

IVORY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Ivory Bill as brought from the House of Lords on 13 November 2018 (Bill 287).
- 2 These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 78 were tabled in the name of the Minister.

Commentary on Lords Amendments

Lords Amendments to clause 2: Pre-1918 items of outstanding artistic etc. value and importance

Lords Amendment 1, 2, 3 and 4

- 6 Lords Amendment 1 would replace a power to publish guidance with a power to make regulations under the negative resolution procedure. This means that other matters that the Secretary of State and prescribed institutions must consider when deciding whether a pre-1918 item is of outstandingly high artistic, cultural or historical value would be set out in regulations, rather than in guidance. "Other matters" will be in addition to an item's rarity and importance and might include, an item's religious or scientific value or whether the item has previously been on public display, for instance.
- 7 Lords Amendments 2 and 3 would replace "Secretary of State" with "appropriate national authority" because the regulations, as set out by Lords Amendment 1, would apply to subject matter that is within the devolved competence of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37. Lords Amendment 4 is a consequential amendment to Lords Amendment 3 and would replace "his or her" with "the authority's".

Lords Amendments to clause 3: Applications for exemption certificates

Lords Amendment 5 and 6

- 8 Lords Amendment 5 would replace a powers to publish guidance with a power to make regulations under the negative resolution procedure. This means that regulations, rather

than guidance, will be used to specify information that a person applying for an exemption certificate must provide.

- 9 Lords Amendment 6 would replace “Secretary of State” with “appropriate national authority” because the regulations, as set out by Lords Amendment 5, would apply to subject matter that is within the devolved competence of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37.

Lords Amendments to clause 4: Further provision about exemption certificates

Lords Amendment 7

- 10 Lords Amendment 7 would remove the power to issue guidance setting out the form or manner in which anything required by clause 3 or 4 may or must be done (for example, requiring that an application is made online or via post). Instead a range of application methods will be provided by Government (including post, phone and an online system) and there will be no requirement that one particular method is used. This means this power is no longer required.

Lords Amendment 8 and 9

- 11 Lords Amendment 8 would remove a power to issue guidance and would replace it with a power to lay regulations. This is with regards to a power to issue guidance which would specify information that must be provided to the Secretary of State when a person, other than the original holder of the exemption certificate, deals in an item. This situation may arise because the exemption certificate for items that qualify under this exemption will remain with the item when the owner of the item changes. It is therefore the case that the new owner, having taken ownership of the item and the exemption certificate, may wish to deal in that item. In order to do so, they must possess a certificate for that item and they will need to provide information and pay a fee to the Animal and Plant Health Authority (APHA), who will be acting on behalf of the Secretary of State. This amendment would require that the "specified information", to be given by the owner to APHA when carrying out such a dealing, must be specified in regulations rather than in guidance.
- 12 Lords Amendment 9 would replace “Secretary of State” with “appropriate national authority” because the regulations, as set out in Lords Amendment 8, would apply to subject matter within the competence of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37.

Lords Amendments to clause 5: Fresh applications and appeals

Lords Amendment 10, 11, 12, 13 and 14

- 13 Lords Amendment 10 would mean that the appeal body, which would hear appeals against the refusal or revocation of an exemption certificate, would be named on the face of the Bill and would be the First-tier Tribunal. The subsections inserted by Lords Amendment 11 would set out the grounds on which a person may apply for an appeal against the refusal or revocation of an exemption certificate. A power is also conferred on to the appropriate national authority (see Lords Amendment 62 of clause 37) to prescribe further grounds in regulations, which would enable an applicant to appeal a decision to refuse or revoke an exemption certificate.
- 14 Lords Amendment 12 would remove replace "Secretary of State" with “appropriate national authority” because these regulations, which would make further provisions about the

appeals process, would apply to subject matter within the devolved competence of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37. Lords Amendment 13 would insert “further” after “make” in order to make clear that these regulations would provide “further” provisions to those set out on the face of the Bill as a result of Lords Amendment 10.

- 15 Lords Amendment 14 would remove subsection (4), which, in the most part, would no longer be necessary as the matters in question would instead be dealt with by First-tier Tribunal Rules. Lords Amendment 14 would, however, also insert replacement text that would require the Secretary of State to make regulations to set a fee that must be paid in order to raise an appeal. The power to make these regulations, as outlined in amendments to clause 37, would be retained with the Secretary of State but consultation with the Devolved Administrations would be required.

Lords Amendments to clause 9: Acquisitions by qualifying museums

Lords Amendments 15 and 17

- 16 Lords Amendment 15 would replace the reference to “Museums Galleries Scotland” with a reference to the “Scottish Administration”. The effect of this amendment would be that it would be the Scottish Ministers, or someone acting on their behalf, who would identify accredited museums as ‘qualifying museums’ for the purposes of this exemption, rather than Museums Galleries Scotland. Lords Amendment 17 is consequential to Lords Amendment 14 and ensures that the correct number references are used in this provision.

Lords Amendment 16

- 17 Lords Amendment 16 would replace “Secretary of State” with “appropriate national authority” because the regulations, relating to a consequential change of name or transfer of functions involving a body specified in subsection (3)(a), would apply to subject matter within the devolved competency of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under Lords Amendment 62 to clause 37.

Lords Amendments to clause 10: Registration

Lords Amendment 18 and 19

- 18 Lord Amendment 18 would replace a power to publish guidance with a power to make regulations under the negative resolution. As a result, further information that the owner of an item must provide when applying to register an item would be specified in regulations, rather than guidance.
- 19 Lords Amendment 19 would replace “Secretary of State” with “appropriate national authority” because the regulations, set out in Lords Amendment 18, apply in relation to Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37.

Lords Amendments to clause 11: Further provision about registration

Lords Amendment 20

- 20 Lord Amendment 20 would remove the power for the Secretary of State to issue guidance setting out the form or manner in which anything required by clause 10 or 11 may or must be done (for example, that an application must be made over the phone or on the internet). Instead it is the Government’s intention that a range of methods will be provided for these

actions to be completed (for example by post, telephone or over the internet) meaning this power is no longer necessary.

Lords Amendments to clause 15: Power to stop and search vehicles

Lords Amendments 21 and 22

- 21 Lords Amendment 21 would be a consequential amendment to Lords Amendment 25 which would remove clause 17 from the Bill. Lords Amendment 21 would remove "accredited civilian officer" from this provision. Accredited civilian officers are officers of the regulator, which is the Office of Product Safety and Standards (OPSS). The effect of this amendment would be to specify that the power to search vehicles, provided for in clause 15, would only be conferred onto customs and police officers and not onto accredited civilian officers. Lords Amendment 22 is a consequential amendment to Lords Amendment 25 which would remove clause 17. Lords Amendment 22 would remove a cross reference to clause 17 which would no longer be required.

Lords Amendments to clause 16: Power to board and search vessels and aircraft

Lords Amendments 23 and 24

- 22 Lords Amendment 23 would be a consequential amendment to Lords Amendment 25 which would remove clause 17 from the Bill. Lords Amendment 23 would remove the term "accredited civilian officer" from this provision. The effect of the amendment would be to ensure that the power to board and search vessels and aircraft, provided for in clause 16, is only conferred onto customs and police officers and not onto accredited civilian officers. Lords Amendment 24 is a consequential amendment to Lords Amendment 23 which would remove clause 17. Lords Amendment 24 would remove a redundant cross reference to clause 17 which would no longer be required.

Lords Amendments to clause 17: Powers to enter and search premises

Lords Amendment 25

- 23 Lord Amendment 25 would remove clause 17 from the Ivory Bill. Clause 17 conferred on to accredited civilian officers the power to enter and search premises, subject to giving reasonable notice, for the purpose of raising awareness, assessing compliance or because there are reasonable grounds to suspect relevant evidence is on the premises. Lords Amendment 46 would add new clauses to the Bill which confer more limited powers of entry on to accredited civilian officers.

Lords Amendments to clause 18: Warrants authorising entry and search of premises

Lords Amendments 26, 27, 28, 29, 30 and 31

- 24 Lords Amendments 26-31 would remove the term "accredited civilian officer" from clause 18. The effect of these amendments would be to remove the power conferred onto accredited civilian officers to apply for, be issued with, or execute a search warrant to search any premises (including premises primarily used as a dwelling).

Lords Amendment 32

- 25 Lords Amendment 30 would move the definition of 'premises' from clause 17 to clause 18. As Lords Amendment 25 would remove clause 17 from the Bill, this amendment would ensure that the definition of a 'premises' is retained in the Bill.

These Explanatory Notes relate to the Lords Amendments to the Ivory Bill as brought from the House of Lords on 13 November 2018 [Bill 287]

Lords Amendments to clause 19: Further provision about search warrants

Lords Amendments 33, 34, 35, 36 and 37

- 26 Lords Amendments 33-37 would remove the term “accredited civilian officer” from clause 19. The effect of these amendments would be to remove the power conferred onto accredited civilian officers to apply for, be issued with, or execute a search warrant to search any premises (including premises primarily used as a dwelling). As a result of this amendment this power would only be conferred onto customs and police officers.

Lords Amendments to clause 20: Powers of examination etc.

Lords Amendments 38, 39, 40 and 41

- 27 Lords Amendments 38 would mean that the power of examination, as provided for in this clause, is only conferred onto police and customs officers and not on to accredited civilian officers. A redefined power of examination would be conferred onto accredited civilian officers by a subsequent Lords amendment.
- 28 Lords Amendments 39 and 41 would be consequential to Lords Amendment 25 which would remove clause 17 from the Bill. These amendments would remove redundant cross references to clause 17.
- 29 Lords Amendments 40 would remove the power conferred on to a police or customs officer to test an item that the officer thinks is or may be relevant evidence, and also the power to take a sample of the item (possibly in a way that might damage it). Instead, police or customs officers would have the power to examine or measure items on the premises, which are considered to be relevant evidence. As with other powers in this clause, this power would not be conferred onto accredited civilian officers.

Lords Amendments to clause 21: Power to require production of documents etc.

Lords Amendments 42 and 43

- 30 Lords Amendments 42 would mean that the power to require production of documents etc., as provided for in this clause, is only conferred onto police and customs officers and not on to accredited civilian officers. A redefined power to require documentation would be conferred onto accredited civilian officers by Lords Amendment 47.
- 31 Lords Amendment 43 would be a consequential amendment to Lords Amendment 25, which would remove clause 17 from the Bill. This amendment would therefore remove a redundant cross reference to clause 17.

Lords Amendments to clause 22: Powers of seizure etc.

Lords Amendments 44 and 45

- 32 Lords Amendment 44 would mean that powers of seizure, as provided for in this clause, are only conferred on to police and customs officers and not on to accredited civilian officers. Redefined powers of seizure are conferred on to accredited civilian officers by Lords Amendment 47.
- 33 Lords Amendment 45 is a consequential amendment to Lords Amendment 25 which would remove clause 17 from the Bill. This amendment would therefore remove a redundant cross reference to clause 17.

Lords Amendments after clause 22

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Lords Amendments 46 and 47

- 34 Lords Amendment 46 would insert a new clause after clause 22 entitled: "Accredited civilian officers: powers of entry". This clause would confer powers of entry on to accredited civilian officers. This new clause limits the powers of entry given to accredited civilian officers. It also separates the powers of entry conferred onto accredited civilian officers from those conferred onto police and customs officers. This new clause would allow an accredited civilian officer to enter a premises for one of two purposes. The first is to enter a premises the officer reasonably believes to be used in connection to the dealing of ivory for the purpose of assessing compliance. The second is to enter a premises on which the officer has reasonable grounds to suspect relevant evidence is present. This new clause would not confer a power of entry for the purpose of promoting awareness and understanding of the provisions of the Bill once enacted (as was provided before amendment). It would also remain the case that an accredited civilian officer must give reasonable notice prior to entering a premises. Finally this clause would not allow an accredited civilian officer to enter a premises used primarily as a dwelling.
- 35 Lords Amendment 47 would insert a second new clause after clause 22 entitled: "Other powers of accredited civilian officers". This second new clause would confer other powers on to accredited civilian officers. The officers would be able to use these powers having entered a premises under the first new clause or if they were otherwise lawfully on a premises and have reasonable grounds to suspect relevant evidence. The second new clause would not confer a power of search on to accredited civilian officers and instead, would allow them to examine or measure anything that they believe may be relevant evidence, for example, an item that appears to be made of or contain ivory on display in a shop. This new clause would also confer on to accredited civilian officers a similar power to require the production of documents as provided in clause 21 and similar powers of seizure as those provided for in 22. This means an accredited civilian officer would also have the power to request any person on the premises to produce any relevant document, for example an exemption certificate or registration. If an officer does identify an item or document that is relevant evidence of an offence, or is relevant evidence to an investigation into whether an offence has been committed, the officer would also have the power to seize that item or document.

Lords Amendments to clause 23: Excluded items

Lords Amendment 48

- 36 Lords Amendment 48 would be consequential to Lords Amendment 47 and would add, to clause 23, a reference to the second new clause inserted after clause 22. A reference to this second new clause would be included in clause 23 to ensure clause 23 applies to the powers of seizure conferred onto accredited civilian officers.

Lords Amendments to clause 24: Further provision about seizure under section 22

Lords Amendment 49

- 37 Lords Amendment 49 would be consequential to Lords Amendment 47 and would add, to clause 24, a reference to the second new clause inserted after clause 22. A reference to this second new clause would be included in clause 24 to ensure clause 24 applies to the powers of seizure conferred onto accredited civilian officers.

Lords Amendments to clause 25: Notices and records in relation to seized items

Lords Amendment 50

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- 38 Lords Amendment 50 would be consequential to Lords Amendment 47 and would add, to clause 25, a reference to the second new clause inserted after clause 22. A reference to this second new clause would be included in clause 25 to ensure clause 25 applies to the powers of seizure conferred onto accredited civilian officers.

Lords Amendments to clause 26: Powers of entry, search and seizure: supplementary provision

Lords Amendment 51

- 39 Lords Amendment 51 would be consequential on Lords Amendment 25, which would remove clause 17 from the Bill, and Lords Amendment 46, which adds the first new clause relating to powers of entry conferred on to accredited civilian officers. Lords Amendment 51 would remove a redundant reference to clause 17 and add a reference to the first new clause inserted after clause 22. This would ensure that clause 26 would apply to the powers of entry conferred onto accredited civilian officers.

Lords Amendments to clause 27: Offences of obstruction

Lords Amendment 52

- 40 Lords Amendment 52 would be consequential to Lords amendments to clause 19, which would remove "accredited civilian officers" from clause 19. Lords Amendment 52 would remove the cross-reference to "accredited civilian officers" in clause 27, as accredited civilian officers would no longer have powers associated with search warrants and would, therefore, only be able to accompany a police or customs officer when those officers enter a premises under a search warrant. To note, clause 27(1) would continue to apply to the actions of an accredited civilian officer.

Lords Amendments to clause 28: Retention of seized items

Lords Amendment 53

- 41 Lords Amendment 53 would be consequential to Lords Amendment 47 and would add, to clause 28, a reference to the second new clause inserted after clause 22. A reference to this second new clause would be included in clause 28 to ensure clause 28 applies to the powers of seizure conferred onto accredited civilian officers.

Lords Amendments after clause 33

Lords Amendment 54

- 42 Lords Amendment 54 would add a new clause after clause 33 entitled: "Contracts of insurance etc." Under this amendment the prohibition in clause 1 would not apply to a transaction under an insurance policy that is in force at the time of commencement of the Bill. It also ensures that the acquisition, or disposal of an ivory item by a regulated insurer as the result of standard insurance activities will not be covered by the prohibition in clause 1. This means that insurance agreements between (i) owners of insured ivory items and their insurers and (ii) insurers and other insurers and re-insurers will not be affected by the Bill. For example, where an insurer acquires title to an item as a result of paying out on a claim made by an insured person following a loss or theft, this will be exempt from the clause 1 prohibition. Where that item is subsequently recovered, and the insurance company "re-sells" it to the insured person in return for repayment of the consideration paid out, this is also exempt. Transfer of title between insurers and re-insurers also falls outside the prohibition in clause 1 (e.g. when insurers merge or re-insure insurance contracts).

Lords Amendments to clause 35: Meaning of "ivory"

Lords Amendments 55, 56 and 57

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- 43 Lords Amendment 55 would replace “Secretary of State” with “appropriate national authority” because the relevant regulations, to extend the scope of the Bill to other ivory bearing species, would apply to subject matter within the devolved competence of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37. Lords Amendments 56 and 57 are consequential amendments to Lords Amendment 55. These amendments would clarify that regulations made by the Secretary of State will be made by affirmative procedure and the equivalent procedures would be followed for regulations made in each of the Devolved Administrations.

Lords Amendments to clause 36: Meaning of other expressions

Lords Amendments 58, 59, 60 and 61

- 44 Lords Amendment 58 is consequential to Lords Amendment 25 which would remove clause 17 from the Bill. Lords Amendment 58 would remove a redundant reference to clause 17 and instead insert a reference the first of the new clauses entitled "Accredited civilian officers: powers of entry". This means the definition of "accredited civilian officer" would be correctly signposted in the Bill.
- 45 Lords Amendment 59 would insert a signpost to the definition of "the appropriate national authority", which would be defined in clause 37 as a result of Lords Amendment 60. Lords Amendment 60 adds a definition for the term "the Northern Ireland Department", which would be added to a number of clauses as a result of Lords amendments. The term is defined as "the Department of Agriculture, Environment and Rural Affairs in Northern Ireland".
- 46 Lords Amendment 61 would remove a redundant reference to a definition of a "premises", which would have previously been found in clause 17. Instead the amendment would insert a new reference to this definition, which would be found in clause 18 as a result of Lords Amendment 30.

Lords Amendments to clause 37: Regulations and guidance

Lords Amendment 62, 63, 64, 65 and 66

- 47 Lords Amendment 62 would insert a definition of "appropriate national authority". This term would be inserted into the Bill by a number of other Lords amendments where the Bill refers to regulations which apply to England, Wales, Scotland or Northern Ireland. This amendment also sets out the process which would be followed with regards to these regulations. The effect is that most regulations under the Bill that apply in relation to Wales, Scotland or Northern Ireland may be made only by, or with the consent of, the Welsh Ministers, Scottish Ministers or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland ('the department'). Each of the appropriate national authorities would also be able to make their own regulations, for example, were consent not given for the Secretary of State to make regulations in Wales, Scotland or Northern Ireland. This will enable the Devolved Administrations to exercise their devolved functions using powers in the Bill where they consider it appropriate. However, this is not the case for: (i) clauses 3(1)(h), 4(7)(b), 5(4) and 10(1)(g) which concern the powers to set fees. These regulations will remain exercisable by the Secretary of State, but will require consultation with the Welsh Ministers, Scottish Ministers and the department. Commencement regulations are unaffected by these amendments.
- 48 Lords Amendment 63 is consequential to the Lords amendments which would replace references to the Secretary of State with references to the appropriate national authority. This amendment ensures that regulations are made through the appropriate legislative means in each of the Devolved Administrations. To note, this amendment does not mention

regulations made by the Scottish Ministers because the relevant provision is made by section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010.

- 49 Lords Amendments 64 and 65 are consequential to the Lords amendments which would replace references to the "Secretary of State" with references to the "appropriate national authority". These amendments would clarify that regulations made by the Secretary of State will be laid before Parliament on the basis of the negative procedure and that the appropriate equivalent procedures would be followed for regulations made in each of the Devolved Administrations.
- 50 Lords Amendment 66 is consequential to Lords Amendments to clauses 2, 3, 4 and 10, which would replace powers to issue guidance with powers to make regulations. Lords Amendment 66 would, therefore, remove a redundant subsection referring to the need to publish guidance issued under these clauses.

Lords Amendments to Schedule 1: Civil Sanctions

Lords Amendments 67, 68, 69, 70, 71, 72 and 73

- 51 Lords Amendment 67 would both remove the term "Secretary of State" and insert "appropriate national authority". This is because these supplementary regulations would apply to subject matter within the devolved competence of Wales, Scotland or Northern Ireland. The effect of this amendment is explained further under amendments to clause 37. Lords Amendments 68 to 72 would be consequential to Lords Amendment 67 and would replace references to the Secretary of State with references to the "appropriate national authority" or the "authority". Lords Amendment 73 would require the Secretary of State to consult the Welsh Ministers, the Scottish Ministers and the Northern Ireland department before publishing guidance (or revised guidance) under paragraph 21 of Schedule 1. This paragraph concerns the publication of enforcement guidance.

Lords Amendments to Schedule 2: Search warrants: England and Wales and Northern Ireland

Lords Amendments 74, 75, 76, 77 and 78

- 52 Lords Amendment 74 is consequential to Lords Amendment 26, which would remove the powers of accredited civilian officers to apply for, be issued with, or execute a search warrant to search any premises. Lords Amendment 74 would, therefore, remove reference to accredited civilian officers from the definition of a "senior officer" with regards to search warrants. Lords Amendments 75, 76, 77 and 78 are similarly consequential to Lords Amendment 26. These amendments would remove references to "accredited civilian officers" from Schedule 2, in doing so, these amendments would clarify that only customs or police officers would have the power to apply for, be issued with, or execute a search warrant to search any premises.

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