

ENVIRONMENT BILL

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

Introduction

This Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) to assist with scrutiny of the Environment Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation and other delegated powers which were added or amended at Commons Report stage. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

Amended Clause 73(1) A power to make regulations relating to the recall of motor vehicles, etc; amended to allow the Secretary of State to provide that a reference in the regulations to a standard is to be construed as a reference to that standard as it has effect from time to time

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution Procedure

Context and purpose

1. Clause 73 enables the Secretary of State to make regulations relating to the recall of motor vehicles, engines for non-road mobile machinery (NRMM), and components for both, if they do not meet the environmental standards they were approved to when placed on the market. The proposed amendment provides that regulations under clause 73 specifying relevant environmental standards may specify standards as they have effect from time to time. The purpose and context for the power generally is set out in the Delegated Powers Memo for the Bill published on introduction. This Supplementary Delegated Powers Memo focuses on the proposed amendment to clause 73.

2. The regime, once implemented, will permit the Secretary of State to require a manufacturer or a distributor of a “relevant product” to recall that product where it does not comply with a “relevant environmental standard”. The purpose of the regime is to enable enforcement of environmental standards for motor vehicles and engines for NRMM and thereby contribute to the improvement of air quality and other environmental objectives.
3. Clause 73(4) provides a three-part definition of a “relevant environmental standard” that applies to any standard which:
 - a. in virtue of any enactment, a “relevant product” must meet,
 - b. is relevant to the environmental impact of that product, and
 - c. is specified in the regulations made under clause 73.
4. The requirement that a standard be “specified in the regulations” means that the regulations need to be updated from time to time to reflect changes in environmental standards, both with regard to the addition of new standards and the modification of existing standards.
5. To remove any uncertainty in the interpretation of a standard that is specified in the vehicle recall regulations, the proposed amendment to clause 73 allows the Secretary of State to provide in the regulations that reference to a standard is to be construed as a reference to that standard as it has effect from time to time (i.e. to allow for “ambulatory references”). This will ensure that where reference to a standard is made in regulations, it may be construed for the purposes of those regulations as a reference to the standard as it may be amended in the future, irrespective of whether the standard is set out in retained legislation, or in legislation applying in virtue of the Northern Ireland Protocol.

Justification for taking the power

6. The justification for delegating the power to make the regulations is that the standards to which vehicles and engines for NRMM are approved, as well the

products themselves, are liable to frequent change in line with changes in environmental regulation and advances in technology. It remains the Department's view that the delegation of power to make arrangements relating to vehicle recall is the most effective and efficient way of implementing an appropriate recall regime that supplements the existing type approval regime (see the Delegated Powers Memo for the Bill published on introduction). Indeed, a power to make regulations prescribing type approval requirements is delegated to the Secretary of State by section 54 of the Road Traffic Act 1988.

7. The amendment detailed above relates to the question of how references to environmental standards specified in any regulations under clause 73 are to be construed. As a result, its inclusion will expand the scope of an existing delegated power in the Bill rather than create a new one. Accordingly, the justification put forward in the original Delegated Powers Memorandum, and summarised in the previous paragraph, applies to this amendment as it did to the relevant clauses on introduction.
8. The scope of the Secretary of State's delegated power to make regulations relating to vehicle recall is limited by clause 73(4) in that it only relates to standards which a relevant product must meet by virtue of an enactment and which are relevant to the environmental impact of that product. This proposed amendment to enable ambulatory references does not change this. These ambulatory references would also only apply to changes to existing standards previously specified in the regulations. If wholly new standards were adopted, amending regulations would be required to ensure those new standards were adequately specified in the vehicle recall regulations.

Justification for taking the procedure

9. The negative resolution procedure is proposed for the regulations. The Department considers that this is the most appropriate procedure for three main reasons: the need for the regulations to be amended in a timely fashion to respond to new environmental standards; the similarity with the power to make

regulations under section 54 of the Road Traffic Act 1988 which is also subject to the negative resolution procedure; and the fact that the power will not apply to individuals but only to manufacturers and distributors of relevant vehicles, engines or components. Furthermore, the question of whether in principle the references to the standards specified in the regulations should have ambulatory effect will already have been considered by Parliament as part of its scrutiny of clause 73 of the Bill itself.

New Clause - A delegated power to allow DAERA to issue statutory guidance to the OEP in relation to its Northern Ireland enforcement functions

Power conferred on: DAERA

Power exercised by: Issuing statutory guidance

Parliamentary Procedure: Lay before the Northern Ireland Assembly

Context and purpose

10. This power enables the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) to issue statutory guidance to the OEP on its enforcement policy (the matters set out in clause 22(6)) so far as relating to the OEP's Northern Ireland enforcement functions. The OEP will be required to have regard to the DAERA guidance in preparing its Northern Ireland enforcement policy, and in exercising its Northern Ireland enforcement functions. This new clause mirrors the power for the Secretary of State to issue guidance to the OEP in England, in clause 24. The supplementary Delegated Powers Memorandum for clause 24 set out the context and purpose of the Secretary of State power: that context and purpose equally applies to the DAERA power.

Justification for taking the power

11. As for the Secretary of State's guidance power in clause 24, the purpose of this guidance power is to allow DAERA to be responsive to issues that may arise in practice in relation to the OEP's Northern Ireland enforcement policy. These issues are not necessarily foreseeable in advance so cannot be provided for on the face of the Bill. The inclusion of similar powers for the Secretary of State and DAERA will help to ensure a consistent approach to environmental governance arrangements across both jurisdictions.
12. The power has been designed in a way so as to protect the OEP's independence. Firstly, the OEP is required to 'have regard' to the guidance but is not bound to act in accordance with it where it has clear reasons not to do so. Secondly, DAERA must exercise the power in line with their duty to have regard to the need to protect the OEP's independence (paragraph 17 of Schedule 1, as amended by paragraph 28(10) of Schedule 3). The guidance must also be laid before the Northern Ireland Assembly.
13. DAERA can also issue guidance to an existing arms-length body, the Committee on Climate Change, on its functions: see section 41 of the Climate Change Act 2008 (CCA 2008). Other Northern Ireland departments also have powers to issue guidance to arms-length bodies.

Justification for taking the procedure

14. Non-binding guidance, including the section 41 CCA 2008 guidance to the Committee on Climate Change, is often not subject to any Assembly procedure. However the Department considers that the Northern Ireland Assembly may take an interest in this guidance to the OEP. The Department's view therefore is that it is appropriate to lay this statutory guidance before the Northern Ireland Assembly and publish it, to enable both transparency and scrutiny.