

NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

The Ivory Prohibitions (Civil Sanctions) Regulations

Is the notification Type 1 or Type 2

Type 1 notification. We consider it appropriate to notify this SI as it is likely that the subject matter was within the competence of the EU at exit day.

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

Provisions to partially implement the Ivory Act 2018 ("the Act"). The Provisions prescribe the civil sanctions arrangements alongside appeal functions under the Act.

The instrument is being made under sections 13 and 39(1) and, in accordance with section 39(3) of the Ivory Act 2018. The Ivory Act 2018 provides that regulations that apply in Scotland may be made only with the consent of the Scottish Ministers.

Summary of the proposals

The Act was introduced to ban commercial dealing in elephant ivory in the UK. When commenced, the Act will ban dealing of items made of or containing elephant ivory, regardless of their age. The ban will apply to dealings taking place within the UK and to exports from and imports into the UK for commercial purposes. It will sit alongside the existing regulatory regime for the trade in endangered species (CITES) which covers elephant ivory.

Before the prohibition on ivory dealing in the Act can be commenced it is necessary to establish the detailed legislative provisions for the operation of the civil sanctions regime (by means of secondary legislation). Regulations supplementing the civil enforcement regime are to be laid before the UK Parliament in Spring 2022 when the prohibition on ivory dealing is also due to come into force.

This instrument is being made in order to introduce civil sanctions, including monetary penalties and enforcement undertakings, in regards to the prohibition on ivory dealing once commenced.

This SI also includes provisions to confer appeal functions on the UK first tier tribunal in line with provisions set out in the Ivory Act 2018. Defra estimate the number of appeals in the first year will be low with no more than two appeals expected in Scotland.

Appeal functions for the Ivory Act are not included under the current Tribunals (Scotland) Act 2014 (the 2014 Act) and without an amendment to that Act any legislation to facilitate the hearing appeals at the Scottish First-Tier Tribunal would be beyond our legal authority.

Consideration to transfer the Ivory Act provisions to the Scottish Tribunal system is on-going. However, where an amendment to the 2014 Act is required the lead in time is 12-18 months. In the interim and while this work is being done the UK Tribunal enjoys jurisdiction in Scotland and can deal with any Scottish cases. We anticipate that this will be a maximum of two cases a year.

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

No

Summary of stakeholder engagement/consultation

Defra held a full public consultation on the enforcement of the Ivory Act 2018 which ran from 23 August 2021 to 19 September 2021. The consultation received 20 responses, twelve responses by, or on behalf of, organisations and eight responses from individuals. The response to that consultation was published on 6 December 2021 and is available here:

[Additional enforcement requirements to the Ivory Act 2018: summary of responses and government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/additional-enforcement-requirements-to-the-ivory-act-2018).

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. 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.

Where ivory sales are not exempt it is necessary to have a functioning civil sanctions scheme and an appropriate appeals process. Allowing appeals to be held on a UK wide level at this stage allows for the Scottish Government to monitor the necessity of specific Scottish appeals functions and consider the requirement for appeals to be heard by Scottish Tribunals at a future date.

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

16 March 2022.

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 (excluding February recess period)

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

Title of Instrument
The Ivory Prohibitions (Civil Sanctions) Regulations
Proposed laying date at Westminster
16 March 2022 (Statutory Instrument (negative resolution), Defra content for timescale for debate to allow for consent process agreed with the Scottish Parliament)
Date by which Committee has been asked to respond
28 days
Power(s) under which SI is to be made
The Ivory Act 2018 – Schedule 1
Categorisation under SI Protocol
Type 1 Notification
Purpose
The Ivory Act 2018 (“the Act”) was introduced to ban commercial dealing in elephant ivory in the UK. When commenced, the Act will ban dealing of items made of or containing elephant ivory, regardless of their age. The ban will apply to dealings taking place within the UK and to exports from and imports into the UK for commercial purposes. The purpose of this SI is to introduce civil sanctions, including monetary penalties and enforcement arrangements. The regulations also include appeal functions, for appeals to be heard at the UK First Tier tribunal.
Other information
N/A
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