STATUTORY INSTRUMENTS

2022 No. 94

TRADE

WILDLIFE

The Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022

Made - - - -	*1st February 2022*
Laid before Parliament	*3rd February 2022*
Coming into force - -	*24th February 2022*

The Secretary of State, in exercise of the powers conferred by sections 2(5), 3(1)(g) and (h), 4(7)(b) and (8)(**a**), 5(5), 10(1)(f) and (g) and 39(1)(a) and (b) of the Ivory Act 2018 ("the Act")(**b**) and with the consent of the Welsh Ministers, the Scottish Ministers and the Northern Ireland department(**c**) in accordance with section 39(3) of the Act, makes these Regulations.

The Secretary of State, in accordance with section 2(5) of the Act, being of the opinion that the institutions specified in the Schedule have the necessary knowledge and expertise to provide the Secretary of State with advice on applications for exemption certificates and having obtained the consent of the persons in charge of each institution to the prescription of that institution as able to provide such advice, in accordance with section 2(6) of the Act, prescribes those institutions as able to provide such advice to the Secretary of State.

The Secretary of State has consulted the Welsh Ministers, the Scottish Ministers and the Northern Ireland department in accordance with the requirements of section 39(4) of the Act before making regulations which prescribe a fee.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 and come into force on 24th February 2022.

(**a**) Section 4(8) is cited for the meaning given to "specified information".
(**b**) 2018 c. 30. Section 39(2) and (3) contain a definition of "the appropriate national authority".
(**c**) The definition of "the Northern Ireland department" is given by section 38(1) of the Ivory Act 2018.

Interpretation

2. In these Regulations—

"the Act" means the Ivory Act 2018;

"applicant" means a person applying for, as the case may be, an exemption certificate in respect of an item under section 2 or registration of an item under section 10(1) of the Act;

"assessor" means an individual nominated by a prescribed institution to assess and inspect an item referred to the prescribed institution under section 3(2) of the Act;

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

"online portal" means the online portal established by the Secretary of State for the purpose of making online applications for exemption certificates or for registration of an item.

PART 2

Exemption for outstandingly valuable and important pre-1918 items

Prescribed institutions

3.—(1) The institutions specified in the Schedule are prescribed for the purposes of section 2(5) of the Act.

(2) Paragraph (3) applies where—

(a) an application for an exemption certificate has been referred to a prescribed institution under section 3(2) of the Act; and

(b) before the assessor has completed an assessment of the item—

(i) the Secretary of State determines that the prescribed institution no longer has the necessary knowledge and expertise to provide the Secretary of State with advice on applications for exemption certificates, or

(ii) the persons in charge of the institution withdraw their consent (given in accordance with section 2(6) of the Act) to the prescription of the institution.

(3) Where this paragraph applies, the Secretary of State must withdraw the referral of the application to the institution mentioned in paragraph (2) and refer it to another prescribed institution.

(4) Where an assessor assesses any item in accordance with section 3(3) of the Act, no duty of care is owed by the prescribed institution or the assessor in respect of that assessment to any person other than the Secretary of State.

Additional information to be provided with an application for an exemption certificate

4.—(1) This regulation specifies the information additional to that specified in section 3(1)(a) to (f) of the Act which the applicant must provide to the Secretary of State on making an application for an exemption certificate.

(2) Where the application for an exemption certificate is made by an applicant who is not the owner of the item, the applicant must provide —

(a) the name and address of the applicant, and

(b) the capacity in which the applicant is making the application.

(3) Where the application is made through the online portal, the applicant must provide—

(a) the email address of the applicant, and

(b) if the application is being made on behalf of the owner of the item, and that owner has an email address, the email address of the owner.

(4) Where the photograph to be provided in accordance with section 3(1)(c) of the Act shows only part of the item, the applicant must also provide a photograph of the entire item.

(5) Where there has been a previous application for an exemption certificate in respect of the same item—

(a) if that application was unsuccessful, the applicant must provide the reference number of the previous application,

(b) if that application was successful, but the exemption certificate issued has been subsequently revoked by the Secretary of State in accordance with section 4(3) of the Act, the applicant must provide the number of the revoked exemption certificate relating to the item.

(6) The applicant must provide copies of any information or documents which the applicant considers support or confirm the explanation to be provided in accordance with section 3(1)(e) of the Act (explanation as to why the applicant is of the opinion that the item satisfies the conditions in section 2(2)(a) and (b) of the Act).

(7) Where the applicant intends to sell or hire out the item, the applicant must provide confirmation of that intention.

Fee for an application for an exemption certificate

5. The fee prescribed under section 3(1)(h) of the Act (fee in respect of an application for an exemption certificate) is £250 per item.

Information in relation to dealing in an item in respect of which an exemption certificate was issued to a different person

6.—(1) This regulation applies where a person ("P") intends to deal in an item in respect of which an exemption certificate was issued to a different person (as described in section 4(7) of the Act).

(2) Before dealing in the item, P must provide to the Secretary of State—

(a) P's name, address and, if P has an email address, that email address;

(b) where P is not the owner of the item—

(i) the name and address of the owner of the item;

(ii) if the owner of the item has an email address, that email address;

(iii) the capacity in which P is proposing to act in dealing in the item;

(c) the reference number of the exemption certificate relating to the item;

(d) a declaration that, in P's opinion—

(i) the exemption certificate relates to the item that P intends to deal in,

(ii) the relevant information on the certificate remains accurate and complete, and

(iii) the item continues to satisfy the conditions specified in section 2(2)(a) and (b) of the Act.

(3) In this regulation, "relevant information" has the meaning specified in section 4(8) of the Act.

Fee in relation to dealing in an item in respect of which an exemption certificate was issued to a different person

7. The fee prescribed under section 4(7)(b) of the Act (fee in relation to dealing in an item in respect of which an exemption certificate was issued to a different person) is £20 per item.

Appeal against refusal or revocation of an exemption certificate

8.—(1) Where an application for an exemption certificate is refused or an exemption certificate is revoked, the owner of the item concerned may by notice in writing require the Secretary of State to disclose—

(a) the opinion of the assessor in relation to the item and the reasons for forming that opinion, as notified to the Secretary of State in accordance with section 3(3)(b) and (c) of the Act;

(b) the identity of the prescribed institution to which the item was referred.

(2) Where an assessor's opinion or the identity of the prescribed institution is required to be disclosed in accordance with paragraph (1), the Secretary of State must—

(a) notify the prescribed institution that the assessor's opinion or the identity of the institution is to be disclosed, and

(b) disclose the required information to the person making the application within 7 days, beginning with the day on which the notice under paragraph (1) was received by the Secretary of State.

(3) Where a representative of a prescribed institution or an assessor is required to provide information or to give evidence in connection with an appeal made under section 5(1)(b) of the Act against the refusal of an application for, or revocation of, an exemption certificate, the Secretary of State must reimburse the reasonable costs of the institution's representative or assessor which are associated with that appeal.

(4) In a case where—

(a) an application for an exemption certificate has been refused in accordance with section 3(2) or (6)(b) or an exemption certificate has been revoked in accordance with section 4(3) of the Act, and

(b) the owner of the item has lodged an appeal with the First-tier Tribunal against the refusal or revocation,

a fresh application for an exemption certificate in respect of the same item may not be made until the appeal against the refusal or revocation has been finally determined.

(5) In paragraph (4), "finally determined" means that a court or tribunal has finally determined the appeal and the period allowed for any further appeal or any application for leave to appeal to a higher court or tribunal has elapsed.

(6) A notice of appeal to the First-tier Tribunal against the refusal or revocation of an exemption certificate must, where the information is not otherwise required to be provided by rule 22 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(**a**) or by a practice direction, be accompanied by all the information which accompanied the application for an exemption certificate which is the subject of the appeal.

(7) Subject to paragraph (8), where a court or tribunal remits a decision to the Secretary of State for reconsideration, the Secretary of State must reconsider the refusal or revocation and notify the appellant of the fresh decision within 28 days beginning with the date of the order or direction of the court or tribunal.

(8) In a case where a court or tribunal has remitted a decision to the Secretary of State for reconsideration and the Secretary of State considers it necessary that an application for an exemption certificate is referred to an assessor for a fresh assessment and opinion, the Secretary of State must—

(a) refer the application to a prescribed institution within 7 days beginning with the date of the order or direction, and

(b) consider the fresh opinion and notify the appellant of the new decision within 28 days beginning with the day on which the Secretary of State receives the assessor's opinion.

(9) Paragraphs (7) and (8) are subject to any contrary direction of a court or tribunal.

(**a**) S.I. 2009/1976. There are amendments to regulation 22, but none is relevant.

Unopposed appeals

9.—(1) This regulation applies where—

(a) a notice of appeal relating to refusal or revocation of an exemption certificate has been sent to the First-tier Tribunal, and

(b) before submitting a response, the Secretary of State notifies the Tribunal that the appeal will not be opposed.

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

(3) Where the appeal is treated as if determined in favour of the appellant, the Secretary of State must issue an exemption certificate within 28 days of the date on which the notification referred to in paragraph (1)(b) was sent to the Tribunal.

PART 3

Other exemptions

Information to be provided with an application for registration

10.—(1) This regulation specifies the information additional to that specified in section 10(1) of the Act (registration), which the applicant must provide to the Secretary of State on making an application for registration of an item.

(2) Where the application for registration is submitted on behalf of the owner of the item by another person ("P"), P must provide—

(a) P's name and address,

(b) if P has an email address, that email address, and

(c) the capacity in which P is acting in relation to the owner of the item in making the application.

(3) Where the application is made through the online portal, the applicant must provide the email address of the applicant.

(4) Where the photograph to be provided in accordance with section 10(1)(c) of the Act shows only part of the item, the applicant must also provide a photograph of the entire item.

(5) Where the applicant intends to sell or hire out the item, confirmation of that intention.

Fees to be provided with an application for registration

11. The fees prescribed under section 10(1)(g) of the Act (fee for registration of an item under section 10) are—

(a) £20 for a single item, or

(b) £50, in a case where a single proposed transaction or arrangement is to be made in respect of several items (numbering more than two and no more than twenty), where—

(i) the transaction or arrangement is to be made between the same owner and the same buyer, or as the case may be, hirer, and

(ii) all the items meet the same relevant exemption condition under section 6, 7, 8 or 9(2)(b) of the Act.

Goldsmith of Richmond Park
Minister of State
1st February 2022 Department of the Environment, Food and Rural Affairs

SCHEDULE

Regulation 3

Prescribed Institutions

1. The following institutions are prescribed under section 2(5) of the Act—

(a) the Ashmolean Museum of Art and Archaeology;

(b) Glasgow Museums;

(c) the Horniman Museum;

(d) Manchester Museum; the University of Manchester;

(e) the National Maritime Museum;

(f) National Museums Scotland;

(g) the Royal Armouries Museum;

(h) University of Cambridge Museums;

(i) the Victoria and Albert Museum.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for implementation of the Ivory Act 2018 (c. 30) ("the Act"). The Act prohibits dealing in ivory unless the item either qualifies for exemption under section 2 of the Act (pre-1918 items of outstanding artistic etc value and importance) or is registered under section 10 of the Act (registration) as falling under one of four categories for exemption specified in sections 6 to 9 (other exemptions).

Part 2 of, and the Schedule to, these Regulations prescribe institutions able to carry out expert assessment of items for which an application for an exemption certificate has been made. Part 2 also makes detailed provision about applications for exemption certificates and dealing in an item in respect of which an exemption certificate was issued to a different person, including the fees payable. Regulations 8 and 9 set out requirements in relation to appeals against a refusal to issue an exemption certificate or against revocation of a certificate.

Part 3 of these Regulations sets out the additional information which must accompany an application under section 10 of the Act (registration) and prescribes the fees payable to the Secretary of State in relation to registration of a single item and to a group registration of a number of items of the same type.

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, voluntary or public sector is foreseen.

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