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HM Government of Gibraltar

Command Paper on a draft Bill to make provision for the prohibition of dealing in ivory, save for in certain circumstances; and for connected purposes.

**Presented to Parliament by
the Minister with responsibility for the Environment.**

by Command of Her Majesty

26th February 2019

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to command.papers@gibraltar.gov.gi or delivered to –

Command Papers Consultation c/o Karl Tonna, Ministry of Health Care and Justice, Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar, no later than 12th March 2019.

Any comments received later than 12th March 2019 may not be taken into account for the purposes of the relevant consultation.

BILL

FOR

AN ACT to make provision for the prohibition of dealing in ivory, save for in certain circumstances; and for connected purposes

ENACTED by the Legislature of Gibraltar.

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**PART I
PRELIMINARY**

Title.

1. This Act may be cited as the Ivory Act 2019.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation.

- 3.(1) In this Act, unless the context otherwise requires –

“authorised person” has the meaning given by section 25(2);

“customs officer” means an officer of Her Majesty’s Customs Gibraltar as defined in section 2 of the Imports and Exports Act 1986.

“dealing” has the meaning given by section 4(2) to (4);

“exemption certificate” has the meaning given by section 5(1);

“ivory” has the meaning given by section 40;

“justice” means a justice of the peace;

“Minister” means the Minister with responsibility for the Environment;

“police officer” means a member of the Royal Gibraltar Police as defined in section 2 of the Police Act 2006.

“pre-1918”, “pre-1947” and “pre-1975” are to be read in accordance with subsections (2) and (3);

“premises” has the meaning given by section 20(7);

“prohibition” means the prohibition in section 4;

“relevant evidence” has the meaning given by 17(4);

“relevant offence” has the meaning given by 17(4);

“Scientific Authority” means the scientific authority established under section 4(1) of the Endangered Species Act 1990.

“search warrant” means a warrant under section 20;

“vessel” is to be read in accordance with subsection (4).

(2) An item that is made of ivory, or has ivory in it, is “pre-1918”, “pre-1947” or “pre-1975” if the item was made before the relevant date (see subsection (3)) and either—

- (a) no ivory was added to the item on or after the relevant date, or
- (b) any ivory added to the item on or after the relevant date—
 - (i) was taken from its animal source before 1 January 1975, and

- (ii) was added to the item for the purpose of restoring it.
- (3) The “relevant date” is—
 - (a) 1 January 1918 for a pre-1918 item;
 - (b) 3 March 1947 for a pre-1947 item;
 - (c) 1 January 1975 for a pre-1975 item.
- (4) A reference to a vessel includes a reference to—
 - (a) a ship or boat or any other description of vessel used in navigation, and
 - (b) a hovercraft, submersible craft or other floating craft, but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed.

PART II PROHIBITION

Prohibition on dealing in ivory.

- 4.(1) Dealing in ivory is prohibited.
- (2) “Dealing” in ivory means—
 - (a) buying, selling or hiring it;
 - (b) offering or arranging to buy, sell or hire it;

- (c) keeping it for sale or hire;
 - (d) exporting it from Gibraltar for sale or hire;
 - (e) importing it into Gibraltar for sale or hire.
- (3) For the purposes of this section—
- (a) buying includes acquiring for valuable consideration;
 - (b) selling includes disposing of for valuable consideration;
 - (c) offering includes advertising and inviting to treat.
- (4) In subsection (2)—
- (a) a reference in paragraph (b) to buying or hiring ivory does not include buying ivory, or hiring it as the borrower, outside Gibraltar;
 - (b) a reference in paragraph (b) or (c) to selling or hiring ivory includes selling ivory, or hiring it as the lender, outside Gibraltar.
- (5) In this section “ivory” includes—
- (a) an item made of ivory;
 - (b) an item that has ivory in it.
- (6) Sections 5 and 9 to 12 set out exceptions to the prohibition.

**PART III
EXEMPTIONS**

Exemption for outstandingly valuable and important pre-1918 items

Pre-1918 items of outstanding artistic etc value and importance.

5.(1) An item that is made of ivory, or has ivory in it, is exempt from the prohibition if—

- (a) the Minister has issued a certificate under this section (an “exemption certificate”), and
- (b) the certificate has not been revoked under section 7(3). This is subject to section 7(7).

(2) The Minister may issue an exemption certificate for an item only if satisfied that—

- (a) the item is pre-1918, and
- (b) the item is of outstandingly high artistic, cultural or historical value.

(3) The following matters are to be taken into account in considering whether the condition in paragraph (b) of subsection (2) is satisfied in the case of a particular item—

- (a) the rarity of the item;
- (b) the extent to which the item is an important example of its type;

(c) any other matters specified in guidance issued by the Minister.

(4) An exemption certificate for an item may be issued only on the application of the owner of the item.

(5) The Scientific Authority shall provide the Minister with advice on applications for exemption certificates.

Applications for exemption certificates.

6.(1) A person applying for an exemption certificate for an item must—

- (a) give the name and address of the owner of the item,
- (b) provide a description of the item and of any distinguishing features that it has,
- (c) provide a photograph of the item showing any such features,
- (d) make a declaration that, in the applicant's opinion, the item satisfies the conditions in paragraphs (a) and (b) of section 5(2),
- (e) provide an explanation as to why the applicant is of that opinion,
- (f) provide information about any dealing in the item that is expected to take place,

- (g) provide any other information specified in guidance issued by the Minister, and
- (h) pay to the Minister any fee prescribed by regulations made by the Minister.

(2) The Minister must refer an application for an exemption certificate to the Scientific Authority if satisfied that—

- (a) the applicant has complied with subsection (1), and
- (b) the item is not one that clearly fails to satisfy the conditions in paragraphs (a) and (b) of section 5(2).

Otherwise the Minister must refuse the application and inform the applicant why it has been refused.

(3) Where an application is referred to the Scientific Authority under subsection (2), an individual nominated by the Scientific Authority (“the assessor”) must—

- (a) inspect and assess the item,
- (b) notify the Minister whether or not, in the assessor’s opinion, the item satisfies the conditions in paragraphs (a) and (b) of section 5(2), and
- (c) notify the Minister of the assessor’s reasons for forming that opinion.

(4) The Scientific Authority may nominate an individual under subsection (3) only with the individual’s consent.

(5) The Minister must reimburse the reasonable costs of the Scientific Authority or the assessor in dealing with an application referred under subsection (2).

(6) Having considered the assessor's opinion, the Minister—

- (a) must grant the application for an exemption certificate if the Minister is of the opinion that the item satisfies the conditions in paragraphs (a) and (b) of section 5(2);
- (b) otherwise, must refuse the application and inform the applicant why it has been refused.

(7) If the application is granted, the Minister must provide the applicant with an exemption certificate.

Further provision about exemption certificates.

7.(1) An exemption certificate must—

- (a) contain a unique number (or combination of letters and figures);
- (b) contain enough information to identify (so far as possible) the item to which it relates.

(2) Where an exemption certificate has been issued for an item and—

- (a) the owner of the item becomes aware that any relevant information relating to the item is inaccurate or incomplete, or

(b) any such information becomes inaccurate or incomplete, the owner must notify the Minister accordingly and must provide the Minister with the necessary information to make good the inaccuracy or incompleteness.

(3) The Minister may revoke an exemption certificate if it appears to the Minister that—

(a) the item concerned does not satisfy the conditions in paragraphs (a) and (b) of section 5(2), or

(b) the owner of the item has failed to comply with subsection (2) above.

(4) The Minister may issue a revised exemption certificate if it appears to the Minister that any relevant information relating to the item concerned is, or has become, inaccurate or incomplete.

(5) The Minister may provide a person with a new exemption certificate (a “replacement certificate”) if—

(a) an exemption certificate has been lost,

(b) a person acquires an item in respect of which an exemption certificate has been issued but is unable to obtain that certificate from the previous owner, or

(c) it seems to the Minister to be appropriate for any other reason to provide a replacement certificate.

(6) Section 6 does not apply to an application for a replacement certificate.

(7) Where a person (P) deals in an item in respect of which an exemption certificate was issued to a different person, the exemption under section 5 applies only if—

- (a) P has taken possession of the certificate or has been provided with a replacement certificate in respect of the item, and
- (b) P has provided the Minister with any specified information and has paid to the Minister any fee prescribed by regulations made by the Minister.

(8) The Minister may require or allow anything that a person is required to do under section 6 or this section to be done in a form or manner specified in guidance issued by the Minister.

(9) In this section—

“information” includes any declaration or photograph;

“relevant information” means any information given to the Minister under section 6 or this section;

“specified information” means information specified in guidance issued by the Minister.

Fresh applications and appeals.

8.(1) Where an application for an exemption certificate is refused or an exemption certificate is revoked, the owner of the item concerned—

- (a) may make a fresh application;

(b) may appeal against the refusal or revocation.

(2) A fee prescribed under section 6(1)(h) must be the same for a fresh application under subsection (1)(a) as for a first application.

(3) An appeal under subsection (1)(b) may be on the ground—

- (a) that the decision was based on an error of fact,
- (b) that the decision was wrong in law, or
- (c) that the decision was unreasonable,

or on any other grounds that are prescribed by regulations made by the Minister.

(4) The Minister may by regulations make further provision about appeals under subsection (1)(b).

(5) The provision that may be made under subsection (4) includes (in particular)—

- (a) provision about time periods within which appeals are to be brought and determined;
- (b) provision about the persons by whom appeals are to be determined;
- (c) provision about written representations;
- (d) provision as to the orders that may be made on an appeal;

- (e) provision requiring an appellant to pay a fee of a prescribed amount.

Other exemptions

Pre-1918 portrait miniature.

9.(1) An item that has ivory in it is exempt from the prohibition if—

- (a) the item is a pre-1918 portrait miniature with a surface area of no more than 320 cm², and
- (b) it is registered under section 13.

(2) For the purposes of subsection (1)(a) the “surface area” of a portrait miniature does not include any part consisting of or covered by a frame.

Pre-1947 items with low ivory content.

10.(1) An item that has ivory in it is exempt from the prohibition if—

- (a) the item is pre-1947,
- (b) all the ivory in the item is integral to it,
- (c) the volume of ivory in the item is less than 10% of the total volume of the material of which the item is made, and
- (d) the item is registered under section 13.

(2) For the purposes of subsection (1)(b) ivory is “integral” to an item if it could not be removed from the item without difficulty or without damaging the item.

Pre-1975 musical instruments.

11.(1) An item that has ivory in it is exempt from the prohibition if—

- (a) the item is a pre-1975 musical instrument,
- (b) the volume of ivory in the instrument is less than 20% of the total volume of the material of which the instrument is made, and
- (c) the instrument is registered under section 13.

(2) In this section “musical instrument”—

- (a) does not include anything that, although capable of being played as a musical instrument, was not made primarily for that purpose;
- (b) includes a bow, plectrum or other thing made for playing a musical instrument.

Acquisitions by qualifying museums.

12.(1) Dealing in an ivory item to which this section applies is exempt from the prohibition if or to the extent that the dealing—

- (a) is a sale to, or a purchase or hire by, a qualifying museum, or

(b) is done for the purpose of such a sale, purchase or hire.

(2) This section applies to an ivory item that—

(a) was owned by a qualifying museum immediately before the relevant time, or

(b) is registered under section 13.

(3) A museum is a “qualifying museum” if it is appointed as such by the Minister by notice in the Gazette.

(4) In this section—

“ivory item” means—

(a) an item made of ivory, or

(b) an item that has ivory in it,

but does not include an item consisting only of unworked ivory;

“purchase” includes an acquisition for valuable consideration;

“the relevant time” means the time of any activity that constitutes dealing in the ivory;

“sale” includes a disposal for valuable consideration (and “sell” is to be read accordingly).

Registration.

13.(1) The Minister must register an item under this section if the owner of the item—

- (a) applies for it to be registered, giving the owner's name and address,
- (b) provides a description of the item and of any distinguishing features that it has,
- (c) provides a photograph of the item showing any such features,
- (d) in the case of an exemption under section 9, 10, or 11—
 - i. makes a declaration that the item satisfies the relevant exemption conditions, and
 - ii. provides an explanation of how the item satisfies those conditions,
- (e) provides information about any dealing in the item that is expected to take place,
- (f) provides any other information specified in guidance issued by the Minister, and
- (g) pays to the Minister any fee prescribed by regulations made by the Minister.

(2) “The relevant exemption conditions” are—

- (a) in the case of section 9, the condition in subsection (1)(a) of that section;

(b) in the case of section 10, the conditions in subsection (1)(a) to (c) of that section;

(c) in the case of section 11, the conditions in subsection (1)(a) and (b) of that section.

(3) Regulations under subsection (1)(g) may provide for exemptions.

(4) Where an item is registered in response to an application under this section, the Minister must provide the applicant with written confirmation of the registration. The confirmation must

(a) identify the owner of the item;

(b) contain a unique number (or combination of letters and figures);

(c) contain enough information to identify (so far as possible) the item to which it relates.

(5) The Minister must keep a record of information (including photographs) provided to the Minister under this section or section 14.

Further provision about registration.

14.(1) The registration of an item under section 13 ceases to be valid if the ownership of the item changes (but the new owner may make a fresh application for registration).

(2) Where an item is registered under section 13 and—

- (a) the owner of the item becomes aware that any relevant information relating to the item is inaccurate or incomplete, or
- (b) any such information becomes inaccurate or incomplete, the owner must notify the Minister accordingly and must provide the Minister with the necessary information to make good the inaccuracy or incompleteness.

(3) The Minister may cancel a registration under section 13 if it appears to the Minister that—

- (a) the item concerned does not satisfy the relevant exemption conditions,
- (b) the registration has become invalid because of subsection (1), or
- (c) the owner of the item has failed to comply with subsection (2).

(4) The Minister may amend a registration under section 13, or anything recorded under section 13(5), if it appears to the Minister that any relevant information relating to the registered item is, or has become, inaccurate or incomplete.

(5) The Minister may require or allow anything that a person is required to do under section 13 or this section to be done in a form or manner specified in guidance issued by the Minister.

(6) In this section—

“information” includes any declaration or photograph;

“relevant information” means any information given to the Minister under section 13 or this section;

“the relevant exemption conditions” has the meaning given by section 13(2).

PART IV ENFORCEMENT

Criminal and civil sanctions

Offence of breaching the prohibition or causing or facilitating a breach.

15.(1) It is an offence—

- (a) to breach the prohibition,
- (b) to cause the prohibition to be breached, or
- (c) to facilitate a breach of the prohibition.

(2) A person commits an offence under this section in relation to an item only if the person knows or suspects, or ought to know or suspect, that the item is ivory, is made of ivory or (as the case may be) has ivory in it.

(3) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(4) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine (or both).

Civil sanctions.

16.(1) Schedule 1 (civil sanctions) has effect.

Powers of entry, search and seizure

Power to stop and search persons.

17.(1) This section applies where a police or customs officer has reasonable grounds to suspect that a person has committed, or is committing, a relevant offence.

(2) The officer may—

- (a) search the person for relevant evidence;
- (b) stop and detain the person for the purposes of the search.

(3) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).

(4) In this Act—

“relevant evidence” means evidence that a relevant offence has been committed;

“relevant offence” means—

- (a) an offence in connection with an exemption certificate or with registration under section 13, or
- (b) an offence under section 15.

Power to stop and search vehicles.

18.(1) This section applies where—

- (a) a police or customs officer has reasonable grounds to suspect that there is relevant evidence in a vehicle, and
- (b) the vehicle is not a dwelling.

(2) The officer may at any time—

- (a) enter the vehicle and search it for relevant evidence;
- (b) stop and detain the vehicle for the purposes of entering and searching it.

(3) Where—

- (a) a police or customs officer has stopped a vehicle under this section, and
- (b) the officer considers that it would be impracticable to search the vehicle in the place where it has stopped,

the officer may require the vehicle to be taken to another place to enable the vehicle to be searched.

- (4) A police or customs officer may require—
- (a) any person travelling in a vehicle, or
 - (b) the registered keeper of a vehicle, to provide any help and facilities, with respect to matters under the person's control, that the officer considers would facilitate the exercise of a power conferred by this section.
- (5) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).
- (6) In this section “vehicle” does not include any vessel or aircraft

Power to board and search vessels and aircraft.

- 19.(1) This section applies where—
- (a) a police or customs officer has reasonable grounds to suspect that there is relevant evidence in or on any vessel or aircraft, and
 - (b) the vessel or aircraft is not a dwelling.
- (2) The officer may at any time—
- (a) board the vessel or aircraft;

(b) search it for relevant evidence.

(3) For the purposes of exercising the power conferred by subsection (2), the officer may require a vessel or aircraft—

(a) to stop, or

(b) to do anything else that would facilitate the boarding of that or any other vessel or aircraft.

(4) A police or customs officer who has boarded a vessel or aircraft may, for the purposes of disembarking from the vessel or aircraft, require that or any other vessel or aircraft—

(a) to stop, or

(b) to do anything else that would enable the officer to disembark from the vessel or aircraft.

(5) A police or customs officer may require any person on board a vessel or aircraft to provide any help and facilities, with respect to matters under that person's control, that the officer considers would facilitate the exercise of a power conferred by this section.

(6) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).

Warrants authorising entry and search of premises.

20.(1) Where a justice is satisfied that the requirements in subsection (5) are met in relation to any premises, the justice may

issue a warrant (a “search warrant”) authorising a police or customs officer—

- (a) to enter the premises;
- (b) to search them for relevant evidence.

(2) A search warrant may be issued only on the application of a police or customs officer.

(3) A police or customs officer may apply for a search warrant only if the officer is a senior officer or is authorised by a senior officer to make the application. In this subsection “senior officer” means—

- (a) an officer of at least the rank of inspector; or
- (b) a customs officer of at least the grade of senior customs officer;

(4) A search warrant may be either—

- (a) a warrant that relates only to premises specified in the warrant (a “specific-premises warrant”), or
- (b) a warrant that relates to any premises occupied or controlled by a person specified in the warrant (an “all-premises warrant”).

(5) The requirements of this subsection are met in relation to premises if there are reasonable grounds to suspect that—

- (a) there are items on the premises that are relevant evidence, and

(b) in a case where the premises are specified in the application, any of the conditions in subsection (6) is met.

(6) The conditions referred to in subsection (5)(b) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is not practicable to communicate with any person entitled to grant access to the items;
- (c) that entry to the premises is unlikely to be granted unless a warrant is produced;
- (d) that the purpose of entry may be frustrated or seriously prejudiced unless a police or customs officer arriving at the premises can secure immediate entry to them.

(7) In this Act “premises” includes any place and, in particular, includes—

- (a) a vehicle, vessel or aircraft;
- (b) a tent or moveable structure.

Further provision about search warrants.

21.(1) An application for a search warrant must be supported by information on oath.

(2) A person applying for a search warrant must answer on oath any question that the justice hearing the application asks the person.

(3) A search warrant may be executed by any police or customs officer.

(4) A search warrant may authorise persons to accompany any police or customs officer who is executing it if the justice issuing the warrant is satisfied that their presence is likely to be helpful to the search.

(5) A person authorised under subsection (4) to accompany a police or customs officer may exercise any power conferred by sections 20 to 28 that the officer may exercise as a result of the warrant. But the person may exercise such a power only in the company of, and under the supervision of, a police or customs officer.

(6) Unless giving notice would be likely to frustrate or seriously prejudice the purpose of a search—

- (a) reasonable efforts must be made to give notice of an application for a search warrant to persons who might be affected by it;
- (b) a search warrant does not authorise entry to premises unless 48 hours' notice of the intended entry is given to the occupier or some other appropriate person who is responsible for the premises.

(7) Schedule 2 contains further provision about—

- (a) applications for search warrants;

(b) search warrants issued.

(8) An entry on or search of premises under a search warrant is unlawful if it does not comply with the provisions of Part 3 of that Schedule (execution of search warrants) .

Powers of examination etc.

22.(1) This section applies where a police or customs officer is exercising a power of search conferred by section 18, 19 or 20 in relation to any premises.

(2) The officer may carry out any examination or measurement of anything on the premises that the officer thinks is or may be relevant evidence.

(3) The officer may break open any container or other locked thing if satisfied that it is necessary to do so for the purpose of—

(a) determining whether a relevant offence has been committed, or

(b) investigating a relevant offence.

(4) The officer may require any person on the premises to provide any help or facilities, with respect to matters under the person's control, that the officer considers would facilitate the exercise of—

(a) a power of search conferred on the officer by section 18, 19 or 20, or

(b) a power conferred on the officer by this section.

(5) Nothing in this section confers any power to search a person.

Power to require production of documents etc.

23.(1) This section applies where a police or customs officer is exercising a power of search conferred by section 18, 19 or 20 in relation to any premises.

(2) The officer may require any person on the premises to produce any document or record in the person's possession or control that the officer thinks is or is likely to be relevant to—

- (a) the question whether a relevant offence has been committed, or
- (b) the investigation of a relevant offence.

(3) A reference in this section to the production of a document includes a reference to the production of—

- (a) a hard copy of information recorded otherwise than in hard copy form, or
- (b) information in a form from which a hard copy can be readily obtained.

(4) For the purposes of this section—

- (a) information is recorded in “hard copy form” if it is recorded in a paper copy or similar form capable of being read (and references to “hard copy” have a corresponding meaning);

- (b) information can be read only if—
 - (i) it can be read with the naked eye, or
 - (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

Powers of seizure etc.

24.(1) A police or customs officer who is exercising the power of search conferred by section 17 may seize and detain anything found in the course of the search.

(2) A police or customs officer who is exercising a power of search conferred by section 18, 19 or 20 in relation to any premises may—

- (a) seize and detain or remove any item found on the premises;
- (b) take copies of or extracts from any document or record found on the premises.

(3) An officer to whom a document or record has been produced in response to a requirement imposed under section 23 may—

- (a) seize and detain or remove that document or record;
- (b) take copies of or extracts from that document or record

In this subsection “document” includes anything falling within paragraph (a) or (b) of section 23(3).

- (4) The powers under this section may be exercised only—
 - (a) for the purposes of determining whether a relevant offence has been committed, or
 - (b) in relation to an item that the officer concerned reasonably believes to be relevant evidence.
- (5) Nothing in this section confers power on an officer to seize an item that is an excluded item.

Authorised person- powers of entry.

- 25.(1) An authorised person may on giving reasonable notice—
 - (a) enter premises that the authorised person reasonably thinks may be used in connection with dealing in ivory (including any item that is made of ivory or has ivory in it) for the purpose of assessing compliance with the provisions of this Act, or
 - (b) enter premises on which the officer has reasonable grounds to suspect that there is relevant evidence.
- (2) In this Act “authorised person” means any person representing the Department of the Environment, and any person who is authorised by the Minister by notice in the Gazette for the purposes of this Act.
- (3) A notice under this section must—

- (a) be in writing,
- (b) be given to the occupier of the premises,
- (c) set out the purpose of the proposed entry, and
- (d) explain the effect of section 31 (offences of obstruction).

(4) The requirement in subsection (3)(b) may be complied with by delivering or leaving the notice at the premises or sending it there by post.

(5) This section—

- (a) does not authorise the entry into premises used wholly or mainly as a dwelling;
- (b) authorises entry only at a reasonable time.

Other powers of authorised persons.

26.(1) This section applies where—

- (a) an authorised person enters premises under section 25, or
- (b) an authorised person who is lawfully on premises has reasonable grounds to suspect that there is relevant evidence on those premises.

(2) The authorised person may carry out any examination or measurement of anything on the premises that the authorised person thinks is or may be relevant evidence.

(3) The authorised person may require any person on the premises to produce any document or record in the person's possession or control that the officer thinks is or is likely to be relevant to—

- (a) the question whether a relevant offence has been committed, or
- (b) the investigation of a relevant offence.

(4) The authorised person may—

- (a) seize and detain or remove any item found on the premises;
- (b) take copies of or extracts from any document or record found on the premises.

(5) An authorised person to whom a document or record has been produced in response to a requirement under subsection (3) may—

- (a) seize and detain or remove the document or record;
- (b) take copies of or extracts from the document or record

(6) The powers under subsections (4) and (5) may be exercised only—

- (a) for the purposes of determining whether a relevant offence has been committed, or
- (b) in relation to an item that the authorised person concerned reasonably believes to be relevant evidence.

(7) The authorised person may require any person on the premises to provide any help or facilities, with respect to matters under the person’s control, that the authorised person considers would facilitate the exercise of a power conferred on the authorised person by this section.

(8) This section— .

- (a) does not confer power to search a person;
- (b) does not confer power to seize an item that is an excluded item.

(9) Subsections (3) and (4) of section 23 apply for the purposes of this section as they apply for the purposes of that one.

Excluded items.

27.(1) This section sets out what is meant by “excluded items” for the purposes of sections 24 and 26.

- (2) “Excluded items” means—
 - (a) items subject to legal privilege, within the meaning of section 14 of the Criminal Procedure and Evidence Act 2011;

- (b) excluded material within the meaning of section 15 of that Act;
- (c) special procedure material within the meaning of section 18 of that Act.

Further provision about seizure under section 24 or 26.

28.(1) Where—

- (a) any items that an authorised person wishes to seize and remove are in a container, and
- (b) the authorised person reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose, any power to seize and remove the items conferred on the authorised person by section 24 or 26 includes power to seize and remove the container.

(2) If a container is seized under this section, reasonable efforts must be made to return it to—

- (a) the person from whom it was seized, or
- (b) (if different) a person to whom it belongs.

(3) Subsection (2) does not apply—

- (a) if the container appears to be of negligible value,
- (b) if it is not practicable for the container to be returned,
or

- (c) while the container is or may be needed for use as evidence at a trial for an offence.

(4) If, in the opinion of the authorised person concerned, it is not for the time being practicable for the authorised person to seize and remove any item, the authorised person may require—

- (a) the person from whom the item is to be seized, or
- (b) where the authorised person is exercising a power of search conferred by sections 18 to 20 in relation to any premises, any person on the premises, to secure that the item is not removed or otherwise interfered with until the authorised person is able to seize and remove it.

Notices and records in relation to seized items.

29.(1) This section applies where an authorised person, or a person accompanying an authorised person, seizes an item under section 24 or 26.

(2) When the item is seized, the authorised person must make reasonable efforts to give a written notice to each of the following persons—

- (a) in the case of an item seized from a person, the person from whom the item was seized;
- (b) in the case of an item seized from premises, any person who appears to the authorised person to be the occupier of the premises or otherwise to be in charge of the premises;

- (c) if the authorised person thinks that the item may belong to any person not falling within paragraph (a) or (b), that other person. A person falling within any of paragraphs (a) to (c) is referred to in this section as an “affected person”.

(3) If—

- (a) the item is seized from premises, and
- (b) at the time of the seizure it is not reasonably practicable to give a notice to an affected person, the authorised person must leave a copy of the notice in a prominent place on the premises.

(4) The notice must—

- (a) state what has been seized and the reason for its seizure;
- (b) specify any offence that the authorised person suspects has been committed;
- (c) explain the effect of sections 32, 33 and 35.

(5) The authorised person must make a record of what has been seized.

(6) If a person who appears to the authorised person concerned to be an affected person asks for a copy of that record, the authorised person must provide a copy of it to that person within a reasonable time.

Powers of entry, search and seizure- supplementary provision.

30.(1) An authorised person who is exercising, or is about to exercise, a power conferred by section 17, 18, 19 or 25 must—

- (a) give his name, and
- (b) if not an officer in uniform, produce documentary evidence that he is authorised to exercise the power, if asked to do so by a person entitled to make the request.

(2) The persons entitled to make the request are—

- (a) in the case of a power exercisable in relation to an individual, that individual;
- (b) in the case of a power exercisable in relation to a vehicle, vessel or aircraft, a person in charge of that vehicle, vessel or aircraft;
- (c) in the case of a power exercisable in relation to premises, an occupier of those premises who is on the premises.

(3) An authorised person need not comply with subsection (1) if it is not reasonably practicable to do so.

(4) An authorised person may use reasonable force, if necessary, for the purpose of exercising a power conferred on the officer by sections 20 to 28.

(5) A person authorised under section 21(4) to accompany an authorised person may use reasonable force, if necessary, for the purpose of exercising a power conferred by sections 20 to 28.

(6) The powers conferred on an authorised person by any of sections 17 to 28 do not affect any powers exercisable by the authorised person apart from those sections.

Offences of obstruction etc.

31.(1) A person commits an offence if, without reasonable excuse, the person intentionally obstructs an officer or authorised person in the performance of any of their functions under sections 17 to 28.

(2) A person commits an offence if—

- (a) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by an officer or authorised person in the exercise of a power conferred by sections 18 to 28, or
- (b) the person prevents another person from complying with any such requirement or direction.

(3) A reference in this section to an officer includes a reference to a person authorised under section 21(4) to accompany a police or customs officer.

(4) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine (or both).

Retention and disposal or return of items

Retention of seized items.

32.(1) An item seized under section 24 or 26 may be retained for as long as is necessary in all the circumstances and in particular—

- (a) for use as evidence at a trial for a relevant offence, or
- (b) for forensic examination or for investigation in connection with a relevant offence.

(2) An item may be not be retained for either of the purposes mentioned in subsection (1) if a photograph or a copy would be sufficient for that purpose.

Forfeiture of seized items by court on application.

33.(1) A police officer, customs officer or an authorised person may apply to the magistrates' court for the forfeiture of an item retained under section 32.

(2) The item is to be retained while proceedings on such an application are in progress.

(3) Where an application under this section is made in relation to an item, the court may order the item to be forfeited if satisfied—

- (a) that a relevant offence has been committed in respect of it, or
- (b) that it was used in the commission of a relevant offence.

(4) If the court does not order the item to be forfeited, it must order the item to be returned to a person entitled to it.

(5) Where an item is ordered to be forfeited under subsection (3), it may be disposed of in whatever way is thought appropriate by—

- (a) the officer or authorised person who made the application,
- (b) another police officer, customs officer or authorised person acting on behalf of the same person as that officer or authorised person, or
- (c) the Minister.

(6) But the item may not be disposed of under subsection (5)—

- (a) before the end of the period within which an appeal under section 34 may be made against the order, or
- (b) if such an appeal is made, before it is determined or otherwise dealt with.

(7) Where an order for the return of an item is made under subsection (4), the item may nevertheless be retained—

- (a) until the end of the period within which an appeal under section 34 may be made against the order, or
- (b) if such an appeal is made, until the time when it is determined or otherwise dealt with.

But if it is decided before the end of the period mentioned in paragraph (a) that there is to be no appeal, the item must be returned as soon as possible after that decision is made.

(8) The persons “entitled” to an item for the purposes of this section are—

- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

Appeal against decision under section 33.

34.(1) Where an order has been made under section 33, each of the following persons may appeal against the order—

- (a) a party to the proceedings in which the order was made;
- (b) any other person entitled to the item to which the order relates.

(2) Where—

- (a) a police officer, customs officer or an authorised person brings an appeal under this section, and
- (b) no person entitled to the item in question was a party to the original proceedings, the officer or authorised person must make reasonable efforts to give notice of the appeal to every person who the officer thinks is or may be entitled to the item.

(3) An appeal under this section is to the Supreme Court.

(4) An appeal under this section against an order must be made before the end of the period of 28 days starting with the date of the order.

(5) Subject to subsections (6) and (7), the court hearing the appeal may make any order the court thinks appropriate.

(6) If an appeal against an order for the return of an item is allowed—

- (a) the court must order the item to be forfeited, and
- (b) subsections (5) and (6) of section 33 apply with the necessary adaptations.

(7) If an appeal against an order forfeiting an item is allowed—

- (a) the court must order the item to be returned to a person entitled to it, and
- (b) subsection (7) of section 33 applies with the necessary adaptations.

(8) The persons “entitled” to an item for the purposes of this section are—

- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

Return of item to person entitled to it, or disposal if return impracticable.

35.(1) Where the retention of an item has been, but is no longer, authorised under this Act—

- (a) the item must (subject to section 33(3) and subsection (3) below) be returned to a person entitled to it;
- (b) a person who claims to be entitled to the item may apply to the magistrates court for an order that the item be returned to that person.

(2) Where—

- (a) a court makes an order under this Act requiring an item to be returned to a particular person, and
- (b) reasonable efforts have been made, without success, to find that person, or it is for some other reason impracticable to return the item to that person, the order has effect as if it required the item to be returned to any person entitled to it.

(3) Where—

- (a) an item is required by a provision of this Act, or an order made under this Act, to be returned to a person entitled to it, and
- (b) reasonable efforts have been made, without success, to find a person entitled to the item, or it is for some other reason impracticable to return the item to a person entitled to it, a police or customs officer, or the Minister, may dispose of the item in whatever way the officer or the Minister thinks appropriate.

(4) The persons “entitled” to an item for the purposes of this section are—

- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

Forfeiture by court following conviction.

36.(1) This section applies where a person is convicted of—

- (a) a relevant offence,
- (b) an offence of attempting or conspiring to commit a relevant offence,
- (c) an offence under sections 36 to 46 of the Crimes Act 2011(encouraging or assisting crime) in relation to a relevant offence,
- (d) an offence of inciting a person to commit a relevant offence, or
- (e) an offence of aiding, abetting, counselling or procuring the commission of a relevant offence.

(2) In this section “the court” means the court by or before which the person is convicted of the offence.

(3) The court may make an order for the forfeiture of—

- (a) any ivory, or any item that is made of ivory or has ivory in it, in respect of which the offence was committed;

(b) any other item that was used in the commission of the offence. An order under this subsection is referred to below as a “forfeiture order”.

(4) Before making a forfeiture order under subsection (3)(b) in relation to any item, the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of the item or otherwise to have an interest in it.

(5) A forfeiture order may not be made so as to come into force before the time when there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.

(6) Where the court makes a forfeiture order, it may also make any other provision that it considers to be necessary for giving effect to the forfeiture.

(7) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of the item.

(8) Provision made by virtue of this section may be varied at any time by the court that made it.

PART V MISCELLANEOUS

Application of Imports and Exports Act 1986.

37. For the purpose of this Act all the powers conferred upon customs officers under the Imports and Exports Act 1986 shall

continue to apply to customs officers in addition to the powers provided to customs officers by this Act.

Contracts of insurance.

38.(1) A transaction under which a person acquires an item in pursuance of an existing contract of insurance is not a purchase or sale of the item for the purposes of this Act.

(2) A transaction under which an item—

- (a) is acquired by a regulated insurer acting in the course of the insurer's business as such, or
- (b) is acquired, in pursuance of a regulated insurance contract, by a person who is or was an insured person in relation to the item under that contract, is not a purchase or sale of the item for the purposes of this Act.

(3) In this section—

“existing contract of insurance” means a contract of insurance entered into before the day on which section 4 comes into force;

“insurance” includes reinsurance;

“regulated insurance contract” means a contract of insurance effected or carried out by a regulated insurer;

“regulated insurer” means a person who has permission to effect or carry out contracts of insurance the Financial Services (Insurance Companies) Act.

Liability of corporate officers for offences by bodies corporate.

39.(1) If an offence under this Act by a body corporate is proved to have been committed with the consent or connivance of an officer, the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate “officer” means—

- (a) a director, manager, secretary or other similar officer of the body, or
- (b) a person purporting to act in any such capacity.

(3) For the purposes of this section, a body corporate shall include a partnership.

(4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with functions of management as if the member were an officer of the body.

Meaning of “ivory”.

40.(1) In this Act (apart from this section) “ivory” means ivory from the tusk or tooth of an elephant.

(2) Regulations made by the Minister may amend subsection (1) so as to include;

- (a) ivory from an animal or species (whether extant or not); and
- (b) any product or substance other than ivory derived from an animal or species (whether extant or not)

that is not for the time being covered by that subsection.

(3) A statutory instrument containing regulations made by the Minister under subsection (2) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before Parliament and approved.

(4) In any proceedings under this Act, any material that is proved to be ivory from an animal is presumed to be ivory from an elephant unless the material is proved to be not from an elephant.

(5) In this section “elephant” means an animal of a species that is—

- (a) within the family Elephantidae, and
- (b) extant on the day on which this Act is passed.

Regulations.

41.(1) The Minister may make regulations under the preceding provisions of this Act in order to—

- (a) make consequential, supplementary, incidental, transitional or saving provision;
- (b) make different provision for different purposes.

Crown application.

42.(1) Subject to subsection (2), this Act binds the Crown.

(2) Sections 15 and 31 and paragraph 9 of Schedule 1 (offences) apply to persons in the service of the Crown but, apart from that, do not bind the Crown.

SCHEDULE 1

Section 16

CIVIL SANCTIONS
PART 1
MONETARY PENALTIES

Imposition of monetary penalties.

1.(1) The Minister may impose a monetary penalty on a person if satisfied beyond reasonable doubt that the person has committed an offence under section 15.

(2) In this Schedule “monetary penalty” means a requirement to pay to the Minister a penalty of an amount determined by the Minister.

(3) The amount of a monetary penalty may not be more than £250,000.

Representations and appeals etc.

2.(1) Where the Minister proposes to impose a monetary penalty on a person, the Minister must serve on the person a notice of what is proposed.

(2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person’s liability for the monetary penalty by payment of a sum specified in the notice (which must be less than or equal to the amount of the penalty). The following provisions of this paragraph apply if the person does not do so.

(3) The person may make written representations and objections to the Minister in relation to the proposed imposition of the monetary penalty.

(4) After the end of the period for making such representations and objections the Minister must decide whether to impose the monetary penalty. If the Minister decides to do so, he must serve on the person a notice imposing the penalty.

(5) The Minister may not impose a monetary penalty on a person—

- (a) if, taking into account (in particular) any matter raised by the person, the Minister is no longer satisfied as mentioned in paragraph 1(1), or
- (b) in prescribed circumstances.

(6) A person on whom a monetary penalty is imposed may appeal against the decision to impose the penalty on the ground—

- (a) that the decision was based on an error of fact,
- (b) that the decision was wrong in law,
- (c) that the amount of the penalty is unreasonable, or
- (d) that the decision is unreasonable for any other reason, or on any other grounds that are prescribed

(7) An appeal under sub-paragraph (6) is to the Supreme Court.

Information to be included in notices under paragraph 2.

3 (1) A notice under paragraph 2(1) must include information as to—

- (a) the grounds for the proposal to impose the monetary penalty;
- (b) the effect of payment of the sum referred to in paragraph 2(2);
- (c) the right to make representations and objections;
- (d) the circumstances in which the Minister may not impose the monetary penalty.

(2) Such a notice must also specify—

- (a) the period within which liability for the monetary penalty may be discharged, and
- (b) the period within which representations and objections may be made.

Neither period may be more than 28 days starting with the day on which the notice is received.

(3) A notice under paragraph 2(4) must include information as to—

- (a) the grounds for imposing the monetary penalty;
- (b) how payment may be made;
- (c) the period within which payment is to be made;

- (d) any early payment discounts or late payment penalties;
- (e) rights of appeal;
- (f) the consequences of non-payment.

The period referred to in sub-paragraph (c) must be at least 28 days.

Monetary penalties- criminal proceedings and conviction.

4 (1) Where a notice under paragraph 2(1) is served on a person—

- (a) no criminal proceedings for an offence under section 15 may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period within which the person's liability may be discharged as mentioned in paragraph 2(2);
- (b) if the liability is so discharged, the person may not at any time be convicted of an offence under section 15 in relation to that act or omission.

(2) A person on whom a monetary penalty is imposed may not at any time be convicted of an offence under section 15 in respect of the act or omission giving rise to the penalty.

PART 2
STOP NOTICES

Imposition of stop notices.

5.(1) Where sub-paragraph (2) or (3) applies, the Minister may serve on a person a notice (a “stop notice”)—

- (a) prohibiting the person from carrying on an activity specified in the notice, or
- (b) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) This sub-paragraph applies where—

- (a) the person is carrying on the activity, and
- (b) the Minister reasonably believes that the activity as carried on by the person involves or is likely to involve the person committing an offence under section 15.

(3) This sub-paragraph applies where—

- (a) the person is likely to carry on the activity, and
- (b) the Minister reasonably believes that the activity as carried on by the person will involve or will be likely to involve the person committing an offence under section 15.

(4) Steps referred to in sub-paragraph (1)(b) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

Information to be included in stop notices.

6. A stop notice must include information as to—

- (a) the grounds for serving the notice;
- (b) rights of appeal;
- (c) the consequences of not complying with the notice.

Completion certificates.

7.(1) This paragraph applies where a person is served with a stop notice prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) Where the Minister is satisfied that the person has taken the specified steps, the Minister must issue a certificate to that effect (a “completion certificate”).

(3) The person served with the stop notice may at any time apply for a completion certificate. The Minister must make a decision whether to issue a completion certificate within the period of 14 days starting with the day on which he receives such an application.

(4) Where a completion certificate is issued, the stop notice to which it relates ceases to have effect.

Appeals.

8.(1) A person served with a stop notice may appeal against the decision to serve it on the ground—

- (a) that the decision was based on an error of fact,
- (b) that the decision was wrong in law,
- (c) that the decision was unreasonable,
- (d) that any step specified under paragraph 5(1)(b) is unreasonable, or
- (e) that the person has not acted as mentioned in paragraph 5(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served, or on any other grounds that are prescribed.

(2) Where paragraph 7 applies and a decision is made not to issue a completion certificate, the person served with the stop notice may appeal against the decision on the ground that—

- (a) it was based on an error of fact,
- (b) it was wrong in law, or
- (c) it was unfair or unreasonable, or on any other grounds that are prescribed.

(3) An appeal under sub-paragraph (1) or (2) is to the Supreme Court.

Offence of failure to comply with stop notice.

9.(1) A person served with a stop notice who does not comply with it commits an offence.

(2) A person who commits an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding six months or a fine (or both).

PART 3
ENFORCEMENT UNDERTAKINGS

10.(1) This paragraph applies where—

- (a) the Minister has reasonable grounds to suspect that a person has committed an offence under section 15,
- (b) the person offers an undertaking (an “enforcement undertaking”) to take specified action, within a specified period,
- (c) the action specified is—
 - (i) action to secure that the offence does not continue or recur, or
 - (ii) action of a prescribed description, and
- (d) the Minister accepts the undertaking.

(2) Unless the person has failed to comply with the undertaking or any part of it—

- (a) the person may not at any time be convicted of an offence under section 15 in respect of the act or omission to which the undertaking relates;
- (b) the Minister may not impose on the person any monetary penalty that he would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission.

PART 4
ENFORCEMENT COST RECOVERY NOTICES

Imposition of enforcement cost recovery notices.

11.(1) The Minister may serve an enforcement cost recovery notice on a person on whom—

- (a) a monetary penalty has been imposed, or
- (b) a stop notice has been served.

(2) For the purposes of this Schedule an “enforcement cost recovery notice” is a notice requiring the person to pay to the Minister the costs incurred by the Minister in relation to the monetary penalty or stop notice up to the time when it was imposed or served.

(3) In sub-paragraph (2) “costs” includes (in particular)—

- (a) investigation costs;
- (b) administration costs;

- (c) costs of obtaining expert advice (including legal advice).

Information to be included in enforcement cost recovery notices.

12.(1) An enforcement cost recovery notice must specify the amount to be paid and must include information as to—

- (a) the grounds for serving the notice;
- (b) how payment may be made;
- (c) the period within which payment is to be made;
- (d) any early payment discounts or late payment penalties;
- (e) rights of appeal;
- (f) the consequences of non-payment.

The period referred to in paragraph (c) must be at least 28 days.

(2) A person required by an enforcement cost recovery notice to pay an amount to the Minister may require the Minister to provide a detailed breakdown of that amount.

Appeals.

13.(1) A person served with an enforcement cost recovery notice may appeal against the decision to serve it on the ground—

- (a) that the decision was based on an error of fact,
- (b) that the decision was wrong in law,
- (c) that the decision was unreasonable, or
- (d) that any of the costs to which the notice relates were unreasonably incurred or unreasonable in amount, or on any other grounds that are prescribed.

(2) An appeal under sub-paragraph (1) is to the Supreme Court.

PART 5
POWER TO MAKE SUPPLEMENTARY PROVISION ETC
BY REGULATIONS

Supplementary regulations- general.

14.(1) The Minister may by regulations (“supplementary regulations”)—

- (a) make provision (including transitional provision) supplementing that made by this Schedule;
- (b) make provision that is consequential on or incidental to that made by this Schedule.

(2) The following provisions of this Part are not to be read as limiting the power conferred by sub-paragraph (1).

Consultation.

15.(1) Before making supplementary regulations the Minister may consult any persons that he considers appropriate.

(2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Minister that it is appropriate substantially to change the whole or any part of the proposals, the Minister must undertake whatever further consultation the Minister considers appropriate with respect to the changes.

Monetary penalties and costs.

16.(1) Supplementary regulations may make any of the following provision in relation to the power of the Minister to require a person to pay a monetary penalty (under paragraph 1) or costs (under paragraph 11)—

- (a) provision for early payment discounts;
- (b) provision for the payment of interest or other financial penalties for late payment;
- (c) provision for enforcement.

(2) Provision made by virtue of sub-paragraph (1)(b) must secure that the interest or other financial penalties for late payment do not in total exceed the amount of the penalty or costs to which the interest or other financial penalties relate.

(3) Provision made by virtue of sub-paragraph (1)(c) may include—

- (a) provision for the Minister to recover the penalty or costs, and any interest or other financial penalty for late payment, as a civil debt;
- (b) provision for the penalty or costs, and any interest or other financial penalty for late payment, to be recoverable, on the order of a court, as if payable under a court order.

Enforcement undertakings.

17. Supplementary regulations may make any of the following provision in relation to an enforcement undertaking—

- (a) provision as to the procedure for entering into an undertaking;
- (b) provision as to the terms of an undertaking;
- (c) provision as to publication of an undertaking by the Minister;
- (d) provision as to variation of an undertaking;
- (e) provision as to circumstances in which a person may be regarded as having complied with an undertaking;
- (f) provision as to monitoring by the Minister of compliance with an undertaking;
- (g) provision as to certification by the Minister that an undertaking has been complied with;

- (h) provision for appeals against refusal to give such certification;
- (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to an undertaking, provision for the person to be regarded as not having complied with it;
- (j) in a case where a person has complied partly but not fully with an undertaking, provision for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person.

Appeals.

18.(1) Supplementary regulations may make any of the following provision in relation to an appeal in respect of the imposition of a requirement, or the service of a notice, under this Schedule—

- (a) provision suspending the requirement or notice pending determination of the appeal;
- (b) provision as to the powers of the tribunal to which the appeal is made.

(2) Provision made by virtue of sub-paragraph (1)(b) may in particular include provision conferring on the tribunal to which the appeal is made—

- (a) power to withdraw the requirement or notice;
- (b) power to confirm the requirement or notice;

- (c) power to take any steps that the Minister could take in relation to the act or omission giving rise to the requirement or notice;
- (d) power to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Minister.

PART 6
GENERAL AND SUPPLEMENTAL

Combination of sanctions.

19.(1) The Minister may not serve on a person a notice under paragraph 2(1) (notice of proposed monetary penalty) in relation to any act or omission in relation to which a stop notice has been served on that person.

(2) The Minister may not serve a stop notice on a person in relation to any act or omission in relation to which—

- (a) a monetary penalty has been imposed on that person,
or
- (b) the person's liability for a monetary penalty has been discharged as mentioned in paragraph 2(2).

Unincorporated associations.

20. Any amount that is payable under this Schedule by an unincorporated association is to be paid out of the funds of the association.

Guidance as to enforcement.

21.(1) The Minister may prepare and publish guidance as to—

- (a) the sanctions that may be imposed on a person who commits an offence under section 15;
- (b) the action that the Minister may take in relation to such a person;
- (c) the circumstances in which the Minister is likely to take any such action.

(2) The guidance may include guidance about the Minister's use of the power to impose a monetary penalty, with information as to—

- (a) the circumstances in which such a penalty may not be imposed;
- (b) the amount of such a penalty;
- (c) the matters likely to be taken into account by the Minister in determining that amount (including, where relevant, any discounts for voluntary reporting of non-compliance);
- (d) how liability for such a penalty may be discharged and the effect of discharge;
- (e) rights to make representations and objections and rights of appeal in relation to such a penalty.

(3) The guidance may include guidance about the Minister's use of the power to serve a stop notice, with information as to—

- (a) the circumstances in which such a notice may not be served;
- (b) rights of appeal in relation to such a notice.

(4) The guidance must include guidance about the Minister's use of the power to serve an enforcement cost recovery notice, with information as to—

- (a) the circumstances in which such a notice may not be served;
- (b) the amount that a person may be required to pay;
- (c) the matters likely to be taken into account by the Minister in determining that amount;
- (d) how liability for the costs to which the notice relates may be discharged and the effect of discharge;
- (e) rights to make representations and objections and rights of appeal in relation to those costs.

(5) The guidance must include guidance about the Minister's use of the power to accept an enforcement undertaking.

(6) Where appropriate, the Minister must revise guidance published under this paragraph and publish the revised guidance.

(7) The Minister must have regard to the guidance or revised guidance published under this paragraph in exercising his functions under this Schedule.

Pre-commencement consultation.

22. If, before the day on which this Schedule comes into effect, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of paragraph 15 or 21, those requirements may to that extent be taken to have been satisfied.

Reports on use of civil sanctions.

23.(1) The Minister must from time to time publish reports about the use made by the Minister of his powers under this Schedule.

(2) Each report must, in particular, specify—

- (a) the cases in which a monetary penalty was imposed, or a stop notice or enforcement costs recovery notice was served, during the period to which the report relates (other than cases in which the penalty or notice was overturned on appeal);
- (b) the cases in which liability for a monetary penalty was discharged as mentioned in paragraph 2(2);
- (c) the cases in which an enforcement undertaking was accepted.

(3) This paragraph does not require the Minister to include in a report any information that, in his opinion, it would be inappropriate to include on the ground that to do so—

- (a) would or might be unlawful, or

- (b) might adversely affect any current investigation or proceedings.

Disclosure of information.

24.(1) Information held by or on behalf of—

- (a) a police or customs officer, or
- (b) the Crown.

may be disclosed to the Minister for the purpose of the exercise by the Minister of any powers conferred on him under or by virtue of this Schedule.

(2) It does not matter for the purposes of sub-paragraph (1) whether the information was obtained before or after this Schedule comes into force.

(3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed).

(4) Nothing in this paragraph authorises the making of a disclosure in contravention of the Data Protection Act 2004, or

(5) This paragraph does not affect a power to disclose that exists apart from this paragraph.

PART 7
INTERPRETATION

Interpretation of Schedule.

25. In this Schedule—

“completion certificate” has the meaning given by paragraph 7(2);

“enforcement cost recovery notice” has the meaning given by paragraph 11(2);

“enforcement undertaking” has the meaning given by paragraph 10(1)(b);

“monetary penalty” has the meaning given by paragraph 1(2);

“prescribed” means prescribed in supplementary regulations;

“stop notice” has the meaning given by paragraph 5(1);

“supplementary regulations” has the meaning given by paragraph 14(1).

SCHEDULE 2

Section 21

SEARCH WARRANTS
PART 1
PRELIMINARY

Application of this Schedule.

1. This Schedule applies to search warrants issued in Gibraltar.

Interpretation.

2. In this Schedule—

“senior officer” means—

- (a) an officer of at least the rank of inspector;
- (b) a customs officer of at least the rank of senior customs officer;

“specific-premises warrant” and “all-premises warrant” have the meaning given by section 20(4).

PART 2
SEARCH WARRANTS- APPLICATIONS AND
SAFEGUARDS

Applications for warrants.

- 3.(1) A person applying for a search warrant must—

- (a) state that the application is made under section 20 of this Act;
- (b) specify the matters set out in sub-paragraph (2) or (3) (as the case may be);
- (c) state what are the grounds for suspecting that relevant evidence is on the premises;
- (d) specify the offence to which the evidence relates.

(2) A person who is applying for a specific-premises warrant must specify each set of premises that it is desired to enter and search.

(3) A person who is applying for an all-premises warrant must—

- (a) specify as many of the sets of premises that it is desired to enter and search as it is reasonably practicable to specify;
- (b) specify the person who is in occupation or control of those premises and any other premises that it is desired to enter and search;
- (c) explain why it is necessary to search more premises than those specified under paragraph (a);
- (d) explain why it is not reasonably practicable to specify all the premises that it is desired to enter and search.

(4) A person who is applying for a search warrant authorising entry and search on more than one occasion must also state—

- (a) the ground on which the person applies for such a warrant;
- (b) whether the person seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired.

Safeguards in connection with power of entry conferred by warrant.

4. A search warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries.

5. A search warrant must—

- (a) specify the name of the person who applied for it;
- (b) specify the date on which it is issued;
- (c) state that the warrant is issued under section 20 of this Act;
- (d) specify each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises to be searched that are under the person's occupation or control and can be specified;
- (e) specify the offence to which the relevant evidence relates.

6.(1) Two copies must be made of a search warrant that specifies only one set of premises and does not authorise multiple entries.

(2) As many copies as are reasonably required may be made of any other kind of search warrant.

(3) The copies must be clearly certified as copies.

PART 3
EXECUTION OF SEARCH WARRANTS

Warrant to be executed within one month.

7. Entry and search under a search warrant must be within the period of one month starting with the date of its issue.

All-premises warrants.

8.(1) In the case of an all-premises warrant, premises that are not specified in the warrant may be entered and searched only if a senior officer has authorised them to be entered.

(2) An authorisation under sub-paragraph (1) must be in writing.

Search of premises more than once.

9.(1) Premises may be entered or searched for the second or a subsequent time under a search warrant authorising multiple entries only if a senior officer has authorised that entry to the premises.

(2) An authorisation under sub-paragraph (1) must be in writing.

Time of search.

10. Entry and search under a search warrant must be at a reasonable hour unless it appears to the officer executing it that the purpose of a search may be frustrated or seriously prejudiced on an entry at a reasonable hour.

Evidence of authority.

11.(1) Where the occupier of premises to be entered and searched under a search warrant is present at the time when a police or customs officer seeks to execute the warrant, the following requirements must be satisfied—

- (a) the occupier must be told the officer's name;
- (b) if not an officer in uniform, the officer must produce to the occupier documentary evidence that the officer is a police or customs officer;
- (c) the officer must produce the warrant to the occupier and supply the occupier with a copy of it.

(2) Where the occupier of premises to be entered and searched under a search warrant is not present at the time when a police or customs officer seeks to execute the warrant—

- (a) if some other person who appears to the officer to be in charge of the premises is present, sub-paragraph (1) has effect as if a reference to the occupier were a reference to that other person;

- (b) if not, the officer must leave a copy of the warrant in a prominent place on the premises.

Extent of search.

12. A search under a search warrant may only be a search to the extent required for the purpose for which the warrant was issued.

Securing premises after entry.

13. A police or customs officer who enters premises under a search warrant must take reasonable steps to ensure that when the officer leaves the premises they are as secure as they were before the officer entered.

Return and retention of warrant.

14.(1) A search warrant must be returned to the clerk of the Magistrate's Court —

- (a) when the warrant has been executed, or
- (b) on or before the expiry of the period of one month starting with the date of its issue, if the warrant is—
 - (i) a specific-premises warrant that has not been executed,
 - (ii) an all-premises warrant, or
 - (iii) a warrant authorising multiple entries.

(2) The Magistrate's Court must retain a search warrant returned under subparagraph (1) until the end of the period of 12 months starting with the date of its return.

(3) If during that period the occupier of premises to which the search warrant relates asks to inspect it, the occupier must be allowed to do so.

EXPLANATORY MEMORANDUM

This Act provides for the prohibition of dealing in ivory save for in certain circumstances and related purposes.