



Department
for Environment
Food & Rural Affairs

Consultation: Implementing the Ivory Act 2018

Summary of responses and government response

Date: September 2021

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



© Crown copyright 2021

This information is licensed under the Open Government Licence v3.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

This publication is available at www.gov.uk/government/publications

www.gov.uk/defra

Contents

Overview.....	4
Introduction.....	4
Scope of the consultation	4
Overview of respondents.....	4
Responses and government response by question	5
Details set out in the Ivory Act	5
Question 2	6
Question 3	7
Question 4	9
Question 5	10
Question 6	11
Question 7	11
Question 8	13
Question 9	13
Question 10	14
Question 11	15
Question 12	16
Question 13	17
Question 14	18
Question 15	19
Question 16	19
Question 17	20
Question 18	21
Question 19	21
Question 20	22

Next steps.....	22
Annex A	23
List of organisations that responded to the consultation.....	23

Overview

Introduction

This document provides a summary of responses to Defra’s consultation on the implementation of the Ivory Act 2018 (the “Act”). The consultation ran from 9 March 2021 to 4 May 2021. This document also sets out the government’s response to the consultation.

Scope of the consultation

The consultation set out the government’s proposals for the implementation of the Act across three areas. These are: the commencement of the Act, including the prohibition on dealing ivory; implementing the standard exemptions; and implementing the exemption for outstandingly valuable and important pre-1918 items (rare and most important items).

As noted in the consultation document, this consultation was conducted on a UK-wide basis. Where powers are to be exercised by the appropriate national authority in the devolved administrations, Defra consulted on their behalf with their agreement. This is accordingly an agreed UK-wide response.

Overview of respondents

The consultation received 114 responses. There was 1 further response that did not answer any questions so has been treated as invalid. 48 responses were by, or on behalf of, organisations. 65 responses were by individuals. One response was not identified as being either by an individual, or by or on behalf of an organisation.

Organisations included those involved in the antiques trade, museums and galleries, professional musicians and music sector organisations, and non-governmental organisations (NGOs) focussed on wildlife and conservation. Individuals included some with personal or professional interests in sectors related to the trade in ivory, such as art, antiques and musical instruments; and some who expressed concerns about the ivory trade and its impact on wildlife and conservation.

Annex A provides a list of all organisations that responded who did not request their response to be confidential. The organisations who responded were made up of the following groups:

Category of organisation	Number of responses
Antiques associations and antiques dealers	25
Galleries, museums and academic institutions (including prescribed institutions)	8
Music sector organisations	3
Wildlife NGOs	6
Other NGOs	3
Other organisations	4

A further 65 responses were submitted by individuals

Responses and government response by question

Details set out in the Ivory Act

A number of responses were received which disagreed with our proposals on implementation, essentially because of their fundamental disagreement with the Act or aspects of it. For example some of those who responded “no” stated that they disagreed with the Act generally, or the ban on dealing “antique art” or “old ivory” specifically, some claiming that it would have no impact on current elephant populations. Others suggested that the Act should include specific exemptions for certain types of item, such as netsuke, art deco statues or stringed instruments and bows. A small number of respondents recommended other ways of regulating the trade in ivory that are not compatible with the Act. These responses have been included in the percentages for each question outlined below. However, such matters were out of the scope of this consultation and have therefore not been addressed in this government response.

Question 2

Do you agree with the proposed approach to commencing the Act? A) Yes/No B) If no, please state your reasons.

All respondents answered this question. Of those, 48% (55) responded “yes” and 52% (59) responded “no”. However, as noted above many of those who responded “no” cited disagreements with the Act that are out of scope of this consultation. Of the responses in scope most (68%) supported the approach outlined in the consultation document.

Of those who responded “yes”, 2 expressed concerns that the lack of a date for the ban to come into force would lead to continuing trade, or that the ban should come into force as soon as possible.

A few of those who responded “no” stated that they believed the ban should be implemented sooner than is proposed.

Some concern was expressed that the implementation of the Act would lead to ivory items being destroyed or donations to museums being stopped.

A few respondents, mostly organisations involved in or associated with the antiques trade, recommended a period of 3 to 12 months between applications for registrations and exemption certificates opening and the ban on dealing coming into force. A majority of these recommended a minimum of between 6 and 12 months.

A few respondents, including individuals and wildlife NGOs suggested that the ban should be implemented as soon as possible, or they disagreed with a period for items to be registered before the ban is brought into force.

One organisation commented that the proposal to require transactions for items prohibited under the Act to be completed in advance of the restrictions coming into force could place sellers in a very difficult position. Sellers do not have control over when a buyer settles an invoice. Additionally, conformity with the Sale of Goods Act 1979 and other consumer law was queried.

A small number of respondents expressed other concerns, including a lack of public awareness of the ban, that the ban would not prevent ivory being sold in other countries, that the pandemic has prevented businesses from selling their ivory items, financial concerns for antiques dealers, and a lack of guidance regarding certification or proof of exemptions.

Government Response

The proposal in the consultation document stated that:

“We intend that the provisions in the Act will be commenced in such a way as to enable those dealing in exempted items to register or, as the case may be, apply for certification of their items, before the ban comes into force.”

Having carefully considered the range of responses we will maintain this approach. On the one hand the Act received Royal Assent in December 2018, so those needing to prepare for the implementation of the ban have had ample time to do so. On the other hand it is reasonable to allow ivory traders, particularly those which require certification, to register their items in advance of the ban coming into effect. We will be implementing an approximate 4 month stay between the opening of the registrations and certification process, and the ban coming into force. We consider this is an appropriate balance of the need to implement the system for registrations and applications for exemption certificates, including time for registrations and applications to be made, and the need to bring the ban into force as soon as practicable.

There will be an awareness raising campaign to support the introduction of the registration and certification processes and provide information to help businesses and individuals comply with the ban.

In response to the points raised about items being destroyed or donations to museums being stopped, the Act does not affect the ownership of ivory items or require items to be destroyed. Neither does the Act affect donations (including to museums), and it instead includes a specific exemption for acquisitions by qualifying museums. This point will be explained in the awareness raising campaign for the commencement of the Act.

We recognise that contracts for the dealing of ivory prior to the ban coming into force may not be complete on the date the ban comes into force (“commencement day”). In general, we consider the 4 month period between the opening of the registration and certification processes, and the awareness raising campaign that will accompany the implementation of the Act, should provide ample opportunity for such contracts to be completed. However, we recognise that for unforeseen reasons this may not always be possible. Therefore we have decided to make provision for a grace period of 28 days (beginning with the date that the prohibition comes into force) to allow completion of contracts which are still in the course of performance on that date. So, for example, if the purchase price has been paid to a seller before the date that the prohibition is commenced, but the buyer has not yet received the item at the date of commencement, there will be a period of 28 days for the item to be handed over.

Question 3

Do you agree with the proposed approach to the group registration process? A) Yes/No B) If no, please state your reasons and provide any suggested additions or alternatives including any supporting evidence.

A total of 96% of respondents answered this question. Of those, 55% (60) responded “yes” and 45% (50) responded “no”.

Issues raised about the approach to group registration included circumstances where items will have to be registered individually if it is not known that they will be sold as a

group, and that registration is time consuming and expensive. Concerns were also expressed by some respondents that sellers would be able to get a discount by grouping unrelated items, that groupings could be used to launder items that do not meet the exemptions with those that do, and the ability to check all items registered in groups.

Numerous responses raised issues that related to other questions on the consultation, and those issues are addressed under the relevant questions.

Government response

The proposal in the consultation document stated that:

“Three or more items up to a maximum of twenty items may be registered as a group rather than as separate individual items. This group registration is only permitted when:

- The subsequent dealing of these items is as a single group and in a single transaction e.g. all items are being sold to a single person in one transaction.
- Each item in the group individually meets the same exemption e.g. a group of pre 1918 portrait miniatures.”

We will maintain this approach, as an appropriate and proportionate way to minimise the burden and costs on those wishing to deal in a number items that are exempt under the same category of exemption as set out in the Act and intended for sale jointly. Each item in the group must be registered as part of the group and qualify for the same exemption in its own right. This minimises the risk of laundering items that do not meet the exemption criteria. The registration will relate only to the items as a group, so the seller or person hiring out the group of items will want to assure themselves in advance that the intended sale or hire relates to the items as a group. If the person is uncertain, or if plans later change, then an item or items to be sold singly must be re-registered as individual registrations or part of a different group registration. It is a criminal offence to buy or sell prohibited items without a valid registration or exemption certificate. Therefore, anyone buying or selling individual items that have been registered as part of a group, or a group of items that includes items that are not covered by the group registration or another valid registration or exemption, would be committing an offence. The proposed administrative guidance will offer further information on the conditions which apply to such group registrations.

The group registration function is not intended to replace the ability to register a set of objects as a single item. The proposal in the consultation stated that:

“A ‘set’ of objects, for example an original tea set or drawing instruments set, may be considered a single item and registered as such. The set should be original: all of the parts of the set, including any box or container, having been produced at the same time with the intention of them being kept and used together.”

Question 4

Do you agree with the proposed approach to guidance on assessing the age of items? A) Yes/No B) If no, please state your reasons and provide any suggested additions or alternatives.

A total of 96% of respondents answered this question. Of those, 61% (67) responded “yes” and 39% (43) responded “no”.

A few respondents expressed concerns about the definition of “expert” and the level of expertise of some of those involved in the trade in ivory. They cited work by Two Million Tusks¹ and work by the University of Portsmouth² highlighting that no qualifications are required to become an antiques dealer or auctioneer, and raised questions about the ability of those currently involved in the ivory trade to adequately assess the age of ivory items. They also expressed concerns about the possibility of accurately determining the age of ivory items.

Several other respondents suggested that the definition of “expert” was too limited, and should be expanded to include those involved in the trade in ivory or those with other particular expertise outside of the commercial sector.

Other comments included concerns that the self-declaration process is open to abuse and evidence would be manufactured, that the required processes are too bureaucratic or too expensive, and questions about who should determine that a museum had sufficient expertise.

Government Response

It is the responsibility of the owner to assure themselves that the item meets the exemption criteria. The process has been simplified as far as possible to remove unnecessary bureaucracy, and there will be a checking process for registrations. The consultation document refers to some examples of evidence which an owner might rely on when making a declaration. It is a criminal offence to breach the prohibition by deliberately or negligently making a false declaration that the item is exempt and then advertising the item for sale or hire, or selling or hiring out the item.

Regarding the comments about experts and expertise, the proposed administrative guidance will, as set out in the consultation document, provide some examples of sources

¹Two Million Tusks (2017) Ivory: The Grey Areas: [TWO MILLION TUSKS \(filesusr.com\)](https://filesusr.com)

² Cox, C. (2017) The Elephant in the Sale Room, The School of Law, University of Portsmouth, Portsmouth, UK: [https://researchportal.port.ac.uk/portal/en/publications/the-elephant-in-the-sales-room\(7e613407-373e-4d46-ba32-5340c789e6e9\).html](https://researchportal.port.ac.uk/portal/en/publications/the-elephant-in-the-sales-room(7e613407-373e-4d46-ba32-5340c789e6e9).html)

of expertise for common items but this will not be an exhaustive list. It will be the responsibility of the seller to ensure and confirm that their item meets the exemption by declaring this as part of the registration process. As such, they will need to satisfy themselves that any expert advice on which they have relied upon was provided by someone with sufficient expertise in the type of item concerned.

Question 5

Do you agree with the proposed approach to guidance on assessing percentage volume of ivory of an item? A) Yes/No B) If no, please state your reasons and provide any suggested additions or alternatives.

A total of 96% of respondents answered this question. Of those, 60% (66) responded “yes” and 40% (44) responded “no”.

While a significant majority of respondents agreed with the guidance on assessing percentage volume of an item, several respondents queried the definition of a set of items and the potential for abusing this classification.

Other points raised included the scope for confusion between volume and weight, the need for clarity on the definition of “integral”, and whether the assessment should be of the current state of the item, or as it was originally if some non-ivory material no-longer forms part of the item.

Government Response

We welcome the broad support for this approach and recognise there will be particular circumstances affecting the assessment of certain items. While the guidance will aim to support those dealing in ivory in complying with the Act, it will be the responsibility of the seller to ensure and confirm that their item meets the exemption and to declare this as part of the registration process. If they are unable to satisfy themselves that their item meets the volume restrictions for the particular exemption, they may decide to seek advice from an expert.

The item in its current state will have to be below the percentage threshold for ivory by volume. If it exceeds this then it will not qualify for the exemption. Submitting a false registration could also render the person registering it liable to prosecution for a fraud offence.

Question 6

Do you agree with the proposed approach to guidance on assessing surface area of portrait miniatures? A) Yes/No B) If no, please state your reasons and provide any suggested additions or alternatives.

A total of 89% of respondents answered “this question. Of those, 73% (74) responded “yes” and 27% (27) responded “no”.

Of those who responded “no”, a majority stated that they disagreed with the Act. Most did not give reasons for this, although 3 said they wanted a “total ban”.

Of those that responded “yes” no comments were provided.

Concerns were raised that sellers will not tell the truth, and that the proposed approach to guidance is unnecessarily complicated.

Two respondents raised concerns about frames (in relation to the portrait miniature exemption). One noted that measuring the surface area may result in the frame having to be removed and the item damaged in the process. The other stated that if the portrait miniature had an ivory frame then that should be treated separately with the same rules as other ivory items.

Government Response

We welcome the support received for our proposal and believe that the proposed guidance is simple and clear. It is the responsibility of anyone dealing in ivory to ensure that the items meet the exemption criteria, and if it is later found that this is not the case there is a risk of enforcement proceedings being taken.

Any areas covered by the frame are not included in the surface area restrictions, so the frame should not need to be removed to measure the surface area.

There are strict requirements on frames containing ivory if they are to be considered part of the portrait miniature; the frame has to be integral, and has to be pre-1918.

Question 7

Do you agree with the proposed information requirements to be required? A) Yes/No B) If no, please state your reasons.

A total of 96% respondents answered his question. Of those, 72% (79) responded “yes” and 28% (30) responded “no”.

The majority of responses supported our proposals.

Of those responses that disagreed, several said that the proposed requirements were “too bureaucratic” or “unnecessary paperwork”.

Other respondents made the following points:

- All documents and photographs submitted in support of a registration should be made publicly available on the registration website, and there should be minimum requirements for the size and quality of photographs;
- The guidance should clarify that applicants making a group application must provide individual photographs of all items in the group;
- If a photograph showing the distinguishing features also shows the entire item, it should be sufficient; and,
- Information about any intended dealing expected to take place should not be required.

Other comments included clarity needed on enforcement of on online auctions, that documentary proof of provenance should be required, and that certificates from an expert would be more practical.

Government response

We welcome the support for the proposals. In terms of administrative efficiency we have kept to the requirements of the Act as far as possible. The additional requirements are necessary for administrative efficiency and to aid the checking process.

In response to the comments about the requirements being unnecessary or bureaucratic, the requirements for the owner’s name and address, description of the item, photograph(s) showing distinguishing features, information about expected dealing, and the declaration and explanation that it meets the exemption are all requirements of the Act.

The consultation document already states that the photographs must show the entire item. There is no requirement for additional photographs if the item’s distinguishing features are shown in a photograph of the entire item. For the group registration (see also Question 3), the requirements must be met for each individual item. Therefore, photographs submitted for group registrations must display the distinguishing features of each item, and each item in its entirety, for the group registration to be valid.

It will be the responsibility of the seller to declare that their item meets the exemption as part of the registration process. It is for sellers to provide an explanation of how the item meets the exemption criteria and to satisfy themselves that they have provided the necessary evidence. This may include documentary proof of provenance.

Question 8

Do you agree with the rationale for establishing the [registration] fees at these levels? A) Yes/No B) If no, please state your reasons.

A total of 96% of respondents answered this question. Of those, 59% (65) responded “yes” and 41% (45) responded “no”.

Most respondents agreed with the level of fees.

Some respondents disagreed with the requirement for items to be re-registered and fees charged accordingly for changes of ownership. A number of respondents were opposed to any fees being charged either initially or at all, whilst at the other end of the scale respondents noted that the registration costs should not fall to taxpayers. Others recommended a fee system that was proportionate to the value of the item.

A couple of respondents expressed concerns about the risk from an over-bureaucratic system and fees could incentivise people to avoid registering. Some noted that the fee levels would harm London’s status in the arts and antiques trade.

Government response

The Ivory Act sets out certain requirements which are covered in the proposals, for example the requirement to re-register an item in order to be able to further deal in it. The fees have been set at a manageable level to encourage compliance and meet the principle that costs should not be borne by the taxpayer.

We propose to keep the fees under close review after the Act is commenced. Depending on numbers of registrations being made, the fee may subsequently be adjusted in order to maintain the cost-recovery principle outlined here. Any subsequent changes would be subject to consultation and require further secondary legislation.

Question 9

Do you agree with the rationale for not providing exemptions from [registration] fees? A) Yes/No B) If no, please state your reasons.

A total of 92% respondents answered this question. Of those, 74% (78) responded “yes” and 26% (27) responded “no”.

Some responses to this question were similar to the responses to the previous question (question 8). A few responses stated that certain types of organisation or individuals should be exempt, including charities, antiques dealers and freelance musicians.

Government response

We do not intend at this time to reduce the fee or provide an exemption for low value items, such as household items or violin bows, or for particular types of organisations or individuals dealing in ivory.

We do not propose to establish any exemptions from the registration fees. We consider it appropriate that the costs are spread across all owners and in proportion to the number of registrations those owners make.

Question 10

Do you agree that the proposed approach to guidance on this exemption [outstandingly valuable and important pre-1918 items] adequately captures and explains it? A) Yes/No B) If no, please state your reasons and provide any suggested additions or alternatives.

A total of 93% of respondents answered this question. Of those, 61% (65) responded “yes” and 39% (41) responded “no”.

Some responses expressed concerns about the criteria being subjective, or it being difficult to judge against the criteria, and the ability of prescribed institutions to arrive at sound judgements on items.

A few responses highlighted that the Act requires rarity and importance to be taken into account, but the proposed guidance stated “and / or” between rarity and the extent to which the item is an important example of its type, with “or” suggesting that they might not both be considered.

A small number of responses expressed concern about items being disposed of because they do not meet the criteria.

Government response

The Act provides powers to prescribe in secondary legislation other matters, in addition to rarity and importance, which are to be taken into account in consideration of items under section 2 of the Act - outstandingly high artistic, cultural or historical value. The consultation provided draft guidance on this and as this condition is capable of wide interpretation, we do not find that there is a compelling case for prescribing any additional matter and therefore conclude that we should maintain this approach.

In response to the concerns expressed about items being disposed of or lost to future generations, the Act does not affect ownership of an ivory item. Ownership of items that do not meet the exemption criteria, or owners who do not wish to apply for an exemption certificate, will not be impacted. A person can still own an item, or gift, donate or bequeath it to another individual or organisation or sell or hire it to a qualifying museum.

The proposed administrative guidance will make clear that both an item's rarity and its importance, relative to other examples of its type, must be considered when assessing an item.

Question 11

Do you agree with the rationale for identifying “prescribed institutions”? A) Yes/No B) If no, please state your reasons.

A total of 90% of respondents answered this question. Of those, 61% (63) responded “yes” and 39% (40) responded “no”.

A minority of responses did not agree with our proposal. A few responses suggested that professionals involved in the antiques trade or specialists from organisations with particular expertise in certain types of item (such as chess sets or Northumbrian pipes) should be involved in making decisions on applications. One response cited data on the expert advisers used by the Acceptance in Lieu Panel and independent assessors used by the Review Committee on the Export of Works of Art, which stated that these bodies more commonly appointed advisors or assessors from “the trade (dealers, ex dealers & auctioneers)” than from “museums of national standing”.

Several responses highlighted that they believed the institutions listed as prescribed institutions lacked expertise in certain areas. These points will be covered in the response to the next question (question 12).

A couple of responses commented on the length of time it would take to receive a decision on an application.

Another couple highlighted that the Act does not require an assessor nominated by a prescribed institution to be an employee of that institution.

Government Response

We welcome the fact that the majority of responses agreed with our proposal. We believe that the rationale for identifying prescribed institutions will lead to a comprehensive range of expertise being available (see the response to question 12), and that the ability for institutions to nominate an assessor who is not an employee will provide flexibility in cases where the necessary expertise in a particular specialism is otherwise unavailable.

Exemption certificates for items found to meet the exemption criteria will be issued as soon as practicable after the application has been submitted.

Question 12

Do you agree that the proposed list of ‘prescribed institutions’ will be sufficient to provide advice for this exemption? A) Yes/No B) If no, please state your reasons.

A total of 94% of respondents answered this question. Of those, 55% (59) responded “yes” and 45% (48) responded “no”.

Several respondents in their responses to both this question and question 11, highlighted areas where they believed there was insufficient expertise in the institutions listed. These included Asian art, Art Nouveau sculpture, firearms and edged weapons, Sikh cultural and religious items, chess sets, and Northumbrian pipes. Concerns were expressed that both the fields of expertise were too narrow or specialised, and that items would be assessed by institutions whose expertise was too general (e.g. areas Asian art generally rather than Japanese art in particular).

A few responses (mostly from those involved in the antiques trade) said that antiques dealers should be included, as providers of expertise.

Concern was expressed in some responses about the geographic spread of the institutions on the list. A couple of responses expressed concern about the ability for the Animal and Plant Health Agency to decide which institution should assess an item.

Government response

We believe that the institutions provide a range of specialisms consistent with the range of ivory items likely to be put forward under this exemption. The ability for institutions to nominate an assessor who is not an employee will provide flexibility in cases where the necessary expertise in a particular specialism is otherwise unavailable.

In response to the concerns about the geographical spread of the institutions, applications will be assessed by the most appropriate institution based on the expertise available. The location of the institution or the applicant will not affect this decision.

As part of the process for being added to the list of prescribed institutions, we have considered the areas of expertise within each institution. This will enable APHA to make decisions about the most appropriate institution to assess a particular item.

Since publishing the consultation we have been in discussions with the Horniman Museum and have agreed to add them to the proposed list of prescribed institutions. We will keep the list of prescribed institutions under review.

Question 13

Do you agree with the proposed approach to information requirements for applications for exemption certificates? A) Yes/No B) If no, please state your reasons.

A total of 84% of respondents answered this question. Of those, 70% (75) responded “yes” and 30% (32) responded “no”.

Of the minority of responses that did not agree with our proposals a few said they believed that assessors should be able to physically assess an item, either for all items or as they deem necessary to make their judgement. Others commented that the information requirements were too complex, burdensome, or unnecessary, that expected dealing in an item could not be foretold accurately due to the nature of the antiques trade, and that linking the previous failed application to a new application could be prejudicial and unfair.

A few respondents said they believed that documentary evidence should be required to support an application.

There were a couple of queries about potential for refunds if an item failed to sell and exclusion of the owner’s personal information where an agent was acting for them. Comments about photographs included provision of multiple photographs, that photographs should show all aspects of the item, that photographs should be sufficient to qualify an item, and that in the case of bows for string instruments, the requirement to take a complete image showing the whole bow means that the ivory tip would hardly be visible.

Government response

We welcome the majority of support for this proposal. We believe that the proposed approach to information requirements set out in the consultation is appropriate.

We are not considering refunds for successful applications where the dealing does not ultimately take place. The certificate will still be valid and the item may be dealt in future if the owner wishes, and the cost of the assessment and associated administration would have already been incurred. It would therefore be inappropriate to offer a refund.

It is for an applicant to decide how best to satisfy themselves and demonstrate that their item meets the exemption criteria, including what supporting documentation to submit. The consultation document proposed that the photograph(s) provided are required to show the entire item, in addition to any distinguishing features. If it is not possible to show the distinguishing features and the entire item in 1 photograph then multiple photographs may be submitted.

We do not consider linking previous unsuccessful applications to a fresh application for the same item to be prejudicial. Doing so will enable APHA to endeavour to send the application to a different assessor, although the specialist nature of the expertise required means this cannot be guaranteed. For completeness, the assessment of the previous

application in the case of an unsuccessful application, or the reasons for revocation in the case of a certificate being revoked, will be provided to a prescribed institution assessing a fresh application for that item. The assessment of the fresh application will be the professional opinion of the assessor based on all the information available to them.

On this basis we remain of the view that the information requirements set out in the consultation are the minimum necessary.

We will be enabling physical inspection of items in exceptional cases where this is deemed necessary. However, we consider that in the majority of cases an assessor will be able to make an assessment using high quality photographs and other evidence provided.

Question 14

Do you agree with the rationale for establishing the [application] fee at this level? A) Yes/No B) If no, please state your reasons.

A total of 90% of respondents answered this question. Of those, 59% (61) responded “yes” and 41% (41) responded “no”.

Some respondents had contrary views about whether there should be a fee charged either to cover the cost of the system or the assessment, and over the scale of the fees including in relation to the value of the item.

Some replies suggested alternative ways to calculate the fee including: the lesser of £250 or a percentage of the item’s value; a two tier system with higher fees for dealers and lower fees for members of the public; and exemptions for certain categories of applicant. A few respondents thought that the fee should be high enough to cover physical inspections of items if required. A couple of respondents thought that the fee level may deter some people from complying with the registration requirements.

Government response

Most respondents agreed with the rationale for setting the fees. These have been set at a level considered reasonable to cover the cost of building and maintaining the registration system and reasonable costs for the prescribed institutions in providing their advice. There are no plans to introduce a differential system for certain types of applicant or items of certain values, or waiving the fee for any period of operation.

We do not believe that the fee level will deter compliance with the requirement to apply for an exemption certificate in order to deal in items that meet the requirements for this exemption.

We propose to keep the fees under close review after the Act is commenced. Any subsequent changes would be subject to consultation and require further secondary legislation.

Question 15

Do you agree with our proposed approach to requirements in the case of subsequent dealing in certified items? A) Yes/No B) If no, please state your reasons.

A total of 93% of respondents answered “this question. Of those, 65% (69) responded “yes” and 35% (37) responded “no”.

We welcome the majority support for this proposal. Of those that disagreed with the proposal, comments included those that considered the requirements were too onerous or bureaucratic, and that items should be subject to re-examination if they are to be re-sold. Some respondents said that it should be a legal requirement for owners to pass on the exemption certificate when the item is sold.

Some respondent stated that new owners should not have to register their details once they purchase an item under this exemption if they have no intention of subsequently dealing in that item.

Government response

When dealing takes place in an item for which an exemption certificate has been issued to a previous owner, we will require the current owner to: notify APHA of any changes in the information on the certificate, including ownership; declare that the information on the certificate is still accurate and complete; and declare that the item is the item for which the certificate was issued.

The process of updating the information for subsequent dealing requires owners to interact with APHA’s administrative process. By the same logic therefore as set out for the standard exemptions, the fee will be set at £20 per item notified. We, however, will not be charging a fee for new owners to provide APHA with their details (or in relation to other information given at the time of registration) if they do not intend to subsequently deal in the item.

Question 16

Do you agree with the rationale for establishing [an application]fee at this level? A) Yes/No B) If no, please state your reasons.

A total of 90% respondents answered this question. Of those, 71% (73) responded “yes” and 29% (30) responded “no”.

A minority of respondents did not agree the need for a fee.

A single respondent said that the fee should be subject to review to ensure the fee covers all associated costs, and that there should also be a higher fee for items to require further

examination by a prescribed institution to confirm the item still meets the exemption criteria.

Government response

We welcome the broad support from respondents for establishing the fee at this level.

We propose to keep the fees under close review after the Act is commenced to ensure that the costs of the process are being broadly met.

We do not intend to introduce a higher fee to cover reassessment of items. If the information provided to APHA suggests that the item may no longer meet the requirements for the exemption, the exemption certificate may be revoked. Revocations may be appealed to the First Tier Tribunal.

Question 17

Do you agree with our proposed approach to further grounds for appeal? A) Yes/No B) If no, please state your reasons.

A total of 84% of respondents answered this question. Of those, 72% (77) responded “yes” and 28% (30) responded “no”.

A single respondent said that the appealed decision should stand unless there is new evidence.

A couple of respondents expressed concern about the ability of owners to make new applications if they are rejected.

Some respondents expressed concern at the imbalance of power or financial resources between an individual and the government when appealing a decision made by the government. A small number expressed concerns about the cost, or that it would only be used for high value items.

Government response

We welcome the support for our proposal, which reflects the standard approach in these matters. Appeal is to the First-tier Tribunal which is intended to provide a low cost (including no fees), informal resolution to disputes.

Question 18

If you identify a further ground for appeal that does not already fall within the other grounds included in the Act, we would welcome a detailed description of this ground and an explanation as to why it would not fall under one of the grounds already included.

A few respondents suggested there should be an additional ground for appeal, that the institution consulted lacked the expertise to assess a particular item.

Another respondent expressed concern about a lack of expertise in the listed institutions with regards to early 20th century bronze and ivory sculpture.

Government response

We do not propose to prescribe any additional grounds for appeal as they provide for circumstances currently envisaged. However, noting the comments made, if the Secretary of State were to refer the item to an institution which might be considered to lack the necessary expertise, there could be scope to appeal the resulting decision on the ground that that decision was based on a previous error of fact (the decision to refer to that particular institution) although that decision may of course have been reasonably arrived at.

Question 19

Do you agree with our proposed approach to these three further provisions for appeals [against decisions on certificates]? A) Yes/No B) If no, please state your reasons.

A total of 91% respondents answered this question. Of those, 77% (80) responded “yes” and 23% (24) responded “no”.

We welcome the majority of support for our proposal on further provisions for appeals against certificates.

Of the small proportion of respondents who disagreed with the further provisions a few said they thought the process was burdensome, unnecessary, or designed to put people off from appealing a decision.

Some respondents also expressed concern that owners are able to make fresh applications after one has been rejected, and appeal each of those that are rejected.

A few asked for clear or more detailed information about the appeals process to be published.

A single respondent expressed disagreement with the point that the Secretary of State may notify the First-tier Tribunal that it will not oppose the appeal.

Government response

Information about appeals to the First-Tier Tribunal will be included in the awareness-raising measures that we are planning ahead of the ban coming into force. The rules are set out in The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) and are outside of the scope of this consultation.

The Act does not exclude the possibility of fresh applications where the original one has been refused. However, where the original refusal was appealed and rejected it is unlikely that repeated fresh applications would have any greater likelihood of success unless new information is provided.

Question 20

Do you agree with our proposed approach to fees for appeals? A) Yes/No B) If no, please state your reasons.

A total of 92% of respondents answered this question. Of those, 72% (76) responded “yes” and 28% (29) responded “no”.

We welcome the majority of support for our proposal. Of the minority that did not agree with our proposal some expressed concern that a fee of some level ought to be charged and returned if the appeal is successful; so as to act as a deterrent to multiple appeal procedures.

A single respondent expressed concerns about the affordability of a fee.

Government response

In line with similar approaches taken for other regulatory regimes, we do not propose to prescribe a fee for such appeals.

Next steps

We will be bringing forward secondary legislation to implement the Ivory Act in line with this government response.

Annex A

List of organisations that responded to the consultation

This is a list of all the organisations that responded to the consultation that did not request their response be treated as confidential. 6 other organisations responded to the consultation but requested that their responses be treated as confidential.

A & J Speelman Ltd	John Taylors
Action for Elephants UK	LAPADA
Amati Musical Instruments	Link WCL
Andrew Lumley Ltd	Music Industries Association
Antiques Trade Gazette	Musicians' Union
Arte Japonica	National Museums Scotland
AS Antique Galleries, London	National Portrait Gallery, London
Association of British Orchestras	Natural Resources Defense Council
BADA	Nicholas Wells Antiques Ltd
BAMF	Platt & Sons
Beare Violins Ltd	Pro Wildlife
Bonhams	Promar International
Born Free Foundation	Rossi and Rossi
Catholic Action for Animals	Royal Armouries
Challis Bright	Sikh Council UK
Chess Collectors International	Society of London Art Dealers
Covington Fine Art Limited	Taylors Auction Rooms (Montrose)
David Shepherd Wildlife Foundation	The British Library
Environmental Investigation Agency	The Northumbrian Pipers' Society
EPI Foundation	The Whitworth Gallery
Finch & Co	Tusk Trust
Fondation Franz Weber	Two Million Tusks
Four Paws UK	University of Portsmouth
Glasgow Museums	WildAid
Humane Society International UK	Wildlife Conservation Society
IFAW	WWF-UK
Incorporated Society of Musicians	Zoological Society of London