply fully with the terms of the undertaking, refuse P's request.

(4) The Secretary of State must, within the period of 28 days beginning with the day on which the Secretary of State receives P's request, inform P of the result of the request.

Monitoring of compliance with an enforcement undertaking

14.—(1) The Secretary of State may monitor P’s compliance with the terms of an enforcement undertaking—

- (a) by requiring P to allow an accredited civilian officer to enter, on reasonable notice and at a reasonable time, premises owned, occupied or controlled by P, for the purpose of ascertaining whether P is complying or has complied with the terms of the undertaking;
- (b) where an accredited civilian officer has entered premises in accordance with sub-paragraph (a), requiring P to facilitate examination, measurement or photography of any item on the premises that the accredited civilian officer reasonably believes is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking;
- (c) by requiring P to produce any document or record which the Secretary of State or an accredited civilian officer reasonably believes is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking;
- (d) by requiring P to assist an accredited civilian officer in taking copies of any document or record on premises entered in accordance with paragraph (a), or produced in accordance with sub-paragraph (c), which the accredited civilian officer reasonably believes is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking;
- (e) by monitoring advertising of any item which is or may be relevant to the question of whether P is complying or has complied with the terms of the undertaking.

(2) A notice given under paragraph (1)(a) must—

- (a) be in writing,
- (b) be given to P and, if P is not the occupier of the premises, to the occupier, and
- (c) set out the purpose of the proposed entry.

(3) The requirement in paragraph (2)(b) may be complied with by delivering or leaving the notice at P’s address or sending it there by post.

(4) In paragraph (1)(a), “premises” does not include any premises used wholly or mainly as a dwelling.

Certification of compliance with an enforcement undertaking

15.—(1) This regulation applies where—

- (a) P has complied with all the terms of an enforcement undertaking agreed with the Secretary of State, or
- (b) the Secretary of State has determined in accordance with paragraph (3)(a)(ii) of regulation 13 (circumstances in which a person may be regarded as having complied with an enforcement undertaking) that, for reasons beyond P’s control, it is impossible for P to comply with or to comply fully with the terms of the undertaking and that P should be regarded as having complied with the undertaking.

(2) Where this regulation applies, P may apply to the Secretary of State for a certificate of compliance with the terms of the enforcement undertaking.

(3) Where paragraph (1)(a) applies, P’s application for a certificate of compliance must be accompanied by evidence sufficient to demonstrate P’s compliance with each of the steps specified in the enforcement undertaking.

(4) Where—

- (a) the Secretary of State is satisfied that P has complied fully with all the terms of the enforcement undertaking, or
- (b) paragraph (1)(b) applies,

the Secretary of State must, within the period of 28 days beginning with the day on which the Secretary of State receives P's application for a certificate of compliance, issue a certificate of compliance to P.

(5) Where the Secretary of State is not satisfied that P has complied fully with all the steps specified in the enforcement undertaking, the Secretary of State must, within the period of 28 days beginning with the day on which P's application was received, notify P of the steps which, in the opinion of the Secretary of State, have not been fully complied with.

(6) Where paragraph (5) applies, P may, within the period of 28 days beginning with the day on which the Secretary of State sent the notification referred to in that paragraph, submit to the Secretary of State further evidence to demonstrate compliance with the terms of the enforcement undertaking.

(7) Paragraphs (8) and (9) apply where the Secretary of State has considered any further evidence submitted by P in accordance with paragraph (6).

(8) If the Secretary of State is satisfied that P has complied fully with the terms of the enforcement undertaking, the Secretary of State must, within the period of 28 days beginning with the day on which the further evidence is received, issue to P a certificate of compliance.

(9) If the Secretary of State is not satisfied that P has complied fully with the terms of the enforcement undertaking, the Secretary of State must, within the period of 28 days beginning with the day on which the further evidence is received—

- (a) inform P that the Secretary of State is not satisfied that P has complied fully with the terms of the enforcement undertaking, and
- (b) indicate to P any action which the Secretary of State proposes to take in relation to the suspected offence to which the enforcement undertaking relates.

Circumstances where a person is to be regarded as not having complied with an enforcement undertaking

16.—(1) Where P has given inaccurate, misleading or incomplete information to the Secretary of State in relation to an enforcement undertaking, the undertaking must be regarded as not having been complied with.

(2) If a certificate of compliance has been issued to P on the basis of inaccurate, misleading or incomplete information given by P in relation to an enforcement undertaking, the Secretary of State may, by notice in writing to P, revoke the certificate of compliance.

(3) Where the Secretary of State sends a notice of revocation of the certificate of compliance to P under paragraph (2)—

- (a) the enforcement undertaking to which the certificate relates must be regarded as not having been complied with, and
- (b) the Secretary of State must, within the period of 28 days beginning with the day on which the Secretary of State sent the notice of revocation to P, indicate to P any action which the Secretary of State proposes to take in relation to the suspected offence.

Partial compliance with an enforcement undertaking

17. Where P has complied partly but not fully with an enforcement undertaking, P's part-compliance must be taken into account by the Secretary of State or, as the case may be, by a court or tribunal, when considering the imposition of any criminal or other sanction on P in relation to the suspected offence to which the enforcement undertaking relates.

PART 4

Appeals

Suspension of a decision to impose a monetary penalty

18.—(1) Where P has appealed to the First-tier Tribunal against a decision of the Secretary of State to impose a monetary penalty, P may also apply to the Tribunal to suspend the effect of that decision.

(2) On receiving an application under paragraph (1), the Tribunal may—

- (a) refuse the application;
- (b) direct that the effect of the Secretary of State's decision to impose a monetary penalty is suspended until the appeal has been determined;
- (c) direct that the Secretary of State's decision to impose a monetary penalty is suspended to such limited extent as is specified in the direction.

Suspension of a decision to serve a stop notice

19.—(1) Where P has appealed to the First-tier Tribunal against a decision of the Secretary of State to serve on P a stop notice, P may also apply to the Tribunal to suspend the effect of the stop notice until the appeal has been determined.

(2) On receiving an application under paragraph (1), the Tribunal may—

- (a) refuse the application;
- (b) direct that the effect of the stop notice is suspended until the appeal has been determined, or such earlier time as is specified in the direction;
- (c) direct that the effect of the stop notice is suspended to such limited extent as is specified in the direction.

(3) If the Tribunal makes a direction under paragraph (2)(b) or (c), the Tribunal must also consider any application by the Secretary of State for the cancellation or variation of the direction.

Powers of the First-tier Tribunal on appeal

20.—(1) On an appeal against a decision of the Secretary of State to impose a monetary penalty or to serve a stop notice, the First-tier Tribunal may—

- (a) confirm the Secretary of State's decision to impose the monetary penalty or, as the case may be, to serve the stop notice;
- (b) withdraw the monetary penalty or stop notice;
- (c) take any of the steps that the Secretary of State could take in relation to the monetary penalty or the stop notice;
- (d) remit the decision to impose the monetary penalty or to serve the stop notice to the Secretary of State for reconsideration.

(2) On an appeal against a decision of the Secretary of State not to issue a completion certificate in relation to a stop notice, the First-tier Tribunal may—

- (a) confirm the decision of the Secretary of State not to issue a completion certificate;
- (b) direct the Secretary of State to issue a completion certificate;
- (c) remit the decision on whether to issue a completion certificate to the Secretary of State for reconsideration.

Unopposed appeals

21.—(1) This regulation applies where—

- (a) P has sent or delivered to the First-tier Tribunal a notice of appeal against—
 - (i) the imposition of a requirement or the service of a notice under Schedule 1 to the Act or under these Regulations,
 - (ii) a refusal by the Secretary of State to issue a certificate of compliance in relation to an enforcement undertaking,
 - (iii) the revocation of a certificate of compliance in relation to an enforcement undertaking, or
 - (iv) a refusal by the Secretary of State to issue a completion certificate in relation to a stop notice, and
- (b) before submitting a response, the Secretary of State notifies the Tribunal that the appeal will not be opposed.

(2) Where this regulation applies, the Tribunal may direct that the appeal be treated as if it were determined in favour of P and, where the Tribunal does so, it is not required to make an order.

(3) Where the appeal is treated under paragraph (2) as if determined in favour of P, the Secretary of State must, within the period of 28 days beginning with the day on which the notification referred to in paragraph (1)(b) was sent or delivered to the Tribunal, take the appropriate step specified in paragraph (4).

(4) The appropriate step is—

- (a) where the appeal relates to a proposal notice, a monetary penalty notice or a stop notice, to withdraw the notice and inform P of its withdrawal;
- (b) where the appeal relates to a refusal to issue, or to the revocation of, a certificate of compliance in relation to an enforcement undertaking, to issue a certificate of compliance to P;
- (c) where the appeal relates to a refusal to issue a completion certificate in relation to a stop notice, to issue a completion certificate to P.

Application for suspension of the effect of an enforcement undertaking

22.—(1) Where P has appealed to the First-tier Tribunal against a decision of the Secretary of State not to issue, or to revoke, a certificate of compliance in relation to an enforcement undertaking, P may also apply to the Tribunal to suspend the effect of the enforcement undertaking to which it relates until the appeal has been determined.

(2) On receiving an application under paragraph (1), the Tribunal may—

- (a) refuse the application to suspend the effect of the enforcement undertaking;
- (b) direct that the effect of the enforcement undertaking is suspended until the appeal has been determined, or until such earlier time as is specified in the direction;
- (c) direct that the effect of the enforcement undertaking is suspended to such extent as is specified in the direction.

(3) If the Tribunal makes a direction under paragraph (2)(b) or (c), the Tribunal must also consider any application by the Secretary of State for the cancellation or variation of the direction.

Appeal against a decision not to issue a certificate of compliance or to revoke a certificate of compliance in relation to an enforcement undertaking

23.—(1) Where the Secretary of State refuses to issue a certificate of compliance or revokes a certificate of compliance in relation to an enforcement undertaking, P may appeal that decision to the First-tier Tribunal.

(2) An appeal under paragraph (1) may be on the ground that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unreasonable.

(3) On an appeal against a refusal to issue a certificate of compliance or to revoke a certificate of compliance, the First-tier Tribunal may—

- (a) confirm the decision of the Secretary of State not to issue, or to revoke, a certificate of compliance;
- (b) direct the Secretary of State to issue a certificate of compliance;
- (c) take any of the steps that the Secretary of State could take in relation to the enforcement undertaking, to the refusal to issue the certificate of compliance or to the revocation of the certificate of compliance;
- (d) remit the decision on whether to issue a certificate of compliance or to revoke a certificate of compliance to the Secretary of State for reconsideration.

Lord Goldsmith of Richmond Park
Minister of State

15th March 2022

Department of the Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to enforcement of the prohibition on dealing in ivory imposed by section 1 of the Ivory Act 2018 (c. 30) ('the Act').

Part 2 of these Regulations sets out the arrangements for the imposition and payment of monetary penalties under Part 1 of Schedule 1 to the Act, including circumstances in which a monetary penalty may not be imposed. Regulation 5 deals with arrangements for payment where a person is not reasonably able to pay a monetary penalty within the specified period. Regulation 7 provides power for the Secretary of State to recover an unpaid monetary penalty as if the penalty were a civil debt.

Part 3 of these Regulations makes provision in relation to enforcement undertakings. Regulations 8 to 10 specify the actions and terms which may be included in an enforcement undertaking and deal with procedure in relation to enforcement undertakings. Regulations 11 to 16 deal with variation of and compliance with an undertaking and make provision for the Secretary of State to monitor compliance and to publish details of enforcement undertakings agreed. Regulation 17 requires part-compliance with an enforcement undertaking to be taken into account when considering the imposition of criminal or civil penalties where a person has failed to comply fully with the undertaking.

Part 4 provides additional powers which the First-tier Tribunal may exercise in dealing with appeals in relation to requirements imposed under Schedule 1 to the Act, including powers to suspend the effect of a decision of the Secretary of State and arrangements for unopposed appeals. Regulation 23 gives a right of appeal against a decision by the Secretary of State not to issue a certificate of compliance, or to revoke a certificate of compliance, in relation to an enforcement undertaking.

An impact assessment was produced for the Ivory Bill and is available on www.legislation.gov.uk. No additional impact assessment has been produced for this instrument as no, or no significant, further impact on the private or voluntary sector is foreseen.

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