

# **ENVIRONMENT BILL**

## **Supplementary Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs**

This supplementary Memorandum relates to a new clause and new Schedule relating to the use of forest risk commodities in commercial activity.

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## **INTRODUCTION**

1. This Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ('the Department') to assist with the scrutiny of the Environment Bill. This Memorandum relates to a new clause and new Schedule relating to the use of forest risk commodities in commercial activity. The Memorandum describes provisions in that Schedule conferring power to make subordinate legislation and guidance. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. In this Memorandum, references to paragraphs are to the paragraphs of the new Schedule.

## **CONTEXT AND PURPOSE**

3. The regulatory regime set out in the Schedule is intended to help tackle deforestation by increasing the demand for sustainably sourced commodities in the UK, and contributing to increased demand globally.

4. The Schedule establishes requirements on larger businesses that use agricultural commodities associated with wide-scale deforestation, referred to as 'forest risk' commodities. Part 1 of the Schedule sets out three core requirements on regulated businesses:

- a. Regulated businesses are prohibited from using forest risk commodities that were produced on land where local laws, such as those relating to land use and ownership, were not complied with.
- b. Regulated businesses must establish a system of due diligence for each regulated commodity. This is defined as a procedure that identifies, assesses and mitigates the risk of illegally produced commodities entering their supply chain.
- c. Regulated businesses must report on their due diligence exercise. Reports are required annually, six months after the end of the financial year.

5. The Secretary of State has powers to make regulations establishing an enforcement system, and to use an enforcement body to investigate businesses' compliance with the requirements. Fines and other civil sanctions may be issued to businesses that don't comply.

6. Finally, the Secretary of State is required to conduct a review of the law's effectiveness every two years, and to set out before Parliament any steps they intend to take to ensure that the policy is delivering as intended. This frequency of review is consistent with the reporting period under clause 20 – report on international environmental protection legislation

## **ANALYSIS OF DELEGATED POWERS**

### ***Paragraph 1: a power to specify forest risk commodities***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

### **Context and purpose**

7. The three core requirements of Part 1 of the Schedule relate to use of 'forest risk commodities'. Paragraph 1(1) defines 'forest risk commodity' as a commodity specified in regulations made by the Secretary of State. The commodity specified must be an agricultural commodity (i.e. a commodity produced from a plant, animal or other organism). The Secretary of State may only specify a commodity that is causing, or may cause, the conversion of forest to agricultural use. The Government will consult before exercising the power to specify a forest risk commodity. In deciding which commodities to regulate first, the Secretary of State will take into account factors including the commodity's contribution to deforestation globally, the amount of that commodity consumed in the UK, and business' ability to trace their supply back to the source area.

### **Justification for taking the powers**

8. The Department's view is that the commodities to be regulated as 'forest risk commodities' should be set out in secondary, not primary legislation.

9. The extent to which particular agricultural commodities, used within the UK, contribute to deforestation is dynamic: it changes across time. In addition, the judgement as to whether to bring a commodity within the scope of regulation should be based on consultation and evidence. Finally, the Government wishes to adopt a phased approach – initially specifying a small number of commodities, working closely with regulated business to refine regulatory delivery (by government) and compliance (by business) and later expanding a more mature regulatory regime to a larger number of commodities as necessary. For all these reasons, it is appropriate to specify forest risk commodities in secondary legislation, pursuant to consultation. It is the Department’s view that the power to prescribe forest risk commodities in secondary legislation will provide the flexibility necessary to respond to changing circumstances, and to ensure that UK business is regulated only to the extent necessary to achieve the policy objective underlying the requirements of Part 1 of the Schedule.

10. The power to specify forest risk commodities is limited by:

- a. paragraph 1(2) – the Secretary of State may only prescribe a commodity produced from a plant, animal or other organism;
- b. paragraph 1(3) – the Secretary of State may only prescribe a commodity if they consider that forest is being or may be converted to agricultural use for the purposes of producing the commodity; and
- c. paragraph 1(4) and (5), which describe the scope of the term ‘forest’.

11. The power is subject to a duty to consult prior to the use of the power – see paragraph 1(7).

12. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law’s effectiveness every two years, and this review may include consideration of the effectiveness of regulations made using the power to specify forest risk commodities.

### **Justification for taking the procedure**

13. The Department’s view is that prescribing the commodities that will be subject to the requirements of Part 1 of the Schedule is a matter likely to be of particular

interest to Parliament. Therefore the Department has proposed that the regulations be subject to the affirmative procedure.

***Paragraph 2(4)(c): a power to add to the categories of ‘relevant local law’***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

**Context and purpose**

14. The requirements of Part 1 of the Schedule relate to use of ‘forest risk commodities’ produced from a plant, animal or other organism grown on land in a way that complies with ‘relevant local law’. ‘Local law’ refers to the local law of the country where a commodity was produced (or more precisely, where the animal, plant or organism from which a commodity is produced, was grown). The categories of ‘relevant local law’ are listed at paragraph 2(4). The list is exhaustive and consists of ‘local law’ that relates to the ownership of land, the use of land or any other local law, relating to land and specified in regulations made by the Secretary of State (see paragraph 2(4)(c)). The Secretary of State may only specify a law that relates to the prevention of forest being converted to agricultural use.

**Justification for taking the powers**

15. The list of relevant local laws is designed to capture those categories of local laws, relating to land, which may have the effect of preventing the conversion of forest to agricultural use. It is the Department’s view that the categories of law listed at paragraph 2(4)(a) and (b) – i.e. laws relating to ownership and use – will cover the majority of such laws. However the Department recognises the possibility there may be some laws in foreign legal systems that (arguably) do not fall squarely within the English law concepts of ownership and use: for example, some forms of native title based on custodianship. In addition, there is the possibility that novel forms of land law may arise in the future – just as native title has emerged relatively recently in some foreign legal systems. It is the Department’s view that the power to make regulations adding to the scope of ‘relevant local law’ is necessary to address these

possibilities, and for the purpose of ensuring that the definition of ‘relevant local law’ comprehensively covers all those local laws relating to land that have the effect of preventing the conversion of forest to agricultural use.

16. The power at paragraph 2(4)(c) is limited in two main ways:
- a. by the categories of local law identified in subparagraphs (a) and (b), with which any further prescribed category of local law should be consistent (i.e. the rule of *ejusdem generis*); and
  - b. by the requirement that the prescribed category relates to land and has an effect related to preventing the conversion of forest to agricultural use.

17. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law’s effectiveness every two years, and this review may include consideration of the effectiveness of regulations made using the power to specify categories of relevant local law.

### **Justification for taking the procedure**

18. The Department’s view is that regulations adding categories of law to the scope of ‘relevant local law’ is likely to be of particular interest to Parliament and therefore the Department has proposed that the regulations be subject to the affirmative procedure.

### ***Paragraph 3: a power to make provision about due diligence systems***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution Procedure*

### **Context and purpose**

19. The core requirements of Part 1 are designed to ensure that a regulated business takes all reasonable actions to ensure that it does not use a forest risk commodity produced illegally (i.e. illegally, by reference to ‘relevant local law’). A regulated business must operate in accordance with a due diligence system (see

paragraph 3). In addition, an enforcement authority will not be permitted to impose a sanction on a business that has breached the prohibition on use of illegal commodities where that business has taken all reasonable steps to implement a due diligence system (see paragraph 13(2)).

20. Paragraph 3 of Part 1 requires a regulated business to establish and implement a due diligence system with respect to each commodity for which it is regulated. Paragraph 3(2) sets out the framework of that system – i.e. a system for identifying, assessing and mitigating the risk of illegally produced commodities entering the supply chain of a regulated business. Paragraph 3(3) provides the Secretary of State with power to prescribe further detail about a due diligence system.

### **Justification for taking the powers**

21. Due diligence systems are regularly used by business to address risk. The framework of such systems is relatively settled, and so may be set out in primary legislation – as has been done at paragraph 3(2). However the details of due diligence systems may change across time, in particular to keep pace with best practice for mitigating the risk of using illegal forest risk commodities. In addition, the extent to which government needs to prescribe the detail of due diligence systems may change across time – as the regulated community develops greater familiarity with the scheme, the need of that community for detailed prescription may reduce. For example, we may make regulations specifying the level to which risk should be reduced – possibly specifying that risk be reduced to a negligible level. There may be a need to change the level in response to technological innovation that allows risk to be reduced to a lower level.

22. The Department is of the view that the detail of the due diligence system should be responsive to best practice, and to the changing needs of the regulated community. Therefore the flexibility of secondary legislation is necessary.

23. The power at paragraph 3(3) is limited by the definition of due diligence system at paragraph 3(2), and includes examples of the kind of provision the regulations will include. Any further detail prescribed by the Secretary of State must fall within the framework outlined at paragraph 3(2), and cannot amend that framework.

24. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law's effectiveness every two years, and this review may include consideration of the effectiveness of regulations made using the power to prescribe the detail of a due diligence system.

### **Justification for taking the procedure**

25. The Department considers that the negative procedure gives Parliament the appropriate level of scrutiny over regulations that will be technical in nature and that will be limited to specifying the details of a framework set out in primary legislation.

### ***Paragraph 4: powers relating to the annual report on due diligence***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution Procedure*

### **Context and purpose**

26. Part 1 of the Schedule imposes a requirement on a regulated person to establish and implement a due diligence system. In addition there is a requirement on a regulated person to report annually to a relevant authority about the actions taken by the regulated person to establish and implement the due diligence system. Paragraph 4(3) gives the Secretary of State power to make regulations about the content and form of the report that is provided to the relevant authority, and the manner in which the report is provided. For example, it is likely that regulations will require that reports include information about the source location for all supplies of the commodity used by a regulated business.

27. Paragraph 4(4) establishes a duty on the relevant authority to publish annual reports, and gives power to the Secretary of State to make regulations specifying the manner and the extent of publication. For example, it is likely that regulations will require the published report to contain information about the volume of a particular commodity, from a particular location, used in a supply chain.

28. Annual reports are provided to a 'relevant authority'. The 'relevant authority' is defined at paragraph 4(5) as either the Secretary of State, or a person specified by the Secretary of State in regulations. At present, it is intended that the functions of the relevant authority will initially be exercised by the Secretary of State as this will allow DEFRA officials to establish reporting tools and sites for publication of reports. As the scheme matures, these functions may be passed to a separate body.

### **Justification for taking the powers**

29. It is the Department's view that the power at paragraph 4(3) is necessary for the following reasons. The annual reports are an important means for checking compliance with Part 1 of the Schedule. It is necessary to have flexibility about the content of the report to ensure that reporting requirements can evolve, towards the objective of ensuring regulated persons are required to report no more detail than is necessary for the relevant authority to effectively check compliance. Flexibility will allow 'fine tuning' of the reporting requirement, in response to lessons learned about the most effective approach to verifying compliance. The power at paragraph 4(3) is necessary to provide the necessary regulatory responsiveness.

30. The power at paragraph 4(3) is limited by the subject matter of the annual report as described in paragraph 4(1). Under paragraph 4(1), a regulated business is required to report on the action it has taken to establish and implement a due diligence system (as described in paragraph 3(2)). The power to specify the content of a report could not be used to require content that went beyond a report on these actions.

31. It is the Department's view that the power at paragraph 4(4) is necessary for the following reasons. The annual reports are a means of informing the public about the actions taken by regulated persons to reduce their use of illegal forest risk commodities. It is necessary to have flexibility as to what information is published, in order to be responsive to the changing balance between the public interest in transparency and the interests of regulated persons in maintaining confidentiality about their operations. The power at paragraph 4(4) is necessary to provide that flexibility.

32. It is the Department's view that the power at paragraph 4(5) is necessary for the following reasons. The administration of the requirements in Part 1 of the

Schedule may evolve – in the sense that functions may, across time, be distributed across different public bodies. Therefore it is necessary that the Secretary of State have the ability to specify bodies to undertake the functions of the relevant authority.

33. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law's effectiveness every two years, and this review may include consideration of the effectiveness of regulations made using the power to prescribe matters relating to the annual report.

### **Justification for taking the procedure**

34. The Department's view is that the three powers, at paragraph 4(3), (4) and (5) warrant a degree of parliamentary oversight but involve matters of a detailed, administrative and technical nature that do not warrant parliamentary approval. As such the Department proposes that the regulations are subject to the negative resolution procedure.

### ***Paragraph 5: powers relating to eligibility for the de minimis exemption***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative and Negative Resolution Procedure*

### **Context and purpose**

35. The requirements of Part 1 of the Schedule fall on a regulated person as defined in paragraph 7(1). A business will be a regulated person, with respect to a particular forest risk commodity, if its turnover exceeds a prescribed threshold. The Department proposes to regulate larger businesses, who are most able to influence commodity producers. However the Department recognises this may include some businesses with a large turnover who do not use significant amounts of a commodity. To address this problem, paragraph 5 establishes an exemption from the requirements of Part 1, with respect to a particular forest risk commodity, in the case where the amount of the commodity used by a regulated person is below a prescribed threshold – see paragraph 5(3). The Secretary of State has power to prescribe the threshold (see paragraph 5(7)). The scope of this power is outlined at paragraph

5(8), and includes power to prescribe the way in which a regulated person may determine the amount of a forest risk commodity that they use.

36. The exemption is available to a regulated person who (before a reporting period) gives the enforcement authority a notice containing prescribed information - see paragraph 5(2)(b). The Secretary of State has power to prescribe the information (see paragraph 5(7)).

37. If, in the course of a reporting period, it becomes apparent that the regulated person will exceed the prescribed threshold for the exemption, the person must lodge a second notice containing prescribed information – see paragraph 5(5). The Secretary of State has power to prescribe the information (see paragraph 5(7)).

### **Justification for taking the powers**

38. It is the Department's view that the power to prescribe the exemption threshold for a particular commodity is necessary for the following reasons. The exemption threshold for a particular commodity cannot be set in primary legislation, if the commodities within scope are prescribed through secondary legislation. It is appropriate that the exemption threshold for a particular commodity be specified in the same manner as:

- a. a forest risk commodity is specified (see analysis of paragraph 1 powers, above); and
- b. the turnover threshold, with respect to that commodity, is prescribed (see analysis of paragraph 7 powers, below).

Accordingly, the powers to specify a forest risk commodity, prescribe turnover thresholds and prescribe exemption thresholds are all subject to affirmative resolution procedure, preceded by consultation.

39. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law's effectiveness every two years, and this review may include consideration of the effectiveness of regulations made using the power to prescribe the exemption threshold for a particular commodity.

40. It is the Department's view that the power to prescribe the content of the exemption notices is a detailed administrative and technical matter that is best

addressed in secondary legislation. The scope of the power is circumscribed by the purpose of a notice – the Secretary of State will be limited to prescribing content that is necessary to inform the enforcement authority of matters relating to reliance on the exemption.

### **Justification for taking the procedure**

41. The Department's view is that regulations prescribing the exemption threshold for a particular commodity is likely to be of particular interest to Parliament and therefore the Department has proposed that the regulations be subject to the affirmative procedure.

42. The Department's view is that the power to prescribe the content of the exemption notices warrants a degree of parliamentary oversight but involves a detailed administrative matter that does not warrant parliamentary approval. The Department therefore proposes that the regulations should be subject to the negative resolution procedure.

### ***Paragraph 6: a power to issue statutory guidance to an enforcement authority***

*Power conferred on: Secretary of State*

*Power exercised by: Issuing statutory guidance*

*Parliamentary Procedure: No parliamentary procedure*

### **Context and purpose**

43. The power to make regulations relating to enforcement includes the power to confer functions on one or more enforcement authorities (see paragraphs 10 and 11, and the analysis below). The Secretary of State will have power to issue statutory guidance to an enforcement authority about the requirements of Part 1 of the Schedule. The enforcement authority must have regard to guidance when exercising its functions under Part 2 of the Schedule.

44. It is anticipated that an enforcement authority will develop public guidance, aimed at regulated business. Further, it is anticipated that the Secretary of State may wish to issue guidance, to the enforcement authority, which is relevant to the content

of such public guidance. For example, it is possible that the Government will work with producer countries to recognise schemes, authorised by the government of the producer country, that certify a particular commodity has been legally produced (i.e. in accordance with 'relevant local law'). In the event that a scheme meets the requirement of the UK Government, the Government intends that regulated businesses would be entitled to rely on a certificate as good evidence of legality. In the event that a certification scheme is recognised, the Government would use statutory guidance to inform an enforcement authority of its view that certificates may be accepted as good evidence of legality.

### **Justification for taking the powers**

45. The Department is of the view that it is necessary that the Secretary of State have a means of informing an enforcement authority of policy initiatives relevant to compliance, and a means of influencing the authority's recognition of those initiatives.

46. The power to issue guidance is not a power to make law. An enforcement authority must apply the law set out in primary and secondary legislation, and the duty to have regard to guidance from the Secretary of State cannot override this obligation to apply the law. To put it another way, the Secretary of State's ability to influence an enforcement authority through guidance is circumscribed by the law set out in primary and secondary legislation.

47. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law's effectiveness every two years, and this review may include consideration of the effect of guidance issued by the Secretary of State to an enforcement authority.

### **Justification for taking the procedure**

48. The Department's view is that any guidance issued by the Secretary of State to the enforcement authority will be about policy initiatives relevant to the public guidance issued by an enforcement authority. The guidance issued by the Secretary of State cannot create new law or amend existing law, and so the Department considers that parliamentary oversight is not necessary.

## ***Paragraph 7: powers relating to ‘regulated person’***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

### **Context and purpose**

49. The requirements of Part 1 of the Schedule fall on a ‘regulated person’ as defined in paragraph 7(1). A business will be a regulated person, with respect to a particular forest risk commodity, if its turnover exceeds a threshold set in regulations made by the Secretary of State – see paragraph 7(1)(a). A subsidiary may be a regulated person if the parent entity has a turnover exceeding the prescribed threshold.

50. In addition to the power to set the turnover threshold, the Secretary of State has power to make provision about how turnover is determined – see paragraph 7(2).

51. Some businesses will not meet the turnover threshold and will not become a ‘regulated person’ until sometime after the Part 1 requirements come into force. The Secretary of State will have power to make regulations specifying the way in which the Part 1 requirements will apply in such cases – see paragraph 7(3). Principally, the power will be used to ensure that newly regulated businesses do not become subject to regulation part way through a financial year. In addition the power may be used to provide transition periods, if such periods are necessary to enable newly regulated business to prepare to comply with the Part 1 requirements.

52. A group of companies may include several companies that are each, separately, a regulated person. The Secretary of State will have power to make regulations specifying the circumstances in which the separate companies, with regulated person status, can be treated as a single regulated person – see paragraph 7(4). This power may be used to allow regulated businesses within a group to operate under the same due diligence system, and to report as a group. In addition, this power may be used to overcome the problem of a regulated business avoiding

regulation by arranging for subsidiaries to undertake those transactions involving the use of a forest risk commodity.

### **Justification for taking the powers**

53. It is the Department's view that the turnover threshold for a particular forest risk commodity is best set in secondary legislation, at the same time and in the same manner that the commodity is specified using the power at paragraph 1. The Department has considered the option of setting a single turnover threshold in primary legislation, above which a business is regulated with respect to all forest risk commodities (specified under paragraph 1). However the Department is of the view that regulation can be better targeted using different thresholds for different forest risk commodities.

54. Regulations made under paragraph 7(2) are subject to a duty to consult.

55. It is the Department's view that the powers to make provision relating to new regulated persons, and to groups of companies, are necessary in order to respond where the administration of the regulatory scheme reveals the need to refine the application of the Part 1 requirements to certain categories of regulated person (i.e. new regulated persons, and groups of companies).

56. Finally, the review provision at paragraph 17 requires the Secretary of State to conduct a review of the law's effectiveness every two years, and this review may include consideration of the effectiveness of regulations made using the power to prescribe the turnover threshold for a particular commodity.

### **Justification for taking the procedure**

57. The Department's view is that these powers are likely to be of particular interest to Parliament and therefore the Department has proposed that the regulations be subject to the affirmative procedure.

### ***Part 2: powers relating to enforcement***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

## **Context and purpose**

58. Part 2 of the Schedule confers power on the Secretary of State to make regulations relating to the enforcement of requirements under Part 1 of the Schedule (see paragraph 8).

59. The regulations relating to the enforcement of requirements under Part 1 of the Schedule may:

- a. confer functions on one or more enforcement authorities (see paragraph 9);
- b. require an enforcement authority to issue guidance about the exercise of its functions, and to consult when preparing the guidance (see paragraph 9(3)).
- c. confer functions on an enforcement authority to monitor compliance with Part 1 requirements (see paragraph 10);
- d. require persons to keep records, and to provide records and other information to the enforcement authority – and require the enforcement authority to provide information to the Secretary of State (see paragraph 11);
- e. confer powers of entry, inspection, examination, search and seizure on an enforcement authority (see paragraph 12, noting the requirement that a warrant is required in the circumstances specified in paragraph 12(3));
- f. make provision for the imposition of civil sanctions, but such provision must ensure that a civil sanction is not imposed on a regulated person who failed to comply with the Part 1 prohibition on use of illegal forest risk commodities but took all reasonable steps to implement a due diligence system (see paragraph 13);
- g. make provision for criminal penalties for failure to comply with civil sanctions or obstruct/fail to assist an enforcement authority (see paragraph 13);

- h. make provision for an enforcement authority to require regulated persons to pay the costs incurred by the authority in performing its functions (see paragraph 15(a));
- i. make provision for an enforcement authority to seek recovery of costs in a matter before a court or tribunal (see paragraph 15(b)).

### **Justification for taking the powers**

60. The Department's view is that the 'infrastructure' for enforcing compliance with the requirements of Part 1 should be established through secondary, rather than primary legislation, so that this 'infrastructure' may be responsive:

- a. in the short term, to the evidence gathered in the course of the consultation that will precede the making of regulations; and
- b. in the longer term, to the actual operation of the scheme and regulatory knowledge gained in the course of that operation.

61. Civil sanctions (e.g. monetary penalties or compliance notices) will be the primary means of enforcing breaches of the requirements of Part 1 of the Schedule. Criminal prosecutions are only intended to be used as a last resort, and the cases in which criminal offences may be created by regulations are limited to those for which civil sanctions are considered an inadequate deterrent – i.e. non-compliance with civil sanctions, or the obstruction of or failure to assist an enforcement authority.

62. Appropriate safeguards are included in relation to the exercise of the powers. In relation to powers of entry etc., regulations may only enable an enforcement authority to enter premises by force, enter a private dwelling without consent, or search and seize items found on premises, with the authority of a warrant.

63. The powers may be used to require an enforcement authority to issue guidance about the exercise of its functions, and to consult when preparing the guidance (see paragraph 9(3)). Such guidance functions as an additional protection against the arbitrary imposition of sanctions, since the enforcement authority will need to make decisions having regard to its published policy.

64. The regulation making power relating to enforcement is subject to a duty to consult (see paragraph 16). Finally, the review provision at paragraph 17 requires

the Secretary of State to conduct a review of the law's effectiveness every two years, and this review may include consideration of the effectiveness of regulations made for the purpose of enforcing the requirements of Part 1 of the Schedule.

### **Justification for taking the procedure**

65. The Department's view is that making provision for imposition of civil sanctions, criminal offences and use of investigative powers is a matter that warrants close Parliamentary scrutiny and time for debate, and so has proposed that the regulations are subject to the affirmative procedure.

66. With respect to the fact that no parliamentary procedure is required for the guidance issued by an enforcement authority (as mentioned in paragraph 9(3)), the Department notes that it is common practice to require a public body, that exercises civil sanctions power, to publish (pursuant to consultation) its policy for using those sanctions (see for example the Regulatory Enforcement and Sanctions Act 2008 section 63).