

## UK: Tough legislation to be introduced for dealers in elephant ivory

14 AUGUST 2018

Eleni Polycarpou

PARTNER | UK

**CATEGORY:**  
ARTICLE



In response to continued calls to create a more effective impact on elephant poaching, the UK Government announced its plans to introduce “*one of the world's toughest*” prohibitions on dealing in elephant ivory in October 2017. While the Ivory Bill is still in the process of passing through Parliament, the UK Government has signified that it hopes for a nationwide ban to come into force before October this year.

### Current position

Although it remains legal to own ivory in the UK, collectors and dealers are already subject to wide-ranging restrictions set out in the Convention on the International Trade in Endangered Species (**'CITES'**), as implemented and enhanced by EU Regulations.

The rules currently in force restrict: (1) the use of ivory for commercial gain within the EU; and (2) the import, export or re-export of ivory from or to any country outside of the EU. For items falling within the 'antique worked specimen' derogation, it is not necessary to obtain any licence or certificate to authorise the use of an ivory item for commercial activities within the EU. It is, however, necessary to obtain a CITES permit from the UK Animal Plant and Health Authority (**'APHA'**) for import, export or re-export of derogated items outside the EU. Commercial activities within the EU relating to non-antique items are still permitted, but a commercial use certificate from the relevant CITES authority in the Member State is required for each item (i.e. APHA in the case of the UK).

### Future proposals

Following the completion of a public consultation which ended in December 2017, the Ivory Bill introduced by the UK Government in May 2018 indicates an intention to go considerably further than the current controls.

Save in respect of items falling within a narrow range of categories, the ban proposed would apply to all commercial activities involving elephant ivory in the UK, including (1) the buying, selling or hiring of elephant ivory; (2) offering or arranging to buy, sell or hire elephant ivory; (3) the keeping of elephant ivory for sale or hire; and (4) the import or export of elephant ivory into or from the UK for sale or hire.

In view of the proposed ban applying solely to elephant ivory and the consequent effect it may have on the market for other ivories, current amendments being considered by Parliament include also an extension to the prohibition to cover also ivory of other vulnerable species, including hippos, walruses and narwhals.

The exemptions to the ban on commercial activities are, according to the draft Bill, intended to apply to the following very narrow categories of worked items of elephant ivory or in the following circumstances:

- Items made prior to 1947 with an ivory content of less than 10% by volume, where the ivory is integral to the structure of the item.
- Musical instruments with an ivory content of less than 20% by volume made prior to 1975.
- Portrait miniatures created 100 years prior to the proposed ban coming into force.
- Items assessed as being of outstandingly high artistic, cultural or historical value, and that are an example of the rarest and most important item of their type, created 100 years prior to the proposed ban coming into force.
- Commercial activities by accredited UK museums or members of the International Council of Museums, including sales to or by such museums but not including the display of historic, artistic or cultural items.

It is envisaged under the draft Bill that owners wishing to take advantage of the proposed exemptions will need to register with and/or apply to APHA for a fee.

The draft Bill includes both civil and criminal sanctions for a broad range of offences, which include engaging in any commercial activity without meeting an exemption, falsely registering an item for exemption from sale and the causing or facilitation of any contravention of the ban. The sanction will depend on the level of severity of the offence but comprise also the possibility of an unlimited fine or up to 5 years in jail.

#### Impact on the art market

While the final form of the proposed ban is yet to be known, collectors, dealers and auction houses undertaking any commercial activities in the UK are right to be concerned.

The proposed ivory ban will not have any effect on the right to own, gift, inherit or bequeath items containing elephant ivory. However, collectors will no longer be able to realise the value of any non-qualifying items in their collections in the UK or export them outside of the UK for sale.

Notwithstanding the potential one-off costs of obtaining advice to ensure they are up-to-date with the new regulations, members of the trade will find that once the legislation comes into force any inventory that does not fall within the narrow scope of the exemptions is valueless. Likewise, in anticipation of the imminent ban, the value of any such items presently on the market will be significantly reduced. Further, the auction trade is likely to find its commission revenue from any non-qualifying items substantially reduced and may find that the demand for auctions of such items will eventually disappear.

# Authors

Eleni Polycarpou

PARTNER | LONDON

Litigation and arbitration

 +44 20 7597 6157

 [eleni.polycarpou@withersworldwide.com](mailto:eleni.polycarpou@withersworldwide.com)