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NS1

To move the following Schedule—

“USE OF FOREST RISK COMMODITIES IN COMMERCIAL ACTIVITY

PART 1

REQUIREMENTS

Meaning of “forest risk commodity”

1 (1) In this Schedule “forest risk commodity” means a commodity specified in regulations made by the Secretary of State.

(2) The regulations may specify only a commodity that has been produced from a plant, animal or other living organism.

(3) The regulations may specify a commodity only if the Secretary of State considers that forest is being or may be converted to agricultural use for the purposes of producing the commodity.

(4) “Forest” means an area of land of more than 0.5 hectares with a tree canopy cover of at least 10% (excluding trees planted for the purpose of producing timber or other commodities).

(5) In sub-paragraph (4) the reference to land includes land that is wholly or partly submerged in water (whether temporarily or permanently).

(6) The regulations may not specify timber or timber products, within the meaning of Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

(7) Before making regulations under this paragraph the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(8) The requirement to consult in sub-paragraph (7) may be met by consultation carried out before this paragraph comes into force.

Prohibition on using illegally produced commodities

2 (1) A regulated person in relation to a forest risk commodity must not use that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.

(2) A regulated person in relation to a forest risk commodity must not use a product derived from that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.

(3) In this Schedule “local law”, in relation to a forest risk commodity, means any law having effect in the country or territory where the source organism was grown, raised or cultivated.

(4) In this Schedule “relevant local law”, in relation to a forest risk commodity, means local law—

- (a) which relates to the ownership of the land on which the source organism was grown, raised or cultivated,
 - (b) which relates to the use of that land, or
 - (c) which otherwise relates to that land and is specified in regulations made by the Secretary of State.
- (5) The regulations may specify a local law only if it relates to the prevention of forest being converted to agricultural use.
- (6) The “source organism” means the plant, animal or other living organism from which the forest risk commodity was produced.

(7) Sub-paragraph (1) does not apply to the use of a forest risk commodity where—

- (a) the commodity is waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072)), and
- (b) the use of the commodity is for the purpose of making renewable transport fuel—
 - (i) that qualifies for the issue of an RTF certificate under article 17 of that Order, and
 - (ii) in respect of which an additional RTF certificate may be issued under article 17A(4) of that Order.

(8) Sub-paragraph (2) does not apply to the use of a product derived from a forest risk commodity where—

- (a) the commodity is waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072)), and
- (b) the product is renewable transport fuel—
 - (i) that qualifies for the issue of an RTF certificate under article 17 of that Order, and
 - (ii) in respect of which an additional RTF certificate may be or has been issued under article 17A(4) of that Order.

Due diligence system

3 (1) A regulated person in relation to a forest risk commodity who uses that commodity or a product derived from that commodity in their UK commercial activities must establish and implement a due diligence system in relation to that commodity.

(2) In this Schedule a “due diligence system”, in relation to a forest risk commodity, means a system for—

- (a) identifying, and obtaining information about, that commodity,
- (b) assessing the risk that relevant local laws were not complied with in relation to that commodity, and
- (c) mitigating that risk.

(3) The Secretary of State may by regulations make further provision about the matters in sub-paragraph (2)(a) to (c), including in particular—

- (a) the information that should be obtained;
- (b) the criteria to be used in assessing risk;
- (c) the ways in which risk may be mitigated.

Annual report on due diligence system

4 (1) A regulated person in relation to a forest risk commodity who uses that commodity or a product derived from that commodity in their UK commercial activities must, for each reporting period, provide the relevant authority with a report on the actions taken by the person to establish and implement a due diligence system in relation to that commodity as required by paragraph 3.

(2) The report must be provided no later than 6 months after the end of the reporting period to which it relates.

(3) The Secretary of State may by regulations make provision—

- (a) about the content and form of reports under this paragraph;
- (b) about the manner in which reports under this paragraph are to be provided.

(4) The relevant authority must make reports under this paragraph available to the public in the way, and to the extent, specified in regulations made by the Secretary of State.

(5) In this paragraph “relevant authority” means—

- (a) the Secretary of State, or
- (b) if regulations made by the Secretary of State specify another person as the relevant authority for the purposes of this paragraph, that other person.

(6) In this Schedule “reporting period” means—

- (a) the period beginning with the day on which this paragraph comes fully into force and ending with the following 31 March, and
- (b) each successive period of 12 months.

Exemption

5 (1) A regulated person in relation to a forest risk commodity is exempt from the Part 1 requirements in respect of their use of that commodity, or a product derived from that commodity, in their UK commercial activities during a reporting period if they satisfy the following two conditions.

(2) Condition 1 is that before the start of the period, the person gives a notice to the relevant enforcement authority containing—

- (a) a declaration that the person is satisfied on reasonable grounds that the amount of the commodity used in their UK commercial activities during the period will not exceed the prescribed threshold, and
- (b) the prescribed information.

(3) Condition 2 is that the amount of the commodity used in the person's UK commercial activities during the period does not exceed the prescribed threshold.

(4) Sub-paragraphs (5) and (6) apply where—

(a) a regulated person gives a notice under sub-paragraph (2), but

(b) the amount of the commodity used in the person's UK commercial activities during the period exceeds the prescribed threshold.

(5) If, before the relevant date, the regulated person gives a notice to the relevant enforcement authority containing the prescribed information, the person is exempt from the Part 1 requirements in respect of their use of the commodity, or the product derived from the commodity, in their UK commercial activities during the part of the reporting period—

(a) beginning with the start of the period, and

(b) ending with the date the notice is given.

(6) If the regulated person does not give a notice under sub-paragraph (5), the person is not exempt from the Part 1 requirements in respect of their use of the commodity, or the product derived from the commodity, in their UK commercial activities during any part of the reporting period.

(7) In this paragraph—

“prescribed” means prescribed in regulations made by the Secretary of State;

“relevant date” means the date during the reporting period that the amount of the commodity used in the person's UK commercial activities exceeds the prescribed threshold;

“relevant enforcement authority” means the enforcement authority on which the function of receiving notices under this paragraph has been conferred by Part 2 regulations.

(8) Regulations under this paragraph may in particular—

(a) prescribe thresholds by reference to weight or volume;

(b) make provision about how the amount of a forest risk commodity used in a regulated person's UK commercial activities (including in relation to a forest risk commodity from which a product is derived) is to be determined, and regulations under paragraph (b) may include provision for determining the amount by reference to matters determined or published by the Secretary of State or other persons.

(9) Before making regulations under this paragraph (except under sub-paragraph (2)(b) or (5)) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(10) The requirement to consult in sub-paragraph (9) may be met by consultation carried out before this paragraph comes into force.

Guidance

6 (1) The Secretary of State may issue guidance to an enforcement authority about the Part 1 requirements.

(2) An enforcement authority must have regard to guidance issued under subparagraph (1) when exercising its functions under Part 2 of this Schedule.

Meaning of “regulated person”

7 (1) In this Schedule “regulated person”, in relation to a forest risk commodity, means a person (other than an individual) who carries on commercial activities in the United Kingdom, and—

(a) meets such conditions in relation to turnover as may be specified in regulations made by the Secretary of State for the purposes of defining who is a regulated person in relation to that forest risk commodity, or

(b) is an undertaking which is a subsidiary of another undertaking which meets those conditions.

(2) Regulations under sub-paragraph (1) may make provision about how turnover is to be determined.

(3) Before making regulations under sub-paragraph (1) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) The requirement to consult in sub-paragraph (3) may be met by consultation carried out before this paragraph comes into force.

(5) The Secretary of State may by regulations make provision for the Part 1 requirements not to apply, or to apply with modifications, in relation to a person who becomes a regulated person for such transitional period, after they become a regulated person, as may be specified in the regulations.

(6) The Secretary of State may by regulations make provision for a group of undertakings to be treated as a regulated person, in such circumstances, for such purposes and to such extent as may be provided (and may modify the application of the Schedule accordingly).

(7) In this paragraph—

“group” has the meaning given by section 474 of the Companies Act 2006;

“undertaking” has the meaning given by section 1161 of that Act, and whether an undertaking is a subsidiary of another undertaking is to be determined in accordance with section 1162 of that Act.

PART 2

ENFORCEMENT

General power

8 The Secretary of State may by regulations (“Part 2 regulations”) make provision about the enforcement of requirements imposed by or under Part 1 of this Schedule (“Part 1 requirements”).

Powers to confer functions

9 (1) Part 2 regulations may include provision conferring functions on one or more persons specified in the regulations (each of whom is an “enforcement authority” for the purposes of this Schedule).

(2) Part 2 regulations may include provision—

- (a) conferring functions involving the exercise of discretion;
 - (b) for the functions of an enforcement authority to be exercised on its behalf by persons authorised in accordance with the regulations.
- (3) Part 2 regulations may include provision requiring an enforcement authority—
- (a) to issue guidance about the exercise of its functions;
 - (b) to consult with specified persons before issuing such guidance.

Monitoring compliance

10 Part 2 regulations may include provision conferring on an enforcement authority the function of monitoring compliance with Part 1 requirements.

Records and information

11 Part 2 regulations may include provision—

- (a) requiring persons on whom Part 1 requirements are imposed to keep records;
- (b) requiring persons on whom Part 1 requirements are imposed to provide records or other information to an enforcement authority;
- (c) requiring an enforcement authority to make reports or provide information to the Secretary of State.

Powers of entry etc

12 (1) Part 2 regulations may include provision conferring on an enforcement authority powers of entry, inspection, examination, search and seizure.

(2) Part 2 regulations may include provision—

- (a) for powers to be exercisable only under the authority of a warrant issued by a justice of the peace, sheriff, summary sheriff or lay magistrate;
- (b) about applications for, and the execution of, warrants.

(3) Part 2 regulations must secure that the authority of a warrant is required for the exercise of any powers conferred by the regulations to—

- (a) enter premises by force;
- (b) enter a private dwelling without the consent of the occupier;
- (c) search and seize material.

Sanctions

13 (1) Part 2 regulations may include provision—

- (a) for, about or connected with the imposition of civil sanctions in respect of—
 - (i) failures to comply with Part 1 requirements or Part 2 regulations, or

(ii) the obstruction of or failure to assist an enforcement authority;

(b) for appeals against such sanctions.

(2) Part 2 regulations must include provision to ensure that in a case where—

(a) a regulated person fails to comply with a requirement in paragraph

2(1) or (2) in relation to their use of a forest risk commodity or a product derived from a forest risk commodity, but

(b) an enforcement authority is satisfied that the regulated person took all reasonable steps to implement a due diligence system in relation to the commodity used by the person in that particular case, a civil sanction may not be imposed on the regulated person in respect of the failure to comply.

(3) Part 2 regulations may include provision—

(a) creating criminal offences punishable with a fine in respect of—

(i) failures to comply with civil sanctions imposed under Part 2 regulations, or

(ii) the obstruction of or failure to assist an enforcement authority;

(b) about such offences.

(4) In this paragraph “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).

14 Part 2 regulations may include provision for the imposition of sanctions of that kind whether or not—

(a) the conduct in respect of which the sanction is imposed constitutes an offence, or

(b) the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

Charges

15 Part 2 regulations may include provision—

(a) requiring persons on whom Part 1 requirements are imposed to pay to an enforcement authority charges, as a means of recovering costs incurred by that enforcement authority in performing its functions;

(b) authorising a court or tribunal dealing with any matter relating to Part 1 requirements or Part 2 regulations to award to an enforcement authority costs incurred by it in performing its functions in relation to that matter.

Consultation requirement

16 (1) Before making Part 2 regulations the Secretary of State must consult any persons the Secretary of State considers appropriate.

(2) The requirement to consult in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.

PART 3

GENERAL PROVISIONS

Review

17 (1) The Secretary of State must review the effectiveness of the Part 1 requirements and any Part 2 regulations (“relevant provisions”) in accordance with this paragraph.

(2) A review must consider in particular—

(a) the amount of forest being converted to agricultural use for the purposes of producing commodities;

(b) the impact of the relevant provisions on the amount of forest being converted to agricultural use for the purposes of producing forest risk commodities;

(c) the impact of the relevant provisions on the use of forest risk commodities, or products derived from forest risk commodities, in UK commercial activities where relevant local laws were not complied with in relation to those commodities;

(d) any changes to relevant local laws in relation to forest risk commodities.

(3) Having carried out a review the Secretary of State must lay before Parliament, and publish, a report stating—

(a) the conclusions of the review, and

(b) the steps, if any, the Secretary of State intends to take to improve the effectiveness of the relevant provisions (including whether the Secretary of State intends to make any regulations under this Schedule).

(4) The first review must be completed during the period—

(a) beginning with the second anniversary of the first date on which paragraphs 2 to 4 are fully in force, and

(b) ending with the third anniversary of the first date on which paragraphs 2 to 4 are fully in force.

(5) Subsequent reviews must be completed before the end of the 2 year period beginning with the day on which the previous review was completed.

(6) A review is completed when the Secretary of State has laid and published the report.

Interpretation

18 (1) In this Schedule— “agricultural use” includes use for horticulture and aquaculture; “commercial activity” includes—

(a) producing, manufacturing and processing;

(b) distributing, selling, or supplying;

(c) purchasing for a purpose within paragraph (a) or (b) (but not purchasing as a consumer);

“due diligence system”, in relation to a forest risk commodity, has the meaning given by paragraph 3;

“enforcement authority” has the meaning given by paragraph 9;

“forest” has the meaning given by paragraph 1;

“forest risk commodity” has the meaning given by paragraph 1;

“local law”, in relation to a forest risk commodity, has the meaning given by paragraph 2;

“Part 1 requirements” has the meaning given by paragraph 8;

“Part 2 regulations” has the meaning given by paragraph 8;

“regulated person”, in relation to a forest risk commodity, has the meaning given by paragraph 7;

“relevant local law”, in relation to a forest risk commodity, has the meaning given by paragraph 2;

“reporting period” has the meaning given by paragraph 4;

“UK commercial activity” means commercial activity carried on in the United Kingdom.

(2) References in this Schedule to a product derived from a forest risk commodity are to a product derived from a forest risk commodity in whole or in part (and include any product of an animal fed on a forest risk commodity or a product derived from a forest risk commodity).”

Member’s explanatory statement

This new schedule contains provisions relating to the use of forest risk commodities by regulated persons in their UK commercial activities. Part 1 of the Schedule contains restrictions on the use of commodities and requirements relating to due diligence and reporting. Part 2 contains enforcement provisions.