EXPLANATORY MEMORANDUM TO

THE IVORY PROHIBITION (CIVIL SANCTIONS) REGULATIONS 2022

2022 No. 311

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 civil sanctions and enforcement regime which underpins 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 Act establishes a number of civil sanctions that may be made use of in response to breaches of the Act, namely the imposition of monetary penalties or stop notices, the entering into of enforcement undertakings and enforcement cost recovery notices. This instrument makes detailed provision in relation to these, other than for enforcement cost recovery notices.

Monetary penalties

2.3 A monetary penalty under the Act is a requirement to pay a specified amount, which may be up to £250,000, to the Secretary of State. This instrument sets out detail on the use of the Secretary of State's powers under the Act, including in particular where the Secretary of State may extend the time for payment or allow payment in instalments, and, where relevant information is not available to the Secretary of State prior to the serving of a proposal notice, where the Secretary of State may withdraw the original proposal notice and serve a new proposal notice. This instrument also allows the Secretary of State to recover unpaid monetary penalties and costs of recovery as a civil debt.

Enforcement undertakings

2.4 Under the Act, where the Secretary of State has reasonable grounds to suspect that a person has committed an offence, the person may offer an undertaking to take specified action, within a specified time period, and the Secretary of State may accept this as an "enforcement undertaking".

2.5 The instrument sets out further details on enforcement undertakings and certification of compliance with undertakings including the circumstances under which the Secretary of State can deem the enforcement undertaking to have been fully complied with or not complied with, the terms that must be included in an enforcement undertaking and the activities that the Secretary of State can undertake to monitor compliance with enforcement undertakings.

Appeals

2.6 The Act establishes an appeal mechanism in relation to certain decisions related to civil sanctions and notices imposed or served under the Act in relation to stop notices and monetary penalties. This instrument establishes an appeal mechanism against a refusal by the Secretary of State to issue a compliance certificate in relation to an enforcement undertaking. It also sets out detail on procedure and establishes additional powers which the First Tier Tribunal may exercise on dealing with appeals.

3. Matters of special interest to Parliament

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 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 ("the Act") and (1) in accordance with section 39(3) of the Act, with the consent of the Welsh Ministers, Scottish Ministers and the Northern Ireland department.

7. Policy background

What is being done and why?

7.1 The policy objective of the Act 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 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.

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 sets an example at home to encourage similar actions globally.

7.3 This instrument makes detailed provisions in relation to the enforcement provisions in the Act, to ensure the effective application of the ban.

Explanations

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

7.4 Existing restrictions concerning commercial activities in ivory are applied internationally through CITES, an international conservation agreement which aims to ensure that trade in endangered species does not threaten their survival. The Convention entered into force in 1975 and the UK ratified it in 1976. CITES has prohibited trade in new ivory, except in exceptional circumstances, from Asian elephants since 1975 and from African elephants since 1990.

7.5 The Ivory Act 2018 and the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 provide detail in relation to the procedure for certification and registration of potentially exempt ivory items and were laid in February 2022. The intention is for applications for registration and certification to be made in advance of the coming into force of the prohibition.

What will it now do?

7.6 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. The process for registering items or applying for a certificate under these exemptions is set out in the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022.

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 23 August 2021 and 19 September 2021 on a UK wide basis, as agreed with the Devolved Administrations. The consultation was published online and can be found here. It set out the Government's proposals for operating the sanctions regime, including enforcement provisions in relation to civil sanctions and the related draft statutory guidance.

10.2 Respondents included those involved in the antiques trade, musicians and non-governmental organisations (NGOs) focussed on wildlife and conservation. Individuals included some with interests in sectors related to the trade in ivory, such as antiques and musical instruments, and some who expressed concerns about the ivory trade and its impact on wildlife and conservation.

10.3 The consultation received 20 responses. 12 responses were by, or on behalf of, organisations, and 8 responses were from individuals.

10.4 The low number of responses was anticipated given the technical and specialist nature of the consultation and likelihood of being of interest to a niche group of stakeholders.

10.5 The majority of respondents agreed with the proposed approach to the additional policies and guidance in the consultation and provided useful feedback to help clarify

the statutory guidance. The Government's response outlines where we intend to make changes to either the proposed regulations or guidance.

11. Guidance

11.1 Statutory guidance in relation to the Ivory Act enforcement regime was consulted on as part of the consultation referred to in paragraph 10.1. This will be published in advance of the date that the instrument comes fully into force.

12. Impact

12.1 The impact on business, charities or voluntary bodies is outlined in the impact assessment for the Act available here.

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

12.3 A full impact assessment has not been prepared for this instrument because the impacts are already outlined in the impact assessment for the Act.

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. 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, as the Act itself establishes the sanctions and the regulations do not impose additional regulatory burdens.

15. Contact

15.1 Melanie Riley at the Department for Environment Food and Rural Affairs (Telephone: +44 (0)20802 66381 or email: melanie.riley@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.