

NMDC response to Government consultation on the ban of ivory sales

December 2017

1. About the NMDC

The National Museum Directors' Council represents the leaders of the UK's national collections and major regional museums. Our members are the national and major regional museums in England, Northern Ireland and Scotland, the British Library, the National Library of Scotland, the National Archives and Royal Botanic Gardens Kew. NMDC acts as an advocate on behalf of members and their collective priorities and provides them with a valuable forum for discussion and debate and an opportunity to share information and work collaboratively. While our members are funded by government, the NMDC is an independent, non-governmental organisation. For more information about NMDC and our activity see our website:

www.nationalmuseums.org.uk

2. Executive Summary

2.1 NMDC welcomes Government proposals to restrict sales of ivory that contribute to the continued poaching of elephants and would support the recommended policy option (2) for a total ban with carefully targeted exemptions.

2.2 The following response is restricted to areas of greatest commonality amongst NMDC members. Individual member museums will also respond to the consultation questions separately where they have further comments.

2.3 NMDC welcomes the proposed exemption for sales to and between museums, and importantly recognises that the ban will not affect loans between museums and other cultural organisations, or the touring of exhibitions. NMDC also welcomes the exclusion from the ban of any further restrictions on the display of ivory in museums or of the right to own, gift, bequeath or inherit ivory.

2.4 NMDC would support an exemption for items of historic, cultural or artistic significance, as long as strict criteria are met and sufficient method of enforcement is ensured, and would also support the exemptions for de minimis and musical instruments.

2.5 Care should be taken in defining a museum for the proposed museum exemption. Further conversation between Defra, DCMS, Arts Council England and equivalents in Scotland, Wales and Northern Ireland, and with sectoral organisations such as NMDC, the Museums Association and the Association of Independent Museums will be required to find a workable definition to use for purposes of enforcement.

3. Museum Exemption

3.1 NMDC supports the exemption for museums. Ivory has played a major part in artistic creation in Europe, Asia and Africa for millennia, and this must not be erased or forgotten. Exempting museums from the ban will ensure there is no attempt to 'erase' history while enabling museums to operate as a haven for historically important ivories safeguarding their long-term preservation.

3.2 Museum collections across the UK contain many thousands of items composed of ivory or with ivory content. Items that may contain ivory include, but are not limited to: tusks and skeletons, antique tools, Arts and Crafts and Symbolic sculpture, astronomical instruments, boxes, cabinets, cutlery handles, edged weapons, historic arms such as ceremonial firearms, historic games, historical musical instruments, horological instruments, jewellery, medieval objects for toiletry and personal devotion, miniatures, navigational instruments, netsuke, Objets d' Art, relics, reliefs, scientific instruments, ship models, snuff rasps, statuettes and tankards.

3.3 Though most collection records identify the material an item is composed of, some may not be explicit in identifying the species of ivory. It is therefore difficult to make a concise estimate of the total amount of elephant ivory in the UK's museum collections. It is also possible that not all items in a museum collection have been catalogued, as the cataloguing process is lengthy and continually ongoing.

3.4 Methods of identifying materials and sources have also improved drastically over time, so more recently acquired items may be subject to more extensive testing than some items which have been in the collections for many years. Museum acquisitions also adhere to strict measures in keeping with the CITES agreement and the EU Wildlife Trade Regulations.

3.5. As museums already comply with existing laws regarding the sale of ivory, use of the current 1947 date as a cut off is already well established. Maintaining this date would ensure continuity of practice and procedure, and avoid confusion for future implementation of the ban.

3.6 The legislation developed to enforce the ban should be explicit in identifying the type of ivory the ban will apply to. Although many tusk-bearing mammals are protected by CITES, this is not the case for all of them, the most obvious being the wild boar (*Sus scrofa*) whose tusks are still commonly used to produce small amounts of ivory, used for artistic guns or knives. The consultation paper refers more than once to banning 'all ivory', so should clarify that the ban refers to elephant ivory.

3.7 While extant species are covered by CITES, a distinction should be made regarding extinct species of elephant such as mammoths (*Mammuthus*), mastodons (*Mammut*) or related taxa. Mammoth tusks are regularly found at UK palaeontological sites and most natural history museums would actively seek to acquire them. Therefore, the ban should apply specifically to extant species of the genera *Elephas* (Asian elephants) and *Loxodonta* (African elephants), and not to extinct species of elephant such as mammoth.

3.8 It is not normal practice for museums to sell objects to each other; rather items are gifted, transferred or placed on long-term loan to maintain public benefit and

integrity. Any definition of 'trade' or 'export' in the ban should not impact on the museum sectors' ability to 'export' culture, in keeping with DCMS, Foreign Office and the GREAT campaigns' international ambitions. Following implementation of the US law, museums are increasingly reluctant to lend to US institutions for fear of loan objects being seized. Government should therefore ensure that the legislation does not impact on the touring of exhibitions and museum loans, where these may be seen as constituting 'commercial activities'.

3.9 In the first version of the USA ban, there was a ban on 'ticketed exhibitions' as they were considered to be commercial ventures. The second version includes a proviso for 'travelling exhibitions', although the status of individual loans to an exhibition is somewhat unclear. Similarly, the provisional version of the French legislation included a complete ban on the transport of ivory, including between two places under the same ownership. This has been removed for the present, but might be reinstated. This would affect the transport of ivory between a museum and its collections store.

3.10 When developing legislation, within the museum exemption, the definition of a museum must be simple enough for the law to be easily applied. While there are many definitions of a museum, there is no single legislative definition or chartered body to which all museums are required to meet or join. Possible solutions could be to use the Museums Association definition from 1998 which says: 'Museums enable people to explore collections for inspiration, learning and enjoyment. They are institutions that collect, safeguard and make accessible artefacts and specimens, which they hold in trust for society.' This definition includes art galleries with collections of works of art, as well as museums with historical collections of objects.

3.11 However we recognise that for the purposes of law enforcement, more definitive guidance would likely be necessary. A possible solution could be to apply to museums which are accredited through the Accreditation Scheme managed as a partnership between Arts Council England, the Welsh Government, Museums Galleries Scotland and Northern Ireland Museums Council. Accreditation is an accepted national standard of exemplary museum practice, however it is voluntary, non-legislative, and some museums opt not to seek accreditation for various reasons, other accredited museums exit from the scheme for a certain time period and rejoin at a later date - such instances may mean that were this scheme to be used, a compliant museum may suddenly become uncompliant.

3.12 In order for a workable definition to be identified, we recommend Defra consults further with DCMS and the Arts Council England and equivalents in Scotland, Northern Ireland and Wales, and includes the NMDC, the Museums Association and the Association for Independent Museums in these further conversations.

4. Historic, cultural or artistic significance exemption

4.1 There is an expectation that the ban of sales would affect private collectors, many of whom donate or bequeath their collections to museums. This may result in the risk of objects of historic, cultural, scientific or historical value being exported from the UK for sale abroad. This may adversely affect museums' ability to collect key objects in the future. The exemption for items which are historically, culturally or

artistically significant would enable museums access to the most important works of art and continue to draw on private collections to enhance their collections, exhibitions and education programmes.

4.2 A huge number of objects and works of art within the national and regional collections were bequeathed as gifts to the nation, and many of the nation's great museums own items that originated from the collections of private collectors, either via donation or sale.

4.3 For example the Wallace Collection, which was bequeathed to the Nation by Lady Wallace in 1897 and opened to the public in 1900 illustrates the importance of private collections in providing education and inspiration to the British public. Highlights of its ivory sculpture collection include medieval religious diptychs and baroque carved reliefs, the latter made by leading European artists, such as Ignaz Elhafen, Dominikus Stainhart, Gerard van Opstal and Frans van Bossuit. Van Bossuit was a celebrated Flemish artist who specialised in ivory sculpture and no works by him in other materials are known. These carvings are considered masterpieces of European small-scale sculpture; not only of great artistic value but also of historical significance as they often belonged to important patrons and collectors.

4.5 Portrait miniatures are a key component of the National Portrait Gallery's collection. The majority are miniatures from the eighteenth and nineteenth centuries, where watercolours have been applied directly to ivory. Sometimes ivory exists within the frame of the miniature itself, but in all cases, ivory is integral to the object. One item in the collection from around 1808, when analysed, revealed a composition of just over 10% by weight. Both the de-minimis, and the artistic, cultural and historic exemptions should be carefully measured to ensure that items such as miniatures are included in the exemption.

4.6 Museums, particularly those with natural history collections may wish to acquire raw ivory in the form of skulls or complete skeletons with tusks. Though most material would come by way of donations, it is foreseeable that a museum may wish to acquire a whole elephant skeleton including tusks to add to the collection.

4.7 NMDC supports the exemption for works of historic, cultural or artistic significance, as long as the definition of the works excluded is sufficient to ensure the purpose of the ban is achieved, i.e. that the continued sale of un-worked and crude ivory carvings which fuels the illegal trade is suppressed.

4.8 The suggestion of a 'pool' of experts able to identify objects of historic, cultural or artistic significance and certify them as such seems the most sensible solution to implementing this exemption. If such a pool or panel is established we would strongly advocate for the inclusion of museum experts to sit within it. If a workable de minimis exemption threshold is established then items requiring a referral to a panel or pool of experts to judge cultural, artistic or historical significance would potentially be more manageable for the Government and enforcement agencies to work with.

4.9 It is important to highlight that additions to museum collections already have to meet strict criteria, whether it is criteria developed by the museum itself through a collections policy or by external expert panels such as Acceptance in Lieu which

enables taxpayers to transfer important works of art and heritage objects into public ownership while paying Inheritance Tax.

4.10 Museums only purchase items that are of historic, cultural or artistic significance, of local or national relevance, or for educational, scientific or research purposes. In anticipation that the ivory ban may prompt a 'surrender' of certain items from private individuals or collections, it should be noted that only items deemed 'museum quality' would make their way into museums, and therefore consideration should be made of where to hold or dispose of unwanted items.

5. Musical Instrument Exemption

5.1 NMDC supports the exemption for musical instruments and would support the call from music industry representatives to use 1975 as the back-stop date for this exemption. However, we do recognise that as legal trade continued until 1989, there may be difficulties in practical application of this date.

5.2 Since opening in 1901, the Horniman Museum and Gardens in south London has provided an inspiring introduction to life on earth. The quality, diversity and beauty of the objects in the collection are a testament to the technical, aesthetic and practical skills of people throughout the world. The Horniman's collection of musical instruments is Designated and one of the most comprehensive in world. The museum has over 9,000 objects which are interpreted in a broad musical and cultural context, and aims to acquire sound and video recordings as well as instrument makers' and collectors' archives. Many of the instruments have ivory parts, particularly collections of keyboards, and the museum continues to collect in this area.

In case of any queries regarding this response or if you require any further information please contact Kathryn Simpson, Policy and Projects Manager, National Museum Directors' Council: kathryn.simpson@nationalmuseums.org.uk / 020 7942 4076.