

LEGISLATIVE CONSENT MEMORANDUM

IVORY BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Ivory Bill (the “Bill”) was introduced in the House of Commons on 23 May 2018. The Bill can be found at:
<https://services.parliament.uk/Bills/2017-19/ivory/documents.html>

Policy Objective

3. The UK Government’s stated policy objective is to help conserve elephant populations, specifically by reducing poaching, through significantly limiting the legal market for ivory in the UK.

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.
5. The key provisions of the Bill are intended to reduce demand for ivory both within the UK and overseas through the application of a ban on commercial dealings for ivory in the UK. “Ivory” is defined in the Bill to mean ivory from the tusk or tooth of an elephant, including any item made of ivory or that has ivory in it (clauses 1(4) and 35).
6. Clause 1 of the Bill bans “commercial dealing” in ivory (“the ivory ban”), namely:
 - buying, selling or hiring ivory;
 - offering or arranging to buy, sell or hire ivory;
 - keeping ivory for sale or hire;
 - exporting ivory from the United Kingdom for sale or hire; or
 - importing ivory into the United Kingdom for sale or hire.
7. Subsequent clauses provide for a number of exemptions to that prohibition, the creation of a register of existing ivory items that have the benefit of the exemptions and the necessary enforcement provisions.

Provisions in the Bill for which consent is required

8. The Bill, as introduced, extends to (and therefore relates to) Wales (as well as England, Scotland and Northern Ireland).

9. To the extent that the Bill provisions prohibit and regulate commercial dealings in ivory within Wales, the provisions of the Ivory Bill are within the Legislative Competence of the Assembly to make legislation for the purposes of promoting animal welfare. To that extent, therefore, the Assembly's consent to the proposed Ivory Bill is sought.
10. Late amendments to the Bill were tabled by the UK Government on 17 October in the House of Lords. Those amendments introduced specific powers for the "appropriate national authority", which is defined by clause 37(1A) as the Welsh Ministers in relation to regulations that apply in relation to Wales. It is noted, however, the Clause 37(1B) provides that even in such circumstances, the Secretary of State may still make the regulations in relation to Wales if the Welsh Ministers consent.
11. The following description of the Bill provisions takes into account those amendments. In order to explain where the Welsh Ministers powers lie, it has been necessary to set out some detail of the relevant provisions in order to explain the context.
12. Clause 2 enables the Secretary of State to issue exemption certificates for pre-1918 items of outstanding artistic etc value and importance. Clause 2(3) requires the Secretary of State to take into account a number of factors when determining whether such items are of sufficiently outstandingly high artistic etc value. Those factors include any matters that may be specified in guidance issued by the "appropriate national authority" (see paragraph 10 above for an explanation of that term).
13. Clause 2(5) enables the appropriate national authority to make regulations prescribing institutions that, in the opinion of the relevant national authority, have sufficient knowledge and expertise to provide the Secretary of State with advice on applications for exemption certificates. Any such regulations would be subject to annulment in pursuance of a resolution of the Assembly (by virtue of clause 37).
14. Clause 3 sets out how an application for an exemption certificate must be made. Clause 3(1) prescribes what an applicant must provide and paragraph (g) requires the applicants to provide such further information specified in guidance issued by the appropriate national authority (see paragraph 10 above in relation to that defined term). Clause 3 goes on to provide for the Secretary of State to refer an application for an exemption certificate to a prescribed institution in certain circumstances.
15. Clause 4 makes further provision about exemption certificates, including the content of those certificates, Secretary of State's power to revoke, revise or provide replacement certificates. Clause 4(7) deals with a transaction involving an item which has the benefit of an exemption certificate and provides that that exemption certificate will only apply if, amongst other things, the persons involved provide the Secretary of State with any information which has been specified in guidance issued by the

appropriate national authority (see paragraph 10 above in relation to that defined term).

16. Clause 5 makes provision for the making of an appeal or a fresh application where an exemption certificate is refused or is revoked. Clause 5(3) enables the appropriate national authority (see paragraph 10 above in relation to that defined term) to make regulations making provision about such appeals. Any such regulations would be subject to annulment in pursuance of a resolution of the Assembly (by virtue of clause 37). Clause 5(4) enables the Secretary of State to make provision (by regulations) requiring an appellant to pay a fee.
17. Clause 6 provides that specified pre-1918 ivory portrait miniatures, registered under Clause 10, are exempt from the prohibition. Clause 7 provides that specified pre-1947 items with low ivory content, registered under Clause 10, are exempt from the prohibition. Clause 8 provides that specified pre-1975 musical instruments, registered under Clause 10, are exempt from the prohibition.
18. Clause 9 provides that the specified sale to, or purchase or hire by a qualifying museum of ivory is exempt from the prohibition. Clause 9(3) defines qualifying museum as, in relation to Wales, a museum shown as being accredited in a list published by or on behalf of the Welsh Ministers. Clause 9(4) enables the appropriate national authority (see paragraph 10 above in relation to that defined term) to make regulations making amendments to clause 9(3) that are consequential upon a change of name or transfer of functions involving a body specified in that paragraph. Any such regulations would be subject to annulment in pursuance of a resolution of the Assembly (by virtue of clause 37).
19. Clause 10 creates a register of existing ivory items that have the benefit of the exemptions in clauses 6, 7 or 8 and that clause and clause 11 set out how the Secretary of State should administer that register. Clause 10(1)(f) requires the Secretary of State to register an item on the register if the owner of the item provides, amongst other things, any information specified in guidance issued by the appropriate national authority (see paragraph 10 above in relation to that defined term).
20. Clause 12 sets out the criminal and civil sanctions which attach to breaching the prohibition or causing or facilitating such a breach. Clause 13 (civil sanctions) brings Schedule 1 to the Bill (described below) into effect.
21. Clauses 14 to 27 of the Bill set out enforcement powers. Clauses 28 to 32 of the Bill deal with the retention and disposal or return of seized items.
22. Clause 35 provides the definition of "ivory". Clause 35(2) enables the appropriate national authority (see paragraph 10 above in relation to that defined term) to make regulations to amend that definition of "ivory" so as to include ivory from an animal or species that is not currently covered by

paragraph (1). That clause goes on to provide that regulations made by the Welsh Ministers under section 35(2) may not be made unless a draft of the instrument has been laid before the National Assembly for Wales and approved by a resolution of the Assembly.

23. Schedule 1 to the Bill deals with monetary penalties. Part 5 of Schedule 1 to the Bill enables the appropriate national authority (see paragraph 10 above in relation to that defined term) to make “supplementary regulations” making provisions supplementing or containing consequential or incidental provision to any provision made in Schedule 1. It also places consultation obligations on the appropriate national authority in relation to the making of those regulations. Any such regulations would be subject to annulment in pursuance of a resolution of the Assembly (by virtue of clause 37).
24. Part 6 (paragraphs 19 to 24) of Schedule 1 to the Bill make various general and supplemental provisions and paragraph 21 requires the Secretary of State to prepare and publish guidance regarding the sanctions that may be imposed following an offence under section 12 and the actions that the Secretary of State may take as a result. Paragraph 21(7) of Part 1 of Schedule 1 to the Bill requires the Secretary of State to consult the Welsh Ministers and the Scottish Ministers and any other person the Secretary feels appropriate before publishing guidance or revised guidance under paragraph 21.
25. Schedule 2 to the Bill makes various provision regarding search warrants in England, Wales and Northern Ireland.

Reasons for making these provisions for Wales in the Ivory Bill

26. The Welsh Government fully supports the UK Government’s aim to help conserve elephant populations, through significantly limiting the legal market for ivory in the UK.
27. Given that there is no policy divergence between the two administrations in this regard, the Welsh Government considers that it is appropriate to deal with the necessary provisions in this UK Bill. It is considered that on, balance, it would not be desirable to seek to legislate separately in Wales at this time (for those provisions of this Bill which fall within the legislative competence of the National Assembly for Wales). This is because:
 - the provisions of this UK Bill will help to deliver the outcomes which the Welsh Government would wish to achieve in this area, it will contribute to the Welsh Government’s Well-being of Future Generations (Wales) Act’s prosperity for all vision, by promoting animal welfare,
 - separate Welsh primary legislation will take longer to deliver the desirable goal, and
 - identical but separate Welsh primary legislation dealing with the trade of ivory within Wales (i.e. not including import and export from

Wales) could lead to confusion for members of the public about which legislation applies to a particular scenario.

Financial implications

28. There are no direct financial implications for the Welsh Government or the National Assembly for Wales as a result of the UK Government legislating on behalf of the Assembly on this occasion.

Conclusion

29. For the reasons given above, it is the view of the Welsh Government that it is appropriate to deal with the prohibition of commercial dealings in ivory in Wales in the wider UK Ivory Bill.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
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