

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

IVORY BILL

Third Sitting

Thursday 14 June 2018

(Morning)

CONTENTS

CLAUSES 1 TO 6 agreed to.

CLAUSE 7 under consideration when the Committee adjourned till this day
at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 18 June 2018

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The Committee consisted of the following Members:

Chairs: STEVE McCABE, †MARK PRITCHARD

- | | |
|--|---|
| † Cameron, Dr Lisa (<i>East Kilbride, Strathaven and Lesmahagow</i>) (SNP) | † Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op) |
| † Chalk, Alex (<i>Cheltenham</i>) (Con) | † Rutley, David (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Courts, Robert (<i>Witney</i>) (Con) | † Smith, Henry (<i>Crawley</i>) (Con) |
| † Davies, Mims (<i>Eastleigh</i>) (Con) | † Sobel, Alex (<i>Leeds North West</i>) (Lab/Co-op) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Turley, Anna (<i>Redcar</i>) (Lab/Co-op) |
| † Donelan, Michelle (<i>Chippenham</i>) (Con) | † Twist, Liz (<i>Blaydon</i>) (Lab) |
| † Harrison, Trudy (<i>Copeland</i>) (Con) | |
| † Hayman, Sue (<i>Workington</i>) (Lab) | Gail Poulton, <i>Committee Clerk</i> |
| † Hoare, Simon (<i>North Dorset</i>) (Con) | |
| † Latham, Mrs Pauline (<i>Mid Derbyshire</i>) (Con) | |
| † McCarthy, Kerry (<i>Bristol East</i>) (Lab) | † attended the Committee |

Public Bill Committee

Thursday 14 June 2018

(Morning)

[MARK PRITCHARD *in the Chair*]

Ivory Bill

11.30 am

The Chair: Before we begin, could colleagues ensure that electronic devices are either turned off or switched to silent mode? As colleagues know, teas and coffees are not allowed during sittings. It is rather warm in here today, so of course you can have water. This sitting is being recorded, so can Members project their voices for the recording, given that the windows are open because of the temperature in the room? Please feel free to take off your jackets. At noon, the Division bell will ring and both Houses will observe a one-minute silence. There will then be a bell at the end to mark when we can return to business. That is, of course, to mark the one-year anniversary of the Grenfell Tower tragedy.

We now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. Please note that decisions on amendments do not take place in the order they are debated, but in the order they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause that the amendment affects. In particular, new clauses will not be decided on until the end of our proceedings on the content of the Bill. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules, following the debates on the relevant amendments.

Clause 1

PROHIBITION ON DEALING IN IVORY

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (David Rutley): It is an honour to serve under your chairmanship, Mr Pritchard. Before I set out the detailed first clause of the Bill, it is worth reflecting why we are here after a very busy day yesterday. I therefore want to say a few words of introduction. The overriding purpose of the Bill is, of course, to protect an endangered species—the magnificent elephant—from being poached for its ivory. We can do that in the UK by closing our domestic market for ivory to all but a very small number of exempted items. That will eliminate the opportunity for UK markets to be abused by those trying to sell illegal ivory, and will send a very strong message globally that the UK believes that ivory should not be traded and that it is a thing of the past. It was refreshing to see the hon. Member for Workington and Members from both sides of the House agree to those fundamental points on Second Reading.

The Bill is a key part of the co-ordinated approach we are taking to the illegal wildlife trade more broadly. Hon. Members on both sides of the Committee were keen to position the Bill as such. Alone, it will not do all the work we need. We need to work on key initiatives, including providing training for heroic park rangers, who risk—and, sadly, all too often lose—their lives in protecting the wildlife that we and they value so much. As we look forward to the illegal wildlife conference in October, we need to ensure this Bill makes as much progress as possible, so it can send the strongest message that this country, this Government and this Parliament strongly support banning the sale of ivory.

Clause 1 will ban the vast majority of dealing in ivory in the UK. Our starting point is that all trade in ivory is prohibited, unless the item in question meets one of the very narrowly targeted exemptions we will discuss later. The clause clearly sets out that the buying, selling and hiring of ivory is prohibited in the UK, that holding ivory for sale or hire is prohibited, and that the import and export of ivory to and from the UK is prohibited, unless the limited exemptions are met. This prohibition will send out a clear message that the UK will not be involved in the commercial trade of ivory, and that such activities are not acceptable.

Subsections (2), (3) and (4) define which activities are prohibited under the Bill. They align with the existing definition set out in the EU wildlife trade regulations for commercial use, which we fully respect. The clause places no restrictions on the right to own ivory or hold it for non-commercial purposes. It is important to stress that gifting, donating or bequeathing ivory is similarly unaffected.

Subsection (4) expands on subsection (2). Subsection (4)(a) states that the “buying” or selling and so on of ivory “outside the United Kingdom” is not covered by the Bill. If a UK citizen was to purchase ivory while they were in a third country and acting in accordance with the laws of that country, it would not be an offence. However, they would be required to comply with the measures in the Bill and the existing CITES regulations, should they wish to bring that ivory item back into the United Kingdom. That is why we intend to design the IT system to take account of such situations as well.

Subsection (4)(b) goes on to state that it is an offence for somebody in the UK to buy, sell or hire ivory to or from a third party “outside the United Kingdom”. In effect, this measure prohibits remote purchases—in other words, those undertaken over the internet or by telephone—unless the purchaser is satisfied that the item meets an exemption under the Bill, and registers it as such either before or at the point of purchase.

Simon Hoare (North Dorset) (Con): The thought occurs to me—I do not know whether there is any evidence for this or whether it is in the Minister's mind to consider it at some later point—what risk is there of people who hitherto traded in and collected ivory merely swapping it for another piece? “I will swap this piece that I have with that piece that you have.” No money changes hands, but in essence it is a trade at nil profit value, or something of that nature. Is there a risk of that happening, and if so, is it addressed in the Bill?

David Rutley: There is a risk that that could happen, but the Bill covers it, and we will look at that issue in further stages as we go through the Bill, line by line.

Subsection (5) provides a simple definition of ivory in relation to its prohibition by the Bill, capturing that “ivory” covers items made solely of ivory or worked items containing ivory. The clause is integral to banning the dealing of ivory in the UK and to achieving our aims: removing the UK from international trade in ivory; and not fuelling international ivory markets.

For those reasons, I seek the support of members of the Committee and I move that this clause stand part.

Sue Hayman (Workington) (Lab): I thank the Minister for his speech and for recognising the importance of our working together constructively across the House on this very important Bill, because the Labour party welcomes this Bill. It is a good piece of legislation and one that we wish to support.

The amendments and new clauses that we have tabled for debate in Committee have been tabled in the spirit of co-operation, to improve the Bill and make it the best it can possibly be, as we work to ban the ivory trade.

I have a small query about subsection (2). During the evidence sessions, concerns were expressed by museums staff about the definition of “dealing” and about how loans for exhibitions could fall foul of the Bill. For example, Anthony Misquitta of the Victoria and Albert Museum said:

“The terminology used in the Bill is ‘dealing’, and the definition of dealing includes the word ‘hiring’. I am sure the intention is not to capture these loans, but as it is currently drafted the Bill does capture them.”—[*Official Report, Ivory Public Bill Committee*, 12 June 2018; c. 61.]

In the Bill’s explanatory notes, page 9 says quite clearly that,

“the prohibition applies to the exchange of ivory for any good or service and, therefore, is not restricted to financial transactions, or exchanges for money.”

Hiring or offering to hire ivory are prohibited activities; such activities include temporarily obtaining an ivory item in return for a payment or other exchange of goods.

Therefore museums raised the concerns that loans of ivory for exhibition could fall foul of subsection (4) (b), and be seen as “hiring” the ivory, although they would receive nothing in return. Can the Minister confirm for me and reassure museums that that will not be the case, and that loans to and from museums will not fall foul of the legislation? Also, could appropriate guidance be provided to museums that are supporting the Bill, so that they can properly understand the situation?

David Rutley: I thank the hon. Lady for those questions. It is worth reiterating the point about the so-called swapping of pieces of ivory. So that Members on both sides of the Committee understand, that would be considered bartering, because it would be exchanging for a valuable consideration, so it would be prohibited.

The point about museum loans is a very good one, which was raised in our excellent evidence session. Loans between accredited museums, or from a private owner to an accredited museum, would be considered hiring and therefore would be permitted under the terms in the Bill for museums.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

PRE-1918 ITEMS OF OUTSTANDING ARTISTIC ETC VALUE
AND IMPORTANCE

Question proposed, That the clause stand part of the Bill.

David Rutley: The clause provides for limited and targeted exemption from the prohibition on the dealing of ivory for items of outstanding artistic, cultural or historical value that are assessed as rare and as important examples of their type. We recognise that there is a certain stratum of ivory items that are of genuine artistic, cultural or historical importance and that are traded not because they are made of ivory but because of their artistry or rarity. That is why we have created a category of exemption to allow such items to continue to be commercially traded if an independent expert assessor advises that they meet strict criteria.

As we heard in evidence on Tuesday, the criteria that must be met for an item to qualify for the exemption set a very high bar indeed—a detailed description of those criteria will be published in guidance—and, as a result, the exemption will apply to a very narrow stratum of items. Two conditions must be met for an item to qualify for exemption. First, the item must have been made before 1 January 1918, meaning that only items that are more than 100 years old may qualify. That is a fixed date, unlike the rolling 100-year approach in the American system. Secondly, the item must be assessed as being of outstandingly high historical, cultural or artistic value. Consideration will be given to whether the item is rare and whether it is an important example of its type, and to other criteria that may be issued in statutory guidance at a later date.

We do not believe it is appropriate or, indeed, possible for the Government to make such an assessment without obtaining advice from experts, so the clause includes a power for the Secretary of State to prescribe a list of advisory institutions. That power will be exercised before the Bill comes into force. Those institutions will be authorised to provide advice on whether an item meets the criteria. Eminent institutions such as the Victoria and Albert Museum and the British Museum, from which we have heard and which have renowned expertise in areas and periods of artistic history relevant to ivory artefacts, have confirmed that they would like to be involved in that process, as we heard on Tuesday. Such institutions already provide advice to the Government on matters of pre-eminence and national importance, such as under the export licensing regime for cultural objects, as we heard from the V and A.

Those institutions will of course be required to ensure that their best-qualified experts are engaged to assess items. Those experts will provide advice to the Animal and Plant Health Agency, which will act on behalf of the Secretary of State. An assessor will advise whether an item meets the conditions for exemption. The APHA, acting on behalf of the Secretary of State, will then decide, based on that advice, whether an exemption certificate should be issued. The Secretary of State may, if necessary, update the regulations prescribing advisory institutions, for example if a source of expertise moves from an institution or a new centre of expertise emerges. Further details of the assessment criteria will be provided through guidance before the Bill is commenced.

[David Rutley]

Preliminary work is already in train and will be taken forward over the summer. Department for Environment, Food and Rural Affairs officials will work closely with their colleagues at the Department for Digital, Culture, Media and Sport to produce that guidance, which will draw on existing criteria used by the Government to assess works of art for pre-eminence and national significance.

11.45 am

Alex Chalk (Cheltenham) (Con): May I ask the Minister about clause 2(4)? It reads:

“An exemption certificate for an item may be issued only on the application of the owner of the item.”

Will he clarify that “owner” also includes an agent of the owner, as is normally the case in other legislation? It would be unfortunate, for example, if an owner had given a long-term loan to a museum and the museum was then barred from making an application on that owner’s behalf. We want to get these certificates done as quickly as possible and for there to be no bureaucratic hurdles.

David Rutley: My hon. Friend makes an important point. The Bill provides for that. The hon. Member for Workington raised some interesting questions around this, which we will debate shortly. For the reasons that my hon. Friend set out, agents will have the ability to get involved in that process.

Sue Hayman: I thank the Minister for that explanation. I ask for one more small clarification, which I think should be quite straightforward. Subsection (5) talks about prescribed institutions, and page 10 of the explanatory notes says that it

“confers a delegated power on the Secretary of State...to designate and update a list of institutions”.

However, the Bill does not mention updating. Will the Minister clarify that that is the position?

Will the Minister also clarify whether that provides the Secretary of State with the ability to remove an institution if for any reason that institution does not meet the required standard?

David Rutley: I thank the hon. Lady for those points. On updating the list, yes, those powers will absolutely be available through delegated powers. On removing bodies from that list, yes, the Secretary of State will absolutely have that power if required. Let us hope it is not.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

APPLICATIONS FOR EXEMPTION CERTIFICATES

Sue Hayman: I beg to move amendment 1, in clause 3, page 2, line 29, leave out “a person” and insert “An owner of an item when”.

This amendment would clarify that only the owner of an item can apply for an exemption.

This should be fairly straightforward. It refers back to clause 2(4), which, as we have just heard from the hon. Member for Cheltenham, states:

“An exemption certificate for an item may be issued only on the application of the owner of the item.”

However, clause 3(1) states:

“A person applying for an exemption certificate for an item must—”.

To tidy this up so that both subsections use the same language and to avoid any confusion, the amendment suggests amending clause 3(1) to read:

“An owner of an item when applying for an exemption certificate for an item must—”,

so that those two subsections work together effectively and efficiently.

David Rutley: I understand that the amendment’s intention is to clarify that only an owner of an item can apply for an exemption certificate. However, although I understand the point that the hon. Lady makes, I do not think the amendment is appropriate. It is the Government’s intention that the application for an exemption certificate under clause 2 will be completed by the owner or by somebody acting on behalf of the owner. This is intended to take into account the owner’s circumstances; the owner may have instructed an agent to act on their behalf, or the owner may not be capable of completing the registration process—due to illness, for instance—so a family member may be able to do so on their behalf.

Subsection (1)(a) states that the name and address of the owner must be stipulated on an exemption application, which reflects the concerns that prompted the tabling of the amendment. Under clause 10, the item is registered using the owner’s details. The primary intention of the clause is to ensure that items meet the criteria for the applicable exemption. The identity of the person making the application is much less significant than ensuring that items containing ivory that should be prohibited from dealings are restricted from the market. For those reasons, I ask the hon. Lady to withdraw her amendment.

Sue Hayman: I am happy to withdraw the amendment. With reference to what the hon. Member for Cheltenham said earlier, it would be good if the guidelines clarified exactly what some of the terminology means and who is then applicable.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Sue Hayman: I beg to move amendment 2, in clause 3, page 3, line 5, at end insert—

“(2A) Where an application is referred to a prescribed institution, the institution must notify the Secretary of State of any intention that the institution may have to purchase or hire the item.”

This amendment requires a prescribed institution to declare any interest that it may have in acquiring the item, in order to make the Secretary of State aware of any conflicts of interest.

The Chair: With this it will be convenient to discuss amendment 3, in clause 3, page 3, line 13, at end insert “, and

- (d) notify the Secretary of State of any interests, whether commercial, pecuniary, or personal, that the assessor may hold in respect of—
- (i) the person applying for an exemption certificate, and

- (ii) any person known to by the assessor to be seeking to buy or hire the item.

(3A) If the Secretary of State believes that any interests declared under subsection (3)(d) create a conflict of interest, the Secretary of State may deem the assessor to not be nominated by the prescribed institution, and shall notify the institution accordingly.”

This amendment requires the assessor to make a declaration of their interests, and grants a power to the Secretary of State to deem an assessor to not have been nominated if the Secretary of State believes there to be a conflict of interest.

Sue Hayman: Amendments 2 and 3 takes us back to concerns raised with me about potential conflicts of interest when prescribed institutions acquire an item. Amendment 2 is designed to give confidence that acquisitions are transparent and that conflicts of interest would therefore not arise. There are also concerns about conflicts of interest between nominated assessors and prescribed institutions, but I will come on to that when I speak to amendment 3. On amendment 2, I hope the Minister will want to ensure that the Bill is as transparent as possible and that we do not have a situation in which conflicts of interest can arise between a prescribed institution and anyone else involved in the application.

As I have said, amendment 3 is designed to deal with conflicts of interest between nominated assessors and prescribed institutions. The concern is that the Secretary of State prescribes the institutions but the institutions can then choose their own assessors who may not be employed by the institutions. We need to be clear that there is no vested interest and no conflict within the commercial trading. The amendment seeks assurances that there are no conflicts of interest in the appointment of an assessor and that if any concerns arise at a later date the Secretary of State will be able to step in and take action. Both amendments seek to minimise the risk of conflicts of interests, in order to give full confidence in the certification process.

David Rutley: I thank the hon. Lady for her suggestions in the two amendments. On amendment 2, we would all agree that a declaration of a conflict of interest is a necessary requirement in many areas. I do not, however, believe that the amendment is necessary, as I hope I will be able reassure the hon. Lady, because we intend to take measures to that effect.

Clause 3 provides for the certification process that applies to pre-1918 items of outstanding artistic value and importance, and takes into account whether the item is rare and the extent to which it is important. The clause also sets out the role of the designated assessor. Our aim is to appoint eminent museums and academic institutions to act as assessors for the exemption. We are in discussion with some of those institutions. We have built safeguards into the process by which they will be able to provide advice. We intend that the institution and assessor will be asked to sign a waiver before accepting a commission to assess an item from APHA to confirm that they have no commercial interest in that item. The final decision whether an item meets an exemption will fall to the Secretary of State through the APHA.

On amendment 3, it is feasible that an institution asked to assess an item might wish to acquire it for its own collection, thus leading to a potential conflict of interest. Additionally, the pool of owners and collectors of such items will clearly be small. In some cases, the

assessing expert might even know the owner through seeing the item. We therefore intend that advisory institutions and the assessors that they appoint to assess an item will sign a waiver to the effect that they have no interest in purchasing an item when accepting a request to assess it. Obviously, that will be a very small set of circumstances because, as we heard in the evidence session on Tuesday, the number of transactions will be very small. With that explanation, I ask the hon. Lady to withdraw her amendment.

Sue Hayman: I thank the Minister for his explanation. I would be interested to know more about how the waiver will be built into the Bill, to give me confidence that it will be structurally part of it.

David Rutley: I will seek some inspiration to ensure that the hon. Member for Workington, which is an incredibly nice part of the world—

Anna Turley (Redcar) (Lab/Co-op): I will help the Minister out, to allow the transaction to take place. I was interested by his reply. Is he essentially saying that by ruling themselves out of undertaking any transactions, organisations that have a genuine interest in acquiring something will under no circumstances be able to apply to register or purchase it, even if they are transparent about wanting it to be part of their collection? Given that only a small number of institutions specialise in the specific areas that we are considering, we may rule out some of our best museums from being able to undertake that process or purchase a valuable item.

David Rutley: I will first answer the question asked by the hon. Member for Workington, and I am sure inspiration on that technical point will come shortly. On ensuring that the waiver fits into the process, it will not actually be in the Bill, but it will be in the binding memorandum of understanding that we will agree and sign with those institutions. On that other technical point, I will get some inspiration shortly.

Simon Hoare: Does the Minister agree that of all the stellar attractions that the Opposition could put before us, the shadow Secretary of State is one of the brightest adornments of the Opposition Benches in the Bill Committee this morning? We all look forward to her erudition and forensic analysis of the Bill, and to what she can contribute to this important debate.

David Rutley: My goodness! I do not think I can disagree with a word of that. We are forever grateful. Indeed, I am genuinely grateful for the conversations that we have had outside the Committee and elsewhere. We are all trying to progress the Bill, and these questions are absolutely right.

The point made by the hon. Member for Redcar is particularly interesting and I would like to consider it further. We would all agree that we want museums to be able to acquire important items for public enjoyment, so we need to further understand the implications of the point she raised.

Sue Hayman: I thank the Minister for that further explanation; I appreciate it. On the understanding that a memorandum of understanding will lay out all those

[Sue Hayman]

areas so we cannot fall foul of any conflicts of interest or difficulties within the certificate, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 1— *Reporting requirements: Exemption certificates*—

“(1) As soon as reasonably practicable after the end of each calendar year, the Secretary of State must—

- (a) prepare a report on applications for exemption certificates that have been granted during that year, and—
 - (i) lay a copy of that report before Parliament, and
 - (ii) publish the report.

(2) Subsection (1) does not apply in relation to a year if section 3 of this Act has not been in force at any time in that year.

(3) A report prepared under this section must include the following in respect of each exemption certificate granted—

- (a) the description or descriptions provided in accordance with section 3(1)(b) by the person that applied for the exemption certificate,
- (b) the photograph or photographs provided in accordance with section 3(1)(c) by the person that applied for the exemption certificate,
- (c) when the certificate was granted, and
- (d) any other information that the Secretary of State considers appropriate.”

This new clause requires an annual report to be published with details and pictures of all items that are granted an exemption certificate under section 3.

David Rutley: The Bill provides two distinct compliance processes. Clause 3, along with clause 4, provides for the first of those, which is a certification process that applies to the exemption of the rarest and most important items of their type. Anyone who wishes to carry out commercial activities with an item under this exemption must apply and be issued with a certificate to do so. The other process is self-registration, which applies to the other four categories of exemption and is dealt with in clause 10.

The certification process is the more stringent of the two compliance processes and includes an assessment of the item by a relevant expert, who will advise the Secretary of State on whether it meets the published criteria for the exemption. Given the highly specialist nature of assessments needed under the exemption criteria, and the likely value of many items considered, the Government consider a certification system most appropriate.

The clause sets out the minimum information and evidence an applicant must provide to demonstrate how the item meets the criteria for the category. As we debated in the response to amendment 1, the applicant may be the owner of the item or someone instructed to act on behalf of the owner.

Statutory guidance to be published before the Bill comes into force may stipulate further information requirements. For example, the applicant must include physical details and descriptions of the item, including photographs. In addition, they may provide details of the item having been previously displayed in a museum or evidence of its provenance or historical associations.

12 noon

The Committee observed a minute’s silence.

David Rutley: As I was saying, the Animal and Plant Health Agency, on behalf of the Secretary of State, will check that all necessary information has been completed and that the application is reasonable. For example, if the application is clearly for an item that is not pre-1918, that will not be considered reasonable and it will be rejected. If satisfied, the APHA will refer the application to an appropriate designated assessor, provided for under clause 2. Although the application’s initial stages will be similar to those for the self-registration system—submitting requested information via the online system—the certification process diverges significantly, as the information provided will be passed by APHA to one of the listed prescribed institutions for expert advice, as discussed earlier.

As we discussed in response to amendments 2 and 3, the institution will be required to confirm via a waiver that it has no commercial interest in the item before accepting a commission. That is to avoid any potential conflicts of interest. The assessor, as a relevant expert, will be best qualified to assess the item against the conditions of the exemption. APHA will then decide whether to issue an exemption certificate, taking into account all relevant factors, including the expert assessor’s advice.

When making an application, the applicant must pay a fee as set by the Secretary of State through regulations. In practice, the set fee will be paid to cover the application’s administration costs. If referred to an expert assessor, an additional fee will be paid to cover reasonable costs incurred by the assessor. The additional fee will be considerably higher than the fee applicable to the self-registration process, reflecting the specialist advice needed and the limited number of unique items for which the process is designed to cater.

I thank the hon. Member for Workington for tabling new clause 1. Clause 10(5) sets out the minimum information and evidence that the Secretary of State must record with regard to both successful and revoked exemptions to applications. That information includes a description of the item and photographs and expected dealings in the item. Furthermore, statutory guidance to be published before the Bill comes into force may stipulate further information requirements to be captured. The Government share the hon. Lady’s aim of being informative to the public and agree that being as transparent as possible about how the system is working in practice will be essential to ensuring public confidence in it. As such, I assure her and the Committee that we already intend to publish headline data on the number of exemption certificates issued each year for items exempted under clause 2.

I will, however, issue a note of caution with regard to publishing the information described in subsections 3(a) to (d) of the new clause. The exemption will apply to a very limited number of outstandingly important items. As such, and particularly when considering the small number of people who are likely to own and wish to sell such items, it is highly possible that the owner may be identifiable through the publication of photos and so on of an item, which would have serious repercussions in terms of personal privacy and data protection. Any

information that the Government publish on annual exemptions must be fully in line with the Data Protection Act 2018. In the light of the assurances that the Government intend to publish information on the number of certificates issued, and with reference to the provisions of the Data Protection Act, I ask the hon. Lady not to press the new clause.

Sue Hayman: The reason for tabling the new clause is that quite a number of people felt that this was an important issue, on Second Reading, in the written evidence and in the oral evidence sessions. If there is a proper report, as opposed to a headline report, that would provide us with important, ongoing evidence and allow for confidence in the Act. All items, not just the headline items that have been granted an exemption certificate, would be included in the reporting requirement under the register that we propose.

I will refer to some of those who have said that they would like to see such a register. On Second Reading, the hon. Member for Mid Derbyshire made an excellent suggestion. She said:

“It would be useful if DEFRA published a register showing how many exemptions have been issued under the historical, artistic and cultural definition every year, so that a picture could be built up of all the relevant artefacts, which would be verified by people who know what they are doing, such as the V&A and other museums.”

She also suggested that the register should be publicly available, in order to

“demonstrate a commitment that the exemption is for the rarest and most important items only, not just any old ivory artefact.”—[*Official Report*, 4 June 2018; Vol. 642, c. 116.]

The International Fund for Animal Welfare and Born Free both support the proposal. They told us in evidence:

“It is absolutely critical...that we should be publicly accountable for what is being listed.”—[*Official Report, Ivory Public Bill Committee*, 12 June 2018; c. 17, Q24.]

A public register would go some way towards establishing a wider understanding and consensus about what constitutes the rarest and most important items, which we know prompted much discussion during the drafting of the Bill. Having a publicly available register would help to inform that process as we go forward. We are not talking about a lot of items. IFAW has suggested that it would be about 75 to 100 items a year, which should not be a huge burden on the Government. Having a publicly available register also provides proper scrutiny and transparency to the legislation and the processes involved.

The Minister confirmed on Second Reading that he would be happy to look at how data could be published, including using a new IT system that would be developed to facilitate the task. I would ask that he does that. I know that he has raised concerns about security and data protection, but I feel sure that we could come up with a method of photographing, data collection and registering that need not fall foul of either data protection or identification and security laws. I do not see why photographing an item in a particular way, as they do for museum catalogues and auctions, would require the identification of the owner. I ask the Minister to reconsider the new clause.

David Rutley: I thank the hon. Lady for her points. She makes an important point—[*Interruption.*]

The Chair: Order. Could we put our phones on to silent, please?

Mims Davies (Eastleigh) (Con): Sorry. I have no idea how it has managed to do that. I am sorry.

David Rutley: It is fine; we all have these technological moments.

The hon. Member for Workington raised some points made by my hon. Friend the Member for Mid Derbyshire and others, and we will certainly consider how we can address some of those concerns. The challenge is that it would be unlikely that we could publish more detail on the specific items exempted, for data protection reasons. However, we will consider whether we could break down the headline figure further, for instance to cover broad categories of items such as statues, reliefs or furniture. I give an undertaking to consider that further.

Liz Twist (Blaydon) (Lab): Does the Minister agree that, given that the whole aim of the Bill is to protect the elephant, we need as much transparency as possible about whether the system that has been devised is operating well, and we need to know what is being exempted? The suggestions put forward by my hon. Friend the shadow Minister are really important in ensuring that we have transparency in the wider field, and that people can see that the Bill is operating in the best interests of the elephants, frankly.

David Rutley: The hon. Lady makes an important point. We are trying to do this for the elephants, so we want to ensure that our approach will provide greater transparency. The balance we need to strike is also about privacy. The technical difficulty is that these items, as we have heard, are small in number, but quite easily identifiable, so could quite easily be linked to individuals.

The approach that I would like to put to the Committee, and that we are looking to take forward, is that we will look at broad categories, which—although I call them broad—will be about specific types of items. That will help us better to track the sorts of items that will be covered under the exemption. I hope that those reassurances are strong enough for members of the Committee.

Anna Turley: I appreciate the Minister’s response, but does he agree that if we have to come back for subsequent legislation, having as much evidence as possible laid before us in the House will enable us better to scrutinise and create further legislation along these lines? I ask that particularly in the light of responses from the Government that indicate a concern just to get the Bill through and then potentially to widen the scope later on. Surely having more evidence on the success and application of the Bill will enable us as parliamentarians to improve future legislation.

David Rutley: The hon. Lady makes a good point. We are trying to get the right balance between privacy and transparency. That is a real challenge in lots of legislation. I also point out that items that are registered, as opposed to certified, will come under clause 10. We will publish data on those items as well.

We are looking at ways of making it as transparent as possible, but the issue with the rarest and most important items is that they are more easily identifiable with an individual than items in some other categories, which is why it might be more difficult in this area than in others. I hope that explanation is helpful. We will do everything

[David Rutley]

we can to try to bring transparency. We are very committed to doing that, and I will work with officials, while the Bill is in Committee and beyond, to see how we can make that more definitive.

Sue Hayman: I thank the Minister for all his comments and for taking the matter seriously. However, because of the number of people who stressed that they felt that this was incredibly important, both for transparency and for getting a proper understanding of the kinds of items that we are looking at in order properly to monitor what the Bill is achieving, I stand by the new clause and would like to press it to a vote.

The Chair: On a point of procedure, to guide the Committee, the Question that I am about to put relates to clause 3. New clause 1 would be decided upon, if Members so chose, at the end of proceedings, after we have deliberated the contents of the Bill as it stands. The Question now relates to clause 3, not new clause 1.

David Rutley: Mr Pritchard, I think we need a bit more clarification. We want to ensure that everybody is clear.

Sue Hayman: Yes—at exactly what stage will we have a vote on new clause 1?

The Chair: New clause 1 will be decided on after we have considered all the clauses and schedules already in the Bill as drafted. All new clauses, whatever their number, come after all the clauses and schedules have been decided upon—they always come at the end—but there will be an opportunity to vote on the new clause if the shadow Minister wishes to press it to a Division.

Sue Hayman: Thank you for that clarification, Mr Pritchard.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

FURTHER PROVISION ABOUT EXEMPTION CERTIFICATES

12.15 pm

Sue Hayman: I beg to move amendment 4, in clause 4, page 4, line 8, at end insert—

‘(5A) Subject to subsection (5B), the Secretary of State may not issue a replacement certificate in respect of an item if a replacement certificate has previously been issued in respect of the same item.

(5B) Subsection (5A) does not apply where—

- (a) an exemption certificate has been applied for under section 3, and issued, in respect of the item since the last instance of a replacement certificate being issued,
- (b) the owner of the item has changed since the last instance of a replacement certificate being issued, or
- (c) it seems to the Secretary of State that there are extraneous circumstances that warrant issuing a further replacement certificate.’

This amendment creates a limit of one replacement certificate being issued for an item. After one certificate is issued, a further replacement certificate can only be issued if a new certificate is applied for under section 3, or if the owner of the item changes, or if there are extraneous circumstances that warrant issuing a replacement certificate.

The Chair: With this it will be convenient to consider clause stand part.

Sue Hayman: The amendment is about further provision for exemption certificates. Under subsection (5), we are looking at a particular concern to do with potential abuse of replacement certificates, which came up a number of times in evidence. Proposed new subsection (5A) limits the Secretary of State, subject to a number of exemptions under proposed new subsection (5B), to ensure that we do not end up with a situation in which a lot of certificates are flying around the place.

The issue was raised in Tuesday’s evidence sessions by the chief executive of the Tusk Trust. He expressed his concerns and said that more safeguards were needed for replacement certificates because, as things stand, an item could have several replacement certificates which could be used to sell similar items legally.

Alex Sobel (Leeds North West) (Lab/Co-op): I have the case of a constituent who is trying to get a second replacement passport. The stipulation is that he has to go to the Home Office for an interview, to verify his identity and why he needs a second replacement passport, and to provide his documentation. That is to prevent passport fraud. Surely the same conditions should apply to replacement exemption certificates.

Sue Hayman: It is really important. We heard an awful lot during the various evidence sessions about how the UK is one of the largest markets in the legal ivory trade. A knock-on effect of that, however, is that we help the illegal ivory trade, simply because of how the whole trade operates. We therefore want to clamp down on the illegal ivory trade and on the ivory trade in this country, because we need to ensure that we leave no loopholes and that nothing in the Bill could be abused by unscrupulous people. If we are not careful with the replacement certificates, as my hon. Friend said, it is possible that more than one replacement certificate could be issued for one item over a period of time and then used to sell on a third item.

IFAW was also concerned about that, stressing that more safeguards were needed to issue replacement certificates, because in theory an ivory item could have several replacement certificates issued over a number of years, and unscrupulous people might use such a certificate to sell similar items legally. Given that the whole point of the Bill is to stop illegal ivory trading and the poaching of elephants, we need to ensure against any such opportunities for unscrupulous people. Any replacement certificates must be issued rarely and with due consideration.

David Rutley: I thank the hon. Lady for her amendment, which recognises an important issue: to ensure that, through our legislation, we do not create any loopholes—something she is keen to avoid, as we all are—that could be exploited by those wishing to circumvent the ivory ban and continue to trade ivory illegally. I understand the concern that an individual might exploit the provision to issue replacement certificates under the exemption for the rarest and most important items. Such an individual might, for example, fraudulently use replacement exemption certificates for non-exempt items.

However, we clearly heard from the Victoria and Albert Museum and the British Museum that items exempted under clause 2 will necessarily be unique

pieces, meaning that there is an exceedingly low risk that a certificate, which will include a photograph, can be used fraudulently for another item, because they are so unique. I must first say that such an action would of course be an offence under the Fraud Act 2006 and might be subject to criminal sanctions, a custodial sentence or a criminal fine. I also want to reassure the hon. Lady that the process an individual must follow to request a replacement will be carefully developed with APHA, alongside other online application processes required for the implementation of the Bill.

As stated in the Bill, a replacement certificate will be issued only if the original has been lost, the original is not passed on by the original owner when the item is sold, or for any other reason the APHA considers appropriate. It is expected that the owner will need to submit an application to request a replacement and declare why a replacement is required. The APHA will compare information provided by the owner against the database of exempt items to ensure that the item in question has indeed been issued a certificate in the past.

A unique identification number will be included on the certificate, which associates it with the exempt item. Certificates will also include the photographs of the item originally submitted when applying for the exemption and a narrative description of the item. Given the nature of items exempted under this category, it is highly unlikely that there would be another item of such close similarity that it could reasonably be taken to be covered by the certificate issued for another item—they are so distinct and different. That will ensure that prospective buyers and enforcement agencies will be able to check that items for sale are compliant with the ban, and will therefore allow any fraudulent activity to be identified by enforcement agencies and the appropriate sanctions to be applied. With that explanation, I ask the hon. Lady to withdraw her amendment.

Sue Hayman: Sorry; I just had to look up what the APHA was—I should know these things.

David Rutley: Excuse me. It is the Animal and Plant Health Agency. There are a lot of acronyms.

Sue Hayman: Yes, quite. Just to confirm, is the Minister talking about developing processes for how it would be managed alongside the Animal and Plant Health Agency?

David Rutley: That is correct.

Sue Hayman: As this is a fraud issue, is he looking at doing it with any other agencies that have expertise in that area? I do not know whether the Animal and Plant Health Agency has expertise in fraud—I am sorry to be a bit ignorant.

David Rutley: I think we are all learning through this process, and Committee stage is about getting into the details and ensuring that we get the right answers to those important questions. The APHA and the enforcement bodies will have full access to the database of exemption certificates, and we have full confidence that they will consider applications for replacements—there will not be many—very sensibly, with reference to the history of applications for that item. The point that I think the hon. Lady was making is whether the enforcement bodies will be engaged in creating the guidance. She is nodding from a sedentary position. My understanding

is that we will involve those bodies as well. We want the best expertise to ensure that this process is as watertight as possible.

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (SNP): Could the Minister clarify the types of circumstances in which a number of replacement certificates might be required, and how likely that is to happen? Would there be some way of tracking the number of replacement certificates so that such certificates would not flood the market, or, if such certificates did become more apparent, that could be identified extremely quickly?

David Rutley: Those are more good questions. I explained a little bit in my remarks—I apologise if I ran through them too quickly. An example would be if a certificate was lost or not passed on appropriately from the original owner when the item was sold. There are situations in which that can happen, and we need to be open to that; we live in a world where people lose things. The hon. Lady makes an important point about tracking. That is where the APHA will be able to log the number of replacements and take the appropriate action. If there is a pattern of behaviour that looks odd, obviously it will be on to that.

The important thing to bear in mind as we go through the Bill is that we are spending a lot of time on the most important areas. It feels like this is a big category, but actually there is a very small number of items. In this particular category it will be much easier to track patterns of behaviour than it would be in some others.

Sue Hayman: I may have missed this in the Minister's comments, but will the number of replacement certificates issued every year be available publicly? Will the register that is being created for items also include whether replacement certificates have been granted for those items?

David Rutley: I await a little inspiration on that point, but it is worth pointing out that the Secretary of State can revoke a certificate if he has cause to do so. Some people might not have focused on that. If there is a pattern of behaviour, certificates can be revoked. That is an important point to consider. On the point about the number of replacements that have been put into the public domain and whether that will be published, we certainly will consider that.

Sue Hayman: The important thing for us on the replacement certificates is to have proper reassurance that there is no potential for abuse, and that the Minister understands the concerns raised in evidence by a number of organisations. If the register will look carefully at how many certificates are sent out each year, so that we have a clear idea of the situation, that will give us an idea of whether abuse is likely to be taking place. If it is being monitored by the Animal, Plant and Health Agency and tracked and we know that the fraud services are involved, that is extremely useful.

It is really about giving proper reassurance to all the agencies involved that no element is open to abuse. But if the register is tracked and abuse is found to be taking place, even though we are talking about only a small number of items, it would be useful to revisit this, perhaps after 12 or 24 months, just to see whether the replacement certification process is working effectively.

David Rutley: This is a real-time conversation—that is what we are here for. Some very good points have been made. I hope that the hon. Lady will gain some reassurance from what I have said; bodies will review the certificates and the replacements will be tracked. On behalf of the Government, I will give due consideration to the proposal for publication. Law enforcement agencies will track this, as they can share and exchange information under the Data Protection Act. That is another layer of protection. We all want a tight system. The steps to achieve that have been set out in this clause.

Sue Hayman: On the understanding that the Minister takes the concerns forward and brings into play a lot of the areas that we have discussed and agreed upon, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

Clause 5

FRESH APPLICATIONS AND APPEALS

12.30 pm

Question proposed, that the clause stand part of the Bill.

David Rutley: Clause 5 makes provision for an owner of an ivory item either to make a fresh application for an exemption certificate under clause 3, where the Secretary of State has revoked a previously issued certificate under clause 4, which we spoke about, or to appeal the Secretary of State's decision to refuse a previous application.

The clause simply sets out that any reapplication for an exemption certificate will be treated as a new or fresh application. It will follow the same procedure as set out in clause 3, and will incur the same fees. The clause gives the Secretary of State a delegated power to set in regulations provisions for an appeals process against a decision to refuse an application or to revoke an exemption certificate. The appeals process will give individuals the right to a fair hearing by an independent and impartial panel. That is consistent with article 6 of the European convention on human rights. A recent example of an appeals process that is article 6-compliant and, like the Ivory Bill process, is outlined in secondary legislation, is section 48(3)(f) of the Children and Social Work Act 2017, which allows appeals when courses for mental healthcare professionals are not approved.

Any appeals process is intended to incur fees that are reasonable and proportionate to the cost of dealing with the appeals. Our intention is to establish an appeals process through regulations before the Bill is commenced.

Sue Hayman: It is very important that the appeals process is robust. When we look at appeals processes in other Departments, we see how important it is that this appeals process is efficient and effective. Too often, appeals get bogged down. We must look at the Department's resources and how it will handle appeals to ensure that people do not have to wait for a long time without knowing what is happening. I seek some reassurance from the Minister about how that will be managed through the Department.

David Rutley: As the hon. Lady says, we need an appeals process. It must be efficient—we do not want logjams—and the relevant bodies must be fully sighted

of the appeals so that they can spot any trends that look odd and take appropriate action. The design is very important. The process will be established before the Bill is commenced.

Liz Twist: Can the Minister please explain whether the appeal will be considered as if it was a fresh application, or whether the appeal body will review the first decision? That is a fine distinction, but it is important. Will it be a second bite at the cherry, or will it be a review?

David Rutley: The hon. Lady makes an interesting distinction. The appeals will be set out in regulations—that is the answer to the previous question. My understanding is that it will be a fresh application. I will carry on talking about the importance of that for a second. We must make sure that people who believe that their application is right have the ability to do that. It will not be considered as an appeal. We will be agreeing the process for appeals over the summer, ahead of laying regulations. What we are saying is that it will be a fresh application.

Liz Twist: I realise that it is difficult when things are happening in real time. I make that distinction because it seems to me that if we set up an appeals process and give it status, the people making the appeal should not get a second bite at the cherry and start with a fresh application unless it is something radically different. The process should be for somebody to review whether the appeal has been considered properly.

David Rutley: I understand the point that the hon. Lady is making. An owner can make a fresh application if they wish, and pay the fee again. That is separate from the appeals process. They make an application, and if that is rebutted they can make a fresh application. The appeal is a separate process.

Liz Twist: I am even more confused. I know that this is really difficult, but perhaps I did not express myself properly. Once the application is made, I understand that there will be a right to an appeal if it is refused. At that stage, will the appeal be reconsidering the original application, or is it a chance for somebody higher up to have another go at deciding?

The Chair: Order. This is a debate, rather than a question and answer session, so it would be helpful for the Committee to get full and comprehensive answers, which are hopefully being inspired as we speak. I will call the shadow Minister, so that inspiration has a little bit more time.

Sue Hayman: We are trying to understand the process of how the appeals are working and, if an application is refused, how that appeals system will work, and whether people who have had an application refused will be advised to put in an appeal against that specific application or whether it is more practicable to start afresh and put in a new application. If it is a new application, to my mind, it is not an appeal to the previous application. We need to get that differentiation absolutely clear, as to the spirit of what the Bill is trying to achieve and the meaning of the terminology.

David Rutley: I thank the hon. Lady for filling that time, which shows true co-operation. We are trying to get answers to these questions on both sides. I really

appreciate that. I will try one more time to explain the process. Forgive me if I have not been as clear as I should have been. Initially an individual or the owner makes an application, which is refused. The appeal is then considered by a separate new assessor once. Separately, an owner may make a new application and pay the fee again, but after the appeal has been heard.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

PRE-1918 PORTRAIT MINIATURES

Sue Hayman (Workington) (Lab): I beg to move amendment 5, in clause 6, page 5, line 6, at end insert—

‘(1A) In this section, “portrait miniature” means a portable portrait that is—

- (a) of no more than 204mm in height,
- (b) of no more than 153mm in width, and
- (c) made by painting on to a sheet of ivory no more than 5mm thick.’

This amendment defines a ‘portrait miniature’ for the purpose of the exemption.

The Chair: With this it will be convenient to discuss clause stand part.

Sue Hayman: The purpose of the amendment is to address a specific issue that has come up clearly in both the written evidence and the oral evidence we heard on Tuesday. A expert from Philip Mould & Company came to speak to us about portrait miniatures, because they are such a specific form of art that separate consideration is required.

Groups including the World Wildlife Fund and the International Fund for Animal Welfare, as well as museums and art galleries, were keen to get a proper definition and understanding of what kind of art works the Bill would affect. They asked for a size criterion in the definition of a portrait miniature, and the hon. Member for Mid Derbyshire raised that during the evidence session because she knows it is needed to avoid confusion about exactly what a portrait miniature is. Compared with the picture at the back of this room, something the size of an A4 sheet of paper could be considered a portrait miniature.

It is important to get a clear definition in place, so that the exemption cannot be abused. The consultant on portrait miniatures from Philip Mould & Company suggested that we go for a maximum size of 6 inches wide by 8 inches high. She said that that would cover between 90% and 95% of all the portrait miniatures that she was aware of. In the amendment, we have converted that suggested measurement into millimetres and stated a maximum thickness. I understand that earlier portrait miniatures are slightly thicker than later ones, owing to the technology used to slice the ivory. On the basis that we are now a metric country, even though personally I would much rather deal with inches—[HON. MEMBERS: “Hear, hear!”] If the Minister accepts the amendment, I would be happy for him to turn millimetres into inches, but because we are a metric country and my understanding is that these days our laws are made in metrics, not in feet and inches, we have converted the 8 inches by 6 inches into 204 mm by 153 mm.

Alex Sobel: On that generational point—[*Interruption.*] I am sure that my hon. Friend the shadow Secretary of State will forgive me, as I am reinforcing her point.

Sue Hayman: I thought you were going to say my “age”!

Alex Sobel: No, no—the point is about metric against imperial measures. Parliament first debated metrification in 1818, which is the period when many portrait miniatures were created. We finally had Government policy agreeing metrification in 1965, but as we know, it was not fully implemented in shops until 2009. We should not be looking here at the same sort of timescale to get metric measures for ivory portrait miniatures. Doing that here and now would be much simpler than wrangling over it for the next 200 years.

Sue Hayman: I thank my hon. Friend for giving us the benefit of his extraordinary knowledge and wonder whether he has thought about joining the V&A staff in the future.

Simon Hoare: Does the hon. Lady have a legitimate expectation that that exchange might be heard on the wireless tomorrow?

Sue Hayman: It may be, as the hon. Gentleman’s previous very kind comments may be. One never knows.

I hope that the Minister will accept the amendment, because it would not change the focus of or detract from anything in the Bill. All it would do is provide clarification, the need for which I thought was universally accepted when we were taking evidence.

Anna Turley: I agree with my hon. Friend. Earlier this week, we heard powerful evidence that the sizes are pretty similar, pretty standard. The amendment would cover 90% to 95% of portrait miniatures. The witness we heard went so far as to say that putting this in the Bill was “very sensible”. That is a direct quote, and it is high praise indeed for some of our legislation to be described as sensible. I think that this provision is the way forward. It is very difficult to see any objection to having it in the Bill.

Sue Hayman: I thank my hon. Friend for that intervention. She is right: the expert said that this would be a “very sensible” thing to do. I hope that the Minister recognises that the amendment is designed to support the Bill by making it generally more effective and giving owners of items a better understanding of exactly what kind of exemption certificate they should apply for, so that the process can move forward much more smoothly.

Mrs Pauline Latham (Mid Derbyshire) (Con): I endorse what the hon. Lady has said. It was clear in the evidence that a measurement was wanted. The whole point about the Bill is that we need clarity and absolute certainty so that everyone knows exactly where they stand. If an item were bigger than is suggested, it would not be considered a miniature, because a miniature is something small. Whether the measurements are in inches or millimetres, I do not mind, although like the hon. Lady, I do not really understand millimetres; I only understand inches. I am interested in what my hon. Friend the

[Mrs Pauline Latham]

Minister has to say, but whether it is stated in the Bill or set out elsewhere as guidance, I would like the size to be specified if possible.

12.45 pm

David Rutley: I thank the hon. Members on both sides of the Committee who have contributed to this debate. I acknowledge the intention behind the amendment to provide further definition to clause 6 on exemption of pre-1918 portrait miniatures. When the Government consulted on the ban on ivory, the evidence obtained indicated that there is no universally accepted definition of portrait miniatures on the basis of size. Furthermore, the definition of “miniature” is, strangely enough, a reflection not of the item’s size but of the technique used to create it. As a result, these items can range in size.

Our assessment is that, within the currently proposed definition, the sale of portrait miniatures is not likely directly or indirectly to fuel the continued poaching of elephants. As evidence to our consultation from the antiques sector, the public and some conservation bodies indicated, an exemption for portrait miniatures under the current definition would be proportionate and justified. The items will need to be registered under clause 10 and go through the application for exemption process described in clause 3, which states that an item must clearly satisfy the conditions for exemption or be referred to a prescribed institution for inspection. The process is sufficient for ensuring that items meet the exemption for pre-1918 portrait miniatures.

Although no clear proposal for a size qualification of portrait miniatures was put forward during the consultation, it is something that we have always been keen to consider. I thank the shadow Minister for her proposal.

Kerry McCarthy (Bristol East) (Lab): When we took evidence on this point on Tuesday, the expert, Emma Rutherford, was asked whether the frame should be included and what should actually be measured. She said that she thought it would be done by size of the ivory, because frame sizes differ. If we are to go down the path of judging something by size, is it the Minister’s view that frame should not be included and that only its contents would be measured?

David Rutley: Perhaps finishing the point I am trying to make will clarify the matter for the hon. Lady, and I will then go on to the point about the frames. I am grateful for the amendment, and I also note the helpful detail from Philip Mould & Company given during the evidence session. We will continue to consider this issue fully.

Sue Hayman: I appreciate the Minister’s response, but to be honest I felt that this was a pretty straightforward thing that we could move ahead with. There did not seem to be any disagreement at all. Philip Mould & Company is the expert in portrait miniatures. Emma Rutherford brought some along to show to us, and she was pretty clear on the definition. The amendment

would be an extremely helpful addition to the Bill and I do not really understand why the Government will not consider it.

David Rutley: I assure the hon. Lady that the Government will give it full consideration, as I said. This is one point in the Bill’s passage. We will give full consideration to what has been said in Committee today and in the evidence sessions.

Liz Twist: I urge the Minister to think carefully about including a definition in the Bill. I think we all think we understand what is meant by a miniature—I have a pretty clear idea—but in the Bill, to which people will turn to argue points in disputes, it is important to spell out what we actually believe a miniature to be.

David Rutley: We will give that full consideration. I understand the point that hon. Members have made, that including a definition would add greater clarity. We will make that definition as clear as possible. However, as I have said several times now, the point has been made very clearly by Members on both sides of the Committee and we will give it full consideration.

Sue Hayman: Will the Minister expand on what he means by “give consideration”? I am sorry to push this, but I really think it would be helpful to have a definition in the Bill.

David Rutley: I understand that the hon. Lady’s enthusiasm knows no bounds; she is very passionate, as we all are, but I think she understands that there are formal processes that need to be gone through as part of the legislative process, and there will be moments at which these points can be given full consideration as the Bill progresses over the next few weeks.

Dr Cameron: It appeared to me in the evidence sitting that the expert was clear about the size of portrait miniatures, but the Minister has said there is a range, rather than a definite size. I wondered whether, in that case, the range could be set out in the Bill, or whether we could seek clarification: is there a clearer definition of portrait miniatures than the Minister’s initial evidence suggests?

David Rutley: Yes, there are different ways in which that could be reviewed; it could be by range or by definitive sizes. As I said in my earlier remarks, I think that the contributions made by Philip Mould & Company were helpful and we want to give them due consideration.

Alex Chalk: I am reassured by the Minister’s undertaking to give this important matter, raised in good faith by the Opposition, full consideration. Can he clarify that in the course of that consideration he will seek the best possible range of expert advice, to ensure that any future amendment will not have to be amended further in due course, and will truly meet the point that has properly been raised?

David Rutley: Absolutely; we want the best advice, and I think we have received some very good advice. We just need to give it due consideration as the Bill progresses.

Kerry McCarthy: Looking back again at Emma Rutherford's evidence, she said that 90% to 95% of miniatures would be within the range of 6 by 8 inches. Clearly that means that 5% or 10% are outside that. We did not press her—perhaps we should have—on the importance of that. She seemed quite relaxed about the fact that most would be covered by that rule if we were to introduce it, but I think if we are to consider introducing a size provision, we need to know whether some important miniatures would be excluded, and perhaps tweak it or at least bear that in mind.

David Rutley: I think that relates closely to what my hon. Friend the Member for Cheltenham said. We need to get the best available advice on how to define that. Important points were made about frames, and so forth, which need to be considered. We want to get the best advice and expertise available, to get the definition right, and then, as the hon. Member for Blaydon said, make the definition transparent and available to anyone.

Simon Hoare: I entirely take the point made by the hon. Member for Blaydon about the need for clarity in handling disputes. If I have heard my hon. Friend the Minister correctly, to deal with this important issue he proposes to take further soundings and seek clarification, and, when he and the Department have reflected on the amendments and discussion in Committee, to give the Government's response on Report in the House, as is proper.

David Rutley: My hon. Friend makes an important point. I hope I have provided some reassurance to Members on both sides of the Committee that we are taking the matter seriously. I have never said that we are giving something serious consideration as often as I have in the past couple of minutes, and clearly my voice and tone are not as reassuring to people as they should be, but in the spirit of what we are trying to achieve, I hope that Members understand that important points were made in evidence, and there are processes that need to be undergone. Members have made important points in Committee about ifs, buts and maybes, and they need to be worked through, but I make a commitment that we shall give the matter proper consideration, with the right expertise, and move forward as quickly as we can. I hope that reassures Members on both sides.

I did not realise that there was so much interest in portrait miniatures until we got involved with the Bill.

Sue Hayman: I think the reason there is quite a lot of interest is partly that Emma Rutherford, the consultant, brought along such beautiful examples of portrait miniatures, but partly that it seemed to be a straightforward, easy thing on which we could all agree. I think that is why there has been such interest. I must say I am reluctant to let this go.

David Rutley: I understand the hon. Lady's frustration to some extent, but having been asked to come off the substitutes bench to act as a Minister for a few weeks, I am learning that processes need to be put in place to ensure that various regulations and laws are respected and due process is followed before any changes are made. That is the point I am trying to make, perhaps not as elegantly as I should, but I hope that reassures her.

Sue Hayman: With reference to the point made by my hon. Friend the Member for Bristol East about looking at the implications of size, will the Minister undertake to work with me to take the matter forward and to table an amendment for consideration on Report, so we have that clarification in the Bill?

David Rutley: That is an excellent suggestion, and I look forward to working with the hon. Lady in the spirit of co-operation that we have seen today, to see how we can move it forward.

Sue Hayman: On the understanding that we will work together and table an amendment to clarify that area on Report, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

PRE-1947 ITEMS WITH LOW IVORY CONTENT

Question proposed, That the clause stand part of the Bill.

David Rutley: Clause 7 sets out the second exemption under the Bill. Subsections (1) and (2) state that items made before 1947 in which the ivory content is below 10% of the total volume of the item and the ivory is integral to the item, so it cannot be removed without damaging it or without difficulty, are exempt from the prohibition of sales, provided they are registered under clause 10.

The 1947 date for de minimis items derives from the EU wildlife trade regulations as the date before which worked ivory does not currently need a CITES—convention on international trade in endangered species—certificate to be commercially traded, and is familiar to those in the antiques sector. That familiarity will aid the ban's implementation.

The exemption recognises that items with a very low ivory content, such as inlaid furniture, or a dish or a teapot with a small ivory handle, are not valued on the basis of their ivory content. Further, in such pieces, the ivory is incidental and integral to the item. It cannot be easily removed, so it is not vulnerable to recarving. The threshold of 10% ivory content is higher than in a significant number of countries. At federal level, the US has a 50% by volume limit or 200 grams threshold for de minimis exemption, although some states, such as New York and California, have implemented tougher thresholds.

The de minimis threshold is supported by key non-governmental organisations, including the World Wildlife Fund, the Tusk Trust and International Fund for Animal Welfare, which recognise it as a tough measure. Enforcement agencies have also indicated their gratitude that we have opted for a volume rather than a weight-based threshold, as it is far easier to assess.

Ordered, That the debate be now adjourned.—(*Mims Davies.*)

12.58 pm

Adjourned till this day at Two o'clock.

