IVORY BILL – ENFORCEMENT POWERS OF THE OFFICE OF PRODUCT SAFETY AND STANDARDS

Thank you for your contribution to the Committee stage of the Ivory Bill. I said that I would write to you about the enforcement powers of the Office of Product Safety and Standards (the Office).

Like you, I want to make sure that the regulation and enforcement of the Ivory Bill is robust and that those who do not comply with the restrictions receive the relevant sanctions.

The Office for Product Safety and Standards (the Office), which is part of BEIS, is an experienced enforcement body that currently enforces a range of regulations on behalf of the Government and as such they are well placed to provide the regulatory function for ivory compliance and enforcement. On behalf of Defra, the Office already enforces the ‘Nagoya Protocol on access and benefit sharing of genetic resources’; the ‘EU Timber Regulations’; the ‘Forest Law Enforcement, Governance and Trade Licencing’; and a range of environmental regulations relating to, for example, waste batteries and electrical and electronic equipment. The Office works across the UK, and has national oversight of regulations – making sure there are consistent standards.

Recognising that offences committed under this Bill will vary in severity, a mixed regime of both criminal and civil sanctions will apply. In its role as regulator and in exercising its regulatory functions, the Office will fully adhere to the provisions of the Regulators’ Code and all relevant legal requirements to ensure that the legislation is enforced in a proportionate manner that does not undermine the rights and freedoms of businesses. The Regulators’ Code is a statutory Code that provides a clear, flexible and principles based framework for how regulators should engage with those they regulate.

The Code includes a provision relating specifically to officer competency which requires regulators to ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches. The Office currently enforces a
range of regulations on behalf of several government Departments, and they have processes in place to ensure that all officers undertake a programme of training and operate under appropriate supervision until considered, by their managers, to exercise their powers in an appropriate and proportionate way. Officers are required to have individual personal development plans to ensure continuous personal, professional development to maintain the necessary skills and competence required to do their job.

In assessing competence, Enforcement Managers are required to undertake assessments of their officers' knowledge of the specific laws they have the power to enforce to ensure that officers have the necessary understanding of the legislation and the enforcement policies of the Office. Officers are not authorised to enforce the legislation until they have successfully completed this process.

The training programme for OPSS officers will be developed and implemented before the Bill is commenced. Officers will have the power to enter business premises, inspect or seize products and documentation, obtain warrants, initiate proceedings and serve notices. It will constitute an offence to obstruct an authorised officer in their activity. Where products or evidence are seized, officers will provide the business with written notification and information on the next steps and any rights to appeal. There will be a requirement for the Office to ensure that their officers act in accordance with agreed service standards and policies.

The Office will be able to impose civil sanctions in the form of discretionary, proportionate and cost effective courses of enforcement action. The Office exercise their existing enforcement powers to ensure a consistent approach with other legislation, such as the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, and the Criminal Justice and Police Act 2001, and other associated guidance that applies. We envisage close working of the Office with other enforcement bodies. The Office will use civil sanctions and criminal sanctions are likely to fall to the Police.

Clause 17 of the Bill does not contain unusual powers to allow the Office to exercise powers for non-public health matters. An example of similar existing legislation is paragraph 23 of Schedule 5 of the Consumer Rights Act 2015 (CRA) which is enforced by Trading Standards. The CRA allows Trading Standards Officers to exercise the power of entry for a routine inspection if they provide notice. The CRA includes powers which allow Trading Standards Officers (as civilian officers), to apply for a warrant to enter premises. Those in the Office will be granted similar powers to enter premises; if they wish to enter without providing notice, they must apply for a warrant.

Paragraph 18 of Schedule 1 of the Bill allows the Secretary of State to provide detailed provisions concerning the appeals process for civil sanctions. Paragraph 18 of Schedule 1 relies on section 22 of the Tribunals, Courts and Enforcement Act 2007 to make provisions concerning the appeals process for monetary penalties and stop notices. The details concerning the appeals procedure will be outlined in regulations which will specify which chamber of the First Tier tribunal will hear appeals, in addition, regulations will ensure that the safeguards in Article 6(2) and (3) of the European Convention of Human Rights are protected, for example, appellants will be informed of the nature and cause of the
accusation against them in the language they understand, they will have adequate time and facilities for the preparation of their defence, they will be able to defend themselves through legal representation of their choosing; and they will be in a position to examine or examine witnesses against them and use an interpreter if required.

I hope this offers you reassurance that in commissioning the Office for Product Safety and Standards to take on the regulatory function, that they are well placed to do so, have the relevant expertise and experience and will help to ensure compliance with the Ivory Bill.

I am placing a copy of this letter in the Library of both Houses.

Yours sincerely,

[Signature]

DAVID RUTLEY MP

Please accept my sincere thanks for your important contribution to the Bill Committee – it is much appreciated.