The Government is grateful for the report from the Constitution Committee on the Ivory Bill.

The Committee has recommended that the Government should set out its justification for investing civilian officials working directly to the minister with policing powers and provide details of any safeguards for the proposed regime.

**Justification for using OPSS**

As the Committee notes, the accredited civilian officers referred to in the Bill will be officers of the Office of Product Safety and Standards (OPSS) which is a part of the Department of Business, Enterprise and Industrial Strategy (BEIS). As part of a central government department, OPSS is directly accountable to the Secretary of State for BEIS who is accountable to Parliament for OPSS’s activities in the usual way.

The Government considered a number of options for the civilian enforcement body, including Trading Standards, the Environment Agency (which only operates in England) and the Animal and Plant Health Agency. OPSS is an experienced body that currently enforces a range of regulations on behalf of Defra and other government departments. It also has experience of co-working with the police, including the National Wildlife Crime Unit, and customs officers to make sure that enforcement is effective and that all parties are clear on their role and remit. OPSS also focusses on working collaboratively with businesses to ensure products sold to consumers are compliant with regulations. OPSS is therefore well placed to enforce the Ivory Bill because it operates across the whole of the UK and it has vast experience in regulating a diverse range of other product regimes.

**Accountability and transparency**

OPSS already has similar powers to those included in the Bill under:

- the Consumer Rights Act 2015
- Part 3 of the Batteries and Accumulators (Placing on the Market) Regulations 2008;
- Schedule 2 of the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012;
• Part 3 of the Timber and Timber Products (Placing on the Market) Regulations 2013;

• Schedule 3 to the Heat Network (Metering and Billing) Regulations 2014; and

• Part 4 of the Nagoya Protocol (Compliance) Regulations 2015.

OPSS places great importance on accountability. In addition to its direct accountability to the Secretary of State, it considers its accountability to:

• the other government departments for which it provides enforcement services;

• to the businesses that it regulates; and

• to the intended beneficiaries of the regulations it enforces, including consumers, the environment and the business community.

OPSS aims to ensure that effective accountability mechanisms are in place in respect of all three of these groups, for example, through:

• regular meetings, performance reports and sharing of information with other government departments;

• engagement with representatives of the businesses it regulates; and

• engagement with representatives of the intended beneficiaries of regulation.

In line with the statutory principles of Better Regulation, OPSS is committed to being transparent about its regulatory activities. It maintains a published list of the statutory enforcement actions that it has taken and publishes an annual report relating to its enforcement activities. Paragraph 23 of Schedule 1 to the Bill will require OPSS to publish regular reports on its use of civil sanctions to supplement existing reporting requirements.

Safeguards

OPSS is answerable to Parliament through the Secretary of State for BEIS. It has its own internal governance arrangements. In addition, OPSS has its own set of published Service Standards to which it adheres. This details how they operate their enforcement policies, the standards to which officers will comply when dealing with businesses and members of the public and how officers will conduct inspections and compliance checks.

OPSS has its own internal complaints policy, but if a complainant is dissatisfied with the outcome or handling of a complaint, they could choose to take this to the Parliamentary and Health Service Ombudsman, as one can with any government department or public body.

The Committee notes that the there is no provision in the Bill that would make OPSS subject to the Regulators' Code. Compliance with the Code is secured by the inclusion of named bodies or primary and secondary legislation in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (the 2007 Order) which is made under powers in section 24(2) of the Legislative and Regulatory Reform Act 2006 (the 2006 Act).

OPSS is already subject to the Code in relation to the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012, as listed above, and other regulations including weights and measures legislation and the End of Life Vehicle Regulations 2003. OPSS voluntarily applies the same Code principles to other regimes that are not included in the 2007 Order.
The Government will add an entry for the Ivory Act 2018 to the 2007 Order for when the ivory ban comes into force. This means that OPSS (and any successor body should this ever be the case) will be subject to the Code.

Amendments to the Bill

The Government is grateful for the Committee’s consideration of the Bill. We have considered the Committee’s concerns carefully. One of the intentions of the Bill is to change behaviour through enforcing compliance with the ban. It is therefore imperative that there is a civilian enforcement body to manage day to day compliance; leaving more serious cases to the police.

On the basis that we intend to maintain a role for OPSS as a civilian regulator. In doing this we need to ensure that its officers have the appropriate level of powers to enforce the ban effectively. However, we now think that there is a case for there being different powers for civilian and police/customs officers in the case of the ivory ban.

The Government will therefore be tabling amendments to the Bill that will remove clause 17 and replace it with two new clauses dedicated to outlining the powers of entry of OPSS officers in relation to an examination of relevant evidence in non-domestic premises.

The new clauses will not include powers for OPSS officers to enter premises for the purpose of “promoting awareness and understanding”. OPSS officers will only be able to arrange to enter premises for the purposes of assessing compliance or where they have reasonable grounds to suspect relevant evidence is on the premises. OPSS officers will also be able to enter premises where they have a legal right to be (e.g. the public areas of shops and auction houses, street markets, etcetera).

We will replace references to OPSS “searching premises” to references to “examining anything on the premises” that the officer thinks may be relevant evidence. This is to make clear that the purpose of any examination would be to carry out a visual inspection of the premises and to examine documents and items (e.g. those on display) or carry out any measurement.

When conducting an examination on the premises, the OPSS officer will be able request documentation (e.g. exemption certificates or proof of registration), seize, detain or remove any items found on the premises, or take copies of documents, etc. This would be with the co-operation of persons on the premises. OPSS officers will not be given powers to open sealed containers, force entry into locked rooms or cabinets. OPSS officers will also not be given powers to carry out tests that may damage an item or take samples from anything that they have the power to examine. References to accredited civilian officers and clause 17 will be removed from clauses 20 to 22. The respective powers will be set out in the above mentioned new clauses.

Clauses 18 and 19 will also be amended so that OPSS officers will not be able to apply to the courts for search warrants; only the police and customs officers will be able to do this. We envisage that OPSS officers would be able to accompany police or customs officers as “authorised persons” under clause 19(4).
Again, I would like to thank the Committee for its work in considering the Bill and I hope the Government's amendments address the concerns expressed by your committee.