

Progress on the Implementation of the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018

Purpose

This paper updates members about the progress on the implementation of the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (“the Amendment Ordinance”) and seeks members’ comments on the related matters.

Background

2. To demonstrate the Government’s commitment in combating the illegal ivory trade and to contribute to the global efforts in protecting wild elephants, the Government announced in December 2016 a three-step plan to phase out the local trade in ivory by the end of 2021 and to impose heavier penalties to enhance deterrent against illicit trade in endangered species through legislative amendment. To take forward the proposal, the Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017 was submitted to the Legislative Council (LegCo) for scrutiny in June 2017.

3. The Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (“the Amendment Ordinance”) was passed by LegCo on 31 January 2018 and commenced on 1 May 2018. It amended the Protection of Endangered Species of Animals and Plants Ordinance (“the Ordinance”) to take forward the ivory phase-out plan and increase the penalties under the Ordinance.

Implementation of Ivory Phase-out Plan

Step 1, Step 2 and Preparation for Step 3

4. Step 1 of the ivory phase-out plan has taken effect since the Amendment Ordinance commenced on 1 May 2018. It has banned the import and re-export

of all elephant hunting trophies and those remaining post-Convention ivory¹ items, the import, export and re-export of which are currently permissible under CITES².

5. Step 2 of the ivory phase-out plan has also taken effect three months after Step 1, i.e. on 1 August 2018. It has banned the import and re-export of pre-Convention ivory³ (except for antique ivory). The commercial possession of pre-Convention ivory (except for antique ivory) in the local market has also been subject to licensing control similar to the control on post-Convention ivory. Licence applications for commercial possession of pre-Convention ivory (except for antique ivory) have been scrutinised to ensure that the ivory came from legal source. Inspections of the ivory have been conducted including recording the weight, taking photos and putting on tamper-proof hologram stickers⁴. Twelve Licences to Possess (PLs) have been issued for about 2.6 tonnes of pre-Convention ivory for commercial use. In addition to post-Convention ivory, there were a total of 375 licensed stocks covering a total of about 65.8 tonnes of commercial ivory (except for antique ivory) as at the end of 2018.

6. Step 3 of the ivory phase-out plan will take effect on 31 December 2021 and it will ban the the possession for commercial purposes of all ivory including pre-Convention ivory and post-Convention ivory (except for antique ivory). All the existing PLs for commercial use of ivory will expire on or before 30 December 2021, and any application for new licence for ivory that is not covered by an existing licence will not be accepted.

Trade in Antique Ivory

7. As a measure to protect cultural relics, the trade in antique ivory continues to be allowed under a strengthened control regime. Antique ivory means a piece of elephant ivory that was, before 1 July 1925—

¹ The ivory that was acquired after the CITES provisions started to apply on elephants (1 July 1975 for Asian elephant and 26 February 1976 for African elephant) is referred to as “post-Convention ivory”.

² The Convention on International Trade in Endangered Species of Wild Fauna and Flora

³ The ivory that was acquired before the CITES provisions started to apply on elephants (1 July 1975 for Asian elephant and 26 February 1976 for African elephant) is referred to as “pre-Convention ivory”.

⁴ Except for ivory scrap, and worked ivory less than 0.1 kg.

- (i) removed from the wild;
 - (ii) significantly altered from its natural state for jewellery, adornment, art, utility or musical instruments; and
 - (iii) acquired by a person after the alteration in such altered state that required no further carving, crafting or processing to effect its purpose;
- and does not include an elephant hunting trophy.

8. Import of antique ivory requires a Licence to Import (IL) and a Pre-Convention Certificate issued by the previous exporting place, while re-export requires a Licence to Re-export (RL). Possession of antique ivory for commercial purposes does not require a PL provided that the ivory can be proven to meet the requirements for antique exception. Since 1 August 2018, a total of 8 consignments covering a total of 22 pieces of antique ivory have been imported. There have been no re-export of antique ivory so far.

Other Exceptions

9. The Amendment Ordinance aims at phasing out the local trade in ivory. The current exceptions permitted under CITES which are limited to specific and stringent circumstances including scientific studies, education and law enforcement continue to be allowed under appropriate licences. Possession of ivory of personal or household effects for non-commercial purposes, as well as import and re-export of such ivory (except for tourist souvenirs) for non-commercial purposes, are not affected by the Amendment Ordinance and continue to be exempted.

Re-employment Training for Ivory Craftsmen

10. We understand that only a small number of ivory craftsmen remain in the industry as many ivory craftsmen have already changed job since the international ivory ban took effect in 1990. For ivory craftsmen that might be affected by the ivory phase-out plan, we have liaised with the Employees Retraining Board (ERB) to find suitable re-employment training for those ivory craftsmen to switch to another job according to their needs. There are more than 700 existing re-employment training programmes under ERB. According to our survey conducted in late 2017, a few ivory craftsmen wished to receive re-employment training at that time. We have referred them to ERB for follow-up action subsequently.

Implementation of New Penalty Regime

11. To provide a stronger deterrent against the smuggling and illegal trading of endangered species, the Amendment Ordinance has imposed uniform penalties for both commercial and non-commercial summary offences, and promulgated a new set of penalties for offences convicted on indictment. For summary offences, a fine of \$5,000,000 and two years of imprisonment will be imposed for offences concerning Appendix I species; and a fine of \$500,000 and one year of imprisonment for offences concerning Appendices II and III species. For offences convicted on indictment, a fine of \$10,000,000 and imprisonment for ten years will be imposed for offences concerning Appendix I species; and a fine of \$1,000,000 and imprisonment for seven years for offences concerning Appendices II and III species. The increased penalties have taken effect since the Amendment Ordinance commenced on 1 May 2018 and apply to all scheduled species under the Ordinance in addition to elephants.

12. Before the increment of maximum penalty under the Amendment Ordinance, all the prosecution cases were tried at the Magistrates' Court. However, the maximum sentence a Magistrate can impose is two years imprisonment and a maximum fine of \$100,000 for a single offence. Therefore, the more serious cases under the Ordinance have to be escalated to District Court for trial. As at the end of 2018, 17 cases were tried or will be tried at the District Court after seeking legal advice. The cases involved smuggling of rhino horns, wood chips of incense tree, pangolin scales, live turtles etc. The seriousness of a case will depend on the species involved and their conservation status, seizure quantity, *modus operandi* of the illegal act etc.

13. It was observed that with effect of increased maximum penalties under the Amendment Ordinance, the sentences laid have been significantly increased. For instance, an illegal import of 3.1 kg rhino horn was tried at District Court and the sentence laid was an imprisonment of 8 months after one-third deduction as the offender pleaded guilty. Another example was an illegal export of 2.6 kg wood chips of incense tree for which the sentence laid was an imprisonment of 24 months after one-third deduction. The sentences laid in similar conviction cases before the implementation of the Amendment Ordinance were about 2 to 4 weeks imprisonment and 2 months imprisonment respectively. The significantly raised penalties laid by the court send a clear message to the public

about the seriousness of such offences.

Education and Publicity Work

14. A series of activities have been carried out locally and internationally to publicize the ivory phase-out plan and new penalty regime among the general public, travellers and traders in 2018.

15. Two press releases and four Facebook posts regarding commencement of Steps 1 and Step 2 of the ivory phase-out plan as well as enforcement cases under the new penalty regime have been made to raise public awareness on the Amendment Ordinance.

16. To remind travellers not to import or export ivory and other endangered species without the necessary CITES permits, publicity materials including handbills were distributed, and posters and panels were displayed, at different land control points, Hong Kong-China Ferry Terminal, Hong Kong International Airport and the International Travel Expo. A TV advertisement, an audio public announcement, as well as TV and radio announcements of public interest were also broadcasted at suitable locations such as land control points, cross-boundary coaches and YouTube Channel.

17. Two circular letters were issued to about 1,000 ivory traders and about 19,000 traders of endangered species respectively to notify them about the new ivory control and increase in penalties. A guidance notes on frequently asked questions regarding antique ivory was also uploaded to AFCD's website for reference by the ivory traders.

18. At the international level, we have notified all CITES Parties through the CITES Secretariat about Hong Kong's ivory phase-out plan and new penalty regime. As the import and re-export ban under Step 1 and Step 2 of the ivory phase-out plan constitutes "quantitative restrictions" under the General Agreement on Tariffs and Trade (GATT)⁵, a notification of the concerned measures has also been made to the World Trade Organization.

Inspections

⁵ In this paper, the GATT refers to the *General Agreement on Tariffs and Trade 1994*.

19. Further to the measures mentioned above, two rounds of education visits and inspections of ivory shops have been conducted to ensure understanding of ivory traders about the new ivory control and enhance their compliance to the Amendment Ordinance. A total of 462 education visits and inspections of ivory shops were conducted in 2018.

20. The first round of education visits was conducted before implementation of Step 1 of the ivory phase-out plan targeting licensed ivory shops. The licensees were educated about the new ivory control and reminded to comply with the licensing requirement.

21. Another round of inspections to ivory shops was conducted after Step 2 of the ivory phase-out plan commenced targeting both the licensed ivory shops and other art and craft shops. Licensee's compliance to licence conditions such as hologram requirement, proper keeping of transaction records, as well as display of the licence (or a notice in lieu of the licence) and the poster was checked. No irregularities were found during the inspections. Educational leaflets were also distributed to art and craft shops and the keepers were educated on the control on endangered species particularly the new control on ivory.

Way Forward

22. As the ivory phase-out plan proceeds to its completion in 2021, we will scrutinize every licence application for renewal or variation of existing PLs, import and export of antique ivory and other ivory under exceptional circumstances to prevent abuse of the exceptions allowed under the plan.

23. Education visits and inspections of ivory shops and other shops selling specimens of endangered species would be conducted from time to time. The new control on ivory and new penalty regime would be explained to the relevant shop keepers.

24. We will also monitor the need of the ivory craftsmen and find suitable re-employment training for them to switch to other employment together with ERB, and provide any other necessary assistance under established mechanisms as appropriate.

25. For the forthcoming prosecution cases, we will make sure that the evidence collected from the investigation be fully and factually presented by the prosecutor in the court, and we will monitor the penalty laid by the court for the future cases.

Advice Sought

26. Members are invited to comment on the above way forward for better implementation of the ivory phase-out plan and stronger deterrent against illegal trade in endangered species under the new penalty regime.

Agriculture, Fisheries and Conservation Department
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