



HOUSE OF LORDS

Select Committee on the Constitution

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12th Report of Session 2017–19

# Ivory Bill

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### *Committee staff*

The current staff of the committee are Matt Korris (Clerk) and Lloyd Whittaker (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

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# Ivory Bill

## CHAPTER 1: IVORY BILL

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### Introduction

1. The Ivory Bill (“the Bill”) was introduced in the House of Commons on 23 May 2018 and completed its Commons stages on 4 July. It was introduced to the House of Lords on 5 July and had its second reading on 17 July.
2. The Bill aims to prohibit commercial activities concerning ivory in the United Kingdom and also to prevent the import and re-export of ivory for commercial purposes to and from the UK.

### Powers of entry, search and seizure

3. The Bill confers powers of entry, search and seizure on police and customs officers and also on “an accredited civilian officer”.<sup>1</sup> The Explanatory Notes to the Bill state: “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.”<sup>2</sup> In effect, this is the conferral of power upon a civil servant working for the Secretary of State. Although the Explanatory Notes refer to “the regulator”, this term is not used in the Bill. During the Bill’s Committee stage the Minister, David Rutley MP, explained that the regulatory role would fall to the Office of Product Standards and Safety (OPSS), part of the Department for Business, Energy and Industrial Strategy.<sup>3</sup>
4. Clause 18 provides that an “accredited civilian officer” is among the categories of person who can apply for search warrants. These may be granted by a justice of the peace or their equivalent in Scotland and Northern Ireland. Such an accredited civilian officer may also execute a search warrant<sup>4</sup> and has significant related powers under clauses 19-22, including the power of seizure.<sup>5</sup> Further provision in relation to warrants is provided in schedule 2.
5. **Powers to enter and search premises and to seize property represent a significant interference with individual liberty. They are ordinarily vested only in recognised legal officials who typically operate independently of, or at least at arm’s length from, the government. By clause 17, accredited civilian officers are however explicitly described as officers of the Secretary of State. The clause leaves the Secretary of State with significant discretion in the appointment, and dismissal, of such persons.**
6. Clause 17 sets out certain restrictions on the use of these powers—for example, the search power does not authorise the entry into premises “used wholly or mainly as a dwelling”<sup>6</sup> unless a warrant has been authorised. It is also the case that the power to search premises is established for a limited

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1 [Ivory Bill](#), Clause 17(7) [Bill 119 (2017–19)]

2 [Explanatory Notes to the Ivory Bill](#) [Bill 119 (2017-19)—EN], para 99

3 “The regulatory body, the Office for Product Safety and Standards, and the police will be responsible for identifying and investigating breaches of the ban.” Ivory Bill, Public Bill Committee, (19 June 2018), [col 129](#)

4 [Ivory Bill](#), Clause 19(3)

5 *Ibid.*, Clause 22

6 *Ibid.*, Clause 17(6)(a)

set of purposes. However, clause 18 is not subject to such limitations and the civilian officers are vested with much the same powers as the police and customs officers.

7. The Government has offered written reassurances as to the role of officers within OPSS and their powers under the Bill,<sup>7</sup> including that officers will be subject to the Regulators' Code,<sup>8</sup> however this does not appear on the face of the Bill.
8. **We do not wish the progress of the Bill to be delayed, as the fundamental objective of the Bill was widely welcomed at second reading. However, we are concerned that important policing functions, including powers of entry, search and seizure, are to be exercised by civilian officials working directly to the minister. We recommend that the Government should set out its justification for investing officials appointed by, and working for, ministers with policing powers and provide details of any safeguards for the proposed regime.**

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7 Letter from David Rutley MP, Parliamentary Under Secretary of State for the Environment at the Department for Environment, Food and Rural Affairs, to Alex Chalk MP, 24 June 2018: [http://data.parliament.uk/DepositedPapers/files/DEP2018-0655/Alex\\_Chalk\\_-\\_OPSS.pdf](http://data.parliament.uk/DepositedPapers/files/DEP2018-0655/Alex_Chalk_-_OPSS.pdf)

8 Department for Business, Innovation and Skills, 'Regulators' Code' (April 2014): <https://www.gov.uk/government/publications/regulators-code>