



## BRIEFING PAPER

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# The Ivory Bill

By Elena Ares and Alison Pratt

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## Summary

An international agreement in 1989 to effectively ban international trade in ivory was brought in under the [Convention on International Trade in Endangered Species of Wild Flora and Fauna \(CITES\)](#). This agreement listed African elephant ivory on Appendix I to the Convention in 1990, meaning trade in ivory was limited to “exceptional circumstances.” This did not affect legal domestic markets, which were allowed to continue—and did so in many countries.

However, there has been rising international concern over the declining population of African savanna elephants. Between 2007 and 2014 the savanna elephant population declined by 30 percent, largely due to poaching. A recent [census of the savanna elephant population](#) found that “elephants are struggling both inside and outside parks.”

### International action on ivory

In September 2015, the then US President Barack Obama and China’s President Xi Jinping pledged to enact “near complete bans” on the import and export of ivory. As a result in June 2016 the US Government introduced new regulations and China announced that it would introduce a ban on all ivory trade and processing activities by the end of 2017. France introduced a “near complete ban” on ivory trading in France and all overseas French territories in 2016. And in October 2016 the Conference of Parties to [CITES](#) accepted a non-binding resolution to phase out domestic ivory markets.

### UK ban on ivory sales

In September 2016 the UK Government announced a plan to introduce a ban on the sale of ‘modern day ivory’ – that is, all ‘worked’ ivory produced after 1947. Any works produced prior to this date would be classed as ‘antique’ and trade in them would be permitted. The proposed ban was criticised on the grounds that it did not provide a total ban, as set out in the 2015 Conservative Party manifesto.<sup>1</sup> In response, an e-petition with over 100,000 signatures called on the Government to ‘Shut down the domestic ivory market in the UK’.<sup>2</sup>

Following this, in October 2017, the Government announced a proposal to introduce a total ban on ivory sales in the UK and published a consultation. A total ban, with some exceptions, was announced in April 2018. This was followed by the publication of the Ivory Bill in May 2018.

### The Ivory Bill

The Bill will prohibit the commercial use of ivory items or those containing ivory regardless of their age, with some exceptions. As set out in the explanatory notes the ban will not affect “ownership of items made of, or containing ivory, including, inheriting, donating or bequeathing”.<sup>3</sup> Wildlife organisations have welcomed the ban. However, many antique traders have expressed concerns at the extent of the proposals and how they will work in practice. The Bill was not amended during Committee Stage. There was significant debate on several areas, including whether the Bill should be extended to cover ivory from non-elephant species.

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<sup>1</sup> Conservatives, [The Conservative Party Manifesto 2015](#), p55

<sup>2</sup> [Petitions, UK Government and Parliament: Shut down the domestic ivory market in the UK](#)

<sup>3</sup> Explanatory Notes, [paragraph 9](#)

# 1. Ivory trade and poaching

Estimated at being worth between \$15 to 20 billion annually, illegal trade in wildlife is a lucrative market for criminals,<sup>4</sup> and one of the highest value illicit trade sectors in the world.<sup>5</sup> In recent years, there has been a surge in demand for wildlife products, including ivory. This surge in demand has largely come from east and south-east Asian markets.<sup>6</sup>

The [Convention on International Trade in Endangered Species of Wild Flora and Fauna \(CITES\)](#), is an agreement between governments to ensure that international trade in specimens of wild animals and plants does not threaten their survival. A State for which the Convention has entered into force is called a Party to CITES. Currently there are 183 Parties. In 1989, Parties to the CITES secured an agreement to ban international trade in ivory.<sup>7</sup> Africa's overall population of elephants did increase after the ban, but a recent estimate of African savanna elephants reported a 30 percent decline in numbers (144,000 elephants) between 2007 and 2014.<sup>8</sup>

In 2014, [a CITES report](#) showed that "over 20,000 African elephants were poached across the continent in 2013." This report also noted that the "sharp upward trend in illegal elephant killing observed since the mid-2000s" had peaked in 2011, but went on to caution that poaching levels "remain alarmingly high and continue to far exceed the natural elephant population growth rates."<sup>9</sup>

...over 20,000 African elephants were poached across the continent in 2013.

The [Great Elephant Census](#), which reported in August 2016, showed that the current rate of decline in elephant numbers is 8 per cent per year, primarily due to poaching.<sup>10</sup>

## Box 1: Great Elephant Census

The [Great Elephant Census](#) was a large scale project designed to provide accurate and up-to-date data about the number and distribution of African elephants. Launched in December 2013, the project reported in August 2016.<sup>11</sup> The final results of the census show:

- Savanna elephant populations declined by 30 percent (equal to 144,000 elephants) between 2007 and 2014.
- The current rate of decline is 8 percent per year, primarily due to poaching. The rate of decline accelerated from 2007 to 2014.

<sup>4</sup> UNEP, [Illegal Trade in Wildlife Fact Sheet](#), May 2016

<sup>5</sup> Oxford Martin School, [Programmes: Illegal Wildlife Trade](#), Accessed: 11 November 2016

<sup>6</sup> European Commission, ["Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking"](#), February 2016

<sup>7</sup> Andrew M. Lemieux, Ronald V. Clarke, ["The International Ban on Ivory Sales and its Effects on Elephant Poaching in Africa"](#), *British Journal of Criminology*, **49**; **4**, (2009)

<sup>8</sup> Elephant Census, ["Paul G. Allen's Great Elephant Census Reveals Dramatic Population Decline in African Savanna Elephants"](#), 31 August 2016

<sup>9</sup> CITES, ["Elephant poaching and ivory smuggling figures released today"](#), 13 June 2014

<sup>10</sup> Elephant Census, ["Paul G. Allen's Great Elephant Census Reveals Dramatic Population Decline in African Savanna Elephants"](#), 31 August 2016

<sup>11</sup> Chase MJ, et al., ["Continent-wide survey reveals massive decline in African savannah elephants"](#), *PeerJ*(2016)

- 352,271 elephants were counted in the 18 countries surveyed. This figure represents at least 93 percent of savanna elephants in these countries.
- Eighty-four percent of the population surveyed was sighted in legally protected areas while 16 percent were in unprotected areas. However, high numbers of elephant carcasses were discovered in many protected areas, indicating that elephants are struggling both inside and outside parks.<sup>12</sup>

## 2. Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

### 2.1 A ban on international ivory trade

In 1989 an agreement was reached under the [CITES](#) to effectively ban international trade in ivory; by placing African elephant ivory on Appendix I, parties to the Convention limited trade in ivory to “exceptional circumstances.”<sup>13</sup> This means that, while the international market in ivory was closed, legal domestic markets were allowed to continue in several countries around the world.

#### Box 2: Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

##### What is CITES?

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), is an international agreement between governments to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The [text of the Convention](#) was agreed at a meeting of representatives of 80 countries in the US on 3 March 1973, and on 1 July 1975 CITES entered into force. CITES is a voluntary international agreement which is legally binding on the Parties—in other words they have to implement the Convention—it does not take the place of national laws.<sup>14</sup>

##### How does CITES works?

CITES works by subjecting international trade in specimens of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by the Convention has to be authorised through a licensing system.<sup>15</sup>

The species covered by CITES are listed in [three Appendices](#), according to the degree of protection they need:

- **Appendix I** includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.
- **Appendix II** includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilisation incompatible with their survival.
- **Appendix III** contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.<sup>16</sup>

<sup>12</sup> Elephant Census, [“Paul G. Allen’s Great Elephant Census Reveals Dramatic Population Decline in African Savanna Elephants”](#), 31 August 2016

<sup>13</sup> CITES, [“How CITES works”](#), [accessed: 27 January 2017]

<sup>14</sup> CITES, [“What is CITES?”](#), [accessed: 27 January 2017]

<sup>15</sup> CITES, [“How CITES works”](#), [accessed: 27 January 2017]

<sup>16</sup> CITES, [“How CITES works”](#), [accessed: 27 January 2017]

## 2.2 EU and UK regulations

CITES is [implemented within Europe](#) through two EC Regulations ([338/97](#) and [865/06](#) as amended). These Regulations implement CITES in a stricter manner than is required by the Convention.<sup>17</sup>

These regulations are transposed into UK legislation through [the Control of Trade in Endangered Species \(Enforcement\) Regulations 1997](#) or COTES. These Regulations provide for criminal offences relating to breaches of the requirements of CITES, and in effect ban the sale or trade of raw or unworked tusks of any age. Specifically, the regulations make it an offence to sell, keep for sale, offer for sale, transport for sale, use for a commercial purpose, or purchase anything which claims to be made from a species in Annex A of the EC Council Regulation. Under the regulations, the maximum penalty upon conviction is a 5 year prison sentence, a level 5 fine or both.

## 3. International actions

### 3.1 CITES Conference of Parties (CoP) 17

The Government's 2016 announcement of its proposed ban on modern day ivory sales came just ahead of the 17<sup>th</sup> meeting of the CITES Conference of Parties. Environment Minister, Dr Thérèse Coffey, attended the conference on behalf of the Government. Ahead of the meeting she commented:

Working with other governments, I want to see strong outcomes from this conference to protect our precious global wildlife, including elephants, lions and rhinos. I hope the world takes note of the UK's decisive action at this important time.<sup>18</sup>

The conference accepted a non-binding resolution to phase out domestic ivory markets and rejected the proposal to develop a 'decision making mechanism' which would allow international trade in ivory.<sup>19</sup>

The Wildlife Conservation Society (WCS) celebrated the decision of CITES delegates to phase out domestic ivory markets; Susan Lieberman, WCS Vice President of International Policy, commented that the decision provided renewed hope for Africa's elephants:

"The global community today further chipped away at the elephant ivory market. [...] Traffickers and criminal networks are losing their markets and losing their financial incentives to illegally kill Africa's elephants for their ivory.

[...]

"There is renewed hope for Africa's elephants today. We know we must end the laundering of ivory into domestic markets, and the demand for elephant ivory, if we are going to stop the

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<sup>17</sup> JNCC, "[Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#)", [accessed: 31 January 2017]

<sup>18</sup> Defra, "[UK ban on modern day ivory sales](#)", gov.uk, 21 September 2016

<sup>19</sup> Environmental Investigation Agency, "[Unpacking CITES CoP17: The wins and the losses](#)", 5 October 2016

poaching. This action follows steps by the United States and France and by U.S. states including Hawaii, New York, and California who have enacted laws to close down their domestic elephant ivory markets. And China and Hong Kong SAR are promising to do the same.<sup>20</sup>

### 3.2 Conference on the Illegal Wildlife Trade (IWT) in Hanoi

The UK Government supported Vietnam in holding a [third “high level” conference on 17 November 2016](#). This conference built on the London and Botswana conferences held in 2014 and 2015 respectively. The intention of the UK Government at this conference was to focus on encouraging countries to take action on commitments they have already made.<sup>21</sup>

The UK’s commitments at the conference were:

- Building on the commitment made during China’s State Visit to the UK in 2015, UK and China will adopt pragmatic measures to jointly tackle the illegal trade of wildlife products including ivory. To prevent smuggling of illegal wildlife products and effectively deter the offenders, UK and China will jointly develop and implement a law enforcement training project in Africa in 2017. With support from the range states, the training project will focus on enforcement, the identification of species and conservation issues.
- The UK will fund Interpol to expand their work with key nations, tracking and intercepting illegal shipments of ivory, rhino horn and other illegal wildlife products.
- The British military will train a new team of anti-poaching trackers to be deployed in African range states, beginning with Malawi in 2017.
- The UK will commit up to £4 million to the International Consortium for Combatting Wildlife Crime to strengthen criminal justice systems and provide coordinated support at national, regional and international level to combat wildlife and forest crime.<sup>22</sup>

In a debate on the ivory trade on 8 December 2016, Defra Minister Dr Thérèse Coffey said the UK would host the next high-level event in London in 2018 “to maintain global momentum.”<sup>23</sup> The Conference which will take place in London on 11 and 12 October 2018 was [officially launched](#) in October 2017.

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<sup>20</sup> As quoted in: WCS, [“CITES CoP17 Delegates Adopt Resolution Recommending Closure of Domestic Elephant Ivory Markets Globally”](#), *National Geographic*, 2 October 2016

<sup>21</sup> PQ HL2627 [Conference on the Illegal Wildlife Trade: Hanoi] 8 November 2016

<sup>22</sup> [Hanoi Statement on Illegal Wildlife Trade](#), 17 November 2016

<sup>23</sup> [HC Deb 8 Dec 2016 vol 618 c207WH](#)

### 3.3 Examples of bans in other countries

In September 2015, then US President Barack Obama and China's President Xi Jinping together pledged to enact "near complete bans" on the import and export of ivory.<sup>24</sup>

#### USA

In June 2016, the USA introduced a near-total ban on the commercial trade of African elephant ivory. The new rules restrict exports and sales across state lines, as well as limit ivory trophy imports to two per year, per hunter.<sup>25</sup> The rules exempt items over 100 years old. Newer items that include less than 200g of ivory as long, as it less than 50% of the volume of the item and the ivory was imported before 1990, are also excluded.<sup>26</sup>

#### China

Building on the pledge made in 2015, at the end of 2016, China announced that it would introduce a ban on all ivory trade and processing activities by the end of 2017.<sup>27</sup> The Chinese Government stated that it would cease part of ivory processing and sales by 31 March 2017 and cease all ivory processing and sales by 31 December 2017.<sup>28</sup>

This is seen as significant event, as China is one of the world's largest consumers of wildlife products,<sup>29</sup> and demand in China is thought to be "driving a global trade in endangered species" according to experts at the Wilson Center, an American think-tank.<sup>30</sup> Lo Sze Ping, CEO of WWF-China said:

WWF applauds China's decision to ban its domestic ivory trade so swiftly, underlining the government's determination and strong leadership to reduce demand for ivory and help save Africa's elephants.

Closing the world's largest legal ivory market will deter people in China and beyond from buying ivory and make it harder for ivory traffickers to sell their illegal stocks.<sup>31</sup>

Wildlife Watch reporter Rachael Bale described this as "the most significant step yet in efforts to shut down an industry that has fuelled the illegal hunting of elephants."<sup>32</sup>

An [National Resources Defence Council article](#) from December 2017 highlighted the Chinese Government's closures of ivory factories and shops, together with the destruction of some ivory stockpiles. It reports

<sup>24</sup> Rachel Bale, "[U.S.-China Deal to Ban Ivory Trade Is Good News for Elephants](#)", *National Geographic*, 25 September 2015

<sup>25</sup> Jani Actman, "[U.S. Adopts Near-Total Ivory Ban](#)", *National Geographic*, 3 June 2016

<sup>26</sup> Antique Traders Gazette, [US ivory 'final rule': what you need to know](#), 2016

<sup>27</sup> BBC, "[China announces ban on ivory trade by end of 2017](#)", 30 December 2016

<sup>28</sup> WWF, "[China to ban domestic ivory trade by 2017](#)", 30 December 2016

<sup>29</sup> IFAW, "[Reducing markets for wildlife products in China](#)", Accessed: 11 November 2016

<sup>30</sup> Wilson Center China Environment Forum, [Wild Laws: China and Its Role in Illicit Wildlife Trade](#), 2 June 2016

<sup>31</sup> *ibid*

<sup>32</sup> Jani Actman, "[China to Shut Down Its Ivory Trade by the End of 2017](#)", *National Geographic*, 30 December 2016

raw ivory prices falling by 50% as result but raises concerns about the ivory trade being displaced into neighbouring countries with less stringent controls, such as Vietnam and Laos.<sup>33</sup>

### France

In 2016, the French Government announced a near complete ban on the ivory trade in France and all overseas French territories.<sup>34</sup> The ban includes provisions to ban the trade of raw ivory and the production of artefacts using ivory, regardless of age. It also prohibits the restoration and sale of ivory products bought after 1975. The Parliament Magazine EU set out the terms of the ban in August 2016:

The French decree includes provisions to ban the trade and commercial use of raw ivory, plus the production of artefacts using ivory, irrespective of its age.

It also prohibits both the restoration and sale of ivory products bought after July 1975, even if they were purchased legally.<sup>35</sup>

The International Fund for Animal Welfare (IFAW) questioned the exemptions to the ban which allowed for the trading of objects made of ivory and rhinoceros horn which were produced before 1 July 1975 and raised concerns about the potential for the falsification of certification.<sup>36</sup>

## 4. UK action

### Summary

In September 2016 the UK Government announced a plan to introduce a ban on the sale of 'modern day ivory' – that is, all 'worked' ivory produced after 1947. Any works produced prior to this date would be classed as 'antique' and trade in them would be permitted. The proposed ban was criticised on the grounds that it did not provide a total ban, as set out in the 2015 Conservative Party manifesto.<sup>37</sup> In response, an e-petition with over 100,000 signatures called on the Government to 'Shut down the domestic ivory market in the UK'.<sup>38</sup>

Following this, in October 2017, the Government announced a proposal to introduce a total ban on ivory sales in the UK and published a consultation. A total ban, with some exceptions, was announced in April 2018. This was followed by the publication of the Ivory Bill in May 2018.

### 4.1 Ban on modern day ivory sales

On 21 September 2016, the Government [announced](#) plans to ban the sale of 'worked' ivory produced since 1947. Ornaments and works of

<sup>33</sup> NRDC, [With Ivory Ban Final, China Steps Forward; U.S. Steps Back](#), 28 December 2017

<sup>34</sup> RFI, ["France introduces total ban on ivory sales"](#), 17 June 2016

<sup>35</sup> The Parliament Magazine EU, ["France praised for ban on ivory trade"](#), 26 August 2016

<sup>36</sup> IFAW, ["A near total ivory ban finalized in France!"](#), 17 August 2016

<sup>37</sup> Conservatives, [The Conservative Party Manifesto 2015](#), p55

<sup>38</sup> [Petitions, UK Government and Parliament: Shut down the domestic ivory market in the UK](#)

art dating prior to 1947 would be classified as 'antique' and trade in them permitted.

The Government planned to 'consult with environmental groups, industry and other relevant parties to establish how and when a ban could be introduced, as well as any necessary exemptions' early in 2017.

On 20 September 2016, speaking ahead of the 17th Conference of Parties to CITES (CoP17), DEFRA Minister, Lord Gardiner of Kimble, set out the Government's actions towards securing a total ban on ivory sales in answer to a PQ:

The Government has conducted informal discussions with representatives of the arts and antique sector on the scale of legal trade in ivory currently taking place. An accurate assessment is challenging as records for antiques may not necessarily record an item as containing ivory where this is only a small component of a larger item. Extrapolation from available data indicates that sales of items containing ivory may be worth in the order of several tens of millions of pounds per annum. [...]

We are actively exploring options with interested parties and other Government Departments about how to implement the UK Government's manifesto commitment to press for a total ban on ivory sales. The UK has successfully lobbied for the EU-wide adoption of the existing UK ban on trade in raw ivory tusks, which was agreed through European Council Conclusions on an EU Action Plan on Wildlife Trafficking adopted in June. Trade in such tusks presents the greatest risk of poached ivory entering the legal market. In addition, these conclusions urged EU Member States to consider further measures to put a halt to commercial trade in ivory from elephants.<sup>39</sup>

### Comments on the partial ban

The Government's ban on modern day ivory sales was criticised. For instance, Tusk, the conservation charity, criticised the Government for not going far enough.<sup>40</sup> Moreover, Action for Elephants UK and 124 signatories wrote a [letter](#) to Prime Minister Theresa May on 24 September 2016, calling on the government to ban all ivory trade in the UK. The signatories were concerned that the proposed ban does not apply to all sales of ivory, including pre-1947 pieces, as they believe that: "the existence of a legal ivory trade serves as a cover for illegal sales of ivory, while continuing to perpetuate the cycle of supply and demand."<sup>41</sup>

### **E-petition: Shut down the domestic ivory trade in the UK**

An [e-petition](#) on Parliament's website calling on the Government to 'Shut down the domestic ivory market in the UK' received over 100,000 signatures. The Government response noted their continued commitment to maintaining the current global ban on any international trade in new ivory and highlighted recent actions to ban modern day ivory sales:

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<sup>39</sup> [HL 1615](#) [on Ivory: Sales] 20 September 2016

<sup>40</sup> ['UK Government falls short in modern day ivory ban'](#), *Tusk*, 21 September 2016

<sup>41</sup>, ['Letter to Prime Minister'](#), *Action for Elephants UK + 125 signatories*, 24 September 2016

The Government is deeply concerned by the continued poaching of elephants for their ivory, which is why we are committed to maintaining the current global ban on any international trade in new ivory.<sup>42</sup>

On 17 January 2017, the Petitions Committee decided to schedule a debate in Westminster Hall on the motion.<sup>43</sup>

### **Westminster Hall Debate: UK Ivory Trade**

On 8 December 2016, MPs debated the [UK Ivory Trade](#).<sup>44</sup> Dr Thérèse Coffey, the responsible Minister, responded to the issues raised by Members during the debate. She explained *inter alia* that:

- She was proud of the plans for banning the sale of ivory that is less than 70 years old
- The 1947 date in the ban had its foundations in EU regulations, which still remain the overarching legislation for the implementation of CITES in the UK
- DEFRA would consult on implementing the ban early in 2017.

Jeremy Lefroy, the debate's sponsoring Member, meanwhile concluded by reasserting his call to "widen the [Government's] consultation early next year to cover all possible scenarios, including a total ban and a near-total ban [on ivory sales]."<sup>45</sup>

### **Westminster Hall Debate: Domestic Ivory Market**

On 6 February 2017 a debate in Westminster Hall considered e-petition 165905 regarding the domestic ivory market in the UK. In her concluding remarks, Dr Thérèse Coffey, the responsible Minister, stated that the Government were committed to "introducing the most effective ban possible on ivory". She encouraged Members to contribute to the consultation on plans for stronger action which would "soon be launching".<sup>46</sup>

## **4.2 Total ban on ivory announced**

In response to the calls for a wider ban, on 6 October 2017, the Government [announced](#) its proposal to introduce a ban on all ivory sales. These proposals would extend and apply to the UK, including Scotland, Wales and Northern Ireland. A [consultation](#) on the proposals was published at the same time. This consultation proposed four categories of exemptions to the ban.

[They] will need to be strictly defined and enforced to prevent exploitation. These are:

- Allowing the continued sale of musical instruments which contain ivory.

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<sup>42</sup> [Petitions, UK Government and Parliament: Shut down the domestic ivory market in the UK](#)

<sup>43</sup> Petitions Committee, "[Decisions of the Petitions Committee Tuesday 17 January 2017](#)", 18 January 2017

<sup>44</sup> [HC Deb 8 Dec 2016 vol 618 cc184-208WH](#)

<sup>45</sup> [HC Deb 8 Dec 2016 vol 618 c208WH](#)

<sup>46</sup> [HC Deb 6 Feb 2017 vol 627 cc46-48WH](#)

- Allowing the continued sale of items which contain a small percentage of ivory, and where the ivory is integral to the item - a “de minimis” exemption.
- Allowing the continued sale of items which are of significant artistic, cultural and historic value.
- Allowing the continued sale of ivory to museums, and between museums.<sup>47</sup>

The announcement of the proposed ban was widely welcomed. Tusk [called](#) the “announcement of the proposals and the associated consultation a welcome step towards implementing the Government’s longstanding commitment to close the UK ivory market”. A coalition of NGOs campaigning as [Ban UK Ivory Sales](#), welcomed the proposals, but were of [the view](#) that a separate exemption for musical instruments was not necessary.

The Government published the [consultation response](#) in April 2018, which confirmed that it would be bringing forward the ivory ban.

## 5. Ivory Bill published

Following the consultation, the Government published the [Ivory Bill](#) on 23 May 2015, together with [explanatory notes](#), an [impact assessment](#) and a [delegated powers memorandum](#).

The Bill would introduce a ban on dealing elephant ivory, with a few exceptions, making it a criminal offence. Defra and the FCO summarised the measures in the Bill, together with the level of support for ban, as follows:

The Bill covers ivory items of all ages, not only those produced after a certain date, subject to some narrow, carefully-defined exemptions. The maximum penalty for breaching the ban will be an unlimited fine or up to five years in jail.

The Bill follows widespread engagement with environmental groups and the antiques trade sector as well as the general public. More than 70,000 people and organisations responded to Defra’s consultation on an ivory ban late last year, with over 88% of responses in favour of measures to ban ivory sales in the UK.<sup>48</sup>

The [statement](#) also highlighted that number of elephants has declined by almost a third in the last decade and around 20,000 a year are killed to meet the global demand for ivory.

The Government also produced [a factsheet](#) on the Bill which set out the rationale for introducing a ban:

The past five years has seen a slow decline in the levels of elephant poaching, partly attributable to the closure of some key domestic ivory markets, particularly China and the United States. However, legal markets continue to fuel consumer demand and provide cover for an illegal market to operate. Legal markets act as a mechanism by which ‘new ivory’ from recently killed elephants can be laundered into trade, as it is extremely difficult

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<sup>47</sup> Defra, [“Banning UK sales of ivory”](#), page 11, October 2017 gov.uk

<sup>48</sup> Defra and FCO, [Introduction of ivory bill boosts fight against elephant poaching](#), 23 May 2018

to differentiate illegal ivory from legal ivory. The UK Border Force has seized multiple ivory items which have been subject to artificial stains or ageing techniques, which are clearly destined for the antique market. Studies have shown that where outlets offering legal and illegal ivory side-by-side, revenue and profits become intermingled and difficult to separate.<sup>49</sup>

The factsheet also set out the how the Government believes the ban will impact the illegal ivory trade, by closing the UK ivory market to all items except those that meet the exemption requirements:

It will:

- remove the financial value from ivory;
- reduce the opportunity for new ivory to be laundered through legal markets;
- significantly reduce the flow of ivory from the UK to overseas markets, especially in the Far East, where demand for ivory is strongest;
- send a clear message to the rest of the world that the UK no longer considers ivory to be an acceptable commodity; and
- encourage other countries to take similar actions.<sup>50</sup>

## 5.1 Impact Assessment

The [Impact Assessment](#) published alongside the Bill provides further detail, including evidence of the difficulties with the current ban on dealing in post-1947 ivory, and the level of support in the UK for a ban. It anticipates that the main affected parties will be antique dealers (including street stalls engaged in the sale of antiques) and auction houses. And that:

Evidence suggests that there are approximately 2,500 antique dealers/stalls, and 1,000 auction houses in the UK. However, not all of these businesses will sell ivory products. A recent survey in London found that only 15% of antique stalls and shops offered ivory items for sale.<sup>51</sup>

The Government estimates the present value of net cost to business over the ten-year appraisal period is £74.6m.<sup>52</sup> This includes costs of complying with the rules, loss of value of exiting stock, and loss of any future profits. There are no proposals to compensate businesses.

## 5.2 Unworked Ivory

Under CITES regulations it is already illegal to trade in new ivory. With regard to older unworked ivory the explanatory notes for the Bill set out that this is not explicitly covered:

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. Although the Ivory Bill does not expressly prohibit commercial activities in respect of raw African

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<sup>49</sup> Defra, [Ivory Bill Factsheet – overview](#), 23 May 2018

<sup>50</sup> *ibid*

<sup>51</sup> Defra, [Ivory Bill Factsheet - Impact Assessment](#), 23 May 2018

<sup>52</sup> Defra, Ivory Bill Impact Assessment, 23 May 2018

ivory, the Bill will have the effect of putting this policy on a legislative footing.<sup>53</sup>

The EU adopted new [guidance](#) for the existing regulations in May 2017. This recommended that EU Member States suspend the export of raw ivory items from 1st July 2017.

## 6. Detail of the Bill

The [Ivory Bill](#) will prohibit the commercial use of ivory items or those containing ivory regardless of their age, with a few exceptions. As set out in the explanatory notes the ban will not affect “ownership of items made of, or containing ivory, including, inheriting, donating or bequeathing”.<sup>54</sup>

**Clause 1** of the Bill bans dealing in ivory which is defined as buying, selling or hiring of ivory. This will include offering or arranging to do so; keeping ivory for sale or hire; and importing or exporting ivory to the UK for sale or hire. This will not apply to anyone doing so outside of the UK, but will apply to anyone doing so remotely from the UK, for example over the internet.

**Clause 35** of the Bill sets out the meaning of ivory to be “ivory from the tusk or a tooth of an elephant”. The clause also gives the Secretary of State powers to extend the definition through regulations to other ivory bearing animals listed by CITES in an [Appendix](#). The explanatory notes envisage this may be necessary if there is any evidence of a ban displacing the ivory trade to ivory from other animals such as hippopotamus or a range of marine mammals.<sup>55</sup>

### 6.1 Exemptions

The ban affects anyone wishing to deal in an item that includes elephant ivory. The Bill includes exemptions for certain items as long as they have been assessed or registered as set out in the Bill.

There will be exemptions for pre-1918 items of outstandingly high artistic, historical or cultural value; pre-1918 portrait miniatures; pre-1947 items where ivory is “less than 10% of the total volume of the material”<sup>56</sup>; pre-1975 musical instruments where ivory is less than 20% of the total volume; and acquisitions by qualifying museums. The exemptions included in the Bill were set out by the Government as follows in its announcement:

- The rarest and most important items of their type. Items of outstanding artistic, cultural or historic significance, and made prior to 1918. Such items will be assessed by specialists at institutions such as the UK’s most prestigious museums [**Clause 2**]

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<sup>53</sup> Explanatory Notes, [paragraph 12](#)

<sup>54</sup> Explanatory Notes, [paragraph 9](#)

<sup>55</sup> Explanatory Notes, [paragraph 135](#)

<sup>56</sup> Ivory Bill, [Clause 7](#)

- Portrait miniatures. A specific exemption for portrait miniatures – which were often painted on thin slivers of ivory – made before 1918 [**Clause 6**]
- Items with only a small amount of ivory. Such items must be comprised of less than 10% ivory by volume and have been made prior to 1947 [**Clause 7**]
- Musical instruments. These must have an ivory content of less than 20% and have been made prior to 1975 [**Clause 8**, and includes bows and plectrums]
- Sales to and between accredited museums. This applies museums accredited by [Arts Council England](#), [the Welsh Government](#), [Museums and Galleries Scotland](#) or [the Northern Ireland Museums Council](#) in the UK, or [the International Council of Museums](#) outside the UK [**Clause 9**]<sup>57</sup>

Items that fall under **clause 2** will have to be assessed by an expert to qualify for an exemption. Items falling under **clauses 6-9** will have to be registered by the owners to qualify for an exemption.

### Assessing pre-1918 items for ban exemption

Under **clause 2** items will be exempt if they are issued with a certificate by the Secretary of State. Applicants will have to provide a number of details and pay a fee, as set out in **clause 3**, and following any guidance issued by the Secretary of State. The application will then be referred to an “advisory institution with relevant expertise” for assessment. If an application is refused an applicant will be able to make a fresh application or appeal the decision as set out in **clause 5**.

### Registration scheme

**Clauses 10-11** will require the Secretary of State to register an item if the owner requests it and provides the information required in any guidance issued, and provide written confirmation of the registration. The registration will not be transferable if the ownership of the item changes, meaning it would have to be re-registered.

In the [consultation response](#) the Government set out how the system would work, although this is not specified in the Bill. It will be administered by the Animal and Plant Health Authority (APHA) as follows:

We will introduce a new online system to handle the majority of registrations, and provision will be made for those unable to use an online system. This online database will be accessible by government, the regulatory body and the Police.

Owners with items they wish to sell and which they consider meet the exemption criteria under the de minimis, musical instruments or portrait miniatures categories, will be required to register their items via an online system. In doing so, they will be deemed to have confirmed that, to the best of their knowledge, the item in question meets the relevant category of exemption, and will have

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<sup>57</sup> Defra, [Banning UK sales of ivory, Summary of responses and government response](#), April 2018

submitted information or evidence about the item– for example photographs or evidence of its age<sup>58</sup>

## 6.2 Criminal and civil sanctions

The Bill sets out a mixture of criminal and civil sanction, allowing a range of sanctions that can be applied depending on the severity of the offence. **Clause 12** sets out that breach of the legislation will include dealing in a prohibited item or one that is not properly certified or registered; or dealing without meeting all the exemption requirements; or doing anything that causes (for example by auctioning) or facilitates (for example by hosting online sales or advertising an item) a breach of the prohibition.<sup>59</sup>

The maximum penalty for a breach will be 5 years in prison, or an unlimited fine, or both. Offences will also be prosecutable under existing applicable legislation, such as the *Serious Crime Act 2000*, the *Proceeds of Crime Act 2002* and the *Fraud Act 2006*.<sup>60</sup>

**Clause 13** and **Schedule 1** set out the provisions for civil sanctions which include a maximum fine of £250,000, together with powers to issue stop notices, enforcement actions and cost recovery notices.

## 6.3 Powers of entry, search and seizure

**Clauses 14-32** of the Bill cover powers of entry, search and seizure.

The police have both general and specific stop and search powers in various pieces of legislation.<sup>61</sup> The main general powers are in the *Police and Criminal Evidence Act 1984* (PACE). Similarly, the police have a variety of powers to search premises.<sup>62</sup> Under other legislation, officials such as customs officers and local authority inspectors also have powers of entry and of stop and search.

The Bill would provide powers for police, customs officers and National Crime Agency officers to stop and search people and vehicles, and to board and search vessels and aircraft. These powers would apply where they have reasonable grounds to suspect an offence under **clause 10** or **clause 12**. The Bill would also allow accredited civilian officers (i.e. officers of the regulator) to enter premises which they reasonably think may be used in connection with ivory dealing. They would be able to do this to promote awareness of the Bill's provisions or assess compliance. Civilian officers would also be able to search the premises if they have reasonable grounds to suspect there is relevant evidence there.

<sup>58</sup> Defra, [Banning UK sales of ivory, Summary of responses and government response](#), April 2018

<sup>59</sup> Explanatory Notes, [paragraph 83](#)

<sup>60</sup> Explanatory Notes, [paragraph 88](#)

<sup>61</sup> The main powers are set out in [Annex A](#) of Home Office, PACE Code A, [Exercise by police of officers statutory powers of stop and search](#), 2014

<sup>62</sup> Home Office, PACE Code B, [Code of practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises](#), 2013

**Clauses 18-19** would allow senior police, customs or accredited civilian officers to apply for a warrant to enter and search in circumstances where, for example, co-operation is unlikely to be forthcoming.

Under **clauses 20-27**, enforcement officers would have powers to examine items, to require the production of documents and to seize relevant evidence. **Clauses 28-32** cover the retention, disposal and return of seized items.

The Explanatory Notes state that these powers “are derived from and applied in line with the *Police and Criminal Evidence Act 1984*.”<sup>63</sup> They also point out that they wouldn’t apply where an officer suspects mere *possession* of ivory not intended for dealing.<sup>64</sup>

## 6.4 Extent and commencement

The Bill extends coverage to corporate bodies and institutions. The legislation would also bind the Crown, although the sections dealing with offences only apply to those working for the Crown.

The Bill covers England, Wales, Scotland and Northern Ireland. The Act will be brought into force through regulations, although no date is included in the Bill.

The Bill allows for transitional provisions to be made in regulations, and for different provisions to be made for each part of the UK.

## 6.5 Reactions to the ban

The Government [press release](#) from 3 April 2018 announcing the intention to ban ivory included statements from Tusk Trust, WWF, the Zoological Society of London and Stop Ivory welcoming the announcement. John Stephenson, CEO of Stop Ivory called it a “momentous step”.<sup>65</sup>

The International Fund for Animal Welfare also welcomed the announcement:

We’re especially pleased that the proposed new legislation will cover ivory items of all ages – not only those produced after a certain date, as is currently the case - and also contains tough new penalties to act as a real deterrent. Michael Gove also confirmed that, in line with the approach taken by other countries such as the United States and China, there will be certain narrowly-defined and carefully-targeted exemptions for items which do not contribute to the poaching of elephants.<sup>66</sup>

Reaction from antiques trade, as set out in the [Antique Dealer’s Gazette](#), were more cautious. Anthony Browne, chairman of the British Art Market Federation, welcomed the exemptions:

Defra’s announcement should be viewed, Browne argued, in the context that the antiques trade had been faced with “the very real prospect of an unqualified ban. It should be recognised that the

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<sup>63</sup> Explanatory Notes, [paragraph 22](#)

<sup>64</sup> Explanatory Notes [paragraph 92](#)

<sup>65</sup> Defra, [Government confirms UK ban on ivory sales](#), 3 April 2018

<sup>66</sup> IFAW, [Great news as the UK Government confirms ban on ivory sales](#), 3 April 2018

NGOs were pressing for this and government was under pressure.<sup>67</sup>

Both the Society of Fine Art Auctioneers and the British Antique Dealers Association believe the minimum content exemption should be the same for all items to avoid confusion. BADA's view was that it should be set at 20%.

The Antique Dealer's Gazette has also published [an information sheet](#) which includes a range of views on the proposed legislation, including a number of concerns raised by dealers about its practical application. There are also concerns that small items such as antique needles will be included in the ban.

The [Museums Association](#) welcomed the inclusion of accredited museums in the exceptions to the ban:

The Museums Association (MA), which had called for a museum exemption in its response to Defra's consultation on the ban last December, welcomed the government's revised proposals.

The MA's policy officer Alistair Brown said: "The proposed legislation reflects quite a lot of what we submitted to the consultation. It's really heartening to see that the MA's point of view has been taken seriously by Defra. It's good that the government has recognised that some items are highly valued by museums and that they should have a role in preserving items of historical importance."<sup>68</sup>

## 7. Bill progress

The [Second Reading](#) of the Ivory Bill took place on 4 June 2018. During the debate there was general support for the proposed legislation. However, concerns were raised about several issues including: the Bill exclusively covering elephant ivory; how effectively the legislation would address online trading in ivory; and, funding for enforcement.<sup>69</sup>

### 7.1 Committee stage

There were six Committee sessions for the Bill. Two of these took evidence from a range of witnesses, including a number of NGOs, representatives of the antiques and music trade, museums and also the UK Border Force and the National Wildlife Crime Unit (NCWU). Full transcripts are available on the [Committee website](#), together with written submissions.

The Bill was not amended during Committee, but there were a range of issues that were debated and several failed opposition amendments.

### Types of ivory covered

During Committee stage the extent of the proposed legislation, which only covers ivory from elephants, was raised on several occasions.

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<sup>67</sup> Antique Dealer's Gazette, [IVORY BAN – industry leaders react: "We will draw the government's attention to the ban's inconsistencies"](#), 3 April 2018

<sup>68</sup> Museums Association, [Accredited museums granted exemption from ivory ban](#), 6 April 2018

<sup>69</sup> [HC Deb 4 July 2018 c91](#)

Clause 35 provides for the option of other types of ivory being included through secondary legislation, but only for species that are listed under the CITES convention.

There was general support from most witnesses for the definition to be extended. However, some NGOs were concerned that changing the definition in the Bill could delay the legislation, and it would therefore not be in place when the [Illegal Wildlife Trade Conference](#) is hosted by the Government in October.<sup>70</sup> Specifically, a concern existed that extending the definition would require a further full consultation.<sup>71</sup>

Will Trawler, from the Born Free Foundation, provided some figures to the Committee on the extend of trade in non-elephant ivory:

From 2007 to 2016—just under a decade—78,000 hippos and hippo products were exported by CITES parties. Hong Kong imported 60 tonnes of hippo ivory between 2004 and 2014. Between 2007 and 2016—those dates again—7,000 narwhal products were exported and more than 172,000 walrus specimens were reported to have been exported on the CITES trade database. Those are not insignificant by any measure—they are enormously significant. With that kind of volume now, as we have just mentioned, the shift away from elephant ivory could put insupportable pressure on these other species, which is why we would like to see an accelerated process for that after this process has been undertaken<sup>72</sup>.

An opposition amendment to Clause 35 proposed extending the definition to ivory from killer whales, narwhal, sperm whale and walrus.<sup>73</sup> During the debate Sue Hayman, speaking for the Opposition, made the case for a short consultation on extending the coverage of the Bill. However, in response, David Rutley, Parliamentary Under Secretary of State at the Department for the Environment, Food and Rural Affairs, also referred to a potential challenge under the European Convention of Human Right. This was because in the Government's view, extending the ban could be considered to affect the right to peaceful enjoyment of private property. The opposition view was that this was not the case.<sup>74</sup> The amendment was withdrawn but a further amendment to the Clause, which would have allowed regulations on ivory to be extended to non-CITES animals was pushed to a vote and failed by 8 votes to 7.

## Reporting certifications

There was discussion during Committee on whether it would be beneficial for the Government to publish full details, on a yearly basis, of the exemption certificates issued for ivory items. In response, the Minister set out concerns about data protection and how easy it might be to identify owners of certain items.<sup>75</sup> The Minister did state that the Government would consider providing, more detail than set out in the

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<sup>70</sup> Ivory Bill, [Public Bill Committee](#), 12 June 2018, c12

<sup>71</sup> Ibid c13

<sup>72</sup> PBC [12 June 2018](#), c4

<sup>73</sup> PBC, [19 June 2018](#), c142

<sup>74</sup> Ibid c159

<sup>75</sup> PBC [14 June 2018](#) c80

Bill, such as a broad category for each item, in any reporting,<sup>76</sup>. An opposition amendment for a New Clause 1 requiring annual reporting of items granted an exemption, including pictures, was put to a vote and failed by 8 votes to 7.<sup>77</sup>

### Strict liability

An opposition amendment to Clause 12, would have made anyone trading elephant ivory strictly liable for any offence.<sup>78</sup> This was in response to evidence from witnesses, including the NWCU, on the difficulties in proving those dealing ivory knew they were committing a crime. The NWCU referred to shifting the onus to those selling ivory to prove they did not know it was ivory, particularly when selling online.<sup>79</sup> The amendment failed on division by 8 votes 7.<sup>80</sup>

### Enforcement resources

The issue of enforcement and resources was raised several times during the sessions. The lead of the UK Border Force CITES team, Grant Miller, who has a staff of 10, stated that “at the moment ... our resourcing is adequate to control the threat”.<sup>81</sup>

However, Inspector Hubble, from the NWCU, which has a team of 12, stated that “due to our limited resources we have to be really selective in what we deal with”. He also referred to the amount of intelligence that is available and stated that “at the moment we struggle to disseminate all that to the Border Force”.<sup>82</sup> The NWCU has [confirmed funding](#) until 2020.

A new clause 3, proposed as an opposition amendment and which failed at division by 8 votes to 7, would have required the Government to make an assessment, to be laid before Parliament, of the resources available to enforce the ban on ivory dealing.<sup>83</sup> The Minister referred during the debate to future funding of the NWCU:

We want to show people that we are serious about the work that we are doing; that is very clear from the feedback from the NGOs. However, the specific, longer-term funding, post-2020, will be part of the normal spending review process, notwithstanding ongoing dialogues. That is where the more sustainable approach to funding, or the future funding, of the NWCU can be reviewed. That process will be kicking off very soon. That will be an important way of engaging with that debate and looking at the resources that are in place.<sup>84</sup>

He also highlighted the role of new Regulator, the [Office for Product Standards and Safety](#), in enforcing the legislation and issuing civil sanctions.

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<sup>76</sup> *ibid* c80

<sup>77</sup> PBC, [19 June 2018](#), c161

<sup>78</sup> PBC, [19 June 2018](#), c121

<sup>79</sup> *ibid* c122

<sup>80</sup> *ibid* c128

<sup>81</sup> PBC [12 June 2018](#) c34

<sup>82</sup> *ibid* c34

<sup>83</sup> PBC, [19 June 2018](#), c128

<sup>84</sup> *ibid* c136

### ***De minimis* exemptions**

There were several discussions during the examination of the Bill covering issues such as whether the size of exempt miniatures should be defined.<sup>85</sup> In addition, representatives of the antiques industry raised concerns that the 10% de minimis exemption for items was too low.<sup>86</sup> However, witnesses were happy with the 20% exemption for musical instruments as covering most instruments of concern.<sup>87</sup>

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<sup>85</sup> PBC, [12 June 2019](#), c45

<sup>86</sup> *ibid* c52

<sup>87</sup> *ibid* c54

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