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**Environment, Climate Change and Land Reform
Committee
Comataidh Atharrachadh Clìomaid is Ath-leasachaidh
Fearann**

**Legislative Consent Memorandum-
Ivory Bill**



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Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



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Scottish Green Party



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Scottish National Party

Membership

1. There have been membership changes during the reporting period:
 - Graeme Dey MSP left the Committee on 28 June 2018
 - Donald Cameron MSP left the Committee on 6 September 2018
 - Alex Neil MSP left the Committee on 6 September 2018
 - Gillian Martin MSP joined the Committee on 6 September 2018

Background

2. The [Ivory Bill](#) was introduced in the House of Commons on 23 May 2018, and the final amending stage in the House of Commons was on 4 July 2018. The next amending stage is the House of Lords Third reading/Report stage and the date for this is not yet fixed.

The purpose of the Ivory Bill as set out in the Legislative Consent Memorandum (LCM) is as follows-

3. To prohibit commercial activities concerning ivory in the UK and the import and re-export of ivory for commercial purposes to and from the UK, including intra-EU trade to and from the UK. The Bill extends to Scotland.
4. The aim of the Bill is to help conserve elephant populations, specifically by reducing poaching, through significantly limiting the legal market for ivory in the UK. "Ivory" is defined in the Bill to mean ivory from the tusk or tooth of an elephant, including an item made of ivory or that has ivory in it.
5. The Bill consists of 42 clauses:
6. Clause 1 of the Bill bans dealing in ivory (the ivory ban). This is defined as: buying, selling or hiring ivory; offering or arranging to buy, sell or hire ivory; keeping ivory for sale or hire; exporting ivory from the United Kingdom for sale or hire.
7. Clause 2 and clauses 6 to 9 set out exemptions to the prohibition for certain items.
8. Clauses 3 to 5 and clauses 10 and 11 provide for the compliance processes by which a person wishing to engage in the commercial use of an item under one of the exemptions must abide.
9. Clauses 12, 13 and 34 provide for a mixed regime of criminal and civil sanctions to be applied to those who have committed an offence under the Bill. Clause 13 gives effect to Schedule 1, which provides for a range of civil sanctions.
10. Clauses 14 to 27 make provision for enforcement, including the conferral powers on the police, customs officers, and accredited civilian officers to enable them to enforce the ivory ban. Clause 27 makes it an offence to, without reasonable excuse, intentionally obstruct an enforcement officer and provides a sanctions summary e.g. imprisonment for up to six months or a fine not exceeding level five of the standard scale (currently £5000) or both.
11. Clauses 28 to 32 make provision in relation to the retention, disposal and return of seized items, and for forfeiture by court order and appeals against such orders. Clause 33 relates to the forfeiture of items being imported or exported in breach of the ivory ban.
12. Clause 34 confers a power on the UK Secretary of State to amend the definition of ivory in the Bill to include ivory from any other animal or species listed in an Appendix to the CITES Regulations.
13. Clauses 35 to 42 make ancillary general provision.

Consultation on the Bill

14. The UK Government consulted on banning UK sales of ivory. The consultation ran from 6 October 2017 to 29 December 2017. Over 71,000 responses were received with 88% in favour of a ban on UK sales of ivory. The Scottish Government has not consulted separately in Scotland.

Financial Implications for Scotland

15. In the accompanying documents to the LCM the Scottish Government indicated that no financial implications for Scotland have been identified. In subsequent correspondence the Scottish Government states "The UK impact analysis estimates a net cost to business per year of £7.4m. Based on this estimate, costs to Scottish businesses might be around £700k per year, although it is likely that auction houses and antiques dealerships, the sector most likely to be affected, are more heavily concentrated in the London area than anywhere else in the UK."

Provisions that Relate to Scotland

16. All of the provisions of the Bill, as introduced, extend to Scotland, except for clause 19(7) and (8) and Schedule 2 which make provision in relation to search warrants in England, Wales and Northern Ireland.
17. The Scottish Government considers that the provisions of the Bill concerning the prohibition and regulation (including enforcement) of the import and export of ivory (originating from an endangered species under CITES) into and from Scotland for sale or hire (i.e. the dealings referred to in paragraphs (d) and (e) of clause 1(2)) relate to matters reserved under section C5 (import and export control) and Part 2 of schedule 5 of the Scotland Act 1998. Those provisions are therefore matters that could be provided for in an Act of the Scottish Parliament.
18. The Explanatory Notes for the Ivory Bill state "In so far as any provision of the Bill relates to the import or export of ivory items (described at clause 1(2)(d) and (e)), those provisions are a reserved matter. It is still under consideration as to whether any of the other provisions of the Bill are within the legislative competence of the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly."
19. With the exception of the provisions concerning the prohibition and regulation, including enforcement, of the dealings referred to paragraphs (d) and (e) of clause 1(2), the Scottish Government is of the view that the provisions of the Bill (in so far as they extend to Scotland) make provision for purposes within the legislative competence of the Scottish Parliament. This includes the provisions of the Bill concerning the prohibition and regulation (including enforcement) of other dealings (i.e. the dealings referred to in paragraphs (a) to (c) of clause 1(2)) and the various delegated powers conferred by the Bill on the UK Secretary of State to make further provision for such purposes.

20. The Bill, as introduced, does not confer functions on, or modify any functions of, the Scottish Ministers and the Scottish Government is of the view that the Bill, as drafted, does not include any provision which would alter the executive competence of the Scottish Ministers.

The Scottish Government's Position on Legislative Consent

21. The Scottish Government considers it would not be desirable to seek to legislate separately at this time for those provisions of this Bill which fall within the legislative competence of the Scottish Parliament. The LCM states: these provisions of the Bill will help to deliver the outcomes which the Scottish Government would wish to achieve in this area, and any separate provision is likely to take longer to deliver.
22. However, since no adjustments were made to the Bill, prior to its introduction, to take account of this devolved competence, the Scottish Government and UK Government are in the process of reviewing and agreeing amendments to the Bill to ensure that devolved interests are protected.
23. The Scottish Government has stated it is minded in principle to lodge a Legislative Consent Motion, but would not intend to do so until it is satisfied that devolved interests in relation to matters falling within the legislative competence of the Scottish Parliament have been reviewed and, if necessary, protected by means of amendments to the Bill agreed by the UK Government.

Scrutiny of the Legislative Consent Memorandum

24. The Cabinet Secretary for Environment, Climate Change and Land Reform laid the LCM in Parliament on 6 June 2018.
25. The Committee considered the LCM on 26 June 2018 and subsequently wrote to the Cabinet Secretary for Environment, Climate Change and Land Reform on [26 June](#), indicating that the Committee may wish her to appear before the Committee, but that this was dependent on her response to the Committee's questions. The Cabinet Secretary replied to the Committee's letter on [30 July](#).
26. The Committee considered the Cabinet Secretary's response at its meeting of 4 September. The Cabinet Secretary indicated that following discussions with DEFRA, the Scottish Government had instructed amendments to the Ivory Bill to take account of Scottish devolved interests. The Scottish Government advised that these amendments do not seek to amend policy, they are focused on the provisions for delegated powers. The Committee understands the amendments are due to be considered at the Lords report stage of the Bill, likely to take place in the week beginning 15 October 2018.
27. The Committee agreed it is content with the LCM and the information provided by the Scottish Government on the Bill. However, the Committee understands that the necessary amendments to the Bill to take account of Scottish devolved interests

(including the provisions which confer powers on the UK Secretary of State to make further provision) have yet to be agreed. The Committee notes the view of the Cabinet Secretary for Environment, Climate Change and Land Reform that the Scottish Government anticipates granting consent to the anticipated proposals and the Scottish Government does not anticipate a need for separate Scottish secondary legislation. The Committee understands that this judgement is subject to sight of the detail of the secondary legislation proposed by the Secretary of State.

28. The Committee welcomes the commitment from the Cabinet Secretary to write to the Committee to provide an update on the outcome of the discussions with the UK Government on the devolution aspects and when amendments have been laid and considered.

