

ANTIQUES TRADE
gazette
THE ART MARKET WEEKLY

Ivory: the ban

Dealers take ad in ATG to urge trade and collectors to sign petition

by Noelle McElhatton

15 AUGUST 2018: Dealers Alastair Gibson and Laura Bordignon have taken an advertisement in Antiques Trade Gazette calling on the trade to petition the government to widen the 'de minimus' exemption for antique ivory objects in a forthcoming law that will restrict their trade.

The letter in ATG No 2354, paid for by the British Antique Dealers' Association, asks readers to sign up "before it is too late" ahead of the committee stage of the House of Lords' debate on the bill on September 10.

The petition calls for the bill's current 10% de minimus exemption to be raised to 50% for cultural objects made of ivory.

The dealers, both members of BADA's council, need 10,000 signatures for the government to respond and more than 100,000 to be considered for debate in parliament. As this story was published, the petition had nearly 1,400 signatures.

The bill, which allows the trade of musical instruments with less than 20% of ivory, antiques with less than 10% of ivory, portrait miniatures of a certain size, museum-quality objects with ivory and sales between museums, is currently going through parliament ahead of its enactment into law later this year.

In a letter to ATG, Paul Roberts, deputy chairman at Edinburgh saleroom Lyon and Turnbull, describes the de minimis exemption as an "extraordinarily impractical provision" and called for the "mobilisation of dealers, auctioneers and all other interested parties to speak directly to their own MPs across the country to try and head off this particular aspect of this ill-conceived piece

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The ivory ban: your questions

Roland Arkell and Noelle McElhatton on what the new ivory law could mean for art and antiques

An idea that began life with Conservative government manifesto pledges in 2010 and 2015 for a total ban on the UK trade in ivory finally took shape last week.

The Department for Environment, Food & Rural Affairs (Defra) announced that it intends to introduce legislation that will prohibit the trade in ivory of any age in the UK, with narrow exemptions, after a public consultation in late 2017.

The ban will build upon, rather than replace, current CITES rules.

Readers have asked ATG to explain the implications of the ban at this early stage in the process, which we do here with help from Defra, antiques trade bodies and experts.

What does the ban involve from an antiques point of view and is the '1947' date still relevant?

The government intends to exempt only a narrow range of items containing ivory from the sales ban.

The 'antiques exemptions' concern pre-1947 objects that contain less than 10% by volume of pre-1947 ivory; items that are at least 100 years old and deemed the 'rarest and most important items of their type' and a specific exemption for portrait miniatures that are at least 100 years old (see box, opposite page, below left).

Also exempted are musical instruments with an ivory content of less than 20% which were made prior to 1975 (when Asian elephants were listed under CITES).

When will the law come into effect?

Not immediately. Defra is not committing to a timescale, except to say that it will happen "as soon as parliamentary time allows".

While conservationists may wish to have the law in place to time with a major event in October, the *London 2018 Illegal Wildlife Trade Conference*, antiques trade bodies believe this timing is unlikely given the government's busy legislative agenda.

Should I stop selling ivory now?

Until the law is passed, it is still legal to sell ivory objects – or those that contain ivory – that were 'worked' before March 1947.

Goodbye to all this... perhaps

De minimis: objects that would not pass the 'up to 10%' rule

1. An Art Deco silver teaset with ivory handles and finials (Viners, Sheffield 1935) sold by Hansons in London for £700 in February.
2. A bronze and ivory Ferdinand Preiss figure *Con Brio*, sold for £11,000 at Tennants in November 2017.
3. A set of 12 silver fish knives and forks (Martin Hall, Sheffield 1928) sold for £220 at Tennants in February 2018.
4. This Victorian silver stilton scoop with spiral turned ivory handle sold for £260 at Cottees. But under the new law, would it be considered the best of its type?

'Rarest and most important of their type'

5 & 6. A German 19th century silver mounted tankard sold for £7200 at Tennants in March 2017 and a George III toothpick box sold for £420 at Woolley & Wallis in January. Would they be considered items of "outstandingly high artistic, cultural or historical value"?

7. Less than 100 years old, this pair of Ferdinand Preiss figures (one shown) sold by Matthew Barton for £2800 in 2017 would not qualify for the 'rarest and most important items of their type' exemption.



When the law is enacted, what can be sold under the 10% de minimis exemption?

This rule will effectively prohibit the sale of many objects and is being questioned by the trade (see *News*, page 1 and *Letters & Opinion*, page 63). It allows the sale of a Georgian mahogany chest of drawers with ivory escutcheons and might permit the ivory inlays on a Victorian workbox that are equivalent in volume to the veneers of the portrait miniatures that have escaped the axe.

But what about silver and ivory cutlery? The de minimis is so low that almost every object with a solid ivory handle will surely fall foul.

Georgian and Victorian silver cutlery with ivory handles could not be sold. Instead, to cash in on the value of their silver content, a seller would have to remove the handle and sell the item as scrap.

What does Defra mean by 'rarest and most important items of their type'?

Quite what this description means in practical terms remains to be seen. It will doubtless be subject to much interpretation.

The government's response to Defra's consultation refers to "items made of, or containing, ivory, which are assessed as of outstandingly high artistic, cultural or historical value".

It adds that decisions will be made by "a limited number of institutions, such as selected museums" using



Until the law is passed, it is still legal to sell ivory objects that were worked before March 1947

guidance drawing on "existing criteria used by government to assess works of art for pre-eminence and national significance".

There are countless ivory antiques that are carved and worked in ingenious ways but only a small percentage would be deemed 'rare' or 'important' – they are simply enormously tactile and beautifully fashioned objects made by different cultures in a different era.

Some Japanese okimonos and netsukes, Cantonese boxes, German figures and tankards, Dieppe carvings and African ethnographica would fall into the 'good but not quite good enough' category.

Dealers and collectors who own large numbers of these items – and there are many – may no longer be able to monetise them in the UK: as yet there is no mention of whether it will be permissible to send antique ivory overseas for sale.

What impact will the 100-years-old requirement have?

This is likely to extinguish the UK market for the large number

of predominately ivory objects fashioned in the 1920s and '30s. Some bronze and ivory figures, icons of the Art Deco movement, may qualify under the 10% de minimis rule but many won't.

Unlike in other countries, such as the US where a rolling 100 year definition of 'antique' is used, this is not being proposed here. The description of the 'rarest and most important' exemption in the consultation policy statement ends with the following paragraph: "Items exempted under this category must have been produced at least 100 years prior to this sales ban coming into force." So if the ban came into force on, say, March 1, 2019, then the exemption would be restricted to items made before 1 March 1919.

What will I have to do to sell under the exemptions?

Anyone wishing to sell an item under the de minimis, musical instrument or portrait miniature exemptions will be required to register their items via an online system managed by the Animal and Plant Health Agency (APHA). A fee will be charged.

To qualify for the 'rarest and most important item of its type' exemption, sellers will again have to register items and pay a fee. The APHA will seek advice from an institution in the relevant field to decide whether the item meets this exemption before issuing a permit for sale to the owner.

and some answers



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Sales to an accredited museum will be conducted in a similar fashion.

How will Defra police registration?

Spot checks will be carried out by enforcement and compliance officers. If an item is being sold commercially, regulators or the police may check to confirm that an item is registered and compliant and take action if it is not. A regulatory body will work with the antiques sector and others to ensure that they are able to comply with the new regulations.

What will the penalty be for breaking the law?

Criminal sanctions for failing to adhere to the ban will be consistent with existing offences concerning

ivory under the Control of Trade in Endangered Species (COTES) Regulations. Violators will face up to five years in jail or an unlimited fine.

What chance the ban can be amended before it becomes law?

Before a bill is submitted for Royal Assent, a draft must be debated in both the Commons and the Lords, during which changes can occur. The government has indicated it will consult the trade on how the exemptions will work in practice. Trade bodies, auctioneers and dealers have told *ATG* they are aiming in particular to raise the 10% de minimis threshold (see *Letters & Opinion*, p4-14). ■

Ivory: changes at a glance

The new, as yet unnamed law will allow for narrow exemptions to the ban. These comprise:

■ **Items with only a small amount of ivory** in them. Such items must be comprised of less than 10% ivory by volume and have been made prior to 1947. This is the de minimis exemption.

■ **Musical instruments.** These must have an ivory content of less than 20% and have been made prior to 1975 (when Asian elephants were added to CITES).

■ **Rarest and most important items** of their type. Such items must be at least 100 years old and their rarity and importance will be assessed

by specialist institutions such as the UK's most prestigious museums before exemption permits are issued.

In addition, there will be a specific exemption for **portrait miniatures** painted on thin slivers of ivory and which are at least 100 years old.

■ **Museums.** Commercial activities with, and between, museums which are accredited by Arts Council England, the Welsh Government, Museums and Galleries Scotland or the Northern Ireland Museums Council in the UK, or the International Council of Museums for museums outside the UK.

Editor's comment



Noelle McElhatton

Workable ivory ban requires one final lobbying push

15 AUGUST 2018: The general parameters of the government's ivory ban, on the cards for years, were made clear in April. But, as always with issues of CITES, the devil will be in the detail.

As we outline in this Q&A and later compilation of news and opinion on the forthcoming ban and its legal framework, there are likely to be huge numbers of antiques and works of art that won't qualify for trade under the exceptions.

Now is not the time to question who has 'owned the debate' on ivory in the eight-year build-up to this announcement, from when the Conservative government first mooted a ban. As *ATG*'s letters pages and editorials in this report attest, we are all united in wanting to preserve the elephant and drive out any potential for modern or poached ivory to enter the system.

At the same time, it is hard to ignore the potential damage this ban – as currently outlined – could inflict on large and small dealers and auctioneers, as well as collectors of objects incorporating antique ivory.

So, with weeks left before the ban becomes law, the voices in this guide agree that now is not the moment to throw in the towel.

The trade appears united and focused on the ban's inconsistencies, especially regarding the de minimis rule.

It is surely an anomaly to learn that – under the new rules – it will be fine to sell a wind instrument made in 1974 that contains up to 20% ivory, while to trade an inlaid writing slope made in the Vizagapatam region of Indian in the 1750s, it can contain only 10% of the offending material.

Quite what the description 'rarest and most important items of their type' means in both legal and practical terms remains to be seen. A narrow view is that this excludes all but a small number of 'museum quality' items.

A broader interpretation – one that seeks to prohibit the sale of 'tourist trinkets', tusk carvings and billiard balls while permitting the sale of antiques that have genuine artistic merit – would provide the trade with much more wriggle room.

Email: noellemcelhattonantiquetrade gazette.com

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of legislation."

Anthony Browne, chairman of the British Art Market Federation, says BAMF plans to question the ruling that musical instruments should be treated differently to works of art.

Taken as a whole, the new law will allow for only a handful of very narrow exemptions. In addition to items containing only a small amount of ivory as part of a larger whole, the government will permit the sale of portrait miniatures painted on ivory which are at least 100 years old and other ivory works of art that are at least 100 years old and deemed the "rarest and most important items of their type". Addressing MPs as well

as collectors and the trade, Gibson and Bordignon stress that antique ivory objects "have no link to today's poaching crisis" and urge dealers and auctioneers to encourage their collector clients to sign the petition.

"Our last chance is that the House of Lords will see reason and grant us further exemptions," the letter says.

A recent email to LAPADA members included this tip about filling in the petition: "Once you have filled in the form online, you will be informed that your 'online de minimis petition vote' is not validated until you click a link that is generated and sent to you, via email. "Only when this link is clicked, will your vote be counted."

<https://petition.parliament.uk/petitions/223254/>

Why 'de minimis' provision is 'extraordinarily impractical'

MADAM – Defra's findings outlined in the post-consultation document include an extraordinarily impractical provision for the 'de minimis' exemption – requiring registration (with an as yet unspecified fee) of all objects with an ivory content below 10% created before 1947.

Consider the wide range of items this involves, from EPNS teapots, chests of drawers, miniatures, scientific instruments, Art Deco figures... The list goes on.

Could I call on the ATG, which has a full understanding of the issues involved, to mobilise dealers, auctioneers and all other interested parties to speak directly to their own MPs to try and head off this particular aspect of an ill-conceived piece of legislation. If we work together, that's probably nearly every single one of parliament's 650 MPs.



“

Speak to your MP to head off this aspect of an ill-conceived piece of legislation

**Paul Roberts,
Lyon & Turnbull**

If the legislation goes forward as planned, it will be totally unmanageable for all auctioneers, particularly for smaller auction houses with a rapid turnaround of less valuable items.

This will inevitably lead to a series of totally unnecessary prosecutions fuelled by the possible whistle-blowing enthusiastic conservationists.

Despite their well-meaning

intentions, they really have no idea of the implications of their actions on innocent, unsuspecting citizens – anyone who buys, sells or owns antiques with ivory.

Frankly neither do those who have drafted the outline of this undeliverable 'compromise'.

**Paul Roberts, deputy chairman
Lyon & Turnbull**

No winners from the ivory ban

MADAM – I concur with everything that Michael Baggott wrote in ATG No 2235.

When this ban goes ahead, every side will lose – most importantly the elephant.

Dr Peacock, whose views were aired in the same issue, will sadly be giving up his collection in vain because it will not save one animal.

I have previously suggested in ATG's Letters page that there should be a tax on pre-1947 ivory. That bird has now flown.

The question I now pose is what is going to happen to the old ivory that, once the law is enacted, will become illegal to sell?

I fear the answer is that it will be destroyed. This will amount to iconoclasm. What environment secretary Michael Gove is doing is winning votes – no more, no less.

There is a better way.

Edric van Vredenburg

Ivory: the industry reacts

Mark Dodgson, secretary general, BADA



"We need to bear in mind that the starting point for the government was a manifesto pledge for an indiscriminate ban. Following intervention from trade bodies, the government has made exemptions for cultural goods, based on their consultation proposals, so we do welcome their acknowledgment that there should be a special place for heritage items.

"We will draw to the government's attention the inconsistencies within its proposals, particularly concerning the low de minimis threshold, and seek to have input into creating a workable definition for the 'rarest and most important' items exemption."

Martin Levy, H Blairman & Sons



"The terms of the exemption appear more stringent than is necessary to achieve the

government's welcome efforts to stamp out poaching and illicit trade.

"I await details to see how the proposals will work in practice, and the extent to which the trade in bona fide works of art will operate."

Bill Forrest, Roseberys



"If anything, the exemptions put forward will serve to give ivory a greater

value in terms of a status symbol and a commodity. The ban misses the whole point and tragically, is unlikely to prevent any elephants from being slaughtered for their tusks."

Anthony Browne, chairman of the British Art Market Federation



The antiques trade had been faced with "the very real prospect of an unqualified ban. It should be recognised that the NGOs were pressing for this and government was under pressure".

Helen Carless, chairman of the Society of Fine Art Auctioneers (SOFAA)



"SOFAA welcomes the fact that the proposed ban recognises the distinction between the market for ivory as a substance, which we agree needs to be eliminated, and the market for works of art whose significance lies in their status as works of art, not for what they are made of.

"But we are concerned that the different level of de minimis between musical instruments (20% by volume) and other objects (10%) appears to be illogical and will lead to confusion. We consider that they should be brought into line."

Max Rutherford, dealer



"The main problem for now is the uncertainty. I have a large stock of ivory, owned and consigned, but I have no idea what may be judged acceptable for trade and what not. I shall almost certainly have to do my business abroad. Given Britain's long history as a centre of dealing connoisseurship, that is very sad."

Jonathan Pratt, managing director, Bellmans



"We all have to make a sacrifice to achieve the ongoing

survival of the elephants. What is proposed gives us clarity. We will live with it and get on with it."

Michael Baggott, dealer and antiques TV presenter



"If ever there was a time for this trade to begin to act and think as one, for pride and petty organisational differences to be put aside, for dealers, academics, museums and auctioneers to speak with a single, clear unequivocal voice, then that time is now.

"A terrible mistake has been made – born out of a sincere passion to do good, but a mistake nonetheless. If we only ever achieve one thing as a unified trade, it must be to correct this."

Seven reasons the ivory ban is 'flawed and ill-conceived'

MADAM – Having read the government (Defra) statement on the UK ivory ban (ATG No 2337), it is obvious that far from offering clarity, it is flawed on the following points:

1. The decision to enforce a ban has been decided on 80,000 responses from the public. This represents less than 0.1% of the population.

2. There is no mention of compensation for those who have legally collected antique works of art made from or containing ivory such as Japanese netsuke and medieval ivories.

3. The government has essentially criminalised collectors, legitimate art dealers and any member of the public who dares to sell their property despite legally owning those items for years or generations.

4. The policy states that portrait miniatures will be exempted "for commercial activities" because "some conservation NGOs indicated that they believe this exemption would be proportional and justified. We agree with this assessment as we do not believe the sales of portrait miniatures fuel, directly or indirectly, the continued poaching of elephants".

Parliament: will enact law banning ivory with few exemptions



It is a mystery why the same thinking does not apply to any other antique works of art.

5. "Ivory items currently require a CITES certificate in order to be sold", the policy goes on to say. This is not the case for antique ivory. CITES permits are only required for the legal importation and exportation of endangered species.

6. The government "will empower institutions such as museums, to provide advice on whether an item under the 'de minimis' or 'rarest and

most important' exemptions may be assessed as being of 'outstandingly high artistic, historic and cultural significance".

What museum will take impartial and legal responsibility for making such decisions and how will they cope with the number of submissions they will inevitably receive? There is a financial cost to be levied which will, no doubt, increase over the years.

Defra's document refers to "critical assessments ... made by specialists in their field". Aside from experienced auction house specialists and dealers, who exactly are these specialists?

7. UK museums will be allowed to sell/buy and loan items between each other and to non-UK museums.

It should be kept in mind that museums would not exist at all without the gifts and endowments of private collectors (eg the Wallace Collection). Museums are not alone in playing "a vital role in protecting the nation's cultural heritage". Private collectors, art dealers and auctioneers have all played a vital role as well and over many centuries.

The proposed ban will result in cultural vandalism, is ill-conceived, politically motivated and will not save one elephant from the true criminal in this sorry tale: the poacher.

David Williams, London

'Heading towards unworkable fudge'

MADAM – I am alarmed at the government's apparently poor understanding of how the trade works and its relationship with collectors and venerable institutions.

Despite the considerable input from dealers, auctioneers, trade bodies and museums into the ivory consultation, we still seem to be heading towards an unworkable fudge on ivory, not least regarding the 'de minimis' clauses.

Unless this is seriously addressed, literally millions of antique items will be little more than scrap, sacrificed on a well-meaning but ill-informed iconoclastic bonfire. More likely, those objects will become bogged down in an irreconcilable mire of 'is it or isn't it', as a bouchon of gargantuan proportions drowns the 'experts' in an unworkable licensing system.

It is also interesting that the government thinks that, for some reason, it has the right to effectively annul or diminish the legally acquired assets of its law-abiding citizens by passing such legalisation with no form of compensation.

Marc Allum
Consultant, writer and broadcaster

Send ATG to your local MP

MADAM – I would suggest sending a copy of last week's ATG guide to the ivory ban to every MP with an appropriate covering letter.

The absurdities of the government's proposals are evident and unworkable, and leave millions of attractive but not outstanding ivories, and items containing ivory, in limbo.

I quite understand why the government has given in to overwhelming public demand for this ban from well-meaning animal lovers, who simply don't understand the implications for dealers, collectors and auctioneers.

Instead of just giving in, let's have a coherent explanation from pressure groups as to how banning the sale of pre-1947 ivory is going to save the life of a single elephant – because it won't – and how such a ban is relevant, because it's not.

Legislation based on sentiment is bad legislation.

Ian Harris
N Bloom & Son

Collections 'are now worthless'

MADAM – As a dealer (and collector) in antique needlework tools and other small collectables, I am dismayed and angered by the proposals for the ivory ban as outlined in detail in last week's ATG.

Many of my customers have built up quite substantial collections and ivory, particularly that carved in Dieppe in the early 19th century, forms a significant part.

Are they to suddenly find their collections, in which they have invested considerable amounts of money, are now worthless? What compensation has the government earmarked for them, and dealers like myself, who sell currently legal (pre-1947 and mostly pre-1847!) ivory?

How can it be legal under these proposals to be able to sell, for example, a 1920s silver teapot with an ivory finial, yet a tiny Dieppe carved pincushion of similar size from 1800 would be illegal?

Thanks to ATG for its useful Q&A but at this juncture there are still too many unanswered questions.

Sylvie Collett

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Potential consequences of the ivory ban – for museums

MADAM – Last year readers may recall a Victorian presentation ‘ivory tusk’ dinner gong was removed from display in one of the Royal Collection exhibitions.

The argument for its removal was that as the exhibition charged a fee, a financial benefit was being realised by this piece of unworked ivory.

I think this raises an interesting and potentially devastating point which the government – in its haste to introduce a near total ivory ban – is overlooking.

If you take that precedent and then apply it under the new proposed ban, then every museum and public display in the country that makes a charge or receives ‘a financial benefit’ from its collections could, legally, display only antique objects containing ivory which met the stringent de minimis or 100-year-old portrait

miniature exemptions, or were over 100 years old and deemed among ‘the best and most important’ of their type.

One assumes that they would all need to be individually registered and assessed – possibly by the members of the very museums that own them – and the correct fees paid.

The argument might be proposed that every object within a museum collection was of cultural importance and they would automatically be deemed exempt. But there are many domestic objects within our museums (rightly, so I might add) and surely exempting them might stand as a precedent for every similar object to come onto the market?

It would seem perverse for a board of museum curators to grant exemptions for their own domestic objects but not

equivalent ones in private hands.

I am not even going to touch on the burdensome logistics that this may entail or the costs to the country’s museums, which may run into many (wasted) millions.

However, I am deeply worried that the next step in this frenzied cultural war against any historic object fashioned from ivory will be the removal of works of art from public display, either voluntarily or – as in this case – through the unwitting consequences of an ill-conceived and executed piece of legislation.

It may seem ridiculous to some to suggest this. But is it any more ridiculous than those who proposed a ban on gothic reliquaries to save elephants in the wild sounded just four short years ago?

Michael Baggott
Dealer

We need class action

MADAM – Thank you for printing my previous correspondence (ATG No 2337). If I thought that a ban on pre-1947 ivory would stop the death of 50 elephants I would stop writing.

Here I throw down a gauntlet to antique ivory dealers and collectors.

I fear the people representing the antiques world have been inept, to say the least, on the ivory issue.

How anyone thinks small percentages of furniture or musical instruments are going to make a difference is beyond belief.

My previous arguments on this issue have focussed on fears of iconoclasm and destruction of past culture. Maybe it is time to put this fight on an economic level.

It seems to me that there are many collectors and dealers out there who are going to lose a great deal of money and in some cases their livelihood. So I propose that a class action is taken against government before it enacts any law.

I feel strongly enough that I will be the first person to donate £10,000 to this. Are enough of you prepared to follow and find an excellent lawyer to fight this case or do you wish to go on moaning and lose the argument?

Edric van Vredenburg
London

UK ivory trade ban will harm market world leader status

MADAM – We are all devastated at what is being proposed by the government in relation to ivory.

We antique dealers buy and sell articles which were mainly made over the last 200 years. As I walk around my warehouse, I see George III ivory and silver tea caddies from the 1780s, ivory billiard and bagatelle balls from 1800-80, toilet sets with ivory handles from 1900, a few boxed sets of cutlery with ivory handles from the 1870s and finally, beautiful silver tea sets with ivory handles on the kettles and tea pots, from 1800-1900.

If what environment minister Michael Gove is proposing becomes law, none of the above could be sold in the trade and they will become valueless, useless and probably end up on the black market.

The horrible trade in modern ivory is being driven by the Chinese market and not by the UK antiques trade. The killing of elephants is a terrible thing and we do not condone it all.

However, how does destroying

beautiful pieces entirely or partially made in ivory help the poaching crisis in Africa? The proposed legalisation is going to have a major negative impact on most of the UK antiques trade.

The creators of this proposal need to go back to the drawing board. Otherwise the UK, an art market world leader, will be pushed further down the ladder in its position as the place to buy and sell in a well-regulated market.

John Dixon
Georgian Antiques, Edinburgh

MADAM – I am an antiques collector, as my father was before me.

Among many treasured possessions is a hand-carved Chinese ivory chess set made in 1860. No one can say whether this chess set uses ivory taken from an elephant that was already dead from disease, predation or old age.

First, I cannot see how one

Ivory: sewing plea

MADAM – I am sending you a photo of some small sewing tools in carved ivory, made c.1840 (right).

Most ivory sewing tools, such as thimbles, tape measures, needle cases, shuttles and pin wheels are all about the size of an average thimble (approximately 1/2in or 5cm long).

Some of these tools are still being used today as well as collected. These items should be seriously considered for exemption from the ivory ban as it is impossible to do certain types of needlework without them. Sewing Bees are increasing in popularity globally where these tools are demonstrated and enjoyed as they are all unique and not machine-made.

Bridget McConnel, author of online newsletter *The Thimble Society*, specialist dealer in antique sewing tools and author of *The Story of Antique Needlework Tools*



elephant alive today will be saved by me not being able to sell this chess set.

And secondly, I bought the chess set at auction in the 1980s, paying the buyer’s premium and the appropriate VAT. As the government collected tax from me for something they now deem illegal, should I expect this to be repaid to me? I don’t think so.

When the ban comes into

force, any objects with ivory in my collection will have no commercial value for my children.

For these reasons I will not vote for any political party that bans the sale of antique works of art that are made of or contain ivory.

An antiques enthusiast with a conscience
(Name supplied)

Stakeholders consider legal action on ivory

Trade bodies and sculpture association seek counsel and appeal to industry for financial help

by Noelle McElhatton and Roland Arkell

8 MAY 2018: Trade bodies whose members will be affected by the government's plan for a near-total UK ban on the sale of ivory are seeking legal advice on challenging the proposals before they become law.

The outline of the ban, published by Defra on April 3 after a public consultation in late 2017, allows only a small amount of antique exemptions that require certification.

No date has been set for bringing the legislation before parliament. In the interim, a coalition of antiques trade bodies and collectors led by BADA and, in a separate initiative, the Public Monuments and Sculpture Association (PMSA), are consulting lawyers about the ban.

The PMSA is examining the

potential to legally challenge the ban, the government's liability for compensation payments and the consultation process itself.

BADA, in partnership with LAPADA and auctioneer body SOFAA, is being less specific on the details of its legal probe, except to say it focuses on "a possible range of issues relating to the proposals".

The advice the group receives "will be considered, with the aim of forming an agreed plan of action", BADA said.

Responding to the moves, a Defra spokesman told ATG: "The consultation ran for 12 weeks and we engaged with stakeholders and gathered information. The ivory sales ban takes account of the views and evidence received."

“**The questions gave the impression of seeking justification for a decision already taken**”

Destruction concerns

The PMSA, a charity that seeks to preserve, protect and promote Britain's sculptures, is concerned a near-total ban will result in "the destruction or loss of thousands of fine sculpted works in ivory which will be rendered valueless".

The charity's chairman, John Lewis, is asking for counsel's opinion on whether the

intended legislation "contravenes human rights legislation and the protection of personal property as it confiscates, without compensation, the value of sculpted ivory less than 100 years old". The PMSA also suggests the consultation was not conducted and concluded in an impartial and proper way.

In a letter to ATG (page 58), Lewis writes: "The questions [the consultation] asked gave the impression of seeking justification for a decision already taken. It was no consultation at all and savoured more of a 'show trial' than a genuine wish to hear from those affected."

If the PMSA receives favourable legal opinion, it would then raise funds for legal action. BADA is also asking that people wishing to donate to support its initiative should contact Mark Dodgson, BADA

secretary general at mark@bada.org or call 020 7589 4128.

'Self-interest'

The PMSA believes the antiques trade's arguments in favour of carefully managed commerce were interpreted as self-interest.

Lewis told ATG: "We have been too weak in listening to and accommodating the views of [the animal conservation lobby] which has resulted in a situation which contravenes all canons of natural justice. Hopefully Defra will listen."

In announcing their responses, the trade bodies restated their abhorrence of modern poached ivory. "BADA, its members and the trade more widely are united in their opposition to illegal trade in poached ivory," BADA said.

Join us in ivory trade ban legal challenge

MADAM – The Public Monuments & Sculpture Association shares many of the concerns which have been expressed in your letters pages since the last statements from Defra on the ivory issue.

Accordingly, we are seeking counsel's opinion not only as to the way the 'consultation' was phrased, conducted and concluded but also as to whether the intended legislation in fact contravenes human rights legislation.

By this we mean the government is effectively confiscating, without compensation, all value from owners of sculpted ivory that is less than 100 years old.

If any of your readers would be prepared to assist us financially, to pursue this matter, we would be extremely grateful.

Protecting sculpture

By way of explanation, we are a small charity, one of whose missions is to encourage excellence in and the study and protection of sculpture.

“**There is no persuasive evidence that criminalising the sale or purchase of old sculpted ivory would deter poachers**”

We are currently recording and publishing the public sculpture of the UK, a project now over 70% completed.

This is why we feel it is our duty to oppose the extent of the proposed legislation by Defra banning the sale or purchase of historic elephant ivory.

No persuasive evidence whatsoever has been produced that criminalising the sale or purchase of old sculpted ivory would deter poachers in Africa or reduce demand from India, the Far or Middle East.

All this said, we would entirely support a stand taken by the government on this matter which would involve heavy penalties for those dealing with ivory taken from elephants who lived during a given period of years up to the present.

It is unfortunate that the present proposals, on the back of a consultation where the questions gave the impression of seeking justification for a decision already taken, was no consultation at all and had the flavour more of a 'show trial' than a genuine wish to hear from those affected.

Celebrity campaign

And, at the end, Defra could only point to some 0.01% of the population which they claimed as justifying their current extreme proposals, resulting presumably from a highly organised and well-funded public campaign by celebrities to promote a total ban

The consequences will also include:

- The destruction or loss of thousands of fine sculpted works in ivory which will be rendered valueless as they will not meet the exceptionally high criteria demanded of the limited exceptions to the proposed ban.
- A substantial disadvantage to the British art market against the growing competition from Paris where there are not the problems proposed for the UK fairs and auctions.
- The confiscation of value, with no compensation, from many possessors of ivory sculpture, whether brought back by those who fought for us abroad, inherited or purchased when works in ivory were highly regarded.
- A considerable increase in bureaucracy involved in certifying the limited exceptions to the proposed ban.

John Lewis OBE
Chairman, The Public Monuments & Sculpture Association

For further coverage and breaking news every day visit:
antiquetrade gazette.com



Why museum ivory fears are misguided

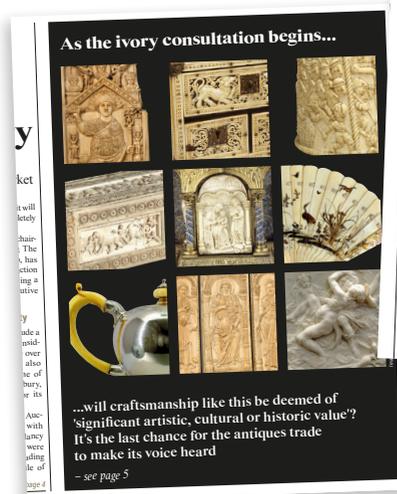
MADAM – Michael Baggott’s recent letter about the potential adverse impact of the ivory sales ban on the display of ivory pieces by museums (ATG No 2339) is, with respect, misguided.

He is right that the ‘Sandringham case’ based on the current rules meant that an ivory piece was removed from display in 2017 because Sandringham House charged an entrance fee. That was a perverse consequence of the current law and it should be changed.

However, he is wrong about the impact of the proposed sales ban. There will be a specific exemption for accredited museums.

The government’s policy statement says that “accredited museums play a vital role in protecting the nation’s cultural heritage, and in making our heritage accessible to the public, and as such will be permitted to purchase items that do not meet any of the listed exemptions, but are in line with their acquisitions and ethical policies”.

It stands to reason that if museums will be permitted to buy items that do not fall within the exemptions (as well as those that do), they will also be able to display them – and not have to hide them in the basement.



Left: the front page of ATG No 2312 and, above, Michael Baggott’s letter in ATG No 2339.



It is hard to see how a sales ban on that basis would have a ‘potentially devastating’ impact on museums – or indeed any impact at all

But we do not even have to rely on that assumption, as the policy statement also says: “We do not intend, through our ban on ivory sales, to affect the display of historic, artistic and cultural items to members of the public by accredited museums.”

It is hard to see how a sales ban on that basis would have what Michael terms a “potentially devastating” impact on museums – or indeed any impact at all.

Andrew Brown

Target the poachers instead

MADAM – I have been dealing in Oriental antiques for almost 50 years and have been a supporter of the Environmental Investigation Agency (EIA) for most of this time.

A few weeks ago, I received the results of an investigation which proves where 80% of all the poached ivory from Africa goes.

It takes an undercover journey, with the help of crime syndicates and corruption, to Shui Dong, a coastal city that is a gateway to China and the rest of the world for poached ivory.

The EIA has the evidence and images of the culprits and the raw tusks.

With this in mind, surely it is time to ease the proposed almost total ban on good antique items.

These routes should be closed as a priority and then the ban reassessed, as it distances the link between genuine antiques and the blame attached to collectors and dealers.

Kevin Page

Mixed messages on the ivory ban

MADAM – I have a deep concern that our political masters do not properly understand what they are proposing to unleash with their submission to well-meaning but ill-informed pressure groups over the ‘total’ ban on the sale of ivory in this country.

They also appear to not really understand their own statements as to how their suggestions might be implemented.

At this juncture I need to declare that I have not read the proposed legislation myself but am reliant on both your *Guide to the UK Ivory Ban* (ATG No 2337) and your letter writer Andrew Brown in ATG No 2341.

The guide clearly states that antique ivory items (and those containing a certain percentage of ivory) cannot be sold unless the vendor is in possession of the relevant permission from the Animal and Plant Health Agency.

Such permissions will only be granted to items that fall within the loosely defined areas of portrait miniatures, 10% de minimis and



Above: our Q&A on the ivory trade ban proposals (ATG No 2341).

“rarest and most important” exemptions. In summary, unless an item falls within a specified category and has been granted its certificate, it would be illegal to sell it.

Andrew Brown’s letter quotes the government’s policy statement and



There is a circle there that badly needs squaring before any more harm is done

says that “accredited museums... will be permitted to purchase items that do not meet any of the listed exemptions but are in line with their (the museum’s) acquisitions and ethical policies”.

So how is this going to work, then? You have a museum that wishes to make a purchase of something from outside the exemptions groups.

But you have legislation that makes the seller of that item, un-exempted and without its APHA authorisation, in breach of the law!

It is ill-conceived and poorly thought through. There is a circle there that badly needs squaring before any more harm is done.

Graham Gemmell

Editor writes: The bill, as currently drafted, sets out the circumstances whereby a museum can legitimately acquire an object that falls outside the ‘de minimis’ and ‘rarest and most important items of their type’ exemptions, from members of the public and dealers. See page 4 for more details.

Ban is all for show, no action

MADAM – The government’s desire to enact a ban on the UK trade in ivory, including antique ivory, means that they can publicly demonstrate they have stood up to the ivory lobby and ‘bravely’ taken action in the cause of saving the elephant while, at the same time, avoiding the action that they should have taken.

What the government won’t do is stand up to and confront China and the other Asian countries that are responsible for the demand for ivory and the ivory trade.

Nor will they make the financial resources available to help the most impoverished nations of Africa fight the highly organised and heavily armed gangs of poachers who will, no doubt, slaughter elephants to extinction.

Alistir Wood Tait
Antique & Fine Jewellery
Edinburgh

Countdown begins as ivory bill published

Trade associations press ahead with legal challenge as Gove targets October date

by Laura Chesters and Noelle McElhatton

29 MAY 2018: The art and antiques trade associations are in a race against time in their bid to challenge aspects of the government's planned ivory ban. The bill was published last week, earlier than expected.

Representatives from dealer bodies BADA and LAPADA, auctioneer association SOFAA and the ADA (Antiquities Dealers' Association) met last week to agree topics for legal consideration.

These include the potential for a judicial review into how Defra conducted its public consultation as well as elements of the proposed legislation.

The bill contains details of the ban (see box, page 4), as

outlined by Defra in April. Industry leaders declared surprise at the speed with which it has been published.

However, environment secretary Michael Gove defended the timing, saying: "We have acted quickly in introducing this bill, less than six weeks after publishing our consultation responses. I hope this serves as a clear sign of our global leadership on this vital issue."

The government will host an international conference about the illegal wildlife trade on October 10-11, at which Defra is expected to highlight progress with the ban.

Parliamentary debate

The bill's publication is the first stage in the process for it to become law. Debate starts in the House of Commons on

Ivory ban: What we now know

The 57-page bill deviates little from the proposals announced in April, writes *Roland Arkell*. Points to note are:

Certification

- All ivory objects that qualify for one of the exemptions will need a certificate before sale.
- Exemption certificates for items deemed to be 'of outstandingly high artistic, cultural or historical value' will in effect become passports valid each time the item is sold. This is different to the proposals for those objects qualifying under the 'de minimis' rule (pre-1947 items with ivory content less than 10%). In these cases a registration certificate is valid only for a single change of ownership.

Import/export

- The term 'dealing in ivory' includes importing or exporting it from the UK for sale. It will thus not be possible to move prohibited items across borders.

Items of outstandingly high artistic, cultural or historical value

- Precisely what is meant by a pre-1918 item 'of outstandingly high artistic, cultural or historical value' is yet to be seen. However, the object chosen to illustrate this point was a 13th century Gothic era carving of the crucified Christ from the Victoria and Albert Museum. The guidance says both (a) the rarity of the item and (b) the extent to which the item is an important example of its type, will be taken into account with 'assessments subject to detailed criteria ... to be issued in due course'.

Acquisitions by qualifying museums

- A clause in the law allows for the sale of otherwise prohibited items to accredited museums. It says these sales (subject to more general CITES rules on ivory) may be carried out by 'a private individual, group of individuals or an organisation'. It allows for the possibility that, for example, an Art Deco bronze and ivory figure c.1925 with an ivory content of over 10% could be sold to a museum.

June 4, and then at a later date in the House of Lords.

ATG understands that the associations had a first consultation with solicitors last week.

In a statement, BADA emphasised the government's "eagerness to press ahead" and said the coalition of trade bodies would "represent the concerns of a wide community of those affected by this proposed legislation including collectors, curators and

academics, who at the same time condemn the international trade in illegal poached ivory".

It added that "fundraising is well under way to ensure that the coalition is able to present its case effectively".

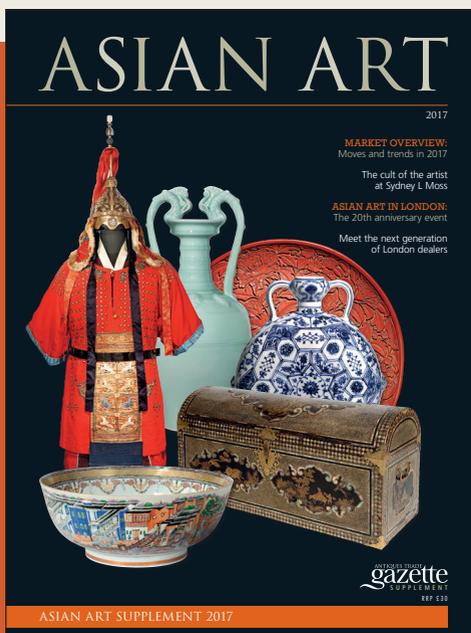
The Public Monuments & Sculpture Association has agreed not to seek separate legal advice on a challenge to the ban (ATG No 2341) and to support the art and antiques

trade coalition in its fundraising efforts (see *Letters*, 59).

Defra said: "The consultation ran for 12 weeks and we engaged with stakeholders and gathered information. The ban takes account of the views and evidence received."

■ Anyone wishing to support the action should contact Mark Dodgson, BADA secretary general on 020 7589 4128 or email mark@bada.org.

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MPs consider extending ban to more species

Call for further regulation in Commons ivory bill debate

by Roland Arkell

12 JUNE 2018: The bill that will mean a near-total ban on the sale of African elephant ivory could be extended to include other ivory-bearing species before it becomes law.

The steps have been met with concern by dealer association BADA.

During a second reading in the House of Commons on June 4, many speakers suggested the Government should look at items including sperm whale teeth, narwhal horns and hippo tusks in the legislation. The argument given was that a ban on one form of ivory could increase pressure on another. Timing was also a factor.

Kerry McCarthy, MP for Bristol East, said: "We know that this will be the only time we have an ivory bill before this

“

We have restrictions but the restrictions don't work

house for many years to come, so if we are going to try to protect those species, it makes sense for us to do it now."

A BADA spokesman told ATG: "We have grave concerns over any proposal to extend the bill to cover other species before there has been proper inquiry, investigation and consideration of the impact of the proposals.

"The bill currently is being pushed through at incredible haste, which can result in too little scrutiny, which in the past has led to laws that were poorly drafted and have needed to be

amended at a later date." The association is still fundraising in the hope of mounting a legal challenge to the legislation.

The almost wholly consensual 'ivory' debate ran in the Commons from 7.15-10pm with around 40 cross-party MPs in attendance.

The second reading passed with unanimous support. The bill will now pass to committee stage scheduled for June 12.

During the June 4 debate the argument was made many times that the current law – allowing for the trade in elephant ivory worked prior to 1947 – is inadequate. "We have restrictions but the restrictions don't work," said the environment secretary Michael Gove.

The need for a narrow band of exceptions was supported by all but one MP (John Mann, Labour MP for Bassetlaw), although most of the speakers

suggested it will be necessary to debate some of the finer points at committee stage.

This included clarification of the legal definitions that will surround the proposed exemptions – particularly the key phrase 'objects of outstandingly high artistic, cultural or historical value'.

MPs also wanted to know how the law will apply to online sales and asked if an annual register of the items issued with exemptions would be made publicly available.

They also sought clarity on proper funding for the Wildlife Crime Unit (currently with an annual budget of just £250,000) and Border Force ahead of the changes to the law – referencing a point made earlier in the day by dealer Michael Baggott as a guest on BBC Two's *Daily Politics*.

He used a Victorian teapot



Michael Gove, secretary of state for environment

with ivory insulators to demonstrate the de minimis rule that will be subject to a paid-for registration scheme.

"There are 20,000 antiques dealers in the country and many have items such as this that will require certification," he said. "When this law comes in at least 400,000 certificates [documents] will need to be issued. Now who is going to do that?"

'Quick, affordable' registration process for ivory

by Laura Chesters

19 JUNE 2018: MPs have called for a "quick, affordable and not too bureaucratic" registration process for items containing less than 10% ivory under the bill that will usher in a near-total ban on the trade in ivory objects.

The House of Commons' ivory bill committee discussed clarifications to exemptions this week and during these meetings Cheltenham MP Alex Chalk argued: "It is key that we ensure that the registration process is quick, affordable and not too bureaucratic, so that when an item is discovered in the course of a furniture sale, instead of being told that it will cost a huge amount of money and time to defer the process, an



Left: BAMF chairman Anthony Browne, BADA secretary general Mark Dodgson and portrait miniature specialist Emma Rutherford gave evidence to the committee.

individual can be advised that it will be a matter of a short, proportionate pause and a small, proportionate outlay to ensure that the item becomes legal."

Other issues raised during discussions were the 10% de minimis rule, the size of portrait miniatures, the cost of registering objects and the size

of the border force agencies to deal with the ivory law in the UK.

During the first two sessions of the committee meetings evidence was given by British Art Market Federation chairman Anthony Browne, BADA's secretary general Mark Dodgson and Emma Rutherford from Philip Mould & Company.

Rutherford gave evidence on the size of portrait miniatures and MPs argued a definition of this object type should be included in the bill.

The definition of a "portable portrait that is of no more than 204mm in height, no more than 153mm in width, made by painting on to a sheet of ivory no more than 5mm thick" was

recommended to be included.

The committee also discussed the need to ensure there is sufficient funding in place for the relevant authorities to enforce the bill. Redcar MP Anna Turley said: "I was shocked that the CITES Border Force team at Heathrow has only 10 people and that the National Wildlife Crime Unit has only 12 people, given the existing scale of the problem. They will have an awful lot of work to do when the bill is in force."

The ivory bill committee will continue to discuss evidence and amendments until June 21. Following this committee stage the bill will return to the floor of the House of Commons for the report stage and third reading. Following this it will progress to the House of Lords.

Duplicated emails dominated ivory consultation responses

MADAM – The consultation by DEFRA on the proposed government ivory ban seemingly gave no information for or against a total ban on ivory which could help respondents have an informed opinion.

Of the total of 127,607 responses to the questionnaire on banning ivory, 39,485 were identical emails from members of the Stop Ivory Campaign (30.9%), 21,099 were ‘largely duplicated’ emails from a campaign by the Avaaz organisation (16.5%), and 66,472 (52%) responded to a 38 Degrees campaign which you would

only really sign if you supported the ban.

So, these three organisations supplied 99.9% of the responses. It is very hard to take this survey as a serious and credible attempt to get an unemotional and unbiased response to a very serious question. It is hardly surprising then that Mr Gove got the answer that he wanted.

The population of the UK is at present 65.6m, so one must ask how the opinion of 0.00019% of an uninformed part of the population of the country be allowed to influence its legislation.

Surely this consultation needs to be repeated, with both sides of the argument being available to respondents and a much wider population sampling than previous.

Fletcher Wallis
via email

DEFRA response:

A Defra spokesperson said: “The consultation ran for 12 weeks and we engaged with stakeholders and gathered information. The ivory sales ban takes account of the views and evidence received.”



It is very hard to take this survey as a serious and credible attempt to get an unemotional response to a very serious question

Ivory ban is right move and the trade must accept it

MADAM – Despite extensive editorial coverage as well as correspondence in *Antiques Trade Gazette*, the debate on banning ivory seems to lack balance.

May I put in a word for the government which is proposing a total ban?

This is the way forward.

Once ivory, all of which whatever its age comes from dead elephants, is no longer a valuable commodity, then trade will eventually cease.

It will simply take time for people in the trade with vested interests, to get used to this. But as a policy, it is definitely a move in the right direction.

Niall Milligan
Penzance

‘Olympic’ Defra arrogance

MADAM – The casual non-response to the excellent letter from Fletcher Wallis by the so-called Defra ‘spokesperson’, (ATG No 2347), who says nothing of any value, betrays an Olympic arrogance which quite takes one’s breath away.

Far from the ivory sales ban taking account of the views and evidence received, as claimed, it would appear that Defra has, in fact, ignored the evidence.

News

‘Quick, affordable’ registration process for ivory

by Laura Chesters



Left: BAMF chairman Anthony Browne, BADA secretary general Mark Dodgson and portrait miniature specialist Emma Rutherford gave evidence to the committee.

MPs have called for a “quick, affordable and not too bureaucratic” registration process for items containing less than 10% ivory under the bill that will usher in a near-total ban on the trade in ivory objects.

The House of Commons’ ivory bill committee discussed the definition of a “portable” object, such as a portrait miniature, at a furniture sale, instead of being told that it will cost a huge amount of money and time to do the process.

discussions were the 10% de minimis rule, the size of portrait miniatures, the cost of existing objects and the in-

enforce the bill. Redcar MP Anna Turley said: “I was shocked that the CITES Border Force team at Heathrow has only 10 people and that the National Wildlife Crime Unit has only 12 people, given the existing scale of the problem. They will have an awful lot of work to do when the bill is in force.”

The ivory bill committee will continue to discuss with

It has accepted only the views of the emotive and vociferous brigade, who are interested in heritage destruction, rather than in actually saving elephants.

What does the spokesman now have to say about the numerous forthcoming claims for compensation against the government, reaching a multi-million pound total, in respect of ivory objects bought legally, but which will shortly be illegal to sell, unless sense belatedly prevails?

Gavin Littaur
London NW4

Above: the ivory trade ban is being debated by MPs (ATG No 2347).



Defra has accepted only the views of the emotive and vociferous brigade

Use premium for protection

MADAM – I wonder if auctioneers might consider using their buyer’s premium from antique ivory sales, or part of it, to conserve the elephant species?

Residual income for elephant conservation and recycling of ivory could be achieved.

Dermot Murphy

Counsel says wait for ivory challenge

by Noelle McElhatton

3 JULY 2018: Trade bodies seeking to legally challenge the government's plan for a near-total UK ban on the sale of ivory have been told they must wait until the bill receives Royal Assent.

The aim had previously been to challenge the bill before it became law.

Dealer organisations BADA and LAPADA, together with auctioneer body SOFAA, received counsel from a QC after raising funds for legal advice among members and collectors (ATG No 2341).

The consortium of trade bodies received the advice



Left: the third Commons debate on the ivory bill is scheduled for July 4.

ahead of the third reading of the bill in the House of Commons, on July 4, after which it passes to the House of Lords

for debate. A statement from the consortium said it hoped for amendments during the parliamentary process as “we

have concerns that the government has significantly underestimated the impact of the bill”.

It added: “We are hopeful that amendments will be tabled and debated with the aim of focusing the legislation on tackling the illegal international trade in modern poached ivory whilst protecting antique cultural, religious and devotional objects which are part of the social history of Africa, Asia and Europe.”

Two potential challenges

Legal advice the trade bodies received outlined two potential areas of challenge to the act once it receives Royal Assent (before it enters the statute book). These are property rights under the Human Rights Act (1998) and free movement of goods under EU law.

2019 netsuke conference pulls out of London

by Laura Chesters

3 JULY 2018: The government's imminent ivory law change has forced an international collectors' conference to pull out of London and move overseas.

The International Netsuke Society Convention, due to be held in the capital on May 2-6, 2019, has been cancelled because participants are reluctant to exhibit in London under a near-total ivory trade ban.

Japanese art expert and convention organiser Rosemary Bandini said: “It is extremely disappointing that the UK is already losing its place as a centre of excellence in Asian art as a direct result of the government's proposed ban.

“I am deeply concerned that without an exception for old ivory artefacts, which are clearly valued for their historical and cultural value rather than their ivory content,

moving the convention, almost certainly to Paris, is a sign of things to come.”

Bandini added that “London has been pre-eminent in the field of Asian art since the end of the 19th century” and attendees for the annual convention come from all over the world, including Australia, Japan and Mexico.

The ivory ban received further publicity last week as the British Museum revealed it had accepted a huge collection of ivory works of art.

A celebrated collection of ivories from The Sir Victor Sassoon Chinese Ivories Trust will be going on display at the British Museum after it acquired the collection earlier this year.

Museum director Dr Hartwig Fischer said he “supports the proposal to ban the modern ivory trade worldwide” but that it is “right for the museum to collect historical specimens”. He added: “We are



Above: a Qing vase, one of the 556 Sassoon ivories accepted by the British Museum.

Image: British Museum

not gaining anything by destroying these historic objects. They are part of that incredible diversity of human cultures that have evolved over millions of years.”

■ See Letters, page 51.

It's not so simple

3 JULY 2018: I am writing to counter the simplistic view espoused by Niall Milligan on the banning of ivory (*Letters*, ATG No 2348).

He suggests that the banning of ivory will cause the price to fall and trading in ivory to cease.

Currently class A drugs are banned, but I believe they remain quite popular and the price appears to be holding up very well.

The markets for antique and modern ivory are totally separate and the banning of antique ivory may well prevent its sale as those who buy sell and collect these objects are law-abiding people who abhor poaching as much as anybody.

Modern ivory, on the other hand, is already banned. But banning something does not deter criminals, rather it incentivises them. The price of poached ivory will rise and more elephants will be slaughtered.

I would also take issue with Mr Milligan's view that “dealers will get used



Above: BADA chairman Michael Cohen.

to this”. I suggest Mr Milligan puts himself in the shoes of a dealer who has been dealing legally for 30 or more years in Japanese or Indian applied art.

Such dealers are now facing bankruptcy and ruin for the sake of a piece of populist legislation that can never succeed in the aims claimed to justify it.

Michael Cohen
Chairman, BADA

For Michael Cohen's views on the legal challenge by trade bodies to the ivory ban bill, see antiquetrade gazette.com

Ivory: British Museum dilemma



The Trustees of the British Museum

Above: the British Museum in London.

MADAM – News that the British Museum is to accept the donation of more than 500 Chinese ivory figures from the Sir Victor Sassoon collection, mainly from the 18th and 19th centuries, is to be welcomed... to a degree!

My concern lies with the statement by museum director, Dr Hartwig

Fischer, that it “fully and unreservedly” supported banning the ivory trade worldwide. It would be helpful if he could clarify his remark and give a clear endorsement to an end to the slaughter of living elephants, but not to the cessation of the buying and selling of antique ivory carvings or antique

works of art that incorporate ivory elements.

He seems sensible and must surely recognise that there is absolutely nothing about the UK government’s proposed legislation that could conceivably save the life of a single pachyderm.

Graham Gemmell

MADAM – We find the British Museum’s double-faced agreement to accept the Sassoon ivories, while telling all other ivory collectors to stuff their holdings in the interest of saving elephants, typical of the lost moral compass among politicians and public institutions.

Dr Fischer called the Sassoon ivories of “the greatest significance”.

The British Museum needs no lessons from the Ivory Education Institute on how all major museums obtain the bulk of their holdings. It is from the passion, pursuit and investments of collectors who assemble the objects museums come to covet.

How then can the museum justify absorbing one collection while throwing all other collections under the bus until such time as it declares something else of “the highest cultural value” and finds that since “they exist...they do not save any elephant’s life today”?

Godfrey Harris

Managing director, Ivory Education Institute, Los Angeles

The British Museum responds: *The museum fully supports the ivory ban bill and the exemptions it includes which will allow museums to continue to acquire objects and make them available for display and public benefit.*

The proposed exemptions will also allow the continued sale of items which are of significant artistic, cultural and historic value, along with musical instruments, portrait miniatures and those items which contain a small percentage of ivory which come under the ‘de minimis’ exemption. The ivory objects cared for by the British Museum are integral parts of the collection, and play an indispensable part in the museum’s presentation of the history of human cultural achievement.

Lords to table ivory bill amendments

by *Laura Chesters*

10 JULY 2018: The House of Lords plans to recommend amendments to the ivory bill in the hope that it will be “less damaging” to the art and antiques trade.

The bill, designed to introduce a near-total ban on the ivory trade, is due to move from the Commons to the upper house later this month.

Lord Matthew Carrington of Fulham told ATG: “My concern is the bill will not be effective in stopping the trade in illegal modern ivory as it is far too complicated. But at the same time it will make life complicated for dealing with old ivory.”

“We want to create a more workable bill that is more effective in stopping the modern trade in ivory and that is less damaging to the trade in antique ivory. We are hoping to



Above: Matthew Carrington (also shown right) spoke in the Lords on the ivory issue in December.

make amendments. We must not allow the destruction of artistic heritage.”

De minimis rule

Lord Carrington said the Lords is planning to table amendments relating to the so-called de minimis exemption (antiques with less than 10% of ivory) and specifically the registration requirements. He is

also seeking clarification about what museums can buy under proposed exemptions.

He highlighted institutions such as the Cutlery Collection in the Sheffield Industrial Museums, the Geffrye Museum in London and The Holburne Museum in Bath that focus upon domestic life throughout the ages. “We want to ensure it is possible for these museums

to buy the types of items they want.”

Last week environment minister Michael Gove confirmed plans to consult on a proposed widening of the ban to include other ivory-bearing species such as hippo, walrus and narwhal.

The consultation will launch “as soon as possible” but will not delay the progress of the current bill.

Separately, Asian art dealer Alastair Gibson has launched a petition to lobby parliament to amend the de minimis exemption. He argues the proposed 10% rule is too narrow and is calling for it to be raised to 50% for cultural objects.

Trade bodies BADA, LAPADA and SOFAA seek to legally challenge the government’s bill once the act receives Royal Assent (before it enters the statute book).

■ See *Letters*, page 59.

Ivory bill – key dates

July 4
Ivory bill passed unanimously by the House of Commons

July 17
House of Lords debate on the ivory bill begins

July 25
September 3 –
Summer recess

October
Government target to enact bill into law

Ivory ban 'is a purely opportunistic move'

MADAM – I write in support of the views expressed in BADA chairman Michael Cohen's letter (ATG No 2349), written in response to another letter supporting the ban (ATG No 2348).

One can only conclude that this legislation is not only ill-thought-out, but a purely opportunistic move by the interested parties in wanting to get their name in the press and win votes. Now that those politicians have started this absurd process, they will leave everybody else to pick up the pieces.

As Mr Cohen states, there is already legislation in place to counter the illegal trade in modern ivory. These new proposals contained in the bill will not do the slightest thing to stop the trade in poached ivory. They will, however, potentially destroy large quantities of artworks and put many dealers out of business.

Another ATG correspondent the other week also highlighted the vast irregularities in the votes cast in favour of the ban. The huge number of identical email votes would, in most cases, warrant an investigation of the whole process. However, because there is a political agenda behind the ban, nobody is interested in querying this.

As an exhibitor at *Masterpiece* said

to me last week, 'well that is a funny coincidence, isn't it!'

Christopher Richardson Brighton

Living in 'ivory towers'

MADAM – Having studied the subject of antique ivory, and collected it for many years, it seems to me that Michael Cohen, BADA chairman, is unaware that his organisation, together with LAPADA and SOFAA, appear to live in an ivory tower, so to speak.

Not only have they been asking all the wrong questions, but they are posing them too late.

A dose of practical reality now needs to be injected into the proceedings.

The chance of preventing an ivory bill has evaporated. There is, however, a win-win solution, which will not only protect our priceless antiques heritage, but which will also leave the path open to protect the present-day elephant.

So far as turn-of-the-century and earlier ivory is concerned – genuine antiques – the elephant has long gone, but its legacy remains, and it should remain. Under the proposed new law, virtually all antique ivory will become worthless, as it cannot be traded, and much of it will tragically

It's not so simple

MADAM – I am writing to counter the simplistic view espoused by Niall Milligan concerning the banning of ivory (*Letters*, ATG No 2348).

He suggests that the banning of ivory will cause the price to fall and trading in ivory to cease.

Currently class A drugs are banned, but I believe they remain quite popular and the price appears to be holding up very well.

The markets for antique and modern ivory are totally separate and the banning of antique ivory may well prevent its sale as those who buy sell and collect these objects are law-abiding people who

abhor poaching as much as anybody.

Modern ivory, on the other hand, is already banned. But banning something does not deter criminals, rather it incentivises them. The price of poached ivory will rise and more elephants will be slaughtered.

I would also take issue with Mr Milligan's view that "dealers will get used to this." I suggest Mr Milligan

puts himself in the shoes of a dealer who has been dealing legally for 30 or more years in Japanese or Indian applied art.

Such dealers are now facing bankruptcy and ruin for the sake of a piece of populist legislation that can never succeed in the aims claimed to justify it.

Michael Cohen
Chairman, BADA

For Michael Cohen's views on the legal challenge by trade bodies to the Ivory ban bill, see antiquetrade gazette.com



Above: BADA chairman Michael Cohen.

Above: BADA chairman Michael Cohen's letter in ATG No 2349.

be thrown away, or destroyed, which disrespects the elephant's memory.

However, by means of a simple, single amendment, sense will prevail.

The trade bodies should discard the lawyers and organise themselves into a sensible arrangement, which they put to government, whereby the antiques trade urgently creates a body specifically to issue certificates of authenticity for ivory

which, in their expert opinion, is over 100 years old, whether the object consists of 10% or 100% of ivory.

Only these objects will be allowed to be bought and sold; trading in anything more modern becomes illegal.

Gavin Littaur
London NW4

Not exempt from moral choices

MADAM – We write in response to BADA chairman Michael Cohen's letter (ATG No 2349), challenging

the proposed ivory ban bill.

Mr Cohen pleads for the dealers which are facing 'bankruptcy', but how many dealers rely on the sale of ivory items for their entire or most of their revenue? I would be very interested in a number on this.

We all have to make concessions to changing legislation over our careers and surely in a civilised world, it is not acceptable to trade in endangered animal body parts.

The fashion world has adjusted to the legislation of trading in animal furs, why not the ivory dealer? Mr Cohen's analogy with banning class A drugs is ludicrous.

Ivory items in museums are often wonderful and certainly historic. They just should have no monetary value attached. Items could be donated, but not sold.

If an item has no monetary value, the demand will surely diminish both here and in Asia over time, and the impact on the endangered species will surely improve.

The antiques trade is not exempt from moral choices and we agree with your headline on Mr Cohen's letter: 'It is not so simple'.

Paul and Karen Rennie
Rennies Seaside Modern
Folkestone

Ivory: Lords speak out against 'kafkaesque' registration rules

by Laura Chesters

24 JULY 2018: The so-called de minimis rule – the requirement to register items containing less than 10% of ivory prior to sale – has been criticised in the House of Lords as the ivory bill continues its progress through parliament.

Although the majority of members of the Lords supported the bill, a handful of members of the upper house spoke in favour of amendments including Lord De Mauley, Lord Inglewood, Lord Cormack, Lord Carrington of Fulham and former BADA president Baroness Rawlings.

Lord Inglewood, president of the British Art Market



Image courtesy of Parliament Live TV

Federation (BAMF), suggested that the mechanics of the de minimis should be changed.

"What to me is perverse... is the almost kafkaesque process of registration," he said. "The cost of registration may well exceed the value of the item in question and the ivory elements

of which are of little or no interest to the Asian market – which is, after all, the root cause of the elephant's plight.

"This bill merits general support but, with a little tweaking, it could become excellent legislation which I could wholeheartedly endorse."

Lord De Mauley, chairman of art and antiques dealer body LAPADA, said: "I want to make sure that what we enact and put on the statute book is workable and does not collapse under the weight of its own bureaucracy."

The House of Lords committee stage debate will be on held on September 10 and 12 on

“**The cost of registration may well exceed the value of the item**”

the floor of the Lords.

The environment minister Michael Gove hopes to enact the legislation in October.



Digital subscribers can view video highlights of the debate in the House of Lords online at:

antiquetrade gazette.com

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Ivory: call for more petitioners

MADAM – My congratulations to Anthony Bernbaum and to Lewis Baer for their excellent letters: Mr Bernbaum’s account of why he left Online Galleries and Mr Baer advocating the creation of a global trade body for the art and antiques sector (ATG No 2352).

One point to add to Freya Simms’ letter, in the same issue, where she advises those responding to the ivory petition (see weblink, **below right**): the petitioners need to number 10,000 or more to require a response from the government and 100,000 or more to raise a parliamentary debate.

At the time of writing this letter, only 691 people have signed the petition. A great many more will need to sign if any sort of message is going to be conveyed. Are there really so few who oppose the ivory ban bill as presently worded? It is, as Ms Simms wrote, a very easy petition to sign (see below).

Peter Cameron

petition.parliament.uk/petitions/223254

On ivory we need a little high-level diplomacy

MADAM – Six hundred and ninety-one people is actually a fairly decent response from a trade in which there are only a handful of interested parties (*Letters*, ATG No 2353).

That doesn’t change the fact that the legislation is absurdly flawed in every way.

I’m afraid that the current state of democracy gives equal weight to emotive fools as it does to those whose livelihoods and historic collections will be affected.

If one considers that the current colonial power that holds most sway in Africa is China, it is hardly surprising that elephants and rhinos are becoming ever more endangered.

I am tired of hearing about industry meetings and bleatings to an audience who have no understanding of the reality.

Perhaps a little high-level diplomacy would be more in order.

Nick Silver

CITES on the ground

MADAM – I thought your readers might be interested in having a greater understanding of the importance that CITES plays in protecting wildlife and fauna.

I recently returned from Zimbabwe where I connected with Charles Brightman of the Victoria Falls Anti-Poaching Unit, who owns a private company contracted out by the government.

I had hoped to go out into the Bush with his armed team to search out poachers but the timing was not ideal.

However, Charles informed me that elephant and rhino poaching was just the tip of the iceberg. The problems with poachers are far deeper, including the poaching of fish and many species of trees.

Interestingly, in neighbouring Botswana, where poachers have sadly completely wiped out the herds of rhino, there has been an increase of 5% in the elephant

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“**I am tired of hearing about industry meetings and bleatings to an audience who have no understanding of the reality**

population there.

Should readers require further information, Charles’ contact details can be found at vfapu.com or email csb@zol.co.zw.

Laurence Mitchell

We must record the ivory items at risk

MADAM – A friend in the trade asked me over a year ago, ‘what will you do if antiques containing ivory are made illegal?’. Since then I’ve given it serious thought. What can any of us do?

Despite the best efforts of the trade, I fear a law that bans the sale of most antique ivory will soon be with us. We must make a record, or the best record that we can, of the destruction this new bill will cause.

I would like to ask all the members of the antiques trade – auctioneers, dealers, restorers and, in particular, bullion traders who deal with scrap silver and gold – for their help in three key areas:

1. If you see any antique objects which have been mutilated by the removal of their ivory components or will be discarded because they can no longer be sold, please take an image of the item and its details and forward them to the dedicated email address below right. If, as a restorer, you are

“**We must make a record, or the best record that we can, of the destruction this new bill will cause**

asked to remove ivory elements from an object, please do the same.

2. The only alternatives for members of the public discarding unwanted antique ivory are currently wildlife charity-organised ‘surrender days’ which pledge to destroy every item irrespective of its age, and that is simply not acceptable.

May I ask instead that dealers and auctioneers take these items (not for sale). I will pledge to store them until a museum will take them for display or they can be given to a collector

who will keep them safe for at least one more generation.

This way I hope we can become the first port of call for any member of the public with antique ivory that they no longer wish to own.

3. I have grave concerns over the proposed exemption for antique ivory items of “outstanding artistic, cultural or historic value”. In evidence given to the Ivory Bill Committee, it was estimated that no more than 100 such exemptions would need to be granted annually in the UK. To that end, I would ask anyone who applies for an exemption to forward images and details of the object and the grounds on which the exemption was granted or refused.

I sincerely believe all the information, or as much as we can compile, will be vital going forward and possibly the key to overturning this bad law in the future.

Michael Baggott
protectantiqueivory@btinternet.com

Ivory solution is simple one

MADAM – Peter Cameron writes in ATG No 2353 that only 691 people have signed the ivory petition [now

at 1688 as we go to press], that a response from the government requires 10,000 signatures, and that 100,000 are needed to raise a parliamentary debate.

Just four weeks before the House of Lords’ committee stage of the proposed bill to ban ivory, BADA Council members Alastair Gibson and Laura Bordignon have published an open letter, urging people to sign the petition (ATG No 2354).

Too little, too late. The petition asks that the de minimis rule is raised from 10% to 50% of ivory. But 50% of what exactly? Area? Weight? Can the ivory be separated from the object? Is 50% acceptable but 51% illegal? Quite unnecessarily complicated.

The solution is simple and straightforward. Only ivory at least 100 years old, with a certificate of authenticity, can be sold. Trade in any and all other ivory is illegal.

This sensible amendment to the ivory bill – which should have been proposed originally – is the only workable strategy worth formulating.

If the powers-that-be put me in touch with the right people, I am prepared to present the case myself.

Gavin Littaur, London

Ivory removed from Chippendale before sale

by Roland Arkell

Ivory elements of an important piece of Chippendale furniture were removed prior to its appearance at auction earlier this year, ATG has learned.

The neoclassical commode, made for the London residence of Sir Rowland Winn (1739-85) c.1766, was exported from the US to London, to be offered for sale at Christie's with an estimate of £3m-5m.

It is understood that inlaid ivory letters were recently removed in the US and replaced with ivory, the faux ivory celluloid invented in 1899. The commode was then included in the Thomas Chippendale: 300 Years sale on July 5.

Asked by ATG to comment, a Christie's spokesperson confirmed that "the sellers of this commode decided to have the ivory replaced with ivory ahead of the sale to enable ease of movement. The catalogue



Left: The Rowland Winn commode offered by Christie's in July with an estimate of £3m-5m. The addition of the ivory letters to the interior, made soon after the initial commission in 1766, is detailed in a Chippendale invoice to Rowland Winn dated February 14, 1769, which mentions "To a neat Nest of Mahogany drawers and pigeon [sic] wood holes with an ivory Alphabet made to fit into a Cupboard."



“The catalogue noted that the alphabet is now ‘ivorine’”

noted that the alphabet is now ivory.”

Record-breaking piece

The Rowland Winn commode, at one time the most expensive piece of English furniture ever to appear at auction, is primarily made in mahogany and Indian ebony.

However, an unusual element – added by the Chippendale workshop as a special

request in 1769 (see caption above right) – was an array of 20 interior pigeon holes inlaid with ivory letters from A-Z.

When the commode was last sold by Christie's in December 1991 as part of the Messer collection, for £935,000, the letters were catalogued as ivory.

While under a 2014 US law, it may have been legal to export the commode from the US with

its ivory elements, it would not have been possible to bring it back to the US in the event the commode failed to sell or attracted interest from US bidders. The commode did not find a buyer in July.

Neoclassicism

The piece has been hailed as a masterpiece marking Chippendale's full arrival at neoclassicism in the mid-1760s.

Before the sale, and its first appearance in public for 27 years as part of the anniversary auction, Christie's international deputy chairman Charles Cator said: "The colour, the patination, the figuring of the timber, which is one of the great glories of this commode, is all something which is very, very special to Chippendale."

■ See Letters, below

Petition: House of Lords may see sense

MADAM – ATG letter correspondents Peter Cameron and Gavin Littaur (ATG Nos 2353, 2355) have hit the nail on the head in many ways.

Mr Littaur's argument that our petition to raise the de minimis in the ivory ban bill from 10% to 50% is "too little and too late" has been the story of the campaign by trade associations who told us the gentle approach in lobbying Defra was the right one to take.

ATG letter writer Nick Silver also refers to a need for 'high-level diplomacy' (ATG No 2354), but this approach, I believe, has failed.

When it was clear that the House of Commons would not see sense and consider reasonable amendments to the ivory bill, was when dealers directly affected by the proposed ban chose to publicise our fight to a wider audience.

How can we compete against the well-oiled lobbying machines of the wildlife charities and NGOs? Well, we do not have the financial clout to do so and mount national campaigns.

Was it worth my time organising this petition? Who knows, but if readers could put fingers to keyboard and type in 'ivory bill petition', or use the link in our ad on page 6, and then urge clients and contacts to do the same, it might make a difference.

At the time of going to press, the petition stands at 2006 signatures, which is greater than the average petition makes.

The petition will run for six months, by which time the bill will be passed with or without amendments. My focus is to get the message understood by the House of Lords whose committee stage takes place on September 10. They might see sense and widen the exemptions.

If they do, great, and if they don't, at the very least I and a few others have tried to do something for the greater benefit of the British art and antiques industry.

Alastair Gibson MRICS
Gibson Antiques

Items with ivory already threatened

MADAM – In his letter (ATG No 2355) Michael Baggott references the possibility that, following changes in the law, antiques could be mutilated because of their ivory content.

This has already happened at the highest level in America to a piece made by Chippendale himself of importance to our national heritage (see News, page 4).

This piece is the Sir Rowland Winn commode offered at Christie's Thomas Chippendale: 300 Years sale with an estimate of £3m-5m.

Interior pigeon holes within this fabulous cabinet were accentuated with

“Antiques being mutilated has already happened at the highest level in America”



Left: Michael Baggott's plea for ivory items at risk from the ivory ban to be properly recorded.

beautiful ivory letters inlaid into the wood. Christie's catalogue describes the letters as ivory (celluloid). I understand that the original ivory letters were recently removed in the US so that the commode could be offered in London.

One wonders whether this desecration leaving the commode in less than the perfect condition in which it was made contributed to its failure to realise the expected price.

Let's hope the original letters have been saved for replacement in their old positions at some time in the future when more common sense prevails.

Thomas EF Sainsbury
President, Jonathan Sainsbury furniture (dealer, now retired)

Chippendale ivory removal is ‘unforgivable’

MADAM – Your news story (‘Ivory removed from Chippendale before sale’, ATG No 2356) draws attention to the deliberate and unforgivable removal of original ivory elements from an important commode by Thomas Chippendale, England’s most famous cabinet maker.



Martin Levy

What does this act of desecration bode for the future?

But first, in the light of the ivory bill currently passing through parliament, it is important to recognise that the proposed legislation would not necessitate such vandalism.

It was because of restrictions imposed in the United States that the ivory was ill-advisedly removed. American private collectors and museums are, regrettably, the helpless victims of President Obama’s ill-thought out Director’s Order 210 (2014), intended to deter the trade in ivory and ban all imports.

‘Timely warning’

And yet, as members of parliament continue to consider the UK’s own bill, perhaps the American example that led to this wanton damage to a great work of art is a timely warning.

The de minimis exemptions proposed would, of course, allow for works of art such as the now-altered commode to pass freely through the market in its original state.

What is of far greater concern is the fate of the many thousands of less stellar, but bona fide works of art

made of or containing ivory and owned or acquired in good faith.

It should by now be recognised that the ivory bill will pass into law, and we should continue to applaud its purpose in eradicating poaching of the endangered elephant.

What cannot be

accepted is a correlation between the illicit trade and the market for bona fide, pre-1947 works of art: the evidence does not exist.

As discussions continue, it is to be hoped that common sense will be brought to bear on those officials charged with constructing workable and equitable regulations for the bill’s administration.

Parliament must, in its publicly-supported zeal to protect the elephant, also ensure the preservation of our cultural heritage for future generations, irrespective of rarity or value.

Martin P Levy, FSA
H Blairman & Sons, London

ATG’s Chippendale news story: media reaction

Our story last week revealed that ivory elements of an important piece of Chippendale furniture, the Rowland Winn commode made c.1766, were removed for its appearance at a Christie’s auction earlier this year, the commode having been imported from the US.

Reaction to the story on mainstream media was strong, as this selection compiled by Noelle McElhatton shows:

On radio

On BBC Radio 2’s *Jeremy Vine Show*, 30 August, the show’s host asked: should a 200-year-old piece of furniture be stripped of its ivory?

Max Rutherford, dealer, said: “This incident ... was entirely unnecessary. With a piece as important as the Chippendale cabinet, nobody should be removing inlays in any material. The cabinet made a record price in 1991 but is seriously devalued today.”

James Lewis, Bamfords Auctioneers and Born Free Foundation trustee, said:

“I’d like to see the de minimis in the draft ivory bill raised from 10% to 20%. One big risk is the potential for ivory pieces that add up to 15% of a bronze figure, for example, to be removed and copied in modern poached hippo ivory. The argument that there is no link between modern poaching and antique ivory is wrong. But the environmental argument to ‘ban it all’ is also wrong.”

On Instagram

robertyoungantiques wrote: Thank you so much, ATG, for drawing further attention to this irresponsible madness. The proposed law is a fool and must be exposed as such.

paul.jeromack: This is pure vandalism under the guise of animal conservation. I love elephants and want the current ivory trade quashed, but this destruction helps no one – and certainly doesn’t stop elephant slaughter.

kitstocker1: Sheer and utter madness. If we despair at the destruction of heritage sites in the Middle East, yet allow works of art to be dismembered here, how are we the better for it? Christie’s would have been smarter to have refused to accept it for auction.

On Twitter

@FabScarborough: Apart from being an act of unbelievably crass vandalism, a masterpiece of English furniture making has now been physically diminished. Has the work the owner undertook to make the piece more commercial internationally had the opposite effect?

@Timothy_Garland: Replacing the ivory for plastic has not stopped any elephant from being killed since the original auction.

@baggottsilver: Old thin ivory veneers are unbelievably fragile. I can’t imagine there wasn’t damage caused in removing them, also to the surrounding surface of the wood. This is another pitfall. ‘Replacing’ antique ivory with a substitute material can rarely be done without causing damage.

@Marc_Allum: Stumped for words.



We should support ivory petition, not dismiss it

MADAM – I read the letter from Gavin Littaur (ATG No 2355, August 25) and the letter of the previous edition from Nick Silver (ATG No 2354, August 18) with more than a little puzzlement.

It may be that the ivory bill petition started by Alastair Gibson is ‘too little too late’, but I am full of admiration for him, and for Laura Bordignon, for starting it.

I am equally sure that, if only they were made aware of the consequences of the proposed act, a very large number of people would support the intent of the petition.

We must continue to challenge the fallacious arguments being propounded by those who have, so

far, very effectively lobbied for this law.

Lord Gardiner of Kimble, in his speech introducing the ivory bill to the House of Lords, referred to “over 70,000 responses” to Defra’s consultation paper, “of which the overwhelming majority – some 88% – favoured an ivory ban”.

Those numbers have been challenged in previous letters to ATG. As one of those who responded to the consultation, I found it difficult to answer because the questions themselves appeared to assume the need for a change in the law.

It is clear that the antiques community, including dealers, auctioneers, collectors and those

museum curators who have sufficient courage to oppose this bill, have been too slow to mobilise.

That simply makes it essential that the antiques community wakes up now and takes practical steps to refute the arguments that have been made by those who know little and care less for the extraordinary objects which have been made from ivory and which form a part of the cultural heritage of this country.

There is something real that can be achieved right now and that is to sign the petition and to inform others about it so that they too can sign. It only takes a moment.

Peter Cameron, Via email

MADAM – Michael Baggott asks what we can all do with our ivory antiques when they become illegal to sell (ATG No 2355).

While I love elephants and abhor most of our simple politicians, the answer is simple. I intend leaving my ivory to my great, great-grandchildren.

By the time they are old enough to appreciate them, and appreciate them they will, this imbecilic law can be repealed and we can start trading again in fine cultural objects made from that most wonderful of materials.

Maurice Asprey
Via email

Royal Assent close for ivory ban bill

by Laura Chesters

The ivory bill, which proposes a near-total ban on the trade in ivory, has passed its final stage in the House of Commons and is awaiting Royal Assent before it is passed into law next year.

Amendments proposed by the House of Lords were passed in a debate in the House of Commons as the bill progressed through the final stages in parliament.

One of these will limit the powers of accredited civilian officers.

Law in six months

Once the bill gets Royal Assent it is expected to be enacted into law in six months, by the middle of 2019.

The near-total ban on elephant ivory is expected to be extended to cover other ivory-bearing species such as hippos, walrus and narwhals after the government announced in July that it would hold a consultation.

MPs discussed the idea of extending the proposed ban to include other items during the debate of the ivory bill, amid concerns the ban on one form of ivory could increase pressure on another.

In the House of Commons on the evening of Tuesday, December 11, junior environment minister Thérèse Coffey



We have committed to gathering evidence on the trade in ivory from other species as soon as is practicable after Royal Assent

said: “We have committed to gathering evidence on the trade in ivory from other species as soon as is practicable after Royal Assent.”

Bill exemptions

The bill features a number of exemptions.

They include pre-1918 portrait miniatures where the visible surface area is less than 320cm squared.

The other exemptions to the ivory ban are: items with less than 10% ivory by volume made prior to 1947 (which will need to be registered); items that are deemed “the rarest and most important items of their type” made before 1918; items sold to and between accredited museums; and musical instruments containing less than 20% ivory made prior to 1975.

PREDICTIONS: Ivory confusion – or chaos?

Royal assent for the ivory bill has been given. Defra says the law is likely to come into effect in late 2019. ‘Sell it while you can or buy it now while you can’ is the message among those who trade in antique ivory.

If dealers and collectors have been dismayed at the strength of the ban – no doubt it is something close to the worst-case scenario that many feared – then the authorities may gulp at the deluge of paperwork on the way.

Practicalities

The practicalities of a 10% de minimis rule and the meaning of the phrase ‘the best and most important of their type’ will, at best, take some ironing out. So, too, a registration process that documents every teaset with ivory insulators and chest of drawers

with ivory escutcheons. Expect confusion – or chaos.

Unintended consequences

There are already discussions around the so-called ‘unintended consequences’ of the elephant ivory ban – the effect it could have on other ivory-bearing species. The target list might get larger to include walrus, hippo, narwhal, sperm whale and (although extinct for four millennia) mammoth.

It was telling too that in November Sotheby’s and Bonhams chose to join Christie’s in not selling antique rhino horn – not because there was evidence of violations of the law but because more than 30 pressure groups joined in opposing the sale of a collection of Ming and Qing objects.

Just like Prohibition, ivory ban will not work

MADAM – Re: ivory ban. I would very much like to add my tuppence worth to this ongoing issue.

One of the first things that springs to mind is Prohibition. Now that didn’t work out too well, did it? Well, not entirely true.

It glamorised the speakeasy, it cost the government billions of dollars in lost revenue, millions to enforce and unnecessary loss of life as a result of the turf wars.

The only ones to benefit were the bootleggers, gangsters, corrupt officials and everyone who like a good drink. I’m sure you get the point.

It has been illegal to sell unworked rhino horn in the UK since CITES was ratified in August 1976, yet in my opinion some auction houses have been doing just that and flouting the regulations ever since they came into effect. I can provide the name of one such auction house without fear of any contradiction.

Turned a blind eye

It has been my experience that the authorities charged with the regulation and enforcement of the laws have been remiss in their duties and have on occasion turned a blind eye and cocked a deaf ear to blatant offences. In other words, they have cherry-picked which offences to investigate and which to ignore.

That said, I feel that certain members of the government are simply pandering to populist sentiment with scant regard for the livelihood of many conscientious and law-abiding dealers or the financial repercussions that will be borne by collectors who have diligently obeyed the law.

Is the government going to ban all items containing palm oil because of the catastrophic global effects on flora, fauna and climate? Or perhaps when the vegetarians shout loud enough, ban

all meat production and put all producers out of work without a second thought or any compensation?

A complete ban on ivory won’t stop the illegal trade any more than Prohibition led to sobriety.

In fact, history shows us that the more scarce and difficult it becomes to obtain an item, the more attractive and valuable it becomes to those who would have it at any cost. It would also fuel corruption and other criminal activity.

My strong belief is that the ban won’t stop the poaching of even one elephant, or any other animal or plant that has any significant monetary value.

In fact, I believe that the exact opposite will occur. When the value of these items increases due to their scarcity, then so too will the level of poaching. Isn’t that how the law of supply and demand works?

The government and all the relevant agencies/departments have thus far categorically failed to regulate and enforce CITES since 1976 – so why does it think a total ban will change anything at all?

Lost taxes but extra costs

It will not only lose revenue in the form of taxes but will also incur additional costs in the form of regulation and enforcement.

However, if the past is anything to go by, at least that amount will only be minimal if anything at all.

Better regulation and enforcement is the answer and not a complete ban which will ultimately prove to be totally ineffectual as far as criminals are concerned (isn’t that the reason they are called criminals?) but will have devastating effects on the honest law-abiding dealers and collectors.

Won’t this reward the crooks and punish the honest?

F Segolini

Ivory bill to take effect in late 2019

The UK government’s ivory bill has received Royal Assent from the queen to become the Ivory Act 2018.

The queen has formally agreed to make the ivory bill, which proposes a near-total ban on the trade in ivory, into an Act of Parliament.

However, the bill is not expected to come into force until late 2019, later than some experts had predicted.

Regarding the timing of the enforcement of the law, a Defra spokesman said: “Time is required to make sure the ban can be implemented effectively and robustly. Secondary legislation is required to do this, an online registration system needs to be developed and guidance to be issued.

“It is critical that all of these elements are in place before the ban can be put into effect.”

Feeling fobbed off by ivory ban response

MADAM – As a long-term collector of antiques, as well as a student of the auction scene and an active participant in the ongoing debate on the ivory ban, I thought that it might be helpful to bring readers up-to-date in respect of approaches I have made in recent months to Defra's Ivory Policy Team.

Since my personal view – that banning all trade in post-1900 ivory is more sensible and practical than trying to police the proposed '10% ivory in an object' rule – appears to have fallen by the wayside, I have concentrated on just two issues, repeatedly asking:

1. What exactly is the justification for the Government's refusal to establish a compensation scheme, given the reprehensible, retrospective legislation, meaning collectors and dealers will shortly be – with very minor exceptions – owners of valueless antique ivory objects, which could previously be legally traded, and which were of material value?

2. Can you now belatedly provide the list of specialists and experts, whom one can now approach to show one's ivory objects in order to determine whether or not they are of "outstandingly high artistic, cultural or historical value, and are the rarest and most important examples of their type"?

With regard to compensation,

Defra replied: "The Government also considered whether the impact was sufficiently mitigated by (1) exemptions and (2) a transition period (the period between Royal Assent and the ban coming into force). The Government weighed the public interest, against the impact on private interests, and decided against the establishment of a compensation scheme."

On the second question, Defra said: "We will prescribe a number of eminent cultural institutions which possess the necessary knowledge and expertise to provide the Secretary of State with advice on applications for exemption certificates under Section 2. Many of these institutions already provide independent advice to government. A full list will be set out in regulations in due course."

The answer was completed with: "I hope you understand that the Department has a duty to ensure its resources are being used in an effective and productive manner. We are unable to reply to follow-up correspondence unless new points are raised."

Reluctance to answer

In my view, merely stating something is in the public interest is not a sufficient justification for denying compensation.

I should point out that these responses from Defra were only the

most recent, the previous ones being either even less informative, or non-existent, suggesting to me a certain reluctance to answer at all, let alone openly, helpfully and transparently.

In respect of the second question to Defra, they have again succeeded in avoiding a direct answer. A proper response is required.

If the point of the transition period is to allow owners to sell their objects before the legislation comes into force, then both the seller and the buyer should know for certain whether an item qualifies for an exemption, because this status will mean it is either worth something or nothing at all.

As there is no way of knowing this, because the list of specialists and experts is not yet available, the transition period does not adequately replace the lack of compensation for the loss in value of soon-to-be unsaleable items.

This simply will not do. If Defra genuinely wishes to "ensure its resources are being used in an effective and productive manner", I would respectfully suggest that it provides us with the list of relevant specialists and experts at 'eminent cultural institutions' well ahead of this absurd law taking effect, preferably now.

Gavin Littaur
London NW4

Listen to Mr Spock to decide on ivory trade

MADAM – F Segolini makes some interesting and valid points about the failure of alcohol prohibition in the US (*Letters*, ATG No 2373).

We don't believe there is any equivalence between the prohibition of alcohol and the prohibition of trading in ivory. The ethical considerations of alcohol production do not extend as far as the extinction of large mammals... and there has never been a finite limit to the production of alcohol.

We do agree that prohibition is a blunt instrument and is unlikely to succeed on its own, and that the lessons of regulation and enforcement must be learned.

However, the failures of the past should not discourage us from attempting to do the right thing.

The ban on ivory provides for another step towards recalibrating relations between humans and the natural world. Ultimately, this will be an issue of survival, sustainability and ethics.

Speaking of ethics, we are not convinced that it is possible to deal or collect these objects without, at some level, being complicit in the whole sorry situation.

As Mr Spock observed, It is illogical to hunt anything to extinction...

Paul and Karen Rennie
Rennies Seaside Modern
Folkestone, Kent

Ivory antiques ban 'madness'

MADAM – In so many respects, anyone reading or watching the news over the last 12 months could quite easily believe that the whole world has gone mad.

The UK ivory ban (although, I realise, just a mere bagatelle – relatively – to most) has personally been of great concern to me as a collector/dealer in Art Deco figures, which come off most severely in the proposed legislation.

The arguments for and against the ban have been presented many times in your publication. On one thing, I believe, both sides are agreed. We abhor the slaughter of living elephants for whatever reason or purpose.

I was doubly disheartened therefore to learn that Botswana is considering lifting the elephant hunting/culling ban that has been in operation there for the last four years. While this is aimed at sustainably managing the population, what message does it send to the poachers?

The elephants – and collectors of pre-1947 ivory – deserve better.

Simon Armitage

MADAM – I have wanted for some time now to ask a very simple question regarding the attempt to ban the trade in antique worked ivory of any value and that is: what will the proponents of this ban think when all trade in antique worked ivory has been banned, it's all off the market, and the African elephant continues to be slaughtered?

For all the money and time and effort that was misspent on banning antiques when it should have gone to saving live elephants, how will they then justify the blind rush to this misplaced justice and the cultural vandalism that came with it?

Along with its financial cost that was so miserably used to implement a misplaced dogma. What a sad result it will be.

Anthony Werneke, Plaxtol, Kent

Defra survey to gauge ivory impact

Defra (the Department for Environment, Food & Rural Affairs) has launched an online survey aiming to gauge the anticipated volume of ivory items under the new Ivory Act's four exemption categories that will be subject to self-registration if planned for sale.

The law is due to come into effect later this year.

Defra's online survey is short – four questions – and closes at 10am on Friday, January 25. You can find it on the Defra website or via atg.news/defra-survey

For further coverage and breaking news every day visit:
antiquetrade gazette.com



Keeping up to date with CITES

The laws surrounding antiques made with the parts of endangered species are subject to frequent change. *Kim McDonald* of The Taxidermy Law Company provides a refresher guide

Good reputations are often hard fought but through ignorance can be lost in a short space of time. It is therefore imperative that traders keep a close watch on the listings from CITES (the Convention on International Trade in Endangered Species) and the regular changes to UK government policies that can slip in seemingly unnoticed.

Unfortunately, many of these changes are not broadcast widely and the government's dissemination of information could be better.

A good example of this is the new COTES (The Control of Trade in Endangered Species) regulations that became law in October. The law now requires sellers of an Annex A listed natural history product to include the Article 10 licence number in any advertisement – and that includes your auction catalogue, hard copy or online.

It's not just about ivory and tortoiseshell. Whatever your speciality, whether dealing with a tigerskin rug or a Gibson guitar, it pays to always double-check.

Regular changes

Changes to the listings can occur every two to three years after agreements made at the CITES Conference of the Parties – the next being in May 2019. Species can suddenly appear on the CITES appendices – an example being the sawfish (*pristidae*) that appeared on the most endangered list (Appendix I) in 2007. By the following April it had been placed in Annex A of the European Regulations thereby requiring an Article 10 licence prior to advertising/display or sale.

Twelve years later and we still see



Many of these changes are not broadcast widely and the government's dissemination of information could be better

sawfish rostrums appearing in catalogues without such a licence.

Rosewood obligations

By far the biggest offender to slip through the net is Brazilian rosewood (*dalbergia nigra*). This particular species was first listed CITES (straight on to Appendix I) in 1992 and appeared on Annex A from 1997, meaning that pieces of Brazilian rosewood furniture made after 1947 require an Article 10 licence from the Animal and Plant Health Agency (APHA) before they can be sold.

Not all dealers and auctioneers are aware of their obligations. It was only a few years ago, while doing a routine inspection of some taxidermy items at an auction room, that I spotted a piece of Scandinavian designer furniture. On asking whether the item with rosewood had a sales licence, a mild state of panic ensued, culminating in the immediate withdrawal of 70-odd similar lots. The story appeared in the *ATG* and the flood gates opened.

A couple of years later a dealer received a letter from APHA Compliance querying a sale made earlier that year of a guitar which – although not advertised as such at the



Kim McDonald of The Taxidermy Law Company at the ATG seminar on CITES.

time – included a rosewood fretboard. They were asking for proof of its legal import to the UK and the previous Article 10 licence number. Although that situation was resolved, as a wake-up call it was successful.

Subsequent research with the major guitar manufacturers has taught us that from the 1950s until the early '70s Brazilian rosewood was the timber of choice. Later, due largely to the expense, a switch to other less problematic rosewood species was common. However, sellers should assume that 'rosewood' could be Brazilian rosewood unless it is possible to prove otherwise – and proving it is extremely demanding.

When applying for an Article 10 licence for Brazilian rosewood, successful applicants may need to prove the item was either legally imported or it was in the EU prior to 1992. That is often difficult: instruments coming up for sale from deceased estates frequently lack provenance. To add to the complications, recently (2017) all other species of rosewood were added to the CITES Appendix II list, meaning they too require documentation whenever they are traded outside the EU.

So play your vintage Fender, Gibson or Martin etc and enjoy – but without provenance you may not be able to sell it legally.

The 'antiques derogation'

It is important that all dealers and auctioneers are familiar with the 'worked' or 'antiques derogation' in particular. The law says that antiques are exempt from licensing providing they were 'worked' prior to March 3, 1947. The guidance on this issue has been periodically revised and European or simply UK policy can change in a flash.

Since December 2012, narwhal tusks need to carry Article 10 certificates, so too raw sawfish rostrums, whale teeth (without scrimshaw) and marine turtle shells (unless the mounted animal is still attached to the shell).

Previous guidance has since been replaced by the 2017 criteria. After much discussion on the subject, a clarification on tiger (and other) skin rugs now considers these to be 'worked' providing it has been tanned. The presence of linings, backing cloths or flat heads are no longer part of the criteria.

I will not go too deep into the elephant ivory situation that is shortly to change radically – and has been well covered elsewhere in the *ATG* – but currently it is important to remember that any item including any part of a raw ivory tusk is considered unworked, and so too is a tusk that is 'less than 90% carved over the whole surface'. The great majority of ivory page turners are now classed as unworked. ■

You can contact Kim McDonald at Kim@taxidermylaw.co.uk

Stop press: trade bodies prepare for Ivory Act challenge

Antiques trade bodies are stepping up their plans for a judicial review of the Ivory Act that will come into law later this year.

Dealer bodies BADA, LAPADA and the ADA (Antiquities Dealers' Association), along with auctioneer group SoFAA, have been preparing a request for a judicial review of elements of the bill.

A survey of collectors, auction houses and dealers by an independent market research company is planned for the end of January that will attempt to assess "the financial losses they

expect to sustain as a result of the act," a BADA statement to *ATG* outlined.

Freya Simms, LAPADA chief executive, said that "data from an independent research company will be most valuable in the event of a legal challenge".

Anyone interested in participating can email info@bada.org.

Separately, Defra is conducting its own survey on the level of potential registrations for tradeable ivory which closes on January 25. For more on this see *News Digest*, p10-11.

Consultation on the trade in non-elephant ivory launched by government

A consultation into the trade of non-elephant ivory has been launched to find out whether the government should take further action to restrict the trade in ivory.

The consultation, which runs until August 22, seeks evidence on the trade in ivory from other, non-elephant, species to “help inform what, if any, action government should take to further restrict trade in ivory”.

MPs discussed the idea of extending the ivory trade ban to include other items during the debate of the ivory bill last year, amid concerns the ban on one form of ivory could increase pressure on another.

Plans for the consultation were announced when the ivory bill received Royal Assent to become the Ivory Act in December 2018.

The government said it is “keen to hear from specialists across all relevant sectors”.

Environment minister Thérèse Coffey said: “Our ivory ban is one of the toughest in the world. But there are many more precious species, like the hippo and walrus, which could fall victim to the trade in ivory. This call for evidence will help us



Above: Environment minister Thérèse Coffey is calling for evidence on the trade of non-elephant ivory.

to understand if we need to take any further action to protect these animals from the trade in their ivory. We want to hear from specialists in this field to inform any next steps.”

The species being looked at by the Department for Environment, Food and Rural Affairs (Defra) are:

- common hippopotamus
- killer whale, also known as orca

- narwhal
- sperm whale
- walrus
- common warthog
- desert warthog
- mammoth

The consultation can be found at <https://atg.news/Ivorysurvey>. The Ivory Act is “expected to come into force in late 2019”.

Survey launched to gauge impact of ivory ban

by Noelle McElhatton

Industry trade bodies have launched a survey that will attempt to measure the financial impact of the Ivory Act (2018) which comes into force later this year. Collectors, dealers and auctioneers of antique ivory are being encouraged to take part.

The online survey is open to anyone with an interest in antique ivory and can be found via atg.news/BADAsurvey.

Possible legal challenge

Results will be collated into a report that may be used as part of a legal challenge to the act. BADA, with the support of the other trade associations, has commissioned the survey from independent research company Woodnewton with the deadline for responses on February 11.

Separately, the European Commission is reviewing whether to amend its approach to elephant ivory and is unofficially floating ideas for tightening up on the evidence needed to demonstrate that pre-1947 worked ivory objects are indeed ‘pre-1947’, according to members of the antiques trade.

Ivory ban heads to High Court

by Noelle McElhatton

A High Court judge has given the go-ahead for a full judicial hearing on the legality of the Ivory Act, due to usher in a near-total ban on the UK trade in antique ivory.

Sir Wyn Williams has granted permission to the applicants – a new company formed by dealers and collectors called the Friends of Antique Cultural Treasures Ltd (FACT) – to challenge the secretary of state for environment, food and rural affairs on aspects of the act.

The judge noted the applicants’ argument that trade in pre-1947 worked ivory is already covered in EU law and therefore “raises a point of some considerable difficulty and importance in European law”.

The hearing will take place



Court could declare provisions of the Act incompatible with EU law

sometime in October 2019 “if that is reasonably practicable”, a note from the Queen’s Bench Division Administrative Court stated.

The government will be required to argue its case at the High Court hearing.

If FACT is successful in its challenge, “this could result in the court declaring the relevant provisions of the Ivory Act incompatible with EU law; this would effectively render them invalid”, dealer association BADA said in a note to FACT supporters on Monday, July 15.

“It would mean that the law could have no effect unless and until the

government passed new legislation.”

The ban on the UK trade of antique ivory, first promised by the Conservative Party in its 2015 manifesto and coming close to reality when the Ivory Act received Royal Assent in December 2018, is being introduced by the government as a response to modern poaching of elephant ivory.

Opponents of the act have argued – in parliamentary debates and in the letters pages of ATG – that the law will be hard to implement and would fail to stem modern ivory poaching.

Helen Carless, chairman of auctioneer trade association SOFAA, told ATG in January that the act would “have a very real impact on SOFAA members. At the very least it will make low-priced items containing more than 10% ivory impossible to sell.”

FACT is calling for further donations to fund the legal challenge.

Ivory Act: plea for bows to be exempt

A London auctioneer of stringed instruments has launched an online petition to exempt bows from the Ivory Act registration requirement.

It argues that traders in antique bows including musicians, music shops and auction houses will be negatively affected by the practicalities and cost involved in registering the high volume of bows that regularly appear on the market.

Sarah Buchanan of auction house Amati said: “We fully support the Ivory Act’s ethics – endangered species must be protected. Our concern regarding the legislation is one of unforeseen consequences given the huge volume of bows that are traded in the UK and the impracticability of having to register every single sold bow in the UK with an ivory tip, the amount of which is equivalent to an adult thumbnail.”

The petition, which had around 1600 signatures at the time of going to press, can be found at petition.parliament.uk/petitions/237247.

Ivory Act: expect result of court review next month

Court told exemptions on ivory are ‘arbitrary’

by Noelle McElhatton

Dealers and collectors who last week brought a judicial review of the Ivory Act 2018 must wait until November for judgment in the case.

Friends of Antique Cultural Treasures Ltd (FACT) took the government to court saying that the act is contrary to EU law (which allows trade in pre-1947 ‘worked’ ivory) and, on ‘proportionality’ grounds, goes too far by denying owners of antique ivory property rights.

At the hearing, Mr Justice Robert Hay reminded the court that “the democratic process has reached a conclusion” on the act’s substance but that both counsels had “given me a lot to think about” before he produces a final judgment. Tom de la Mare QC, acting for FACT, argued on October 16-17 that the Ivory Act 2018 was “draconian” with

“arbitrary exemptions”.

Instead, de la Mare told the court, FACT is proposing a certification and registration system for ivory antiques. This would be similar to that proposed in the act for exempted items and ensure the removal of modern ivory “tat and trinkets” from the market.

De la Mare highlighted a lack of evidence of any connection between trade in antique ivory and the demand for modern poached “fresh” ivory. He quoted the conclusion of wildlife trade monitor Traffic’s 2016 report, *A Rapid Survey of UK Ivory Markets*, of “no provable link” between the two.

‘An assertion not proven’

A key argument by Sir James Eadie QC, representing DEFRA, was that “the licit trade” in antique ivory was “masking illicit trade in modern ivory”. This point was then refuted by de la Mare as

“an assertion... not proven”.

De la Mare also argued that the act’s exemptions, including for musical instruments and objects of ‘outstanding artistic significance’, were “arbitrary”.

“We’ve been given no criteria to assess what the ‘outstanding artistic, cultural or historic significance’ exemption means in practice,” de la Mare said.

Paul Moss, former owner of Sydney L Moss and a collector of ivory antiques, was among the FACT directors present in court. He told ATG after the hearing that Mr Justice Robert Lay “was clearly engaged and sympathetic to our arguments on the proportionality side”.

Dealer Peter Petrou, who organised fund-raising for the case and was also present, said: “We have done the right thing by putting up this fight... and hope for a system of registration for bona fide antiques rather than a complete ban.”



Above: FACT directors outside the Royal Courts of Justice, (l-r) Paul Moss and dealers Rosemary Bandini and Alastair Gibson.

Ivory Act: Judge ‘concluded it was unlikely to have any effect on the illegal trade’

A High Court judge has turned down an attempt by a group of dealers and collectors of antique ivory to stop the Ivory Act 2018 coming into force.

However, Mr Justice Robert Jay allowed room for FACT (the Friends of Antique and Cultural Treasures Limited) to apply for an appeal, which the group has decided to pursue.

In a 100-page judgment, published on November 5, the judge declared himself “sympathetic” to arguments that FACT made in court in October (ATG No 2414).

Meanwhile DEFRA, the defendant in the judicial review, has said it will “press ahead” with bringing the act into force.

As it prepares to seek permission to

take its claim to the Court of Appeal, FACT has begun a new round of fundraising. In losing the judicial review, FACT is liable to pay DEFRA’s legal costs as well as its own.

A spokesman for FACT told ATG: “We are pursuing this appeal on behalf of collectors and the wider decorative arts community, whose plight has all but been ignored by government in rushing through this ill-conceived ivory ban.”

The judge agreed with several of FACT’s arguments made against DEFRA’s justification of the act’s trade ban.

‘Understated impact’

In particular, he was critical of the

government’s assessment of the act’s likely effects, which “considerably understates the impact... on businesses, and fails completely to deal with collectors, whether they be amateur or expert”.

Mr Justice Jay also concluded the act was unlikely to have any effect on the illegal trade of ivory in the UK and in other countries.

However, he dismissed the challenge, on the basis of DEFRA’s argument that the act would show the UK’s leadership on anti-poaching and show solidarity with other countries with ivory trade bans, including the US and China.

The judge made this ruling, he said, “with some regret, because I remain

sympathetic to [FACT’s] case”.

DEFRA reaction

After the judgment’s publication on Tuesday, DEFRA said the government “will now press ahead to bring into force the ivory ban as soon as practicably possible, with a likely implementation date of early next year”.

Environment secretary Theresa Villiers said: “I welcome [this] ruling by the High Court which upholds the UK’s commitment to ban the ivory trade.”

To donate to the FACT appeal, the details are: British Antique Dealers’ Association, Coutts & Co, Acc No: 00089001, Sort code: 18-00-02.

Trade's latest challenge to Ivory Act could delay the near-total ban until spring 2020

by Noelle MacElhatton

Dealers and collectors have one final chance to overturn the wording of the Ivory Act 2018, after a judge granted them leave to appeal a High Court ruling upholding the new law.

FACT (the Friends of Antique and Cultural

Treasures Limited) sought permission to appeal after it lost a judicial review in October (see last week's front page, ATG No 2417). The appeal is around the act's 'proportionality' in denying owners of antique ivory their property rights.

A date for the hearing in front of three Court of Appeal judges has not been set. However, observers believe a

spring 2020 hearing is likely, delaying the law's enforcement until at least after the appeal has been heard.

DEFRA, the defendant in the judicial review, would not comment on a timetable for enforcing the act, as pre-general election 'purdah' rules prevent comment on government policy.

FACT was encouraged to

appeal after the review judge, Mr Justice Robert Jay, declared himself "sympathetic" to some of the group's arguments in his judgment published on November 5. He found the government's argument had "considerably" understated the impact of the act on dealers "and fails completely to deal with collectors, whether they be amateur or expert".

FACT is seeking donations towards legal costs – that, following the High Court ruling, currently include those of DEFRA.

To donate to funding the FACT appeal, the details are: British Antique Dealers' Association, Coutts & Co, Acc No: 00089001, Sort code: 18-00-02.

Stop sitting on the fence and now back our ivory ban challenge

MADAM – "The course of justice often prevents it" – Edward Counsel (1849-1939), Australian public servant and administrator

We have had our Ivory Act judicial review and our legal team put together a strong factual argument – unlike what were, in my view, the distorted findings put forward by the NGOs to the members of parliament and the government.

Although Justice Jay did not find in FACT's favour (ATG No 2417), he was sympathetic towards the claim of proportionality and has indicated that he is minded to grant

permission to appeal, which under the circumstances is as much as can be expected as a good result. After all, it would have taken a brave judge to go completely against parliament.

Antiques traders and collectors alike abhor the poaching of elephants and illegal trade in modern ivory. I strongly believe that there is absolutely no serious desire for modern ivory in the UK – as was illustrated during the hearing.

We should thank the few individuals that put their good name and reputation behind the company (FACT) that took this to the High



We need in the region of £60,000 for our appeal

Court on our behalf. We should also thank the far too few dealers, collectors and auction houses that gave generously.

It is my understanding that there were only eight auction houses that contributed. I would call that a miserable effort. It seems the majority of such firms and dealers

that even occasionally sell pre-1947 ivory did not contribute but are all too happy to make a profit or take commissions selling these items. They seem content to sit on the fence complaining about the draconian legislation but do absolutely nothing – I now point my figure at you!

We need in the region of £60,000 to see through an appeal, so if 120 so-far-unwilling dealers and auction houses contributed £500 each, we would arrive at our goal without difficulty.

Edric van Vredenburg

Ivory Act: court date set 'earlier than expected' for final legal challenge by dealers and collectors

The battle by dealers and collectors to overturn the Ivory Act will enter its final phase on February 24 and 25 at the Court of Appeal.

In front of three Lord Justices, lawyers for Friends of Antique Cultural Treasures (FACT) Ltd will make their last attempt to stop the act coming into force.

FACT won the right to appeal a High Court judicial review in November last year, which found in favour of DEFRA (the Department of the Environment, Food and Rural Affairs), the act's sponsor.

The group was encouraged to appeal when the High Court judge expressed "sympathy" with FACT's cause, in particular the act's likely financial impact on dealers and collectors.

At the Court of Appeal in February – a date FACT's lawyers say is "earlier than expected" – will argue the act denies the property rights of antique ivory owners under EU law.

Few exemptions

The Ivory Act, which received royal assent in 2018, aims to tackle modern-day poaching of ivory from endangered African elephants.

However, its ban on UK trade in ivory also includes antiques, with only a few artistic exemptions.

Antiques trade bodies have mounted a five-year battle to preserve the trade in antique ivory, citing the lack of evidence connecting modern poached ivory with the antique variety.

FACT's lawyers, led by

Thomas de la Mare QC, will argue the act has "far-reaching and arbitrary measures, supported by no cogent evidence that they will actually deliver any tangible conservation benefits".

In a statement this week, FACT's law firm, Constantine Cannon, said its client was "pleased" the appeal date had been confirmed "so that a final judgement can be made before the Ivory Act comes into force.

"We were encouraged by the High Court's recognition of the complexities [of the ban] and the great importance of this case," Constantine Cannon said in its statement.

"We hope that the Court of Appeal will agree ... the legitimate trade in antique cultural objects has no bearing on the abhorrent practice of elephant poaching and the illicit trade."



FACT directors outside the Royal Courts of Justice after the October hearing: (left to right) Paul Moss, former owner of Sydney L. Moss, Rosemary Bandini and Alastair Gibson, Gibson Antiques.

Appeal for legal fee funds

The appeal hearing date of February 24-25 is "a little earlier than we expected", Constantine Cannon partner Richard Pike said, adding that "the timing won't affect our preparation as most of it is already done".

However the timing puts pressure on FACT to accelerate its fund-raising to cover barrister fees.

To donate, the details are: British Antique Dealers' Association, Coutts & Co, Acc No: 00089001, Sort code: 18-00-02.

Ivory Act: no more challenges to new law says Supreme Court

The Ivory Act 2018 is now expected to come into effect this year after dealers and collectors of antique ivory were refused a final appeal.

Friends of Antique Cultural Treasures (FACT) Ltd, a company set up to fight the act's near-total ban on the trade in antique ivory, had hoped to challenge the decision of the Court of Appeal in May this year. However, an order from the Supreme Court was issued on August 10 stating that permission to appeal had been refused.

Legal fight 'at an end'

Richard Pike, partner at law firm Constantine Cannon, who was advising FACT, said: "We are disappointed that the legal challenge is at an end. Our view has always been that the Ivory Act is a disproportionate measure, doing terrible damage to the UK's artistic and cultural heritage for little, if any, benefit.

"The courts accepted a lot of our evidence but concluded that if the government wants to legislate to send a message to other countries then it can do that, regardless of the harm to its own citizens."

Pike advised dealers and collectors who still have "non-exempt ivory items in the UK" that they might want to sell in the future that they should "take steps immediately to export it".

Mark Dodgson, secretary general at the British Antique Dealers' Association (BADA), said: "Naturally I am disappointed that the Supreme Court did not allow a further appeal. We all strongly condemn elephant poaching, but the courts acknowledged that there

is scant evidence to suggest that the genuine antiques trade represents a cover for a trade in illegally poached ivory in the UK. They also agreed that the scale of the impact of the Ivory Act on collectors and the antiques trade had been under-stated by the Government.

"The Court of Appeal only upheld the High Court judgement because it accepted the Government's case that it was entitled to introduce legislation that was wholly or mainly for the purpose of supporting and encouraging other countries to bring in their modern ivory bans. It would have been perfectly possible to enact measures that send an equally strong message to other countries, without so badly damaging the British antiques trade and historical objects, both of which are unconnected with the modern poached ivory trade.

"Ministerial assurances were previously given that the trade will be consulted on the guidance for how the Act will operate in practice, so I hope that Defra will work with members of the trade before bringing in the new measures, since they will prove complex and confusing for many people."

A Defra spokesperson welcomed last week's final decision. "We welcome the Court of Appeal's ruling from May, which upholds the High Court's decision and dismisses the claim against the Ivory Act. We are committed to bringing the ivory ban into force as soon as practicable to help protect the



world's endangered species and halt biodiversity loss."

Dealer Alastair Gibson, speaking on behalf of the directors of FACT, said it would "like to thank all the donors from the various elements of the trade who made this stand possible".

Paul Moss, Asian art specialist and former dealer and a director of FACT, said: "To keep having judges agree with the most important legal aspect of your case and then find against it anyway, because it doesn't do to disagree with the government, is very dispiriting.

"From the antiques trade point of view this is the thin end of the wedge. Obviously, there is a case which has gone unanswered as to the removal of monetary value from the citizenship, with no compensation. That was not my own rationale: I

object to having the glorious works of art that I love insulted and debased for the material they were carved from in a pre-woke age, and my lifetime of research and publications trashed by a scantily thought-out piece of illogical, knee-jerk legislation. All involved in pushing it through should be ashamed of themselves. But they won't."

The act features a number of exemptions to the ban on the trade of works containing ivory. These include items containing less than 10% ivory by volume made prior to 1947, portrait miniatures made before 1918, sales to and between accredited museums, items 'of outstanding artistic, cultural or historic significance' made prior to 1918, and musical instruments with an ivory content of less than 20% and made before 1975.

Consultation will be final step before Ivory Act is law

A government consultation on the minutiae of elements of the Ivory Act is required prior to the implementing of the new law.

The Ivory Act 2018 – a near total ban on the trade of items containing ivory – is expected to come into effect this year, or early next, after dealers and collectors of antique ivory were refused a final appeal by the Supreme Court last month.

The Act features a number of exemptions, including:

items containing less than 10% ivory by volume made prior to 1947; portrait miniatures made before 1918; sales to and between accredited museums; items 'of outstandingly high artistic, cultural or historical value' made prior to 1918; and musical instruments with an ivory content of under

20% and made before 1975.

A consultation on elements of these – for example it is expected to propose how the phrase 'of outstandingly high artistic, cultural or historical value' should be interpreted – will be launched by the Department for Environment, Food and Rural Affairs (Defra).

Defra would not comment directly on the timescale or content but has said it will consult on the implementation details, including matters that will be set out in the secondary legislation in due course.

BADA secretary general Mark Dodgson said: "We have requested and still await

information from Defra concerning the timing of the expected consultation and the issues it will cover." In August a Defra spokesperson said: "We are committed to bringing the ivory ban into force as soon as practicable to help protect the world's endangered species and halt biodiversity loss."