



## **Ivory Bill** **HL Bill 119 of 2017–19**

### **Summary**

The Ivory Bill is a government bill that proposes to prohibit trading in elephant ivory, with limited exceptions. The Bill was introduced in the House of Lords on 5 July 2018 by Lord Gardiner of Kimble, the Under Secretary of State for Rural Affairs and Biosecurity, and is scheduled to receive its second reading on 17 July 2018.

The law currently requires an individual to obtain a permit in order to trade worked ivory items made after 1947, while items made before 1947 can be traded within the EU without a permit. It is the UK's current policy not to issue permits for the trading of raw African ivory of any age.

Both the African Elephant and the Asian Elephant have been identified as threatened with extinction. A recent large study of trends in African elephant populations found that the number of elephants decreased by approximately 27,000 per year between 2010 and 2014, a rate of 8 percent per year. The authors of this study concluded that “these dramatic declines in elephant populations are almost certainly due to poaching for ivory”.

Clause 1 of the Bill would establish a general prohibition on trading in ivory, which is defined in clause 35 as being from the tooth or tusk of a living species of elephant. Clause 12 of the Bill would make it an offence to breach the prohibition on the trading of ivory, punishable either by criminal or civil sanctions. Exemptions to the ban, and the process of applying for these, are set out in clauses 2 to 11. This includes an exemption for items made before 1918 which are “of outstandingly high artistic, cultural or historical value”.

The Bill was introduced in the House of Commons on 23 May 2018 and had its second reading on 4 June 2018. A public bill committee took evidence from witnesses and examined the Bill over six sittings, before the Bill completed its report stage and third reading in the House of Commons on 4 July 2018. The Bill received cross-party support, though the Opposition advocated for the definition of ivory to be extended to include all threatened ivory-bearing species. The Government said it would undertake a consultation on expanding the definition to include all ivory-bearing species, whether threatened or not, after the legislation was passed. Government amendments removing the restrictions on which species can later be added to the definition by statutory instrument were passed at report stage.

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## I. Background

### I.1 Elephant Populations and the Ivory Trade

#### ***Elephant Populations***

Both the African Elephant (*Loxodonta Africana*) and the Asian Elephant (*Elephas Maximus*) are included in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), identifying them as threatened with extinction.<sup>1</sup> A recent large study of trends in African elephant populations, the Great Elephant Census, counted 352,271 savanna elephants, which the authors estimated represents 93 percent of all elephants in the surveyed countries.<sup>2</sup> The study found that the number of elephants decreased by approximately 27,000 per year between 2010 and 2014, a rate of 8 percent per year. The authors concluded that “these dramatic declines in elephant populations are almost certainly due to poaching for ivory”.<sup>3</sup> Analysis by CITES found that the population of African elephants declined by 111,000 between 2006 and 2016, however the number of illegal killings per year has declined since its peak in 2011.<sup>4</sup>

#### ***Illegal Ivory Trade***

According to figures collected by the Elephant Trade Information System, managed by CITES, approximately 40 tonnes of ivory were illegally traded in 2016, the highest ever recorded.<sup>5</sup> This upward trend is unbroken since 2008 and the overall weight of ivory in illegal trade was three times greater in 2016 than in 2007. It is estimated that the largest market for ivory is China, the destination for approximately 40 percent of seizures for which a destination was reported.<sup>6</sup>

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<sup>1</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, ‘[Appendices I, II and III](#)’, 4 October 2017.

<sup>2</sup> Michael J Chase et al, ‘[Continent-wide Survey Reveals Massive Decline in African Savannah Elephants](#)’, *PeerJ*, 31 August 2016.

<sup>3</sup> *ibid.*

<sup>4</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, ‘[African Elephant Poaching Down, Ivory Seizures Up and Hit Record High](#)’, 24 October 2017.

<sup>5</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, [Status of Elephant Populations, Levels of Illegal Killing and the Trade in Ivory: A Report to the CITES Standing Committee](#), 24 October 2017, p 25.

<sup>6</sup> United Nations Office on Drugs and Crime, [World Wildlife Crime Report](#), 2016, p 45.

## **UK Ivory Market**

A report by TRAFFIC, a non-government organisation which monitors trade in wildlife, summarised the history of the ivory market in the UK:

Historically, the United Kingdom (UK) had one of the largest ivory markets in the world. The popularity of ivory products peaked in the 19th and early 20th century, with annual ivory imports of up to 500 tonnes between 1910 and 1914. Much of the imported ivory was made into decorative items and household and personal objects. These ivory items are now considered antiques, and in 2004, when the UK ivory market was last surveyed by Martin and Stiles (2005), large quantities of ivory antiques were being offered for sale. Despite evidence confirming the considerable availability of ivory in the UK market in 2004, there is a lack of information regarding the current status of the market and therefore the potential link with the surge in both legal and illegal global ivory trade in recent years.<sup>7</sup>

Between 2005 and 2014, the UK was a net re-exporter of ivory for commercial purposes.<sup>8</sup> In total, the UK's re-exports of commercial ivory made up 31 percent of the total EU re-exports during this period. The majority of commercial trade reported by the UK for 2005 to 2014 was in worked ivory, with only 2 percent involving raw ivory.

Ivory is also illegally imported to and exported from the UK. The number of seizures of illegal ivory in the UK increased significantly between 2010 and 2014 compared with the previous five-year period.<sup>9</sup> A number of large seizures of ivory intended for other countries have been made since 2010, however the majority of seizures between 2006 and 2016 have been of small amounts of ivory, with the UK as the presumed final destination.

## **1.2 International Agreements and Existing Law**

In July 1975, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which the UK is a party, entered into force. The aim of the Convention is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.<sup>10</sup> CITES has prohibited trade in new ivory, except in exceptional circumstances, from Asian elephants since 1975 and from African elephants since 1990.<sup>11</sup>

<sup>7</sup> TRAFFIC, [A Rapid Survey of UK Ivory Markets](#), August 2016, p vii.

<sup>8</sup> *ibid*, p viii.

<sup>9</sup> *ibid*, p 29.

<sup>10</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, '[What Is CITES?](#)', accessed 2 July 2018.

<sup>11</sup> [Explanatory Notes](#), p 4.

The CITES agreement is implemented in the European Union (EU) through EC regulations 338/97 (as amended), 865/06 (as amended), 792/2012 and 2015/736, known collectively as the EU Wildlife Trade Regulations.<sup>12</sup> The actions prohibited in the EU regulations are made criminal offences in the domestic Control of Trade in Endangered Species (Enforcement) Regulations 1997.

Under the current regulations, trade to, within and from the EU of ivory for commercial purposes is generally not permitted.<sup>13</sup> A permit is required for the commercial use of worked ivory items made after 1947, however items of worked ivory made before 3 March 1947 may be traded commercially in the UK or EU without a permit.<sup>14</sup> The UK Government's policy is not to issue permits for trade in raw or "unworked" ivory of any age, in line with EU guidance.<sup>15</sup>

### 1.3 Government Proposal for a Partial Ban and Reaction

In September 2016, the Government announced plans for a ban on sales of "modern-day ivory", which would include items made after 1947.<sup>16</sup> Trade in "worked" items, such as works of art and ornaments dating from before 1947, which would be classed as antiques, would continue to be permitted.

In response to these proposals, Action for Elephants, a campaign group, wrote a letter to the Prime Minister, Theresa May, calling for a total ban on ivory trading. The letter, which was signed by 125 prominent scientists, politicians and campaigners, argued that the existence of a legal ivory trade "serves as cover for illegal sales of ivory, while continuing to perpetuate the cycle of supply and demand".<sup>17</sup>

A petition was launched on the UK Parliament website calling on the Government to instigate a total ban on trading in ivory in the UK.<sup>18</sup> This petition attracted 108,530 signatures and a debate on the petition was held in the House of Commons in February 2017. Luke Hall (Conservative MP for Thornbury and Yate), who introduced the debate, argued that there were difficulties in assessing the age of ivory products and that newer ivory

<sup>12</sup> [Explanatory Notes](#), p 4.

<sup>13</sup> European Commission, '[EU Regime Governing Intra-EU Trade and Re-export of Ivory](#)', *Official Journal of the European Union*, 17 May 2017, para i.

<sup>14</sup> [Explanatory Notes](#), p 4.

<sup>15</sup> *ibid.*

<sup>16</sup> Department for Environment, Food and Rural Affairs, '[UK Ban on Modern Day Ivory Sales](#)', 21 September 2016.

<sup>17</sup> Action for Elephants, '[Letter from Action for Elephants UK and 125 Signatories to Prime Minister Theresa May, Calling on the Government to Ban All Ivory Trade in the UK](#)', 24 September 2016.

<sup>18</sup> UK Parliament website, '[Petition: Shut Down the Domestic Ivory Market in the UK](#)', 28 February 2017.

is often disguised as antique.<sup>19</sup> However, other Members, such as Danny Kinahan (then Ulster Unionist MP for South Antrim), emphasised the importance of protecting antiques and the value of the antique market in the UK.<sup>20</sup>

In her remarks at the end of the debate, the Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey, said that the Government had “open views” on a more comprehensive ban, and encouraged Members to contribute to the planned government consultation on the issue.<sup>21</sup>

#### **1.4 Consultation on Proposed Legislation**

On 6 October 2017, the Government launched a consultation on banning trade in ivory in the UK. The Government sought views on its proposal to:

[...] implement a total ban on ivory sales in the UK, and to prohibit the import and export of ivory for sale to and from the UK, including intra-EU trade to and from the UK, where such sales could contribute either directly or indirectly to the poaching of elephants, with some narrowly defined exemptions.<sup>22</sup>

The Government’s proposed exemptions were:

- allowing the continued sale of musical instruments which contain ivory;
- 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; and
- allowing the continued sale of ivory to museums, and between museums.<sup>23</sup>

The consultation paper stated that “even with these exemptions”, the Government believed the UK’s rules would be among “the toughest in the world”.<sup>24</sup>

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<sup>19</sup> [HC Hansard, 6 February 2017, col 2WH.](#)

<sup>20</sup> *ibid*, cols 11–14WH

<sup>21</sup> *ibid*, cols 44–8WH.

<sup>22</sup> Department for Environment, Food and Rural Affairs, [Banning UK Sales of Ivory](#), October 2017, p 4.

<sup>23</sup> *ibid*, p 11.

<sup>24</sup> *ibid*.

The Government received approximately 71,000 responses to the consultation, the majority of which were from campaign groups.<sup>25</sup> According to the Government's summary of responses, 87.6 percent of respondents expressed support for the Government's proposed ban, 4.3 percent expressed opposition, and 8.1 percent did not express a definitive opinion.<sup>26</sup> All of the Government's proposed exemptions received more negative responses than positive responses.

In its response to the consultation, the Government said it would maintain the proposed exemptions to the ban, but that these had been refined. The Government said that in the proposed legislation, items with an ivory content of less than 10 percent by volume and which were made prior to 1947 would be exempted, as would musical instruments with an ivory content of less than 20 percent and which were made prior to 1975.<sup>27</sup> Trade undertaken by museums, and trade in "the rarest and most important items of their type" which are at least 100 years old, would also be excluded from the ban. Finally, an additional exemption, for portrait miniatures produced at least 100 years before the ban comes into force, was proposed as a result of the consultation responses received.

## 1.5 Impact Assessment

An assessment of the likely impact of the Bill was published by the Government in May 2018. This assessment estimated that the cost to businesses involved in the buying and selling of ivory, resulting from the one-off loss of value from existing stock, the on-going reduction in business opportunities, and the cost of familiarising themselves with the new legislation, would be £74.6 million over the next ten years.<sup>28</sup>

## 2. Ivory Bill

The [Ivory Bill](#) (HL Bill 119 of 2017–19) was introduced in the House of Commons on 23 May 2018 and completed its Commons stages on 4 July 2018. It was introduced in the House of Lords on 5 July 2018.

### 2.1 Proposed Ban and Definitions

Clause 1(1) of the Bill would provide that dealing in ivory is prohibited. Clause 1(2) defines dealing as: buying, selling or hiring; offering or arranging to buy, sell or hire; keeping for sale or hire; or exporting from or importing

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<sup>25</sup> Department for Environment, Food and Rural Affairs, [Banning UK Sales of Ivory: Summary of Responses and Government Response](#), April 2018, p 1.

<sup>26</sup> *ibid*, p 3.

<sup>27</sup> *ibid*, p 23.

<sup>28</sup> Department for Environment, Food and Rural Affairs, [Prohibiting the Commercial Dealing of Ivory in the UK](#), 23 May 2018, p 18.

into the UK for sale or hire. Clause 1(4) states that it would not be an offence to trade in ivory while outside the UK, but it would be an offence for someone who is in the UK to sell ivory to someone who is outside the UK.

Clause 1(5) defines ivory as both items made from ivory and items which include ivory. Ivory is further defined in clause 35(1) as ivory “from the tusk or tooth of an elephant”, and subclause 6 defines elephant as “an animal of a species that is within the family *Elephantidae*, and extant on the day on which this Act is passed”. Clause 35(2) would give the Secretary of State the power to extend, by regulations, the definition of ivory in the Bill to include ivory from any animal or species, including those that are extinct such as the woolly mammoth.

## 2.2 Exemptions

### ***Pre-1918 Items of Outstanding Artistic Etc Value and Importance***

Clauses 2(1) and (2) of the Bill would provide an exemption from the prohibition on trading items made of or containing ivory if the Secretary of State had issued (and not revoked) a certificate stating that the item dates from before 1918 and is “of outstandingly high artistic, cultural or historical value”. Clause 2(3) lists the factors to be taken into account when considering whether the item meets the criteria for artistic, cultural or historical value, which are: the rarity of the item, the extent to which it is an important example of its type, and any other matters specified in guidance issued by the Secretary of State. Clause 2(5) would give the Secretary of State the power to prescribe, by regulations, institutions which s/he considers have the necessary expertise to provide advice on applications to take advantage of this exemption.

Clause 3(1) sets out the information an applicant must provide when requesting a certificate for this exemption, as well as any relevant fees. If the applicant had complied with these obligations and the object was not one that “clearly fails to satisfy” the criteria of the exemption, clause 3(2) states that the Secretary of State must refer it to an assessor, which would advise the Secretary of State if the item satisfied the conditions in clause 2(2). The Secretary of State could either then grant the application or refuse it and inform the applicant why it had been refused (clause 3(6)).

Clause 4 makes further provisions about exemption certificates, including the conditions under which the Secretary of State could revoke an exemption certificate. Clause 5 sets out the process an applicant must undergo if they wish to re-apply or appeal against a refusal to grant a certificate or revocation of a certificate.



## **Other Exemptions**

Clauses 6 to 9 provide for other exemptions from the prohibition on trading. Clause 6 would exclude pre-1918 portrait miniatures from the ban, clause 7 would exclude pre-1947 items which comprise less than 10 percent ivory if the ivory is integral to the item, and clause 8 would exclude pre-1975 musical instruments which comprise less than 20 percent ivory. Clause 9 states that qualifying museums would be permitted to participate in dealing in ivory as long as the dealing was for the purpose of a sale, purchase or hire. This exemption would not include unworked ivory.

In order to benefit from these exemptions, the item in question must be registered by the Secretary of State (clauses 6 to 9). Clause 10 sets out the process for registration. Clause 11(1) states that registration of an item would cease to be valid when the ownership changes and the new owner must make a new application for registration. Clause 11(2) states that an owner must notify the Secretary of State if they become aware that any relevant information about the item is incomplete or inaccurate, or becomes so. Clause 11(3) to (4) would allow the Secretary of State to cancel or amend a registration, under certain conditions.

## **2.3 Enforcement and Sanctions**

### ***Criminal Offence and Sanctions***

Clause 12(1) of the Bill would provide that it is an offence to breach, cause to be breached or facilitate the breach of the prohibition on trading in ivory. Clause 12(2) would provide that a person only commits an offence if they know or suspect, or ought to know or suspect, that the item contains ivory, and clause 12(3) would provide that proving all reasonable precautions were taken to avoid committing the offence is a defence for a person charged under this section. Clause 12(4) sets out the maximum penalties for someone convicted for this offence, which would be:

- on summary conviction in England and Wales, imprisonment for not more than twelve months or a fine (or both);
- on summary conviction in Scotland, imprisonment for not more than twelve months or a fine not exceeding the statutory maximum (or both);
- on summary conviction in Northern Ireland, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both); and
- on conviction on indictment, to imprisonment for a term not exceeding five years or a fine (or both).

The Explanatory Notes to the Bill state that the penalties available on summary conviction relate to the maximum summary convictions in each of the devolved nations.<sup>29</sup> Clause 12(5) would provide that for offences committed before the relevant sections of the Criminal Justice Act 2003 come into force, the reference to a maximum term of imprisonment in England and Wales should be read as six months rather than twelve.

The Explanatory Notes highlight that breaches of other legislation may also be committed through the illegal dealing in ivory. For example:

- where the appropriate criteria are met, proceeds obtained through illegal sales of ivory would be confiscated under the Proceeds of Crime Act 2002;
- where there is evidence of serious and organised crime involving ivory sales, the Serious Crime Act 2000 should apply; or
- where information is falsified in order to register an item as exempt or to obtain an exemption certificate, or a registration or certificate is altered or falsified, the Fraud Act 2006 should apply.<sup>30</sup>

### **Civil Sanctions**

Clause 13 of the Bill provides that civil sanctions, as set out in schedule 1, would have effect. In the Explanatory Notes, the Government states that:

A mixed regime of criminal and civil sanctions makes available a range of sanctions which can be applied depending on the severity of the offence committed under the general prohibition. In those cases where a criminal sanction is unwarranted, civil sanctions may be applied.<sup>31</sup>

Schedule 1 sets out the civil sanction regime. Paragraphs 1 to 4 of schedule 1 make provision for the Secretary of State to impose a monetary penalty on someone if s/he is satisfied beyond “reasonable doubt” that the person has committed an offence under clause 12, and sets out the procedure that must be followed. Paragraphs 5 to 9 would give the Secretary of State the power to issue “stop notices” prohibiting a person from undertaking an activity which would be an offence. Paragraphs 11 to 13 would allow the Secretary of State to recover certain costs associated with civil sanctions from the person who has been sanctioned. Paragraphs 14 to 18 would give the Secretary of State power to make regulations relating to civil sanctions.

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<sup>29</sup> [Explanatory Notes](#), p 23.

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

### ***Powers of Entry, Search and Seizure***

Clause 14 would give police or customs officers the right to stop and search a person if they have reasonable grounds to suspect that person has committed an offence. Clause 15 would give the same power to police or customs officers concerning vehicles, and clause 16 concerning vessels and aircraft.

Clause 17 would give power to an “accredited civilian officer” to enter, and under certain circumstances search, premises which s/he “reasonably thinks” may be used in connection with dealing ivory. This would not apply to premises used as a dwelling. Clause 17(7) defines an “accredited civilian officer” as “an officer of the Secretary of State who is authorised by the Secretary of State for the purposes of the Act”.

Clauses 18 provides that a justice (defined in clause 36) may issue a search warrant for premises if there are reasonable grounds to suspect they contain evidence of a relevant offence, and certain other conditions are met. Clause 19 makes further provisions about search warrants, the details of which are set out in schedule 2.

Clause 20 would give officers undertaking any of the searches specified in clauses 15 to 18 the power to examine anything which may be relevant evidence, and clause 21 would allow an officer undertaking these searches to require a person to produce relevant documents. Clauses 22 and 24 would allow officers undertaking a search as specified in clauses 14 to 18 to seize and detain anything found in the course of their search, and to take copies of documents, with the exception of “excluded items” as set out in clause 23. Clause 25 makes provisions regarding the notices and records an officer must provide when seizing an item. Clause 26 would oblige an officer to state their name and provide credentials when undertaking a search, and authorises him/her to use reasonable force. Clause 27 states that it would be an offence to obstruct an officer in the performance of their functions under clauses 14 to 24. Clauses 28 to 32 make provisions concerning retention and forfeiture of items seized under clause 22.

Clause 33 states that an item which is imported or exported in breach of the prohibition could be intercepted under the Customs and Excise Management Act 1979. Clause 34 provides that if an offence is committed by a corporate body, such as a company or institution, an “officer” of the institution would also be liable if the offence was committed with their consent or connivance.

Clause 37 makes provisions regarding regulations and guidance issued under the Bill. Subclause 37(3) states that statutory instruments made under the Bill would be subject to the negative procedure, except for those made under clause 35(2) (relating to the definition of ivory), which would be subject to the affirmative resolution procedure.

Clause 38 states that funds for the enforcement of the provisions in the Bill must be provided by Parliament. The Department for Environment, Food and Rural Affairs estimates that the financial implications of the Bill are £2 million per year for the first five years, to cover enforcement costs and the impact on the justice system, and a one-off cost of approximately £500,000 for a new IT system (although it is expected this will be recovered by application fees).<sup>32</sup>

Clause 39 states that the Bill would apply to the Crown, except regarding offences. Clauses 41 to 42 set out the Bill's extent, commencement and short title.

### 3. Commons Stages

#### 3.1 Second Reading

The Secretary of State for Environment, Food and Rural Affairs, Michael Gove, opened the second reading debate on the Bill by highlighting the prevalence of the poaching of African elephants and the threat this posed to the species.<sup>33</sup> He argued that the Bill would help to reduce this threat by reducing the demand for ivory. Mr Gove stated that the current legislation governing the ivory trade was inadequate because “the existence of the current legal market allows illegally obtained ivory to pass as legally acceptable ivory or worked ivory for sale”.<sup>34</sup>

Mr Gove addressed the exemptions to the general prohibition on ivory trading in the Bill. He stated that the exemptions for portrait miniatures, objects containing less than 10 percent ivory, and pre-1975 musical instruments containing less than 20 percent ivory were justified because these items would be traded in spite of their ivory content, rather than because of it.<sup>35</sup>

Speaking on behalf of the Labour Party, Sue Hayman, Shadow Secretary of State for Environment, Food and Rural Affairs, stated that the Labour Party would not oppose the Bill, but that it would seek to make amendments to it in committee stage.<sup>36</sup> Ms Hayman emphasised that the UK currently contributed to the ivory trade, and argued that “we must send a clear message at home and internationally that the only ivory that we will value is on a live elephant in the wild”.<sup>37</sup> Ms Hayman asked the Government to provide more information on the funding and resourcing available for enforcement of the Bill, and argued that new sentencing guidelines would be

<sup>32</sup> [Explanatory Notes](#), p 36.

<sup>33</sup> [HC Hansard, 4 June 2018, col 91](#).

<sup>34</sup> *ibid*, col 95.

<sup>35</sup> *ibid*, col 96.

<sup>36</sup> *ibid*, col 99.

<sup>37</sup> *ibid*.

needed.<sup>38</sup> She also argued that “further clarity” on the exemptions in the Bill was needed.

Lisa Cameron (Scottish National Party (SNP) MP for East Kilbride, Strathaven and Lesmahagow) said that her Party welcomed the measures proposed to help protect elephants.<sup>39</sup> Dr Cameron argued that some elements of the Bill should be considered further in committee stage, such as a definition of a portrait miniature.

Several Members argued that the definition of ivory in the Bill was too narrow, and should be widened to include that from species other than the elephant. The Bill, as introduced in the House of Commons, contained provision for the Secretary of State to amend, by regulations, the definition of ivory to include that from other species listed in the appendices to CITES such as the hippopotamus, narwhal and walrus. The former Secretary of State for Environment, Food and Rural Affairs, Owen Paterson (Conservative MP for North Shropshire), said that “the Secretary of State should also be able to include other ivory-bearing species not listed in the CITES appendices in clause 35(3)” because evidence suggested that non-elephant ivory was being purchased in order to replace elephant ivory.<sup>40</sup> Mr Paterson argued that “a ban must be careful to ensure that it does not unintentionally place these species under yet more pressure”.<sup>41</sup>

Zac Goldsmith (Conservative MP for Richmond Park) stressed the importance of the Bill achieving royal assent before the Illegal Wildlife Trade Conference which is due to be held in London in October 2018, so that the UK can demonstrate leadership and encourage similar action from other countries, a point also emphasised by Mr Paterson.<sup>42</sup> In his closing remarks, the then Interim Parliamentary Under Secretary of State for Environment, David Rutley, said that the Government recognised the need to act quickly on this issue, and hoped Members would help to ensure the Bill’s swift passage through Parliament.<sup>43</sup>

### 3.2 Committee Stage

A public bill committee examined the Bill over six sittings. During the first sitting the Committee took evidence from conservation groups, and during the second sitting the Committee took evidence from representatives from law enforcement, the antiques and art trade, musicians, and museums.

<sup>38</sup> [HC Hansard, 4 June 2018, col 100.](#)

<sup>39</sup> *ibid*, col 105.

<sup>40</sup> *ibid*, col 104.

<sup>41</sup> *ibid*.

<sup>42</sup> *ibid*, cols 105–11.

<sup>43</sup> *ibid*, col 130.

During the second evidence session Anthony Browne, chairman of the British Art Market Federation and Mark Dodgson, Secretary General of the British Antique Dealers Association expressed concern that the de minimis threshold of 10 percent ivory content was too low.<sup>44</sup> Mr Browne argued that there were a large number of items of low value which have a small percentage of ivory, for which the cost and inconvenience of registration could outweigh the benefits. As a result, “these objects will be destroyed or mutilated, as people try to hack the bits of ivory off [...] or they will just end up in landfill”.<sup>45</sup>

Objections to a 10 percent de minimis threshold were also raised during a debate in the House of Lords on the ivory trade in December 2017. Lord De Mauley (Conservative), chairman of LAPADA, an association of art and antique dealers, argued that there are many “valuable and precious” items containing more than 10 percent ivory which would not qualify for the artistic, cultural or historic significance exemption.<sup>46</sup> Lord De Mauley argued that these items would be “unsaleable and therefore worthless”, and this could lead to them being destroyed.

No changes were made to the Bill during the Commons committee stage, though a number of amendments and new clauses were moved and debated. This included an amendment moved by Labour which would have made the offences created by clause 12 strict liability offences.<sup>47</sup> This amendment was defeated on division by eight votes to seven.

As introduced in the House of Commons, the Bill defined ivory as from the tooth or tusk of a species of elephant which was extant when the Bill was passed. It also limited the Secretary of State’s powers to extend the definition of ivory to that from species listed in the appendices to CITES. The Opposition moved amendment 11, which would have expanded the definition of ivory to include all the ivory-bearing species listed in the CITES appendices (ie hippopotamus, elephant, killer whale, narwhal, sperm whale, and walrus) and also moved a further amendment, amendment 12, which would have allowed the Secretary of State to make regulations to include any ivory-bearing species, including those not listed in CITES, in the definition.<sup>48</sup> Examples of these species include the warthog and the woolly mammoth.

Speaking to these amendments, Ms Hayman addressed concerns that extending the definition to include species that were not included in the original consultation would leave the legislation open to challenge in the courts. Ms Hayman said that she had received advice from the Consultation

<sup>44</sup> [Public Bill Committee, Ivory Bill, 12 June 2018, session 2017–19, 2nd sitting, cols 53–5.](#)

<sup>45</sup> *ibid*, col 54.

<sup>46</sup> [HL Hansard, 21 December 2017, cols 2271–2.](#)

<sup>47</sup> [Public Bill Committee, Ivory Bill, 19 June 2018, session 2017–19, 5th sitting, cols 122–7.](#)

<sup>48</sup> *ibid*, col 142.

Institute that the change could legally be made without consultation, or that consultation could be limited to 14 days and therefore not significantly delay the passage of the Bill.<sup>49</sup> However, this was not accepted by all Members.<sup>50</sup> In addition, Mr Rutley said a consultation on extending the definition would be necessary in order to assess whether extending the ban would be compliant with the European Convention on Human Rights, which includes a right to the protection of property.<sup>51</sup> He argued that further information was needed before a ban on trading in non-elephant ivory could be introduced. Amendment 11 was withdrawn.

The Government also opposed amendment 12, to remove the restriction which limited additions to the definition of ivory to that from species listed in a CITES appendix. Mr Rutley said:

Colleagues will recognise that the overriding purpose of the Bill is to conserve an endangered species: the elephant. Removing the reference to CITES, and thus to the endangered status of an animal, would undermine the objective of the Bill.<sup>52</sup>

Amendment 12 was defeated on division, by eight votes to seven.<sup>53</sup>

The Labour Party proposed several new clauses, two of which were voted on. New clause 1 would have obliged the Government to publish an annual report on exemption certificates which had been granted in the last year.<sup>54</sup> This was defeated on division by eight votes to seven. New clause 3 would have required the Secretary of State to report on the resources available to enforce the ban within a year of the coming into force of the Bill.<sup>55</sup> This was defeated by eight votes to seven.

Ms Hayman also moved a new clause which would have obliged the Government to publish a report on the international ivory market, including analysis of the impact of the new legislation on the demand for ivory in the UK and abroad.<sup>56</sup> Speaking to the purpose of the amendment, Ms Hayman said:

The idea is that the report would provide practical analysis of the impact of the Bill on demand for ivory in the United Kingdom and in other countries. Importantly, we would want it to consider the impact

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<sup>49</sup> [Public Bill Committee, Ivory Bill, 19 June 2018, session 2017–19, 5th sitting, cols 143.](#)

<sup>50</sup> *ibid*, col 148.

<sup>51</sup> [Public Bill Committee, Ivory Bill, 19 June 2018, session 2017–19, 6th sitting, col 157.](#)

<sup>52</sup> *ibid*.

<sup>53</sup> *ibid*, col 160.

<sup>54</sup> *ibid*, col 161.

<sup>55</sup> *ibid*, col 157.

<sup>56</sup> *ibid*, col 162.

on nations or communities that generate income from ivory.<sup>57</sup>

Mr Rutley argued that the necessary data to produce such a report may not exist, that there would be a risk of duplicating work done by CITES, and that it would be more appropriate for a non-governmental organisation to carry out such an analysis.<sup>58</sup> The new clause was withdrawn; however an identical new clause was tabled at report stage.

The Opposition proposed an amendment to clause 6, which would have specified the maximum dimensions of a portrait miniature and of the sheet of ivory it could contain.

Mr Rutley argued that further expert advice on this issue was needed before it could be included in the Bill, and undertook to return to the issue at report stage.<sup>59</sup> The amendment was withdrawn.<sup>60</sup>

### 3.3 Report Stage and Third Reading

#### **Report Stage**

The issue of expanding the definition of ivory was returned to at report stage. The Labour Party moved new clause 1, supported by the SNP, which would have obliged the Secretary of State to lay regulations amending clause 35(1) so as to include ivory from all relevant species listed in a CITES appendix within twelve months of the Act coming into force.<sup>61</sup> Ms Hayman argued that would leave sufficient time for a consultation to take place.<sup>62</sup>

The Government introduced its own amendments to clause 35, amendments 3 and 4, giving the Secretary of State the power to lay regulations expanding the definition of ivory to include that from any species, removing the requirement for the species to be listed in CITES.<sup>63</sup> Speaking to the proposed new clause 1, Mr Rutley said that the Opposition's amendment "presupposes or prejudices of the outcome" of a public consultation and could therefore leave the legislation open to legal challenge.<sup>64</sup> He said that a consultation on expanding the definition of ivory would begin soon after royal assent.<sup>65</sup>

<sup>57</sup> [Public Bill Committee, Ivory Bill, 19 June 2018, session 2017–19, 6th sitting, col 162.](#)

<sup>58</sup> *ibid*, col 164.

<sup>59</sup> [Public Bill Committee, Ivory Bill, 14 June 2018, session 2017–19, 3rd sitting, cols 91–2.](#)

<sup>60</sup> *ibid*, col 92.

<sup>61</sup> [HC Hansard, 4 July 2018, col 359.](#)

<sup>62</sup> *ibid*, col 361.

<sup>63</sup> *ibid*, col 399.

<sup>64</sup> *ibid*, col 389.

<sup>65</sup> *ibid*, col 372.



New clause I was defeated on division, by 305 votes to 256.<sup>66</sup> The Government's amendments to clause 35 were passed without division.

The Labour Party also moved a new clause which would have obliged the Government to publish a report on the effect of the legislation on the international ivory market, identical to that on the topic moved at committee stage.<sup>67</sup> Speaking to the new clause, Ms Hayman said that its intention was to “focus minds and action on the international nature of the illegal wildlife trade”, and to examine whether the new legislation had had an impact in the communities where ivory is being poached.<sup>68</sup> In response Mr Rutley said “the Government do not believe it to be their job to produce [such a report], because other organisations can do so more independently, and of course there would be a cost involved as well”.<sup>69</sup> The new clause was defeated on division, by 306 votes to 262.<sup>70</sup>

The Government moved two amendments to clause 6, stipulating a maximum surface area of 320 cm<sup>2</sup> permitted for a portrait miniature to qualify for the exemption.<sup>71</sup> This followed Mr Rutley's undertaking at committee stage to return to the issue. The amendments were made without division.

### **Third Reading**

Opening the third reading debate, Mr Rutley said that the ban “will be the strongest in Europe and amongst the strongest in the world”, reaffirming the UK's leadership on the issue of elephant poaching.<sup>72</sup> Dominic Grieve (Conservative MP for Beaconsfield) asked the Minister what the impact of the Bill would be on valuing ivory items for probate purposes, and the Minister said he believed that this point “will be further scrutinised in the other place”.<sup>73</sup>

Speaking for the Labour Party, Ms Hayman highlighted the cross-party recognition that a “comprehensive ban on the sale of ivory is needed”.<sup>74</sup> Ms Hayman asked for further information from the Minister on several points, including transparency on the issuing of exemptions, the resources available for enforcement, and how online ivory-trading activities are to be policed.<sup>75</sup>

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<sup>66</sup> [HC Hansard, 4 July 2018, col 390.](#)

<sup>67</sup> *ibid*, col 359.

<sup>68</sup> *ibid*, cols 361–2.

<sup>69</sup> *ibid*, col 389.

<sup>70</sup> *ibid*, col 395.

<sup>71</sup> *ibid*, col 399.

<sup>72</sup> *ibid*, cols 399–400.

<sup>73</sup> *ibid*, col 400.

<sup>74</sup> *ibid*, col 402.

<sup>75</sup> *ibid*, cols 402–3.