What these notes do

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119).

- These Explanatory Notes have been prepared by Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.
Table of Contents

Subject                                                                 | Page of these Notes
Overview of the Bill                                                   | 3
Policy background                                                       | 3
  Public consultation                                                   | 3
  Aim of the Bill                                                       | 3
  Existing restrictions                                                 | 4
  Exemptions to the ban                                                 | 5
  Enforcement                                                            | 6
Legal background                                                        | 7
Territorial extent and application                                     | 7
Commentary on provisions of Bill                                       | 8
  Prohibition                                                           | 8
    Clause 1: Prohibition on dealing in ivory                           | 8
  Exemption for outstandingly valuable and important items              | 9
    Clause 2: Pre-1918 items of outstanding artistic etc value and importance | 9
    Clause 3: Applications for exemption certificates                  | 10
    Clause 4: Further provision about exemption certificates            | 12
    Clause 5: Fresh applications and appeals                            | 13
  Other exemptions                                                       | 13
    Clause 6: Pre-1918 portrait miniatures                              | 13
    Clause 7: Pre-1947 items with low ivory content                    | 14
    Clause 9: Acquisition of items by qualifying museums               | 16
    Clause 10: Registration                                             | 18
    Clause 11: Further provision about registration                    | 19
  Criminal and civil sanctions                                          | 20
    Clause 12: Offence of breaching the prohibition or causing or facilitating a breach | 20
    Clause 13 – Civil Sanctions                                        | 22
  Powers of entry, search and seizure                                   | 23
    Clause 14: Power to stop and search persons                         | 23
    Clause 15: Power to stop and search vehicles                        | 23
    Clause 16: Power to board and search vessels and aircraft           | 24
    Clause 17: Power to enter and search premises                       | 24
    Clause 18: Warrants authorising entry and search of premises       | 25
    Clause 19: Further provision about search warrants                  | 25
    Clause 20: Powers of examination etc.                               | 26
    Clause 21: Power to require production of documents etc.            | 26
    Clause 22: Powers of seizure etc.                                   | 26
    Clause 23: Excluded items                                           | 27
    Clause 24: Further provision about seizure under clause 22          | 27

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Overview of the Bill

1 The purpose of the Bill 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, including intra-EU trade to and from the UK.

Policy background

Public consultation

2 On 6 October 2017, Environment Secretary Michael Gove announced a consultation on proposals to ban ivory sales in the UK to help bring an end to elephant poaching, which is driven primarily by consumer demand for ivory and speculative acquisition of ivory. The Government’s proposals for an ivory sales ban were subject to a 12-week public consultation, which ran from 6 October 2017 to 29 December 2017.

3 The consultation put forward proposals to implement a ban on ivory sales in the UK, and to prohibit the import and re-export of ivory for sale to and from the UK, including intra-EU trade to and from the UK, where such sales could contribute either directly or indirectly to the poaching of elephants. Four categories of exemption to this ban were proposed, and views sought as to their validity and the parameters of any final exemptions. The consultation also sought evidence from respondents as to the size and value of the market for ivory items in the UK, and the impact of a sales ban on conservation, businesses and private individuals. Views were sought as to the compliance, enforcement and sanctions arrangements the Government should introduce in order to implement a ban. The measures proposed would not affect the ownership of ivory items.

4 In total 71,238 responses to the consultation were received and analysed, with 88% of respondents supporting a ban on ivory sales. The evidence received through the consultation exercise, as well as that received through other sources and engagement with stakeholders, informed the final scope of the UK ivory ban to be implemented through the Ivory Bill.

Aim of the Bill

5 The aim of the Ivory Bill is to help conserve elephant populations, specifically by reducing poaching, through significantly limiting the legal market for ivory in the UK. This is intended to reduce demand for ivory both within the UK and overseas through the application of the sales ban to re-exports of ivory from the UK. This aim is in line with the 2017 Conservative Manifesto commitment to “protect[ing] rare species”.¹

6 The Bill also aims to remove the opportunity to launder recently poached ivory as old ivory products through legal markets, and for it to be re-exported to “demand” markets, i.e. those markets where ivory continues to be a desirable commodity. Such markets are also the primary destinations for newly poached and illegally-sourced ivory. This is intended to prevent products from the UK contributing, including inadvertently, to markets which create a demand for ivory, driving poaching and the illegal trade in ivory. Finally, the ivory ban will demonstrate the UK does not consider commercial activities in any ivory that could fuel poaching to be acceptable and it sends a message that similar actions should be taken globally.

The previous Government had announced it was developing proposals for an ivory ban before the 2017 General Election, in keeping with the 2015 Conservative manifesto commitment to “press for a total ban on ivory sales” and the 2010 Conservative manifesto commitment to “press for a total ban on ivory sales and the destruction of existing stockpiles”.

At the 17th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Resolution 10.10 (Rev COP17) on Trade in Elephant Specimens was agreed. This non-binding resolution recommended that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade should take all necessary measures to close their domestic ivory markets as a matter of urgency. The resolution also recognised that narrow exemptions to this closure for some items may be warranted, but that any exemptions should not contribute to poaching or illegal trade.

The Government, through the Ivory Bill, is addressing its domestic and international commitments by adopting a ban on commercial activities in ivory. Clause 1 of the Bill provides for this prohibition and defines commercial dealing as follows:

- buying, selling or hiring ivory;
- offering or arranging to buy, sell or hire ivory;
- keeping ivory for sale or hire;
- exporting ivory from the United Kingdom for sale or hire; or
- importing ivory into the United Kingdom for sale or hire.

This definition is in line with the EU Wildlife Trade Regulations (see paragraph 11 of these Notes). The ivory ban will not affect ownership of items made of, or containing ivory, including inheriting, donating or bequeathing.

Existing restrictions

Existing restrictions concerning commercial activities and 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.

CITES is implemented within the European Union (EU) through four EC Regulations (338/97 as amended, 865/06 as amended, 792/2012 and 2015/736), which are more commonly referred to as the EU Wildlife Trade Regulations. These Regulations implement CITES in a

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4 https://www.cites.org/eng/res/index.php
5 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01997R0338-20170204&rid=1

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
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stricter manner than is required by the Convention. The EU (Withdrawal) Act 2018 allows for the full conversion of these regulations into UK law. The UK Control of Trade in Endangered Species (Enforcement) Regulations 2018 (COTES) make provision for enforcement of the European Regulations.9

12 The Government has made clear its intention for the UK ivory ban to build upon and go further than current rules on ivory. Under the current regulations, items of worked ivory made prior to 3 March 1947 may be subject to commercial activities within the UK or the EU without a permit.10 A permit, issued by the UK’s CITES Management Authority, the Animal and Plant Health Authority (APHA)11 is required for the commercial use of worked ivory items made after 1947 and for the import or re-export of ivory of any age to third party countries outside the EU. In line with EU guidance, the UK’s policy is not to issue documents authorising the sale of, or other commercial trade in, raw African elephant ivory of any age.

13 The Ivory Bill will prohibit the commercial use of ivory and ivory items regardless of their age, with the exception of items meeting one of the five categories of exemption (see section “Exemptions to the ban”). This will mean that the current date-based restrictions will become obsolete. In line with recommendations made in response to the consultation, “backstop dates” are applied to the exemptions included within the Ivory Bill. Dates were recommended to make sure modern ivory items are not permitted under the exemptions and that the UK ivory ban is at least as strong as or stronger than existing regulations.

14 The EU Wildlife Regulations will continue to apply to the import and export of ivory to and from the UK, and alongside the exemptions this Bill will put in place. As a result, if the owner of an item of pre-1947 worked ivory wishes to sell it, or engage in another form of commercial use with it, to a country outside of the EU, they must: i) ensure the item satisfies the conditions of an exemption under the Ivory Bill; and ii) meet existing requirements under the EU Wildlife Trade Regulations on the import and export of ivory.

15 The UK is a Party to CITES in its own right and will continue to be bound by the obligations of the Convention on exiting the EU. The UK Government proposes to ensure continued compliance with CITES on EU exit, through converting the EU Wildlife Trade Regulations into a UK-specific regime under the powers set out in the European Union (Withdrawal) Act 2018.

Exemptions to the ban

16 As part of its consultation, the Government made clear its intention to create exemptions to the ivory ban where the commercial use of an item does not contribute directly or indirectly to the ongoing poaching of elephants. This is in line with CITES Resolution 10.10 and with other examples of domestic ivory trade bans applied globally.12 Strictly-defined exemptions

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10 Worked specimens are defined as specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to affect their purpose.
11 The APHA is an executive agency of the Department for Environment, Food and Rural Affairs.
12 A number of other countries have already taken actions to restrict their domestic markets, including the United States, France and China. The Government has therefore considered global best practice in defining the scope of the UK ivory ban and the exemptions.
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to be applied. Summary convictions up to the statutory maximum allowed in each devolved administration are also allowed for. A range of civil sanctions are also provided for in Clauses 12 and 13. Further details are set out in Schedule 1.

22 Clauses 14 to 27 confer the necessary powers onto the regulatory body, customs officials and the police in order to enforce the ban. These powers are derived from, and applied in line with, the Police and Criminal Evidence Act 1984. Schedule 2 provides further details with regard to search warrants in England, Wales and Northern Ireland.

23 Clauses 28 to 32 provide for the necessary processes for the retention and disposal or return of seized items, including the processes by which an application of forfeiture and an appeal against this application can be made. Finally, Clauses 33 to 42 provide for general provisions necessary for the operation of the Bill.

Legal background

24 The ban in the Ivory Bill covers most of the commercial activities outlined in Article 8(1) of Council Regulation No 338/97 (the “Basic Regulation”). The prohibitions are to:

- the purchase,
- the offer to purchase,
- the use for commercial sale which would mean any form of sale (this includes sale for money and sales in kind such as exchange or bartering),
  - the offering for sale (which would include advertising, or causing an item to be advertised for sale and invitation to treat), or
  - the keeping for sale and transporting for sale (this includes (i) the selling an ivory item and then transporting it; and (ii) the transporting it with the intention of selling it)

of ivory from African elephants (*Loxodonta Africana*) and Asian elephants (*Elephas Maximus*). The prohibition does not apply to other forms of ivory, for example, mammoths, walruses or narwhals. The Bill does contain a provision which allows the Secretary of State to add other ivory bearing species to the scope of the Bill if they are listed in an appendix to CITES.

25 The scope of the ban includes both physical locations and online fora. In terms of geographical scope, the ban covers commercial activities concerning elephant ivory within the UK, between the UK and the EU and between the UK and third countries.

26 The ban in the Ivory Bill does not affect the right to own ivory items for purely personal use, the right to gift, donate, inherit, or the right to bequeath. The regime in CITES and the EU Wildlife Trade Regulations will continue to apply to these activities.

Territorial extent and application

27 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

28 Import and export is a reserved matter across the United Kingdom. At present, the question whether any of the provisions in the Bill are within the legislative competence of the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly is still under consideration.

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In so far as any provision of the Bill relates to the import or export of ivory items (described at Clause 1(2)(d) and (e)), those provisions are a reserved matter. It is still under consideration as to whether any of the other provisions of the Bill are within the legislative competence of the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly.

See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Prohibition

Clause 1: Prohibition on dealing in ivory

31 This clause provides for a ban on dealing in ivory. Subsection (1) states that dealing in ivory is prohibited and subsection (6) states that there are exemptions to this prohibition. The exemptions are provided for in Clause 2 and Clauses 6 to 9. As the prohibition is on dealing in ivory, these measures do not affect the right to own, gift, inherit or bequeath ivory.

Subsection (2) defines dealing for the purposes of the Bill and therefore as applied to the prohibition. The definition aligns with the application of “commercial use” under the EU Wildlife Trade Regulations. The definition provided in subsection (2) applies to transactions regardless of where the transaction is taking place, for example, in a physical location or in an online forum. It applies to individuals, groups of individuals and organisations alike. The following dealing activities are included in the prohibition:

a. **Buying, selling and hiring**
   
   i. Both parties to a transaction, the buyer and the seller, are subject to the prohibition, putting a responsibility on both parties to act responsibly and in accordance with the ban. As such, both parties could be in breach of the prohibition and be liable under the prohibition.
   
   ii. Subsections (3)(a) and (3)(b) state that buying and selling includes bartering or exchange. As such the prohibition applies to the exchange of ivory for any good or service and, therefore, is not restricted to financial transactions, or exchanges for money.
   
   iii. Hiring or offering to hire ivory are prohibited activities. For example, temporarily obtaining an ivory item in return for a payment or other exchange of goods.

b. **Offering or arranging to buy, sell or hire ivory**

   i. Activities undertaken prior to a sale, purchase or hire in ivory, in order to offer ivory for dealing or arrange a dealing in ivory, are prohibited. As set out in subsection (3)(c), advertising ivory for dealing and inviting to treat (inviting prospective buyers to bid, tender or negotiate) are prohibited activities. A person carrying out such an activity, who may be the seller, buyer or another individual or organisation, would be acting in breach of the prohibition.
c. Keeping ivory for sale or hire
   i. Holding ivory which is clearly intended for sale or hire is a prohibited activity. This would, for example, prohibit transporting ivory with the intention to sell it.

d. Exporting ivory from, and importing ivory to, the United Kingdom for sale or hire
   i. Subsection (2)(d) ensures that exporting ivory from the UK for the purposes of sale or hire is prohibited, and subsection (2)(e) ensures that it is prohibited to import ivory into the UK for the purposes of sale or hire.
   
   ii. Subsection (4)(a) states that buying or hiring ivory, or offering or arranging to buy or hire ivory, outside of the UK is not covered by this Bill. For instance, it would not be an offence under this Bill for a purchase of ivory to be made outside of the UK.
   
   iii. Subsection 4(b) states that it is an offence to sell ivory or to hire it as a lender, or to offer to sell or hire ivory as a lender, to a third party outside of the UK. This subsection also, through reference to subsection (2)(b) ensures that it is an offence to offer or arrange to buy ivory from outside of the UK. In effect, this prohibits remote purchases, for instance those made over the internet, or through telephone auctions.

33 Subsection (5) ensures that under the prohibition, “ivory” includes both items made entirely of ivory and items which contain ivory and may be made largely or partly from other substances. Clause 35 defines the term “ivory” as applied under this Bill. In these explanatory notes, the term “ivory item” is used throughout to capture both items made entirely of ivory and items which contain ivory.

**Exemption for outstandingly valuable and important pre-1918 items**

Clause 2: Pre-1918 items of outstanding artistic etc value and importance

34 This clause provides for an exemption from the prohibition for ivory items of outstanding artistic, cultural or historic value which are assessed as the rarest and most important items of their type. Subsection (1) permits an item made of or containing ivory to be subject to dealing if a certificate is issued for this item under this exemption, this is hereby referred to as an ‘exemption certificate’. The exemption of ivory items is also subject to Clause 4(7), whereby dealing cannot take place if the exemption certificate had been issued to a different individual or organization (e.g. the previous owner) unless the current dealer has satisfied both of the conditions under that subsection. An exemption certificate is issued by the Secretary of State, in accordance with the certification process provided for in Clauses 3 and 4. Dealing may only be undertaken if the exemption certificate has been issued, remains valid and has not been revoked. To note, exemption certificates are only applicable to this exemption, not to other exemptions in the Bill, which are subject to a registration process.

35 Subsection (2) sets out the conditions for the outstanding artistic etc. value and importance exemption. All conditions must be satisfied in order for an exemption certificate to be issued. These conditions are:

   a. The item must be pre-1918, as defined in Clause 36 subsections (2) and (3).
   
   b. The item is of outstandingly high historical, cultural or artistic value, which will be assessed in the certification process provided for in Clauses 3 and 4.
Subsection (3) supplements subsection (2) and ensures that an item’s rarity, its importance relative to other examples of its type and other specified matters will be taken into account when considering if the condition set out in subsection (2)(b) is satisfied for that item. All of these factors must be considered when assessing an item. Subsection (3)(c) confers a delegated power on the Secretary of State to issue statutory guidance to specify additional factors that should be considered when assessing an item under this exemption. This guidance is to be used by those assessing an item under the certification process provided for under Clause 3. It is also intended that this guidance is accessible and may be used by the owners of such items in considering whether they wish to put forward their item for assessment under this category of exemption.

Subsection (5) confers a delegated power on the Secretary of State, through regulations, to designate and update a list of institutions, which will be enabled to act in an advisory capacity to the Secretary of State in considering items for exemption under this clause. These institutions will hold specialist expertise in ivory, and this expertise will cover a range of disciplines or periods, for example oriental art, medieval art, renaissance art or in scientific and nautical instruments. These designated institutions could, for example, be accredited museums and university museums. The delegated power allows the Secretary of State to create this list and to amend this list if necessary, for example, if expertise held by institutions changes over time. Subsection (6) ensures that consent from those individuals responsible for the institution is required prior institution being designated.

An illustrative example of the type of items that may be considered exempt under the rarest and most important items category. Assessments will be subject to the detailed criteria set out in any statutory guidance, to be issued in due course.

(1) Artist/maker unknown, The Crucified Christ c 1275-1300 (made), Origin England or France, materials Elephant ivory. “This is an ivory figure of the Crucified Christ, made in France (Paris) or England, in ca. 1275-1300. This is one of the finest surviving ivory carvings of the crucified Christ from the Gothic era, despite its fragmentary state… The figure is from a large altar cross or retable, it is a rare example of a Gothic ivory crucifix figure.”

© Victoria and Albert Museum, London

Clause 3: Applications for exemption certificates

This clause provides for the certification process which applies to the outstanding artistic etc. value and importance exemption. Subsection (1) sets out the information an applicant is required to provide when completing an online application, including information demonstrating how the item meets the criteria for this category as will be set out in statutory guidance. The information required will include both the physical details and description of...
the item, including photographs, and any additional information that the applicant considers is relevant, and makes the case for the item meeting the criteria. This could, for instance, include detail of the item having been previously displayed in a museum, cited in an academic work, or evidence of its provenance or historical associations.

As set out in subsection (2), following the submission of an application this application will be referred, by the Secretary of State, to one of the designated advisory institutions, as outlined in Clause 2(5). This referral is dependent upon the Secretary of State considering the initial application and confirming that the application meets two conditions:

a. The applicant has provided all necessary details and paid the necessary fee as outlined in subsection (1); and

b. The application is reasonable, based on the conditions set out in Clause 2(2). For example, if the item referred to in the application is clearly not pre-1918 this application would not be considered reasonable by the Secretary of state.

If either of these conditions is not met, the Secretary of State must refuse the application, inform the applicant of this outcome and the item would not be exempt from the prohibition.

If both conditions are met, the application will be referred to an advisory institution with relevant expertise. Subsections (3) and (4) ensure that an individual expert within an advisory institution may be nominated to carry out the necessary assessment subject to that individual expert giving their consent to the nomination. As set out in subsection (3) an expert from an advisory institution, the ‘assessor’, must:

a. Undertake an assessment of the information provided in the application against the conditions outlined in Clause 2(2);

b. Based on this assessment, the assessor must provide their advice to the Secretary of State as to whether the item would qualify for the exemption based on the conditions set out in Clause 2(2); and

c. the assessor must provide a reason to the Secretary of State as to why, in the assessor’s opinion, the item does or does not satisfy the conditions.

Subsection (5) ensures that the Secretary of State is able to cover the costs incurred by the institution and/or assessor in each instance in which an assessment is carried out. These must be reasonable costs, for example, reflecting the time taken to carry out the assessment. In practice, it is intended that these costs will be recovered through a fee charged to applicants. A delegated power is conferred on the Secretary of State, in subsection (1)(h), to allow him or her to set and maintain the level of this fee through regulations. In practice the intention is for this fee to be applied as a two part fee in which: i) a set fee is paid to the Secretary of State to make an initial application and this fee would cover administration costs incurred by the Secretary of State; ii) if the application is referred to an assessor, an additional fee would be charged to cover reasonable costs incurred by the assessor, for example, the cost to the institution of an expert assessor’s time to assess an item and to submit a report with their recommendations to the Secretary of State for consideration.

Subsection (6) ensures that the Secretary of State takes the decision to grant or refuse an application for an exemption certificate. This decision will be informed by the advice provided by the expert assessor. If the Secretary of State refuses to issue an exemption certificate, the applicant will be notified, including of the reasons why the item was not considered to meet the criteria. Dealing in that item therefore would remain prohibited. As set out in subsection (7), if the Secretary of State grants the application, an exemption certificate will be issued to the applicant.

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
It should be noted that the certification process provided for in Clause 3 is applied in addition to existing certification and permitting requirements under the EU Wildlife Trade Regulations. For example, for an item of outstanding artistic etc. value and importance to be legally sold to a buyer in another EU Member State or third party country, an exemption certificate, as stipulated under this Bill, and relevant certificates or permits, as stipulated under the EU Wildlife Trade Regulations, would be required.

**Clause 4: Further provision about exemption certificates**

This clause sets out additional provisions on the certification process. Subsection (1) ensures that an exemption certificate, if issued, will be specific to the item subject to the application. To facilitate buyers and sellers to act in compliance with the ivory ban the certificates will include a date of issue, an identification code and other information, such as photographs, to identify the exempt item. This allows for a potential purchaser to assure themselves that the exemption certificate relates to the item in question.

The intention is that a new application for an exemption certificate does not need to be made each time a certified item, under this exemption, is sold or changes ownership. It is the responsibility of the owner to pass on the exemption certificate to the subsequent owner. Subsequent owners of certified items, however, are required to comply with a registration process, as outlined in subsection (7), should they wish to carry out dealing in the item. Thus, the exemption certificate ‘accompanies’ (i.e. remains valid in respect of) an item when a transaction is made. This differs from other exemptions outlined within the Bill.

Subsection (2) confers a responsibility on the owner of the item certified as exempt under Clause 4, to notify the Secretary of State if any of the information associated with the item or the application for its exemption changes or becomes out of date or if the owner becomes aware that any of the information within the application is incorrect or incomplete. This could be, for instance, if the item is damaged in such a way as is likely to affect its ability to meet the exemption criteria, or should it emerge that any of the information initially provided, such as historical provenance, is proven to be incorrect. Subsection (3) explains that the Secretary of State can revoke an exemption certificate if the Secretary of State believes that:

a. The exemption conditions outlined in Clause 2(2) are not met or are no longer met; or

b. Any other information associated with the item or the application for its exemption is inaccurate, changes or becomes out of date and the owner does not notify the Secretary of State, as set out in Clause 4(2).

Subsection (4) allows the Secretary of State to issue a new exemption certificate with revised information. Such an action would be taken in order to address any issues of inaccurate or incomplete information which may arise over time, where this new information, or altered state or condition of the item does not affect the item’s assessment against the exemption criteria. For instance, if the item incurs damage, but it is the assessment of the Secretary of State that this damage does not affect the rarity, importance or historic, artistic or cultural significance of the item.

Subsection (5) ensures that the Secretary of State can issue a replacement exemption certificate if one of the following applies: the original certificate has been lost; the owner was unable to obtain the certificate from the previous owner; or the Secretary of State believes there is an appropriate reason to replace the certificate. While it is the responsibility of the seller to pass on the exemption certificate if the ownership of the item changes, subsection (5) addresses such circumstances where this is not possible, for example, this may occur if an exempt item is inherited. Subsection (6) ensures that the application process set out in Clause 3 would not apply if subsection (5) applies and a replacement certificate is being sought.
Subsection (7) provides for the situation in which an exempt item transfers ownership from one person to another person (P) and the subsequent owner, P, wishes to carry out dealing in that item. In this situation P must satisfy both of the following conditions prior to carrying out dealing:

a. P must be in possession of the exemption certificate for the item. It is the responsibility of the previous owner to pass on the exemption certificate to person P. P may, under subsection (5), apply for a replacement exemption certificate if, for any reason listed under subsection (5), they need to do so. The replacement certificate must be provided prior to commercial dealing being carried out.

b. Person P must also register the dealing with the Secretary of State. This will be done by providing information and a fee as prescribed in regulations to be made by the Secretary of State. This registration must be completed prior to the dealing being carried out. It is intended that the fee prescribed should be reasonable and proportionate to the costs associated with the registration.

Subsection (8) allows the Secretary of State to ask applicants under Clauses 3 or 4, for example when applying for an exemption certificate or registering a dealing in an exempt item, to provide information in a specific form or manner, on a case-by-case basis. This will ensure, for instance, that an owner who may not complete the online process correctly in the first instance is given a chance to do correctly.

Clause 5: Fresh applications and appeals

Subsection (1) provides that if an application for an exemption certificate is unsuccessful, or if an exemption certificate is revoked, the applicant may:

a. Re-apply for an exemption certificate for the same item. Any such re-application would be considered as a new application. As such, under subsection (2), the application would follow the same process as outlined in Clause 3, including being subject to the same fees as set out in Clause 3(1)(h).

b. Make an appeal against the decision taken by the Secretary of State to refuse an application or to revoke an exemption certificate. Subsection (3) confers a delegated power on the Secretary of State to issue subsequent regulations detailing the appeals process to be applied. In these subsequent regulations, the Secretary of State may make provision for details of the appeals process, including the person or institution who would be required to consider an item on appeal, including reassessing it against statutory guidance, and the timescales to which this process would take place (subsection (4)). The Secretary of State may also, through these regulations, stipulate that an applicant wishing to appeal a refusal to issue an exemption certificate, be required to pay a fee to cover the costs associated with the appeals process – for instance the cost of a reassessment of the item by experts. It is intended that fees associated with appeals would be reasonable and proportionate to the costs of dealing with appeals.

Other exemptions

Clause 6: Pre-1918 portrait miniatures

This clause provides for an exemption for portrait miniatures to the prohibition on dealing in ivory.

A portrait miniature is a portrait created in the 18th and 19th centuries and typically painted on a thin sheet of ivory, along with other materials, such as vellum. These ivory sheets were
generally 1mm thick prior to the 1760s, after which the sheets could be cut more thinly. With regard to portrait miniatures, the term “miniature” does not indicate size but instead the technique used and as a result these items can range in size. An example is provided below.

Illustrative examples of portrait miniatures which may, subject to any advice which may be published, qualify under the portrait miniature exemption.

1. Henry Robert, An Unknown girl c 1890-1900, Watercolour on ivory
2. Sir Ross, William Charles, Portrait of Pandelli C. Ralli, 1856, Watercolour on ivory
© Victoria and Albert Museum, London

55 For an item to qualify under this exemption it would need to meet the following conditions:

a. The item is a portrait miniature and is pre-1918 as defined in Clause 36 (subsections (2) and (3)(a)).

b. The surface area of the ivory ‘canvas’ is no more than 320cm² (excluding the frame).

c. The item is registered, prior to carrying out dealing in that item, following the registration regime provided for in Clause 10.

56 If the conditions outlined in Clause 6 are met, dealing in that ivory item is permitted. If it does not meet all of those conditions, the item does not qualify as exempt to the prohibition and dealing in the item is prohibited, unless the item qualifies under another exemption.

Clause 7: Pre-1947 items with low ivory content

57 This clause provides for an exemption to the prohibition on dealing in ivory for items which contain a small amount of ivory – less than 10% by volume – and are largely made of another or other materials. For an item to qualify for this exemption it must satisfy all of the following conditions:

a. The item must be pre-1947, as defined in Clause 36 (subsections (2) and (3)(b));

b. The ivory is integral to the item and as such cannot be easily removed from the item, for example to be re-carved or repurposed. Ivory considered integral to the item is that which is incidental to its overall design and/or construct, and which cannot be removed without difficulty or without damaging the item (subsection (2)). For instance, this could refer to an ivory inlay or escutcheon on a piece of furniture, or a small ivory handle on a piece of tableware;
c. The ivory content of the item is less than 10% of the entire item by volume. This de minimis threshold is intended to further ensure that this exemption applies to items in which the ivory content is incidental, and for which the value of the item does not rest in its ivory content.

d. The item is registered, in line with the registration process provided for in Clause 10, prior to being subject to dealing.

58 If all conditions outlined in subsection (1) are satisfied, dealing in that ivory item is permitted under the de minimis exemption. If one or more of these conditions are not met, that item is not exempt under the prohibition and dealing in the item is prohibited, unless the item qualifies under another exemption.

Illustrative examples of pre-1947 items with low ivory content which may, subject to any advice which may be published, qualify under the pre-1947 item with low ivory content exemption.

1. (1) English made (ca 1913) rectangular box with an arched lid of mahogany, inlaid with fine bands of ivory
   (2) French made (c 1929) Materials and Techniques: Ebony with ivory inlay
   © Victoria and Albert Museum, London

Clause 8: Pre-1975 musical instruments

59 This clause provides for an exemption to the prohibition for musical instruments which contain ivory. The item must satisfy all of the following conditions in order to qualify under this exemption:

e. The item is a musical instrument. As explained in subsections (2)(a) and (2)(b) the definition of a musical instrument, as applied in this Bill, is based on the purpose for which an item was made. Accessories used to play a musical instrument (for example, violin bows) are included in the definition of musical instruments and may also qualify under this exemption, subject to the item satisfying the other conditions of the exemption. A musical instrument is defined as an item that was made primarily for the purpose of playing as opposed to, for example, items intended for decorative purposes, or items of ivory which may technically be able to be used for musical or rhythmic purposes, but were not intended for such. An ivory walking cane, for instance, could in theory be used as a drumstick, but was clearly not intended for that purpose.

f. The instrument is pre-1975, as defined in Clause 36 (subsections (2) and (3)); 1975 is the date at which Asian elephants were first listed at Appendix I of CITES, thus indicating that they were considered vulnerable to extinction if trade in their ivory or other parts was not severely curtailed.

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
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g. The ivory content of the instrument is less than 20% of the volume of the instrument, thus prohibiting items with a significant ivory content. The vast majority of commonly played and traded musical instruments that contain ivory would likely fall within this threshold, for instance pianos, violin bows and other woodwind instruments with ivory components and trims, and;

h. The instrument is registered, prior to being subject to dealing, following the registration process provided for in Clause 10.

If all conditions outlined in subsection (1) are met, dealing in that ivory item is exempt from the prohibition. If any of the conditions are not met, the item is not exempt from the prohibition and dealing in that item is prohibited, unless the item qualifies under another exemption.

The general prohibition is on dealing and as such the use or transport of musical instruments for non-commercial purposes is not affected by the Bill. The EU Wildlife Trade Regulations would continue to apply, for example, to non-commercial cross-border movement of musical instruments. Any certificates or permits required under the EU Wildlife Trade regulations would continue to be required in addition to any necessary registration under this Bill.

Illustrative example of a musical instrument which may, subject to any advice that may be published, qualify under the musical instrument exemption.

Above is an example of a Grand piano (c 1815 – 1820) with Oak case with mahogany veneer, rosewood cross-banding and brass stringing; Brass collars on the tops of solid mahogany legs; Ivory covered naturals and ebony sharps

© Victoria and Albert Museum, London

Clause 9: Acquisition of items by qualifying museums

This clause provides for an exemption to the prohibition for sales to and between qualifying museums. All dealings undertaken in compliance with this exemption must also be compliant with international and domestic laws on trade in endangered species, as defined under CITES and the EU Wildlife Trade Regulations.

The exemption only applies in cases where both of the following conditions are satisfied:

i. The museum must be a qualifying museum, as provided for in subsection (3).

j. The form of dealing to be undertaken must be included in the activities in subsection (1);

Subsection (1) sets out that the following dealing activities are permitted under this exemption:
k. **Sale to a qualifying museum:** a sale may be carried out by a private individual, group of individuals or an organisation, as long as the sale is to a qualifying museum. The seller could therefore be another museum, including a non-qualifying museum (see definition in subsection (3)), or an individual.

l. **Purchase or hire by a qualifying museum:** a qualifying museum may purchase an ivory item from a seller, as outlined above, or hire an ivory item.

m. **Dealing which allows a sale to or purchase or hire by a qualifying museum:** any activity that facilitates dealing to or by a qualifying museum, as defined in subsection (1)(a). This would, for example, include written or verbal offers made to a museum to offer an item for sale or hire at a particular price.

65 As set out in subsection (2), the ivory subject to dealing with a qualifying museum must satisfy one of the following conditions:

n. The ivory is being sold or hired by another qualifying museum; or

o. If it is being sold by any other individual, group of individuals or organisations to a qualifying museum, it must be registered. This registration must follow the registration process provided for in Clause 10 and must be carried out prior to being subject to dealing.

66 Under this exemption ivory can only be sold to or purchased or hired by a “qualifying museum”. Subsection (3) defines a qualifying museum as meeting either one of the following conditions:

p. **At the time of the relevant dealing the museum is accredited by one of the following:**
   
i. The Arts Council England,
   
ii. The Welsh Government,
   
iii. Museums Galleries Scotland, or
   

67 These organisations are the official bodies in each of the Devolved Administrations of the UK, which accredit museums\(^\text{13}\). The full criteria used for accreditation can be found on the relevant organisation’s website, but these criteria define good practice and agreed standards for performance.

q. **At the time of the relevant dealing, the museum is an organisational member of the International Council of Museums (ICOM).** This would allow an item to be sold to a museum outside the UK if it is accredited by ICOM. ICOM (http://icom.museum/) is an international network of museums and museum professionals, and has consultative status with the United Nations Economic and Social Council. Member museums of ICOM must adhere to its ethical and legal standards, which includes adherence to CITES. As such a sale or purchase would involve the export of ivory from the UK, the transaction must also comply with existing EU Wildlife Trade Regulations.

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\(^{13}\) There are about 2,500 museums in the UK, of which 1,722 are accredited by one of the domestic organisations listed above. A list of currently accredited museums in the UK, Channel Islands and the Isle of Man can be found at: http://www.artscouncil.org.uk/document/list-accredited-museums-uk-channel-islands-and-isle-man.
If a museum meets either of the two criteria of subsection (3), it would be considered to be a ‘qualifying museum’ and therefore may purchase or hire ivory, subject to subsections (1) and (2).

Subsection (4) confers a delegated power on to the Secretary of State to make consequential changes to the list of organisations listed in subsection (3)(a) and (3)(b). This delegated power would only be applicable in the instance whereby a listed organisation undergoes a change of name or the responsibility of accrediting museums is transferred to another organisation. This would ensure that the legislation is kept up to date subject to such changes.

Clause 10: Registration

Clause 10 provides for the compliance regime which must be followed by the owner of an ivory item prior to carrying out a dealing that falls under any one of the exemptions provided for in Clauses 6 to 9. The registration process set out in the subsequent subsections is to be carried out on an online government website; it is intended that alternative telephone and postal methods will also be provided.

Subsection (1) ensures that an ivory item must be registered with the Secretary of State by the owner of the item or by someone acting on behalf of the owner. This registration must be carried out prior to any dealing in that item being carried out. By registering the item, the owner will confirm that, to their understanding, the item qualifies under the relevant exemption. As such, the owner must carry out the following, for the item to be registered:

r. Make an application for the item to be registered with the Secretary of State, stating the owner’s name and address;

s. Provide a description of the item, including any distinguishing feature which would allow this item to be identified when compared to other items of its type, for example a serial number;

t. Provide a photograph of the item, including photographic evidence of any distinguishing features mentioned in subsection (1)(b);

u. Declare that the item satisfies the conditions of one of the exemptions: for musical instruments, de minimis items or portrait miniatures. Provide a brief explanation as to how the item meets the conditions associated with the relevant exemption, as set out under Clauses 6 to 8;

v. Provide an explanation of the planned commercial activity which the item in question will be subject to following registration – for example, would the item be sold, or used for hire, imported or re-exported;

w. Provide any other information (set out in guidance); and

x. Pay a reasonable and proportionate registration fee.

If all of the above conditions are satisfied, the owner has registered the ivory item. In submitting this information to the online system to register an item, the owner will, in effect, be making a declaration that the item is as they have described. Should it transpire, either as a result of a check of the system by the Secretary of State, or compliance and enforcement activity by the regulator or police, that the information does not match the item in question, the owner may be liable for prosecution.

Subsection (2) sets out where the conditions for each of the relevant exemptions can be found within the Bill.

Subsection (3) allows the regulations to set out exemptions where a registration fee will not be required if the Secretary of State considers this to be a reasonable and proportionate approach.

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
Subsection (4) ensures that, subject to the requirements of the registration process being fulfilled, confirmation of the registration of the ivory item will be issued. This will permit the owner to engage in dealing with that specific item. To facilitate compliance with the prohibition, the registration will identify the owner of the item, provide a unique number relevant to the specific dealing in the ivory item in question and information to identify the item subject to dealing.

Subsection (5) allows the Secretary of State to retain a record of all registrations and information provided as part of the registration process, as outlined in subsection (1), as well as information provided under Clause 11. This information may be accessed by the Government and enforcement bodies in order to aid enforcement of this Bill, for instance by checking to ensure that items offered for sale match the registration information provided. The Government may also use this information to aid its understanding of the scale and type of ivory items sold in the UK over forthcoming years, and to consider, over the course of time, whether further measures should be taken.

It is intended that non-statutory guidance will provide further information on how to register an item.

Clause 11: Further provision about registration

This clause outlines further the registration process. Subsection (1) ensures that the registration of an item would cease to be valid as soon as the owner of the item changes. As opposed to the exemption certificate issued for items under the rarest and most important category, registration allows the current owner to either i) sell their item or ii) engage in other forms of dealing that do not result in a change of ownership, such as hiring the item. The registration is therefore associated with the individual, and is valid for a single change of ownership.

If a new owner wishes to carry out dealings in that ivory item, they must make a fresh registration. For example, if Person A sells an item to Person B, Person A must register this item prior to carrying out any dealing. If the new owner, Person B, wishes to then sell the item to Person C, Person B must register the ivory item prior to carrying out any dealing. Equally, if Person B wishes to sell the item back to Person A, Person B would be required to register the item. This would also apply if any or all of the individuals in this example were replaced by organisations. The owner must register an item to carry out dealings but does not need to register an item each time a commercial dealing is undertaken as long as the owner does not change. For example, if the owner wishes to hire the item multiple times, the owner completes a single registration for the item to be subject to hire. If, however, the owner changes, the registration becomes invalid and the item must be registered by the new owner before they can carry out any dealing. The purchaser of an item would not be required to register their ownership unless they wished to undertake dealing in that item.

Subsection (2) sets out that once the owner registers an item under Clause 10, the owner has a responsibility to make sure the information recorded in the registration process remains complete, accurate and up to date. As such, if the owner becomes aware that information included in the application is inaccurate or incomplete, or if any information becomes invalid or changes, the owner must notify the Secretary of State and provide the required information to address the issue. This could be, for instance, because the item is damaged or otherwise altered at some time after registration but prior to dealing, or if, having completed the registration process, the owner subsequently becomes aware of some fact that may invalidate the registration – for instance if the item is a piano which, on the basis of new information, dates to 1978 rather than 1970. If an owner were found to be in possession of such information, but had not informed the Secretary of State, they could be found to be in breach of these regulations.
Subsection (3) allows the Secretary of State to cancel an exemption registration, meaning dealing in that item would be prohibited, for any of the following reasons:

y. The Secretary of State believes that the registered item does not meet the exemption conditions as declared by the owner;

z. The Secretary of State considers the registration to be void because the owner of the item has changed since the registration was made, as set out in subsection (1);

aa. The Secretary of State is of the view that the owner of the item has not acted in accordance with subsection (2) and has therefore failed to notify the Secretary of State in order to address any incomplete, inaccurate or out of date registration information.

The Secretary of State may become aware of any of these reasons as a result of compliance and enforcement activity undertaken by the Secretary of State, the regulator or the Police. This could include spot checks of the registration database, or checks on goods for sale in shops, auction houses or on online sales websites.

Subsection (4) allows the Secretary of State to add or alter information to the registration if registration information is or becomes inaccurate or incomplete. This will primarily be applied when the owner has notified the Secretary of State of a change in information. Subsection (5) allows the Secretary of State to ask applicants, when registering an item or once a registration is complete, to provide information in a specific form or manner, on a case by case basis. This could, for instance, ensure that an owner who may not complete the online registration process correctly in the first instance is given a chance to do so correctly, rather than their registration being rejected.

Subsection (6) clarifies the meanings of terms used in this subsection, including with references to other clauses of this Bill.

Criminal and civil sanctions

Clause 12: Offence of breaching the prohibition or causing or facilitating a breach

This clause sets out the offences associated with breaches of the prohibition on dealing provided for in Clause 1.

Subsection (1) outlines that directly breaching the prohibition, causing it to be breached or facilitating it to be breached will all be considered as offences under the prohibition.

bb. **Anyone who directly breaches the prohibition is committing an offence.** This includes carrying out dealing in a prohibited item or carrying out dealing in ivory without an exemption certificate or registration for that ivory item. If an item is sold or otherwise dealt in which meets one of the categories of exemption, but has not been registered or an exemption certificate has not been obtained, then that is an offence under this Bill.

cc. **It is an offence to carry out dealing in an item without meeting all of the conditions required under an exemption to the prohibition.** For example, to sell an item under the musical instrument exemption, the item must qualify as a musical instrument, be pre-1975 and be registered for dealing following the registration process. If one of these conditions is not met and dealing is undertaken, this is an offence. Actions taken to falsify a registration or certification process, if taken dishonestly and with the intent to defraud, would be considered an offence under the Fraud Act 2006.
dd. **Anyone who causes a breach of the prohibition is committing an offence.** This applies, for example, to circumstances where the person who breaches the prohibition is acting at the direction of another person or is supported or assisted by another person. In practice, this could apply to a person acting as an auctioneer, or otherwise selling an item on behalf of somebody else.

ee. **Anyone who facilitates a breach of the prohibition is committing an offence.**

   This offence would apply to anyone who, whilst not directly engaged in the process of a sale, acted in such a way as to allow that sale, or other form of dealing, to occur. For instance, this could apply to the owners of an online sales forum if they were found not to have taken reasonable steps to ensure that an item was a) exempt from the ban, and b) had been registered as such. Further, anyone found to have advertised an item in order to facilitate a sale may be found to be in breach of this clause.

86 Subsection (2) outlines how these offences should be applied in situations where mislabeling and/or misidentification of elephant ivory takes place. Efforts have previously been made to circumvent restrictions on elephant ivory trade by deliberately mislabeling elephant ivory, for example as mammoth, hippo or walrus ivory, bone or indeed an inorganic material such as plastic. An offence would be committed if:

   ff. The offender knew or suspected the item was made of or contained elephant ivory at the time of the offence being committed; or

   gg. The offender should have, for example based on their experience, information available to them or their professional position, known or suspected the item was made of or contained ivory at the time of the offence being committed.

This subsection does mean that, if a person is able to prove, to the satisfaction of the regulator, a magistrate or a jury, that they could not be reasonably expected to have known that the item was made of elephant ivory, they may use this as their defence.

87 Subsection (3) provides that an individual, group of individuals or organisation accused of breaching the prohibition, causing or facilitating it to be breached, can rely on the defence that they took all reasonable actions and exercised all due diligence to avoid an offence being committed. Examples of reasonable actions or due diligence may, on a case-by-case basis, include the following:

   hh. A buyer of a prohibited ivory may show they had checked that the item had been registered prior to the purchase, and that registration appeared to them to be authentic;

   ii. An organisation which listed a prohibited item for sale, for example online or in a sale room, had taken steps to check the item had been registered and that this registration appeared to them to be authentic;

   jj. An organisation which facilitated the sale of a prohibited item could demonstrate that they had taken actions to make sure a person using their service had confirmed they were not using the service to sell illegal ivory, that they monitor the online or physical locations in their control for sales to ensure that they do not contravene this legislation and to have in place systems for reporting illegal or potentially illegal activity if discovered.

88 Subsection (4) provides for the criminal sanctions which could be applied to the offences associated with breaching the prohibition. The maximum sanction, applied on conviction on indictment, is imprisonment for up to five years and/or an unlimited fine (subsection (4)(d)).

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This sanction is in line with the current sanctions in place for illegal wildlife trade offences, including on ivory, as outlined in the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES).

Subsections (4)(a) to (4)(c) specify that a summary conviction, could be applied to offences under this prohibition. The subsections explain that these sanctions cannot exceed the maximum sanctions applicable for summary convictions in each of the Devolved Administrations. The maximum sanctions applied on indictment and on summary convictions are as follows:

<table>
<thead>
<tr>
<th>Maximum penalty on conviction on indictment</th>
<th>Maximum penalty on summary conviction in England and Wales</th>
<th>Maximum penalty on summary conviction in Scotland</th>
<th>Maximum penalty on summary conviction in Northern Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 years’ imprisonment, unlimited fine, or both.</td>
<td>12 months’ imprisonment, fine, or both.</td>
<td>12 months’ imprisonment, a fine not exceeding the statutory maximum (currently £10,000), or both.</td>
<td>Six months’ imprisonment, a fine not exceeding the statutory maximum (currently £5,000), or both.</td>
</tr>
</tbody>
</table>

While Clause 12 sets out offences relevant to the Bill, breaches under other existing legislation may also be committed through the illegal dealing in ivory, in which case existing offences in the relevant legislation should apply. The following are examples of where this could apply, although is not an exhaustive list:

kk. Where the appropriate criteria are met, proceeds obtained through illegal sales of ivory would be confiscated under the Proceeds of Crime Act 2002;

ll. Where there is evidence of serious and organised crime involving ivory sales, the Serious Crime Act 2000 should apply; or

mm. Where, information is falsified in order to register an item as exempt or to obtain an exemption certificate, or a registration or certificate is altered or falsified, the Fraud Act 2006 should apply.

Other examples of legislation which may be applicable are the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Customs and Excise Management Act 1979.

Subsection (5) sets out that subsection (4)(a) takes account of section 154(1) of the Criminal Justice Act 2003, which has yet to come into force. Subsection (5) ensures that until section 154(1) of the Criminal Justice Act 2003 comes into force, the maximum term of imprisonment under subsection (4)(a) should be read as six months. Once section 154(1) of the Criminal Justice Act 2003 comes into force the maximum period of imprisonment will be increased to 12 months, and subsection (4)(a) of this Bill will be correct.

Clause 13: Civil Sanctions

This clause ensures that civil sanctions may also be applied to breaches of the prohibition. A mixed regime of criminal and civil sanctions makes available a range of sanctions which can be applied depending on the severity of the offence committed under the general prohibition. In those cases where a criminal sanction is unwarranted, civil sanctions may be applied. The civil sanctions applicable to offences under the Bill are provided for in Schedule 1.

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
Powers of entry, search and seizure

Clause 14: Power to stop and search persons

93 Subsections (1) and (2) confer powers on to police and customs officers to stop and search persons. The power is engaged where the officer has reasonable grounds to suspect that a person has committed, or is committing, a relevant offence, as defined in subsection (4).

94 The Bill does not affect possession of ivory and as such there is no provision for a possession offence and there is no power to stop and search where an officer suspects that a person has in his or her possession an ivory item that is not intended for dealing. The officer will need to have reasonable grounds to suspect that the person has committed or is committing an offence in relation to dealing. This, for instance, may include through intelligence gathered as to a planned sale of ivory, or information from the registration database that an item has been falsely registered. A police or customs officer may also detain a stopped person for the purpose of carrying out the search.

95 The term "police or customs officer" is defined for the purposes of the Bill in subsection (4) to include National Crime Agency (NCA) officers designated with the powers and privileges of a constable or officer of Revenue and Customs (see the definition in Clause 36 (1)) and authorised by the Director General of the NCA to exercise the powers of a police or customs officer. The intention is that NCA officers designated with the powers and privileges of a constable and/or the powers of an officer of Revenue and Customs (under section 10 of the Crime and Courts Act 2013) will have access to the powers contained in the Bill. The scheme in the Crime and Courts Act 2013 operates in such a way that an NCA officer designated with the powers and privileges of a constable, officer of Revenue and Customs, or both would automatically be able to exercise the powers of a constable and/or Revenue and Customs officer (as the case may be), as conferred under statute or common law. The reference to an NCA officer in subsection (4) is drafted in such a way as to ensure that it is consistent with that general approach.

96 As provided for in subsection (3), the stop and search powers are exercisable in any place to which the police or customs officer has access. This would include any public place and any premises that are the subject of a search warrant issued under Clause 18.

Clause 15: Power to stop and search vehicles

97 Subsections (1) and (2) confer powers to stop and search vehicles on to police or customs officers. The power is engaged where the officer has reasonable grounds to suspect that the vehicle contains evidence of a relevant offence, as defined in Clause 14(4). The power does not apply where the vehicle is a dwelling (subsection (1)(b)); in such circumstances the provisions of Clause 18 would apply. A dwelling is not defined but is intended to be given its natural meaning; the exclusion would, for example, apply to a residential caravan. The power applies to vehicles whether or not a driver or other person is in attendance of the vehicle. Where it is impractical for a stopped vehicle to be searched in the place it has been stopped, the officer may require the vehicle to be moved to another place before conducting the search (subsection (3)). This provision would apply, for example, where the vehicle has been stopped on a busy road and it would be safer to conduct the search in another location.

98 Subsection (4) places a duty on any person travelling in the vehicle or the registered keeper to facilitate the exercise of an officer’s powers under this subsection, for example, the driver of the vehicle might be required to open a locked glove box or boot.

99 These stop and search powers are exercisable in any place to which the officer has lawful access, this would enable a vehicle parked in a garage on premises that are the subject of a search warrant under Clause 15 to be searched (subsection (5)).
**Clause 16: Power to board and search vessels and aircraft**

This clause contains powers to board and search vessels or aircraft analogous to those in Clause 15 in respect of entry and search of vehicles. A vessel is defined in Clause 36(4) and includes any ship, boat or hovercraft. The powers do not apply where the vessel or aircraft is used as a dwelling, for example, a house boat.

**Clause 17: Power to enter and search premises**

This clause confers on accredited civilian officers a power to enter and search premises. An accredited civilian officer is defined, for the purposes of this Bill, in subsection (7). An accredited civilian officer is an officer of the regulator, acting on behalf and authorised by the Secretary of State for the purposes of this Bill. A premises is also defined in subsection (7) for the purposes of this Bill to include, as well as places and buildings, vehicles, vessels and aircraft and tents and other temporary or moveable structures.

An accredited officer may enter a premises to i) raise awareness and understanding of the provisions in the Bill, in order to facilitate compliance; or ii) to assess compliance with the provisions in the Bill and thus identify any offences (subsection (2)). The officer may only enter a premises for one of these reasons if the officer reasonably thinks that the premises is used in connection to the dealing in ivory (subsection (1)). Such premises may, for example, include auction houses or antique dealing businesses, musical instrument dealers, offices of online sales fora, or offices of firms that advertise ivory for commercial use. This power is conferred to allow the designated regulator to raise awareness of the Bill and compliance with its provisions with arts and antique dealers, musical instruments dealers, and others such as those businesses outlined above who may reasonably be expected to deal in items of ivory exempted from this ban; or to assess whether such businesses are operating in compliance with the Bill. To enter a premises the officer must give notice as defined in subsection (5). The officer may only search such a premises if both of the following conditions are satisfied: i) they are present in the premises for one of the reasons in subsection (2) or they are otherwise lawfully present; and ii) the officer has reasonable grounds to suspect that there is relevant evidence on the premises (subsection (3)). The term “otherwise lawfully present” accounts for situations where the officer may enter a place by virtue of express or implied consent, without having given notice, i.e. a place that is expressly or implicitly accessible to the public.

Subsection (4) confers an additional power of entry onto accredited civilian officers. Under subsection (4), if an accredited civilian officer has reasonable grounds to suspect there is relevant evidence on the premises, the officer may, having given reasonable notice, enter a premises and search the premises for relevant evidence.

Subsections (5) and (6) apply to both powers of entry conferred onto accredited civilian officers by this clause. Subsection (5) and sets out that an accredited civilian officer must give notice of their intention to enter a premises in writing, and must explain why they consider they have reasonable grounds to enter the premises. This could be, for instance, because they have intelligence to suggest that the premises are being used to hold or store ivory intended for dealing, or that the premises are being used to facilitate such dealing, i.e. by advertising ivory for sale. In giving reasonable notice, an explanation must also be given of the offences at Clause 27 of this Bill, namely of obstructing an officer from carrying out their reasonable functions, and of the associated penalties. Subsection (6)(a) ensures that the officer cannot enter a premises used primarily as a dwelling, and subsection (6)(b) limits entry to reasonable times.

The powers conferred onto civilian officers in this clause are not unusual. An example of similar existing legislation is paragraph 23 of Schedule 5 to the Consumer Rights Act 2015 (CRA) which is enforced by Trading Standards. The CRA allows Trading Standards Officers to exercise the power of entry for a routine inspection if they provide notice. The CRA includes powers which allow Trading Standards Officers (as civilian officers), to apply for a...
warrant to enter premises. Accredited civilian officers under this Bill will be granted similar powers to enter premises; if they wish to enter without providing notice, they must apply for a warrant.

Clause 18: Warrants authorising entry and search of premises

106 Subsection (1) enables a justice to issue a search warrant to a police, customs or accredited civilian officer that authorises that officer to enter premises specified in the warrant and search them for such evidence. A justice is defined in Clause 36. There is a two-stage test for the grant of a search warrant (subsections (5) and (6)). The first element of the test is that the justice must be satisfied that there are reasonable grounds to suspect that evidence of a relevant offence is to be found on premises covered by the warrant. The second element of the test is that any of the conditions in subsection (6) are met. The nature of those conditions is such that a relevant enforcement officer should, where possible, secure entry into premises or access to items on the premises with the co-operation of the owner or occupier and only seek a warrant where such co-operation is unlikely to be forthcoming or where the purpose of the search would be frustrated or seriously prejudiced if immediate entry to the premises could not be secured using the authority of a warrant.

107 Subsection (2) ensures that applications for a search warrant must be made, in England and Wales and Northern Ireland, by a police, customs or accredited civilian officer, or, in Scotland, by a police, customs or accredited civilian officer or the procurator fiscal.

108 Subsection (3) ensures that an officer applying for the warrant must be an appropriate level of seniority or be authorized by a person of that level of seniority. This subsection sets out what this level is for each of the relevant enforcement and regulatory bodies.

109 Subsection (4) provides for a search warrant to be issued under this clause may either be in relation to a single set of premises (a “specific-premises warrant”) or, in England and Wales and Northern Ireland only, an “all-premises warrant” where it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practical to specify all the premises at the time of applying for the warrant. An all-premises warrant will allow access to all premises occupied or controlled by that person, both those that are specified on the application, and those that are not; this allows for follow-up searches where evidence at one premises controlled by the named person identifies a second premises associated with that person.

Clause 19: Further provision about search warrants

110 Subsection (1) ensures that in addition to an application, supporting information in writing, evidence on oath and a complaint on oath should be provided in support of a warrant application in England and Wales, Scotland and Northern Ireland respectively. Subsection (2) provides for the justice hearing an application for a warrant to seek further information in relation to the application.

111 Subsection (3) enables a search warrant to be executed by any relevant police, customs or accredited civilian officer and not just the officer who applied for the warrant. If the search warrant so provides, subsection (4) enables authorised persons to accompany a police, customs or accredited civilian officer when executing a warrant. Such a person is only permitted if the justice who is issuing the warrant is satisfied that the authorised person would be helpful to the search, for example individuals with expertise in identifying ivory items. Subsection (5) allows a person authorised under subsection (4) to exercise any power conferred onto officers by Clauses 18 to 24 as a result of a warrant, but they may only exercise these powers when accompanying, and under the supervision of, a police, customs or accredited civilian officer.
Subsection (6) ensures that persons applying for search warrants must make reasonable efforts to inform those persons who might be affected by it (for example, the owner or occupier of the premises or the owner of ivory in question). Such a warrant would only authorise entry if 48 hours’ notice had been given to those persons who might be affected by it. Subsection (6) allows persons applying for search warrants to do so without informing those persons who might be affected by it only in the situation where giving notice would likely undermine the purpose of the search.

Subsection (7) gives effect to Schedule 2 which makes further provision about applications for, and the execution of, search warrants in England and Wales and Northern Ireland. Scotland has similar provisions in its common law. Failure to comply with the requirements in Part 3 of Schedule 2 in respect of the execution of warrants in these jurisdictions would render the entry and search of premises unlawful (subsection (8)).

Clause 20: Powers of examination etc.

This clause enables a relevant enforcement officer, when acting in accordance with a power of search conferred by Clauses 15 to 18, to examine anything in the vehicle or vessel or on a premises. Such examination may extend to measuring or testing anything that the officer has the power, under this clause, to examine. As part of this measuring or testing, subsection (4) allows the officer to take a sample from an item as long as such an action causes no, or the least possible, damage to the item. The power to measure or test items, including taking a sample, would, for example, help to determine if the item in question is elephant ivory, and thus subject to the prohibition and if the item needs to be seized and/or an offence has been committed. This would, for example help in avoiding unnecessary seizures. Subsection (6) places a duty on any person in or on the premises to facilitate or assist the exercise of an officer’s powers under Clauses 15 to 18, for example, to open any locked container. If there is no such person on the premises to assist in such manner or that person refuses to do so, subsection (5) confers a power on a relevant enforcement officer to use force to break open a container or other locked thing (for example, a locked store room). This power is restricted to circumstances in which the officer is satisfied that it is necessary to take such an action in order to determine if a relevant offence, as defined under Clause 14(4) has been committed or in order to investigate a relevant offence.

Clause 21: Power to require production of documents etc.

This clause enables a relevant enforcement officer, when acting in accordance with a power of search conferred by Clauses 15 to 18, to require any person in the vehicle or vessel or on the premises to produce any document or record that is in the person’s possession or control. The power is restricted to circumstances in which an officer thinks that such a document may aid understanding as to whether a relevant offence, as defined under Clause 14(4), has been committed or the investigation of a relevant offence. The power is defined so as to extend to requiring a person to produce information held in electronic form, for example on a computer, so that it can be read.

Clause 22: Powers of seizure etc

This clause enables a customs, police or accredited civilian officer to seize and detain any item found in the course of a search they are permitted to carry out under Clauses 14 to 18. An item may only be detained if the officer reasonably believes it to be relevant evidence, as defined under Clause 14(4). Items may also be seized for the purpose of determining whether any such offence has been committed. The power also extends to taking copies or extracts of any documents or records, such as invoices, receipts or agreements or offers to sell, found on the premises that could be used as evidence of an offence. The power to seize and detain, remove, or take copies of, or extracts from, a document or record, extends to documents or
records produced to the officer under the powers in Clause 20. These powers apply to a relevant enforcement officer searching a person, vehicle or vessel (with or without a warrant) or any premises (under a warrant) or to a relevant enforcement officer who is lawfully on the premises for some other purpose. The powers of seizure in this clause do not extend to excluded items as defined in Clause 23.

Clause 23: Excluded items

This clause defines excluded items which fall outside the powers of seizure in Clause 22. In England and Wales, excluded items are:

- Items subject to legal privilege as defined in section 10 of Police and Criminal Evidence Act 1984 ("PACE"), broadly communications between a professional legal adviser and his or her client in connection with the giving of legal advice to the client or in connection with legal proceedings and for the purpose of such proceedings. Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

- Excluded material as defined in section 11 of PACE, broadly personal records which a person has acquired or created in the course of any trade, business, profession or other occupation and which he or she holds in confidence; or journalistic material (that is, material acquired or created for the purpose of journalism) which a person holds in confidence.

- Special procedure material as defined in section 14 of PACE, broadly material acquired or created in the course of any trade, business, profession or other occupation or for the purpose of any office and held subject to an express or implied undertaking to hold it in confidence or subject to a restriction on disclosure or an obligation of secrecy contained in any enactment; and journalistic material, other than excluded material.

Schedule 1 to PACE makes special provision for obtaining judicially authorised access to excluded material or special procedure material for the purpose of a criminal investigation.

Subsections (3) and (4) make analogous provision for Scotland and Northern Ireland.

Clause 24: Further provision about seizure under section 22

This clause contains an ancillary power to seize any containers in which seized items are stored (subsection (1)). Such containers may be any form of packaging in which items may be sold or boxes containing relevant documents. Subsection (2) provides for the subsequent return of seized containers save where one of the conditions in subsection (3) are satisfied. Subsection (4) caters for circumstances where it is not practicable to seize all items at the time of the search of the premises, for example, because the task proved to be more time consuming than expected or because of the volume of items that needed to be removed. In such cases, the relevant enforcement officer can impose a duty on the person from whom an item is seized, or any person on the premises, to secure the items and not to tamper with them.

Clause 25: Notices and records in relation to seized items

This clause makes provision for the issue of a written notice, where an item is seized under Clause 22, to affected persons as defined in subsection (2). If no such person is present on the premises subject to a search warrant, a copy of the notice must be left on the premises (subsection (3)). This is to ensure that all persons with an interest in the seized items are properly informed of the seizure and of the provisions in Clauses 28, 29 and 31 in respect of

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
the retention and forfeiture or return of seized items. In addition to the notice of seizure issued at the time of the seizure, a record must be made of the items seized; such a record could be compiled after the search has taken place, for example, once the seized items have been taken to a police station (subsections (5) and (6)).

Clause 26: Powers of entry, search and seizure: supplementary provision

122 Subsection (1) ensures that an officer exercising a power conferred under Clauses 14 to 17 must, if asked to do so by a person entitled to make such a request, give his name and, if not a constable in uniform, produce documentary evidence that they are authorized to exercise the power. A person entitled to make such a request is defined in subsection (2). Subsection (3) ensures that that the officer does not need to comply with subsection (1) if it is not reasonably practicable for the officer to do so.

123 Subsections (4) and (5) enable a relevant enforcement officer (or a person authorised to accompany them when executing a search warrant) to use reasonable force, if necessary, when exercising powers under Clauses 14 to 24 (or under Clauses 18 to 24 for authorized accompanying persons), for example, to search a person or to enter premises to execute a search warrant.

124 Subsection (6) provides that the powers of entry, search and seizure conferred by the Bill are without prejudice to the continued operation of any other powers conferred by or under any other enactment or under common law.

Clause 27: Offences of obstruction etc

125 Subsection (1) makes it an offence for a person to, without reasonable excuse, intentionally obstruct a relevant enforcement officer in the exercise of his or her powers under Clauses 14 to 24.

126 Subsection (2) makes it an offence for a person, without reasonable excuse, to fail to comply with a reasonable requirement made, or direction reasonably given, by a relevant enforcement officer under Clauses 15 to 24. It is also an offence to prevent another person from complying with such a requirement or direction. Such a requirement or direction may be, for example, to open a locked door of a room within premises subject to a search warrant or to open a locked cabinet.

127 These offences extend to the obstruction of, or failure to comply with a requirement or direction given by, a person authorised to accompany a relevant enforcement officer to effect a search of premises (see Clause 19(4)).

128 Subsection (4) provides for the maximum penalties for both offences, as follows –

<table>
<thead>
<tr>
<th>Maximum penalty on summary conviction in England and Wales</th>
<th>Maximum penalty on summary conviction in Scotland</th>
<th>Maximum penalty on summary conviction in Northern Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 months’ imprisonment, a fine, or both.</td>
<td>6 months’ imprisonment, a fine not exceeding level 5 on the standard scale (currently £5,000), or both.</td>
<td>6 months’ imprisonment, a fine not exceeding level 5 on the standard scale (currently £5,000), or both.</td>
</tr>
</tbody>
</table>

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
Retention and disposal or return of items

Clause 28: Retention of seized items
129 This clause authorises the retention of items seized under Clause 22 for as long as is necessary and, in particular, either for use as evidence in a trial or to enable forensic or scientific examination, or as part of an investigation for an offence under the Bill. The retention of items seized under Clause 22 is not authorised in a situation in which a photo of the item would suffice.

Clause 29: Forfeiture of seized items by court on application
130 This clause provides for the forfeiture and disposal of seized ivory items and other items where the procedure in Clause 32 does not apply. Subsection (3) allows a magistrates’ court (in England and Wales), a sheriff (in Scotland) or a court of summary jurisdiction (in Northern Ireland) (see subsection (8)) to order the forfeiture of an item if the court is satisfied that a relevant offence has been committed in respect of that item, or the item was used in the commission of a relevant offence. Where the court orders forfeiture, it is for the applicant (namely, the officer who made the application), another officer acting on behalf of the same person as that officer or the Secretary of State to decide on the method of disposal for the forfeited item (subsection (5). Any action to dispose of the item is stayed pending the outcome of any appeal or until the end of the timeframe in which an appeal can be brought (subsection (6)). Subsection (7) makes further provision for the return of an item under subsection (4), authorising the continued retention of an item, pending the outcome of an application for forfeiture, or any appeal against a decision by the court to order the item to be returned to the person from whom it was seized, or the owner of the item.

Clause 30: Appeal against decision under section 29
131 This clause confers a right of appeal to the appropriate higher court in each jurisdiction (see subsection (3)) against a decision under Clause 29 either to order the forfeiture of an item or to order its return to the person entitled to it. An appeal may be brought forward by the person from whom the item was seized, the owner of the item or any party to the proceedings in which the order was made, for example a police officer. An appeal must be lodged within 28 days of the decision by the lower court (subsection (4)). If an appeal is brought forward by a police officer or other authorized person and no persons entitled to the items (defined in subsection (8)) was present or represented at the original hearing, the officer has an obligation to make reasonable efforts to give notice of the appeal to every person who may be entitled to the item. On hearing the appeal, the court will determine the question afresh.

Clause 31: Return of item to person entitled to it, or disposal if return impracticable
132 Where the retention of a seized item is no longer authorised under the Bill, this clause provides for the return of the item to the person entitled to it. Subsection (1)(b) provides that a person entitled to the item may make an application to the appropriate court (as defined in Clause 29(8)) for a seized item to be returned. In any case where it has proved impossible to find the owner, or it is impractical for some reason to return the item (for example, because the owner refuses to accept receipt), subsection (3) allows for the item to be disposed of by a police or customs officer or the Secretary of State.

Clause 32: Forfeiture by court following conviction
133 This clause provides that where a person has been convicted of relevant offence under the Bill (as defined in Clause 14(4)) or of a relevant offence related to the illegal trade in ivory under another Act (for example, the Serious Crime Act 2007), the sentencing court may make...
a forfeiture order in respect of any item relating to the offence or in respect of other items that were used in the commission of the offence (subsections (3)). For example, in relation to any item that has been used in the commission of a serious offence, the court may order forfeiture of non-exempt ivory that were clearly not for personal use e.g. multiple mass-produced items that were intended for export. The convicted person and any other person who claims ownership of the items are entitled to make representations to the court (subsection (4)), and a forfeiture order does not take effect until the time for lodging an appeal has lapsed or until the outcome of any appeal (subsection (5)). Subsections (6) to (8) enable the court to make supplementary provision to give effect to a forfeiture order.

General

Clause 33: Application of Customs and Excise Management Act 1979

134 This clause ensures that customs officers can exercise the powers under the Customs and Excise Management Act 1979 (“CEMA”) when they intercept an item being imported or exported in breach of the prohibition entering or leaving the UK. Border Force customs officials routinely rely on CEMA powers to enforce restrictions on the importation and exportation of particular items. A number of the CEMA powers would automatically apply in any event, for example the power in section 159 of CEMA to examine any imported goods, but this clause provides that other CEMA provisions are also engaged.

135 Subsection (1) makes an item in breach of the prohibition liable to forfeiture if it is imported to or exported from the UK. This has the effect of engaging other CEMA powers, in particular, the powers in section 139 and Schedules 2A and 3 to detain, seize and forfeit any item that could be “liable to forfeiture”. Section 139 of CEMA provides that goods which are liable to forfeiture may be seized or detained. Schedule 2A to CEMA makes provision in respect of detained goods – essentially allowing customs officers time to investigate whether the goods in question are indeed liable to forfeiture. Schedule 3 to CEMA governs the process of seizure and forfeiture of goods. The CEMA provisions include similar safeguards regarding the issue of notices of seizure as are included with powers of seizure in the Bill and also provide for judicial oversight. In summary, if, after a one-month period from the time of seizure there has been no challenge to the legality of seizure, the goods are automatically condemned as forfeit. If someone challenges the legality of seizure, customs officers must bring condemnation proceedings to obtain an order for condemnation of the goods.

136 Subsection (2) applies section 5 of CEMA for the purposes of subsection (1). Section 5 of CEMA defines the time of importation or exportation of goods for the purposes of the powers in CEMA, for example, in the case of items imported by sea, the time of importation is when the ship carrying the item comes within the limits of a port.

Clause 34: Liability of corporate officers for offences by bodies corporate etc.

137 In the case of an offence under the Bill being committed by a body corporate (an organisation such as a company, corporation or institution) or Scottish Partnership, this clause extends liability for the offence to a person who is an officer of the body corporate (as defined in subsection (2)) or an officer of the Scottish Partnership (as defined in subsection (3)) where the offence has been committed with the consent or connivance of that person, (subsection (1)).

Clause 35: Meaning of “ivory”

138 Subsection (1) provides the definition of ivory applied under this Bill. Ivory from any species of elephant is in scope of this Bill and this ivory may be obtained from an elephant tusk or tooth. Subsection (6) further defines “elephant” as any animal or species that is within the family Elephantidae and that is extant, i.e. living, at the time at which this Bill is passed. This
means in practice that ivory from all species and sub-species of elephants, including any which may be identified in future, are covered by this sales ban. It also means that ivory from extinct species of the family Elephantidae, such as mammoths, is not within scope of these measures.

139 Subsection (2) confers a delegated power to the Secretary of State to make regulations under the Bill in order to amend the definition of ivory in subsection (1). This delegated power could, for example, be applied if the restrictions under this Bill inadvertently led to the displacement of ivory trade from elephant ivory to another form of ivory, including from an extinct species (i.e. the mammoth). Displacement, for example, could lead to increases in hippopotamus ivory trade, putting that species at greater risk of extinction, or further poaching of elephants for their ivory if use of ivory from other species fuels demand in ivory generally. In such a scenario ivory from the hippopotamus and other species could be included within the scope of the prohibition on ivory as outlined within this Bill. Subsection (3) specifies that the affirmative resolution procedure would apply.

140 Subsection (4) provides for ivory, which has been proved to be ivory and is relevant to offence proceedings, to be assumed to be elephant ivory unless the accused can prove otherwise. The burden of proof would, therefore, lie with the accused in order to that prove it is not elephant ivory and is instead ivory from a different species. For example, scientific test results could be provided as evidence of origin.

Clause 36: Meaning of other expressions

141 This clause lists various words or phrases used throughout the Bill and, where relevant, the corresponding provision at which their meaning is located. Subsection (2) defines “pre-1918”, “pre-1947” and “pre-1975”, as applied in Clauses 2, 6, 7 and 8 respectively. An item would qualify if the item was made prior to the relevant date and meets one of the following conditions:

nn. No ivory had been added to the item on, or after, the relevant date, or
oo. Any ivory added to the item on, or after, the relevant date must have been taken from its animal source prior to 1 January 1975 and the ivory must have been added for the purpose of restoring the item, any other purpose would not be valid.

142 Subsection (3) provides the relevant dates for 1918, 1947 and 1975 respectively. The relevant date for pre-1947 aligns with the date used under current EU Wildlife Trade Regulations (which was itself chosen as the date 50 years prior to the introduction of the Regulations), which apply this date to all worked ivory items. The relevant dates for pre-1918 and pre-1975 are set at the first day of the calendar year. 1975 is the year in which Asian elephants were first listed at Appendix I of CITES, thus indicating that they were considered vulnerable to extinction if trade in their ivory or other parts was not severely curtailed.

Clause 37 Regulations and guidance

143 This clause provides that where this Bill provides for regulations to be made these regulations may make consequential, supplementary, incidental, transitional or saving provisions. For example, regulations will be made to provide supplementary guidance on the appeals process to be applied to the certification regime, as provided for in Clause 5 of the Bill. Such regulations may provide different provisions based on the purpose of the regulations being applied and may provide different provisions for different parts of the UK, for example in different devolved administrations.

144 Subsection (2) and (3) specify that all regulations under the Bill will be made by statutory instrument and that the negative resolution procedure would apply to any such statutory instrument, except under Clause 35(2). Regulations under Clause 3(2) would be subject to the affirmative resolution procedure.

*These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)*
Subsection (4) confers a responsibility on the Secretary of State to publish all guidance, in relation to exemptions and compliance processes, relevant to regulations under Clauses 2, 3, 4, 10 or 11.

Clause 38: Financial provision

As regards expenditure by the Secretary of State, see the sections below headed “Financial implications of the Bill” and “Parliamentary approval for financial costs or for charges imposed”.

Clause 39: Crown application

This clause provides for the Bill to apply to the Crown, including Her Majesty the Queen, the Royal Family, Royal properties and Royal collections. As such the Crown is bound to the prohibition on dealing in ivory unless an exemption certificate or registration has been issued. The Crown would not be subject to any relevant offence, as defined in Clause 14(4), and would, therefore not be subject to sanctions associated with any offence under the Bill. Persons in the service of the Crown, however, could be subject to relevant offences and sanctions under the Bill.

Clause 40: Extent

This clause sets out the territorial extent of the provisions of the Bill (see Annex A for further details).

Clause 41: Commencement

This clause provides for commencement of the Bill, at which point the Bill would come into force. The Secretary of State would bring the Bill into force by regulations. Subsection (2) enables the Secretary of State, by regulations, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Bill. Such regulations are not subject to any parliamentary procedure.

Clause 42: Short title

This clause provides for the short title for this Bill.

Schedule 1: Civil Sanctions

Part 1: Monetary Penalties

Paragraph 1 provides for a monetary penalty to be served as a sanction to a relevant offence, as defined in Clause 14(4), where the Secretary of State is satisfied beyond reasonable doubt that such an offence has been committed. Sub-paragraph (2) defines a monetary penalty and sub-paragraph (3) ensures that a monetary penalty up to, but not exceeding, £250,000 could be applied.

Paragraph 2 sets out the process by which a monetary penalty may be imposed by the Secretary of State, including service of a notice of what is proposed, and the right of the person on whom the monetary penalty is imposed to appeal the penalty.

Paragraph 3 sets out the information which must be included, by the Secretary of State, when serving a notice to the person on whom the monetary penalty is imposed.

Paragraph 4 provides that if a person who is served a notice proposing a monetary penalty to be imposed, that person will not be subject to criminal sanctions for the same offence during the period within which liability could be discharged by payment of the sum stated in the notice. It also states that if the person pays the sum stated in the notice, and as such they discharge their liability under the monetary penalty, they cannot be subject to criminal sanctions for the same offence.

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
Part 2: Stop Notices

Paragraph 5 provides for a stop notice to be served as a sanction by the Secretary of State where a person is carrying on with an activity which involves, or is likely to involve, an offence being committed under this Bill and the person is likely to carry on further the activity which involves, or is likely to involve, an offence being committed. A stop notice may be served in order to prohibit that person from continuing to carry out a specified activity (for example illegally offering ivory for sale), or to prohibit that person from continuing to carry out a specified activity until that person has taken steps, as defined in the notice, to make the activity compliant with the Bill and to stop or prevent an offence being committed (for example, to stop illegally offering ivory for sale until they register that item as exempt or obtain an exemption certificate for that item).

Paragraph 6 sets out the information which must be included in a stop notice when served by the Secretary of State on a person.

Paragraph 7 provides for completion certificates to be issued by the Secretary of State, only in the case of a stop notice being served which prohibits an activity until the person takes the steps stated in the notice, if the Secretary of State is satisfied the required steps have been taken. The person served a stop notice must apply for a completion certificate and the Secretary of State must take a decision on the application within 14 days. If a completion certificate is issued, the stop notice ceases to have effect and the person may continue to carry out the previously prohibited activity.

Paragraph 8 ensures that the person served a stop notice has the right to appeal against that notice being served and provides for the grounds on which that appeal can be made. This paragraph also ensures that, where relevant, a person may appeal the decision taken to not issue a completion certificate and provides for the grounds on which that appeal may be made.

Paragraph 9 provides for an offence where a person served with a stop notice who does not comply with that stop notice. Under this paragraph, criminal sanctions on summary conviction are applied to this offence. The maximum sentences on summary conviction, as applied in each of the devolved administration, are also set out.

Part 3: Enforcement undertakings

Paragraph 10 provides for an enforcement undertaking to be applied under this Bill subject to the conditions set out in sub-paragraph 1. If the person suspected of committing a relevant offence completes the actions set out in the enforcement undertaking to stop the offence or prevent it from re-occurring (for example, the person offers and completes an undertaking to register an exempt item before continuing to use it for dealing) that person cannot be convicted of a relevant offence and the Secretary of State may not impose a monetary penalty. If that person fails to comply with the enforcement undertaking, they may, in relation to the offence or omission they have committed, be convicted of a relevant offence and face criminal sanctions or may be served a monetary penalty.

Part 4: Enforcement cost recovery notices

Paragraph 11 provides for enforcement cost recovery notices to be served by the Secretary of State on a person on whom a monetary penalty notice has been imposed or a stop notice has been served. The enforcement cost recovery notice would require the person to pay back the costs, as outlined in sub-paragraph (3), associated with that monetary penalty or stop notice.

Paragraph 12 sets out the information which must be included by the Secretary of State in the enforcement cost recovery notice when it is served to the person.

These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
Paragraph 13 provides for the right of the person served with an enforcement cost recovery notice to appeal the decision taken by the Secretary of State to serve that notice. The paragraph specifies on what grounds the appeal can be made.

**Part 5: Power to make supplementary provision etc. by regulations**

Paragraph 14 confers a delegated power on the Secretary of State to, by supplementary regulations, make supplementary, consequential or incidental provisions to Schedule 1.

Paragraph 15 ensures that before making such supplementary regulations, the Secretary of State must consult any persons the Secretary of State considers appropriate. If, based on this consultation, it is appropriate for the Secretary of State to make substantial – rather than supplementary, incidental or consequential – changes to the provisions in Schedule 1, the Secretary of State must undertake further consultation as the Secretary of State considers appropriate.

Paragraphs 16, 17 and 18 provide examples of provisions the Secretary of State may make by supplementary regulations in relation to Schedule 1.

**Part 6: General and supplemental**

Paragraph 19 provides that the Secretary of State cannot serve a monetary penalty on a person for an action or omission if that person has already been served a stop notice in relation to the same action or omission. It also states that a stop notice cannot be served on a person for an act or omission if a monetary penalty has already been imposed on that person for the same act or omission or if the person’s liability for that monetary penalty has been discharged as outlined in paragraph 2(2).

Paragraph 20 sets out how an unincorporated association must pay any payment required under Schedule 1.

Paragraph 21 confers a responsibility on the Secretary of State to publish guidance which will provide details on which sanctions will be applied to a person committing a relevant offence, as defined in Clause 14(4), in what circumstances and what actions will be taken in relation to the person. The Secretary of State must apply this guidance when exercising their functions under Schedule 1. Such guidance must also provide details under each of the sanctions provided for under Schedule 1 as stated in sub-paragraphs (2) to (5). Sub-paragraph (6) confers a responsibility on the Secretary of State to revise guidance where appropriate and to publish revised guidance. All guidance and revised guidance under this paragraph must be subject to consultation of persons the Secretary of State considers appropriate.

Paragraph 22 ensures that any consultation undertaken prior to commencement of the Bill, which would have satisfied the requirements of paragraph 21, can be considered when meeting the consultation requirements under paragraph 21.

Paragraph 24 confers a responsibility on the Secretary of State to publish reports on the use of civil sanctions as provided for under Schedule 1. The paragraph makes clear what information a report must include and when it may be appropriate for not including information.

**Part 7: Interpretation**

Paragraph 25 explains where definitions for terms used in Schedule 1 can be found within the schedule.
Schedule 2: Search warrants: England and Wales and Northern Ireland

Part 1: Preliminary

173 Part 1 of this Schedule limits the application of this Schedule to England and Wales and Northern Ireland.

Part 2: Search warrants: applications and safeguards

174 Part 2 of Schedule 2 sets out the procedure for applying for a search warrant under Clause 18 and outlines various safeguards. Paragraph 3 sets out the information that must be provided in an application. Paragraphs 4 and 5 set out the information that must be contained in a search warrant, including whether the warrant authorises single or multiple entries into relevant premises. A warrant may authorise entry to, and search of, premises on more than one occasion if, on the application, the justice is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which it was granted, for example, the search of a large warehouse.

175 Paragraph 6 provides for the making of copies.

Part 3: Execution of search warrants

176 Part 3 of Schedule 2 makes provision for the execution of search warrants. Under paragraph 8, where premises are entered and searched in pursuance of an all premises warrant and such premises are not specified in the warrant, entry must be authorised by a relevant enforcement officer of the appropriate grade, as defined in paragraph 2. Where a warrant authorises multiple entries into a set of premises, any second or subsequent entry must be similarly authorised by a relevant enforcement officer of the appropriate grade (paragraph 9).

Commencement

177 The Secretary of State will bring the Ivory Bill into force by regulations. The Bill will be brought into force no earlier than 6 months after Royal Assent.

Financial implications of the Bill

178 As far as it is possible to quantify costs prior to the enactment of this Bill, the Department estimates costs at circa £2 million per annum for the first five years, to cover enforcement costs and the impact on the justice system. There will be a further one-off cost of around £500,000 for the build of the new IT system, subject to cost recovery via fees to applicants. The exact costings will be dependent on the level of compliance with these measures and the number of exemption applications received.

Parliamentary approval for financial costs or for charges imposed

179 A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). This Bill requires a money resolution because the Secretary of State is likely to incur significant expenditure in operating the certification and registration systems (see Clauses 3 to 5 and Clauses 10 and 11). The money resolution was agreed on the 4 June 2018.
Compatibility with the European Convention on Human Rights

The Lord Gardiner of Kimble, Parliamentary Under-Secretary (Department for Environment, Food and Rural Affairs) has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

The Government’s ECHR analysis can be found in the Memorandum to the Joint Committee on Human Rights.

Related documents

The following documents are relevant to the Bill and can be read at the stated locations:

- Delegated Powers and Regulatory Reform Committee Memorandum

- Impact Assessment

- Consultation on banning UK sales of ivory

- Consultation on banning UK Sales of Ivory: summary of responses and Government response
Annex A – Territorial extent and application in the United Kingdom

This extends and applies to the United Kingdom.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Extends to E &amp; W and applies to England?</th>
<th>Extends to E &amp; W and applies to Wales?</th>
<th>Extends and applies to Scotland?</th>
<th>Extends and applies to Northern Ireland?</th>
<th>Would corresponding provision be within the competence of the National Assembly for Wales?</th>
<th>Would corresponding provision be within the competence of the Scottish Parliament?</th>
<th>Would corresponding provision be within the competence of the Northern Ireland Assembly?</th>
<th>Legislative Consent Motion needed?</th>
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<td>Prohibition Clause 1</td>
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<td>Exemption for outstandingly valuable and important pre-1918 items Clauses 2-5</td>
<td>Yes</td>
<td>Yes</td>
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<td>N/A</td>
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<td>Other exemptions Clauses 6-11</td>
<td>Yes</td>
<td>Yes</td>
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<td>Criminal and civil sanctions Clauses 12-13</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Powers of entry, search and seizure Clauses 14-27</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Retention and disposal or return of items Clauses 28-32</td>
<td>Yes</td>
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<td>General Clauses 33-42</td>
<td>Yes</td>
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<td>Schedule 1</td>
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<td>Schedule 2</td>
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These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119)
These Explanatory Notes relate to the Ivory Bill as brought from the House of Commons on 5 July 2018 (HL Bill 119).

Ordered by the House of Lords to be printed, 5 July 2018

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