EXPLANATORY MEMORANDUM TO

THE IVORY ACT 2018 (MEANING OF "IVORY" AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

2024 No. XXX

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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Lord Benyon, Minister of State (Climate, Environment and Energy) at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Richard Pullen, Deputy Director for Environmental Governance, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Graeme Osborn at the Department for Environment, Food and Rural Affairs Telephone: +44 (0) 20802 65758 or email: ivoryconsultation@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Ivory Act 2018 ("the Act"). The Act prohibits dealing in elephant ivory. This instrument extends the prohibition against dealing in ivory to ivory from the following species: common hippopotamus (hippopotamus amphibius), killer whale (orcinus orca), narwhal (monodon monoceros), and sperm whale (physeter macrocephalus).

4.2 This instrument also amends Schedule 1 (Prescribed Institutions) to the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (S.I. 2022/94) to correct the names of some of the institutions prescribed under the Act. Prescribed Institutions provide the Secretary of State with advice on applications for exemption certificates.

4.3 This instrument also amends the Ivory Prohibition (Civil Sanctions) Regulations 2022 (S.I. 2022/311) to make consistent the references to service of notices relating to civil sanctions.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 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. The Act already bans dealing in elephant ivory. The policy objective of this instrument is to help conserve populations of four additional animal species, common hippopotamus (hippopotamus amphibius), killer whale (orcinus orca), narwhal (monodon monoceros), and sperm whale (physeter macrocephalus), 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 ban on dealing 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.

5.2 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 sets an example at home to encourage similar actions globally.

5.3 This instrument corrects some of the names of the institutions prescribed under the Act by amending the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (S.I. 2022/94) to avoid ambiguity.

5.4 This instrument also makes consistent the references to service of notices relating to civil sanctions by amending the Ivory Prohibition (Civil Sanctions) Regulations 2022 (S.I. 2022/311) to avoid ambiguity.

What was the previous policy, how is this different?

5.5 The prohibition on dealing ivory under the Act previously only applied to elephant ivory. This instrument extends the prohibition to four additional species: hippopotamus, killer whale, narwhal and sperm whale.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations are made in exercise of the powers conferred by sections 2(5), 37(2) and 39(1) of, and paragraph 14(1) of Schedule 1 to, the Act. In accordance with section 39(3) of the Act, they are made with the consent of the Welsh Ministers, Scottish Ministers and the Northern Ireland department.

6.2 The Act currently prohibits dealing in elephant ivory, subject to certain exemptions. The changes made by this instrument will extend the application of the Act to 4 additional ivory-bearing species, as detailed in sections 4 and 5.

6.3 The Ivory Prohibition (Exemptions) (Process and Procedure) Regulations 2022 provide the institutions that are able to carry out expert assessment of items for which

an application for an exemption certificate under the Act has been made, as well as provision about applications for exemption certificates, and fees and appeals relating to such applications.

6.4 The Ivory Prohibition (Civil Sanctions) Regulations 2022 make provision for the enforcement of the Act by way of civil sanctions, and set out arrangements for the imposition and payment of monetary penalties, as well as provision for the procedure relating to enforcement undertakings.

Why was this approach taken to change the law?

6.5 Legislation is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 An online public consultation took place between 17 July 2021 and 11 September 2021. The consultation was undertaken on behalf of the devolved administrations with their consent. It set out three options: (1) extend the Act to hippopotamus, (2) extend the Act to five species (hippopotamus, killer whale, narwhal, sperm whale and walrus), and (3) do not extend the Act to other species. Option 2 received the support of the overwhelming majority of respondents. Walrus ivory is not included in the extension of the Act under this instrument because it will remain prohibited subject to certain narrow exemptions under Council Regulation (EC) No 1007/2009 on trade in seal products as assimilated direct legislation in Great Britain and its application in Northern Ireland under the Windsor Framework.

8. Applicable Guidance

8.1 Guidance on dealing in items containing ivory or made of ivory[1] and statutory guidance, 'Ivory Act 2018 enforcement and civil sanctions'[2], have been published for elephant ivory. These are available at gov.uk and will be amended in parallel to this instrument coming into force to include these four animal species. Any material which has been proved to be ivory and is relevant to offence proceedings is assumed to be ivory taken from the tusk or tooth of an elephant or one of these four species unless the accused can prove otherwise. The burden of proof would, therefore, lie with the accused in order to prove that it is not ivory from an elephant or one of these four species and is instead material from a different species. For example, scientific test results could be provided as evidence of origin.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 The impact on business, charities or voluntary bodies is outlined in the impact assessment for the Act available online[3]. A full 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.

[1] Guidance on dealing in items containing ivory or made of ivory: https://www.gov.uk/guidance/dealing-in-items-containing-ivory-or-made-of-ivory

[2] Statutory guidance: Ivory Act 2018 enforcement and civil sanction: Ivory Act 2018 enforcement and civil sanctions - GOV.UK (www.gov.uk)

[3] Ivory Act 2018 impact assessment: https://publications.parliament.uk/pa/bills/cbill/2017-2019/0215/IA182205_01.pdf

Impact on businesses, charities and voluntary bodies

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

9.3 There is no, or no significant impact on small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause. It will be kept under review per the ordinary course of government business.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This memorandum contains information for the Joint Committee on Statutory Instruments, (1) to correct the names of some of the institutions prescribed under the Act in the Schedule to the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (S.I. 2022/94) (Prescribed Institutions), and (2) to make consistent in the Ivory Prohibition (Civil Sanctions) Regulations 2022 (S.I. 2022/311) the references to service of notices relating to civil sanctions and rely on the general common law and Interpretation Act 1978 rules to determine when service is deemed to have been effected.

11.2 The procedure for free issue will be applied and this instrument will be issued free of charge to all known recipients of the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (S.I. 2022/94) and the Ivory Prohibition (Civil Sanctions) Regulations 2022 (S.I. 2022/311).

12. European Convention on Human Rights

12.1 Lord Benyon, Minister of State (Climate, Environment and Energy), has made the following statement regarding Human Rights:

"In my view the provisions of The Ivory Act 2018 (Meaning of "Ivory" and Miscellaneous Amendments) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").