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House of Lords  
London  
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31 July 2018

*My Lords,*

## **IVORY BILL: RESPONSES TO POINTS RAISED AT SECOND READING**

Thank you for participating in the debate at the second reading of the Ivory Bill earlier this month. I undertook to write to several Noble Lords on points I was unable to address in my closing speech.

### **Other ivory-bearing species**

There was much interest in whether we could add ivory from species other than elephants to the definition of ivory in clause 35. We share concerns about other ivory-bearing species, in particular the risk of inadvertently causing a displacement of poaching. The Bill Minister in the House of Commons therefore committed that government would consult on extending the scope of the Bill on, or as soon as practicable after, Royal Assent. However, we must of course ensure that all legislation is robust, defensible and enforceable, in particular, we need to ensure that we conduct a fair balance exercise under the European Convention on Human Rights (ECHR). To this end, we would need to have sufficient evidence such as responses to a public consultation, to assess whether those who possess, or trade in, non-elephant ivory items would have their property rights interfered with. If so, a balancing exercise would need to be conducted between interference with the ownership of ivory and the public interest in banning ivory to identify whether any interference in owning ivory is proportionate, justified, and therefore lawful.

On this point, I noted suggestions that we launch the consultation before Royal Assent. We are keen to be able to extend the scope of the Bill as soon as possible, but again need to ensure that we do not unintentionally hamper the progress of this extension, for instance by consulting ahead of potential amendments. It is also important to note here the clear message conservation NGOs gave during the committee stage in the House of Commons, to quote the representative of one, "there should be flexibility in the Bill to include other species in future, but at this time the focus should be on delivering for elephant ivory, which the consultation was about and where a lot of the research was". The World Wildlife Fund, Born Free, and IFAW stressed that our first priority should be enacting and implementing an effective ban on elephant ivory, which we are keen to do without delay.

## The “rarest and most important items of their type” exemption

Lady Jones of Whitchurch asked about our approach to the exemption for the rarest and most important items of their type, under clause 2 and whether this has changed from the policy statement issued on 03 April. I can assure you that we have not widened this exemption. Clause 2 provides that pre-1918 ivory items must be of outstandingly high artistic, cultural or historical value. To assess this, consideration will be given to (a) the rarity of the item; (b) the extent to which the item is important; and (c) any other matters specified in guidance issued by the Secretary of State. Defra will be working with the Department for Digital, Culture, Media and Sport to produce this guidance, which will draw on existing criteria used by the Government to assess works of art for pre-eminence and national significance.

Lord Clement Jones asked whether there would be a consultation on the guidance made under clause 2. It is a long established policy for the Government to consult stakeholders and the public on the use of powers to make secondary legislation and issue guidance. Defra consultations are carried out in accordance with the Cabinet Office’s consultation principles, which provide clear guidance to all government departments on engagement with stakeholders and the public.

A number of Noble Lords made references to “museum quality” in relation to this exemption. This is not a term that government has used when describing this exemption, not least because, as Lord Cormack pointed out, what is a “museum quality” item to a local museum, may well not be to the Victoria and Albert Museum.

## Exemptions relating to dates

Lord Crathorne queried why there are different backstop dates for the exemptions. We have used different dates to reflect the different nature of the items concerned and their use. The dates cited are all pertinent to existing regulations on ivory:

- the 1947 backstop date for de minimis items derives from the EU Wildlife Regulations, and is very familiar to those within the antiques sector;
- the 1975 backdate for musical instruments, is the date at which Asian elephants were first listed on CITES – and prior to the poaching crisis of the 1980s. This later date creates an exception to the general de minimis parameters for musical instruments in recognition that they did continue to be made with ivory late into the 20<sup>th</sup> century, and;
- a backstop date of 1918 has been chosen for items assessed as the rarest and most important of their type, and portrait miniatures, to make sure that such items must be at least 100 years old.

## **Musical instruments**

There were a number of questions regarding musical instruments, with some reference to the briefing circulated to peers by the Musicians Union. I am pleased to confirm that owners of instruments will only need to register their instruments if they wish to sell them or engage in other commercial activities, such as hiring out. Musicians wishing to take their instruments overseas or have their instruments repaired overseas will not require registration, as this activity does not fall within the definition of 'commercial dealing'. The ivory included in the musical instrument, would, however, be subject to existing controls under CITES regulations. I want to reiterate that it is not the Government's intention to unjustifiably impact on the livelihood of professional musicians. I further confirm that my officials have also written directly to the Musicians' Union to address the queries raised in their briefing.

## **Museums**

In response to the Earl of Kinnoull's concern that the Bill would interfere with inter-museum lending, I would like to make clear that this prohibition should not unduly impact on the work of accredited museums. I can therefore confirm that commercial dealings to and between accredited museums will be exempt from this ban, as set out at clause 9. Accredited museums will be allowed to continue to purchase and loan ivory items which meet their acquisitions policies and complement their collections. This will ensure that important items will be accessible to the public. Accredited museums will also be able to continue to loan and exchange items of ivory between each other.

## **Registration**

Lady Jones of Whitchurch urged the Government to publish an annual register of items that have been exempted to ensure transparency and public confidence in the ban. We agree that being as transparent as possible as to how this system is working in practice will be essential in ensuring public confidence. Therefore, we do intend to publish headline data on the number of items exempted for sale under each of the exemption categories. Where applicable, we will also seek to break this down further by broad categories of items. We must, however, ensure that any information the Government publishes on annual exemptions must be fully in line with the data protection legislation such as the Data Protection Act 2016.

Lady of Jones of Whitchurch looked for assurances that the registration and certification schemes will not be open to abuse. A number of safeguards will be put in place to prevent the system being exploited. An ivory owner looking to register an item as exempt will be required to provide information and evidence to demonstrate why they consider an item to be exempt. They will also be required to confirm that to the best of their knowledge, the item does meet the exemption. We intend for the Animal and Plant Health Agency, the Office of Product Safety and Standards (OPSS) and the police to have access to the system to undertake spot checks of registrations and to carry out any enforcement action

that is necessary. It would also be an offence to make a fraudulent registration, to counterfeit or otherwise misuse a registration certificate.

Additionally, I noted that Lord Carrington of Fulham expressed concern about high registration fees. I want to reiterate the fees charged will be set on a cost-recovery basis, reflecting the cost of building the new IT system. The fee charged on the application will be defined according to HM Treasury guidelines once the final cost of the online application system is established. I will provide further information on fee levels to the House as soon as it is available.

Lord Lingfield suggested that it should not take more than three months to issue exemption certificates. We are working through the timeframes to which these processes can be delivered. We can see no reason why a properly completed application would take as long as three months to be issued.

## **Enforcement**

Lord Inglewood questioned the enforcement provisions given to The Office of Product Safety and Standards were disproportionate. I would highlight that the Office of Product Safety and Standards will only have powers which are proportionate in respect of enforcing measures within the Bill. My officials are carefully considering the clause.

Several Noble Lords have called for a total ban on all online ivory deals, I understand the concerns that differentiating legitimate and illegitimate sales online can often be difficult, but we believe it would be disproportionate to ban online sales, given that existing regulations on other products such as alcohol and medication, which do pose a threat to human health do not have their online sale banned. The Bill has been drafted from the outset with both online and physical sales in mind. The Bill makes it clear that it will be an offence to cause or to facilitate a sale of ivory that either does not meet an exemption, or has not been properly registered or certified. This will apply equally to any website or online forum which hosts or facilitates an illegal sale. It will be the responsibility of any online forum to ensure that ivory items sold on its site are legitimate in exactly the same way we will expect of a high street shop or auction house.

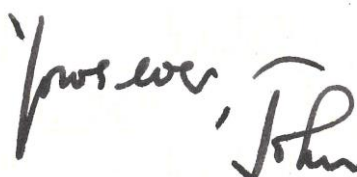
## **Previous antique animal artefact bans**

Lord Lingfield raised the point on whether previous bans on antique artefacts from another species threatened with extinction have subsequently led to an increase in their population number. Strict measures have been put in place in the UK on both the re-export and sale of rhino horn and products derived from it. Since 2010 the UK has not authorised the sale of, or other commercial trade in, rhino horn except in exceptional circumstances. The UK has worked with other EU member States to take similar action to the UK which led to the new European Commission guidance to this effect. Unfortunately we do not have the statistics to be able to demonstrate the impact that this has had on rhino populations.

## Overseas aid

On the issue of overseas aid, which was raised by Baroness Chalker and Lord St John of Bletso, the UK has already pledged £250 million to the Global Environment Facility. Defra has financed, through the Challenge Fund – an Official Development Assistance programme – a number of projects that seek to engage local communities in conservation, enhance human-wildlife co-existence, and reduce human-elephant conflict. Examples of such projects are: IWT 32 in Murchison Falls, Uganda, which funded the growing of chilli and other non-palatable crops on the edge of farmers' field to deter elephants from traversing and crushing crops, and; IWT 36, also in Uganda, which funded the implementation of park action plans for community engagement that looked to tackle the illegal wildlife trade and reduce poaching by local people.

I am copying this letter to all who contributed to the debate, and am placing a copy of it the Library of both Houses. I am of course available to any Noble Lords who would like to discuss this Bill further.

A handwritten signature in black ink that reads "Yours ever, John". The signature is written in a cursive, slightly slanted style.

Copy to:

Lord Grantchester  
Baroness Miller of Chilthorne Domer  
Lord Hague of Richmond  
Lord St John of Bletso  
Lord Selkirk of Douglas  
Lord Clement-Jones  
Lord Lingfield  
Lord de Mauley  
Baroness Quin  
Lord Carrington of Fulham  
Lord Berkeley of Knighton  
Baroness Chalker of Wallasey  
Lord Jones of Cheltenham  
Lord Cormack  
Lord Inglewood  
Baroness Flather  
Lord Crathorne  
Baroness Fookes  
The Earl of Kinnoull  
Earl of Attlee  
Baroness Rawlings  
Baroness Bakewell of Hardington Mandeville  
Baroness Jones of Whitchurch