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10 March 2025

Dear Finlay,

## **The Ivory Prohibitions (Exemptions) (Process and Procedure) (Amendment) Regulations 2025 (ENV/328) – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas and within the competence of the EU at exit day.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI.

The Ivory Act 2018 (“the Act”) prohibits commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes to and from the UK. Ivory is defined in the Act as “ivory from the tusk or tooth of an elephant, hippopotamus, narwhal, killer and sperm whale.”

This instrument will amend the schedule to the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (S.I. 2022/94) to prescribe five additional institutions who may provide the Secretary of State with advice on applications for exemption certificates under section 2 of the Ivory Act 2018 (c. 30) (“the Act”).

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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The proposed new institutions are set out below:

- (j) the Museum of Ethnographers;
- (k) National Museum of Liverpool;
- (l) National Museums of Northern Ireland;
- (m) Royal Albert Memorial Museum;
- (n) National Museum of Wales.”.

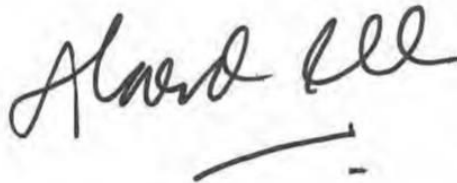
Section 2 provides for an exemption from the prohibition for ivory items of outstanding artistic, cultural or historic value which are assessed as the rarest and/ or most important items of their type. It permits an item made of or containing ivory to be subject to dealing if a certificate is issued for this item under this exemption.

Defra intend to lay this SI on 23 April 2025 with a coming into force date 21 days later.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink that reads "Alasdair Allan". The signature is written in a cursive style and is positioned above a horizontal line.

**DR ALASDAIR ALLAN**

## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

### **Name of the SI(s) (if known) or a title describing the policy area**

The Ivory Prohibitions (Exemptions) (Process and Procedure) (Amendment) Regulations 2025 (ENV/328)

### **Is the notification Type 1 or Type 2**

Type 1 notification. We consider it appropriate to notify this SI as it is an exercise by UK Ministers of a power to make secondary legislation in a devolved area which was within the competence of the EU at exit day (11pm 31 December 2020)

### **Details of the provisions that Scottish Ministers are being asked to consent to.**

The Act prohibits commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes to and from the UK.

“Ivory” is defined under subsection 37(1) of the Ivory Act 2018 (“the Act”) as “ivory from the tusk or tooth of an elephant, hippopotamus, narwhal, killer whale and sperm whale.”

The UK Government intend to amend the schedule to the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (S.I. 2022/94) to prescribe five additional institutions who may provide the Secretary of State with advice on applications for exemption certificates under section 2 of the Ivory Act 2018 (c. 30) (“the Act”). Section 2 provides for an exemption from the prohibition for ivory items of outstanding artistic, cultural or historic value which are assessed as the rarest and/ or most important items of their type. It permits an item made of or containing ivory to be subject to dealing if a certificate is issued for this item under this exemption. The proposed new institutions are set out below:

- (j) the Museum of Ethnographers;
- (k) National Museum of Liverpool;
- (l) National Museums of Northern Ireland;
- (m) Royal Albert Memorial Museum;
- (n) National Museum of Wales.”.

Subsection 39(3) of the Act requires that regulations that apply in relation to Wales, Scotland or Northern Ireland may be made only by, or with the consent of, the Welsh Ministers, Scottish Ministers, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

The instrument is being made under section 2(5) of the Act .

As noted above, subsection 39(3) of the Act provides that regulations that apply in England and any of the devolved nations may be made by the UK Secretary of State only with the consent of the devolved nations. The regulations extend to England,

Scotland, Wales and Northern Ireland. As such, the consent of the Scottish Ministers is required along with that of the other devolved administrations.

### **Summary of the proposals**

The Act was introduced to ban commercial dealing in elephant ivory in the UK. The ban applies to dealings taking place within the UK and to exports from and imports into the UK for commercial purposes.

The Act prohibits dealing in ivory and items made of, or containing ivory, unless they meet one of the narrowly defined exemptions to the ban, these are

- a) pre-1918 items of outstanding artistic etc value and importance,
- b) pre- 1918 portrait miniatures,
- c) pre- 1947 items with low ivory content,
- d) pre- 1975 musical instruments, and
- e) acquisitions by qualifying museums.

The UK Government is proposing to amend the Act to prescribe five additional institutions who may provide the Secretary of State with advice on applications for exemption certificates under section 2 of the Act. 8.

### **Does the SI relate to a common framework or other scheme?**

No.

While this SI will only see the addition of the prescribed institutions aforementioned to provide advice for exemption certificates.

### **Summary of stakeholder engagement/consultation**

N/A

### **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

The Act was introduced to provide additional protection for elephants by banning the commercial sale of ivory within the UK. In January 2025 the species, hippopotamus, narwhal, killer and sperm whale were included to be given the same protections.

There are a small number of cases where ivory sales must be exempt, specifically relating to those being acquired by museums for reasons including science and

education, and for a small number of instruments and artefacts which are historic in nature.

Increasing the number of institutions who may provide the Secretary of State with advice will help mitigate the burden of managing exemption certificates.

The devolved administrations also have the power under section 2(5) to amend or increase the number prescribed institutions who can provide advice on exemption certificates, however, to ensure a smooth operation of the Act, given that the administrative regime that underpins the prohibitions and exemptions in the Act is operated by Defra and APHA it is thought that a UK wide approach is sensible.

**Intended laying date (if known) of instruments likely to arise**

Proposed laying date 23 April 2025 and coming into force 21 days after being laid.

**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

N/A

**Information about any time dependency associated with the proposal**

The Committee is asked to respond within 28 days.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

No broader governance issues

**Any significant financial implications?**

No significant financial implications

## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b>
The Ivory Prohibitions (Exemptions) (Process and Procedure) (Amendment) Regulations 2025 (ENV/328)
<b>Proposed laying date at Westminster</b>
23 April 2025
<b>Date by which Committee has been asked to respond</b>
28 days
<b>Power(s) under which SI is to be made</b>
Section 2(5) of the Ivory Act 2018
<b>Categorisation under SI Protocol</b>
Type 1 Notification
<b>Purpose</b>
The Ivory Act 2018 (“the Act”) was introduced to ban commercial dealing in elephant ivory in the UK. The purpose of this SI is to amend the schedule to the Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 to prescribe five additional institutions who may provide the Secretary of State with advice on applications for exemption certificates under section 2 of the Ivory Act 2018
<b>Other information</b>
N/A
<b>SG Policy contact:</b>
Robyn Chapman <a href="mailto:Robyn.Chapman@gov.scot">Robyn.Chapman@gov.scot</a>