DELEGATED POWERS MEMORANDUM –
SUSTAINABLE AVIATION FUEL BILL

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Sustainable Aviation Fuel Bill ("the Bill"). This memorandum identifies the provisions of the Bill that confer delegated powers. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected. Provisions are described below in the order in which they appear in the Bill.

Purpose and Effect of the Bill

2. There is significant uncertainty about the future revenue that will be generated from the sale of sustainable aviation fuel ("SAF"). There is no established market for the purchase of SAF in the UK and this, along with the emerging technologies involved, leaves potential SAF producers unable to attract private investment to build commercial-scale SAF plants.

3. The purpose of the Bill is to provide greater revenue certainty for SAF producers. The Bill makes provision to establish a revenue certainty mechanism ("the RCM") for SAF production where a designated counterparty enters into 10–15-year contracts with SAF producers. The contracts will provide for payments to SAF producers to make up the difference between a market reference price and a guaranteed strike price. This will support the development of SAF projects by helping to attract the necessary financing and long-term funding from the investment and lending community.

Summary of Delegated Powers

4. The delegated powers in the Bill broadly fall into two categories: those in relation to the designation of the counterparty and the revenue certainty contracts administered by the counterparty; and those that provide for a levy on suppliers of aviation fuel to fund for liabilities incurred by the designated counterparty.

5. The ability of the Secretary of State to direct the designated counterparty to offer contracts to eligible SAF producers, and to issue standard terms and conditions for those contracts is fundamental to the effective running of the RCM but, for the reasons expanded on below, it is not practical to put on the face of the Bill. The technical and specialist nature of the contracts underlying the RCM, and the need

for them to adapt readily to changes in the market for SAF means that it is appropriate that these matters should also be dealt with using delegated powers. Similarly, the need for flexibility in developing the levy provisions means that some delegated powers are considered necessary.

6. It is the Department's view that the delegated powers in this Bill are appropriate and proportionate in this context.

Analysis of the Delegated Powers Clause-by-Clause

Clause 1(1): Direction to offer revenue certainty contracts

Power conferred on: Secretary of State
Power exercised by: Written notice
Parliamentary Procedure: None

Context and purpose

7. This power allows for the Secretary of State to issue a direction requiring the designated counterparty to offer to enter into a revenue certainty contract (as defined in clause 1(2)) with an eligible SAF producer on standard terms or, with the Secretary of State's permission, on those terms as subsequently varied or supplemented. Any such direction must be in writing and include the information set out in clause 1(4)(a) to (c).

8. Since the purpose of the RCM is to support investment for the early stages of the development of SAF production in the UK, the power to direct the designated counterparty is initially limited to a period of 10 years after the Bill is passed (subject to Clause 1(8), considered separately below).

Justification for the power

9. The Secretary of State will run allocation rounds to ensure that revenue support contracts are allocated to those SAF producers best able to meet the Government's objectives under the RCM. Once an allocation round is complete, this power ensures that the Secretary of State can direct the designated counterparty to offer to enter into contracts with the successful applicants on terms approved by the Secretary of State.

Justification for the procedure

10. This power enables the Secretary of State to ensure that contracts are offered to SAF producers that are best placed to enable the Government to meet its

objectives under the RCM. Directions given by the Secretary of State are subject to the requirements in clause 1(4). As a result, the Department considers that this power is largely administrative and that no parliamentary procedure is necessary. This follows the precedent in section 10 of the Energy Act 2013 and in sections 62, 64, 66 and 68 of the Energy Act 2023.

Clause 1(5): Direction to provide assistance to identify SAF producers

Power conferred on: Secretary of State
Power exercised by: Secretary of State's direction
Parliamentary Procedure: None

Context and purpose

11. This power allows for the Secretary of State to direct a company wholly owned by a Minister of the Crown to provide assistance for the purpose of identifying SAF producers that may be allocated a revenue certainty contract.

12. The Secretary of State will run allocation rounds to ensure that revenue support contracts are allocated to those SAF producers best able to meet the Government's objectives under the RCM. This power allows the Secretary of State to direct a relevant company to assist with this process and make payments for that assistance. The company might, for example, be directed to carry out an auction process.

Justification for the power

13. The allocation rounds will ensure that revenue support contracts are allocated to those SAF producers best able to meet the purpose and objectives under the Bill. This power is justified because relevant companies that have expertise in allocation processes of this type will be able to best assist the Secretary of State in ensuring a fair and robust allocation process is followed.

Justification for the procedure

14. This power enables the Secretary of State to direct a relevant company in assisting with contract allocation. That process will be largely administrative, identifying potential producers and providing for a transparent allocation process. The Department considers that given the administrative nature of this power, no parliamentary procedure is necessary.

Clause 1(8): Extent of period within which directions may be given

Power conferred on: Secretary of State
Power exercised by: Regulations made by Statutory Instrument
Parliamentary Procedure: Draft Affirmative

Context and purpose

15. The Bill establishes the revenue certainty mechanism for SAF and appoints a counterparty to enter into contracts with SAF producers. Clause 1(1) enables the Secretary of State to direct the counterparty to offer to enter into a revenue certainty contract with a producer of SAF.

16. The Department expects that the production of SAF in the UK will develop sufficiently that support under the RCM will no longer needed. This is reflected in Clause 1(7) which provides that no direction may be given 10 years after the day on which the Act is passed.

17. However, given the uncertainties about future SAF production and how the market will respond, Clause 1(8) allows for the 10-year period specified in Clause 1(7) to be extended by up to 5 years at a time.

Justification for the power

18. A delegated power is required to allow the Secretary of State to continue provide support to SAF production in the UK through the RCM if the development of SAF production in the UK does not happen as expected. It will also provide flexibility to adapt to market conditions which are unforeseeable at this stage of UK SAF production.

Justification for the procedure

19. Regulations made under this clause would be subject to the draft affirmative procedure. The Department considers that this procedure provides an appropriate level of parliamentary scrutiny for such a power given the potential impact to SAF producers, aviation fuel suppliers and the market more generally if the scheme is extended.

Clause 3(1): Registration and publication of contracts

Power conferred on: Secretary of State
Power exercised by: Regulations made by Statutory Instrument
Parliamentary Procedure: Negative

Context and purpose

20. This power provides that the Secretary of State must require the designated counterparty to maintain a register of information in relation to the revenue certainty contracts and publish those contracts (these may or may not be subject to redactions) or details about them.

21. This requirement will ensure the registration of contracts is maintained effectively, while the publishing requirement will ensure transparency to an appropriate degree, balancing commercial sensitives with public access.

Justification for the power

22. To ensure the efficient and transparent functioning of the scheme, a register that is accurate and accessible will need to be kept. The details of how information will be registered and the amount of detail to be published is unknown at this stage but will be largely administrative. This power enables the Secretary of State to set out the detailed requirements for registration and publication once the counterparty is designated and contracts implemented.

Justification for the procedure

23. The Department considers that the negative resolution procedure is appropriate given that the breadth of the power is relatively narrow. The power will allow the Secretary of State to require the counterparty to maintain a register; set out the information that must be included in the register; and set out the details of how publication is to be undertaken. Given the administrative nature of the powers, the Department considers that parliamentary scrutiny by way of the affirmative procedure would be disproportionate in this instance.

Clause 4: Designation of counterparty

Power conferred on: Secretary of State
Power exercised by: Notice
Parliamentary Procedure: None

Context and purpose

24. This power will enable the Secretary of State to designate a company as the counterparty for revenue certainty contracts. The counterparty will be responsible for managing the contracts with eligible SAF producers, including making payments and collecting payments under the contracts. The power will also enable the Secretary of State to terminate a designation.

25. A company may only be designated under this clause if the company is wholly owned by a Minister of the Crown.

Justification for the power

26. For revenues to flow effectively under the contracts, it is necessary to have a counterparty charged with managing the contracts and making payments. A counterparty needs to be designated to fulfil its functions under the Bill. The Department will internally assess the suitability of a counterparty prior to designating them. It is not appropriate to name a designated counterparty on the face of the Bill as this company could change.

27. If a new counterparty needs to be designated, the Department will need to act quickly to ensure the continuity of the scheme. Failure to provide continuity of counterparties would undermine investor and producer trust in the revenue certainty scheme.

Justification for the procedure

28. The appointment of a designated counterparty is an administrative exercise and is limited to a wholly government-owned company. Where there is the need for a new counterparty to be designated, producers and investors are likely to see the need for parliamentary approval as increasing the risk that a new counterparty would not be in place in a timely manner.

29. The Department, therefore, considers that the most appropriate route for designation in this context is for the Secretary of State to give notice to a person (and publish that notice). This aligns with the approach taken in section 16 of the Nuclear Energy (Financing) Act 2022 and section 65 of the Energy Act 2023 and which allowed for the designation of relevant counterparties by notice.

Clause 5: Transfer schemes

Power conferred on: Secretary of State
Power exercised by: Transfer scheme
Parliamentary Procedure: None

Context and purpose

30. This power enables the Secretary of State to make transfer schemes allowing for the transfer of designated property, rights or liabilities of a company whose designation has been revoked, to the new designated counterparty.

31. Although considered unlikely, this power would be needed where a designation is terminated due to, for example, financial difficulty or poor performance. This

power would be necessary in that circumstance to ensure continuity of revenue support contracts and payments being made under revenue certainty contracts.

Justification for the power

32. If the responsibilities of a designated counterparty need to be transferred, the Department would need to act promptly to avoid disruption to any revenue support contracts in place. This power will allow the Secretary of State to ensure continuity of revenue flow. If this were not maintained, it would result in loss of confidence from producers and investors in the resilience of revenue support contracts.

33. It is not possible to know at this stage what property, rights and liabilities may need to be transferred to affect the transfer of the functions. In addition, transfer schemes are technical and bespoke in nature. It is therefore appropriate that this is done through a transfer scheme.

Justification for the procedure

34. The power is not subject to any parliamentary procedure. Transfer schemes are technical and often contain information that is commercially sensitive and confidential in nature.

35. Any delay in transfer of responsibilities would have a negative impact on existing revenue support contracts and failure to provide continuity of a counterparty has the potential to undermine investor and producer trust in the RCM. For these reasons, the Department considers it appropriate that this power is not subject to parliamentary procedure.

Clauses 6 to 9: Levy funding

Power conferred on: Secretary of State
Power exercised by: Regulations made by Statutory Instrument
Parliamentary Procedure: Draft Affirmative

Context and purpose

36. The RCM provided for under the Bill is intended to be industry funded, in line with the polluter pays principle. Clause 6 enables the Secretary of State to make regulations requiring relevant suppliers of aviation fuel to pay a levy to the counterparty to meet the costs of payments made by the counterparty under the revenue certainty contracts and other costs related to the Bill ("levy regulations").

37. Clause 7 provides that levy regulations may require a person to provide financial collateral to the counterparty.

38. Clause 8 makes provision for levy regulations to confer functions on the designated counterparty in connection with administration and enforcement of the levy regulations, including provisions for resolving disputes. It allows levy regulations to require the Secretary of State to assist the designated counterparty by collecting information and sharing it with the designated counterparty. It also allows the regulations to impose requirements on people to provide information to the designated counterparty or the Secretary of State.

39. Clause 9 enables the Secretary of State to delegate to specified persons anything which is to be calculated or determined under the levy regulations.

Justification for the power

40. The duties and functions of the counterparty in administrating and enforcing the levy, the nature of the levy requirements and how the levy works (for example, how it is to be calculated and enforced) may need to change over time to reflect the development of the market for SAF. In the interests of ensuring that the levy is set at the appropriate level to enable the counterparty to recover its costs for administering revenue certainty contracts and ensuring that the counterparty can administer and enforce payments of the levy, the Department considers that it is appropriate for the Secretary of the State to able make such provision in regulations.

41. Similarly what information the designated counterparty may need to administer and enforce the levy, and what assistance the Secretary of State can provide in relation to those functions may change over time. The Department therefore considers that it is appropriate for the Secretary of the State to able make such provision as to information in regulations.

42. Before making regulations under this power, the Secretary of State must consult such persons as the Secretary of State considers appropriate. This provides an opportunity for those directly affected by these regulations to express their views on the levy design.

Justification for the procedure

43. The Department considers that the draft affirmative procedure is appropriate for making levy regulations. This will allow Parliament to scrutinise how this power is intended to be used and the impacts on suppliers of aviation fuel and their customers. It will also reassure those that are levied that any requirements are unlikely to change frequently or at short notice. The consultation requirement further provides reassurance that the views of those affected by the levy regulations will be considered before the regulations are made.

Clause 10: Payment of surpluses to levy payers

Power conferred on: Secretary of State
Power exercised by: Regulations made by Statutory Instrument
Parliamentary Procedure: Draft Affirmative

Context and purpose

44. This clause provides that the Secretary of State may in regulations require the designated counterparty, in the event that is has a surplus, to make payments to suppliers who have paid the levy. For example, the counterparty may be left with a surplus when the market reference price is higher than the strike price, requiring SAF producers to pay sums to the counterparty, or where the amount of levy paid to the counterparty exceeded its liabilities for the relevant period. This is a similar approach to the approach taken in section 17 of the Energy Act 2013, section 20 of the Nuclear Energy (Financing) Act 2022 and section 71 of the Energy Act 2023.

45. This clause also enables regulations to require that customers of levied aviation fuel suppliers benefit from any payments of surplus made by the counterparty. This clause is similar to section 17(2A) of the Energy Act 2013 and section 71(3) of the Energy Act 2023.

Justification for the power

46. This clause complements the levy provisions in clause 6 of the Bill by ensuring that the payment and reconciliation arrangements of the levy on suppliers of aviation fuel are fair and efficient, including enabling regulations to allow for payments received by the counterparty from SAF producers under revenue certainty contracts to be passed on to levied suppliers of aviation fuel and/or their customers. It is an important part of the RCM that, while suppliers of aviation fuel help to reduce the risks of investment in SAF production through their payment of the levy when the market reference price is below the strike price, levied supplier of aviation fuel and their customers benefit from payments made by SAF producers when the market reference price exceeds the strike price.

47. A delegated power is required because it is not possible to determine the arrangements for payment of surpluses to levied suppliers or aviation fuel and their customers, which will depend on the market price for SAF in the future. In addition, the complexity and detailed nature of these arrangements are such that it would not be appropriate to include them on the face of the Bill.

48. This approach is similar to the approach in section 17 of the Energy Act 2013 and section 71 of the Energy Act 2023.

49. Under Clause 6(1) relevant suppliers can be levied for the cost of payments under revenue certainty contracts made by the counterparty. Where such a levy is taken in advance, this power will enable payments to be made back to those who paid the levy, where there is a surplus. This power will ensure surplus is not retained by the designated counterparty, but also ensure fairness in that where any costs of the levy are bore by customers, they in turn receive any benefit from the surplus.

Justification for the procedure

50. The Department considers that it is appropriate that the regulations are subject to the affirmative procedure so that Parliament is able be able to scrutinise the approach taken.

51. Before making regulations under this power, the Secretary of State must consult the Scottish and Welsh Ministers and the Department for the Economy in Northern Ireland and other such persons that the Secretary of State considers appropriate. This provides an opportunity for Devolved Governments and those directly affected by these regulations to express their views before any such regulations are made.

Clause 11: Financial penalties

Power conferred on: Secretary of State
Power exercised by: Regulations made by Statutory Instrument
Parliamentary Procedure: Draft Affirmative

Context and purpose

52. The Secretary of State may impose a financial penalty on a person if that person has breached a requirement imposed by levy regulations. The amount of the financial penalty may not exceed the lesser of £100,000 and an amount equal to 10% of the turnover of the person on whom it is imposed.

53. The Clause enables the Secretary of State to make regulations to amend the amount of the financial penalty in light of inflation and to specify how a person’s turnover is calculated.

Justification for the power

54. It is necessary to enable that the Secretary of State to adjust the maximum amount of the financial penalty for inflation to ensuring that the levy regulation can be enforced effectively in the future. The provision to determine how a person's turnover is calculated is both technical and administrative and will need to be calculated in a way that is fair across all those levied under the regulation. The Department considers that these provisions are ill-suited to being put on the face of the Bill.

Justification for the procedure

55. The Department considers it is appropriate that regulations to increase the maximum financial penalty or determine how turnover is calculated are subject to the affirmative procedure so that Parliament is able to scrutinise the approach taken.

Clause 12: Power to direct designated counterparty

Power conferred on: Secretary of State
Power exercised by: Secretary of State's direction
Parliamentary Procedure: None

Context and purpose

56. This clause provides that the Secretary of State may give the designated counterparty directions as to the exercise of any of its functions conferred on it by the Bill.

Justification for the power

57. This power is required to give the Secretary of State sufficient ability to exert control over the activities of the designated counterparty, given that this role and function is of critical importance to the RCM. If the Secretary of State does not retain this ability, this could impact the stability of cash flow to contract holders.

58. This power is similar to that of section 8 of the Energy Act 2013 and clause 58(1)(a) of the Energy Act 2023.

Justification for the procedure

59. Any direction by the Secretary of State must be published. Given this power is limited to directions that relate to the exercise of any of the counterparty's functions conferred on it under or by virtue of the Bill, the Department considers the power is limited in a way that justifies it not being subject to parliamentary scrutiny.

Clause 13: Information and advice

Power conferred on: Secretary of State
Power exercised by: Secretary of State's direction
Parliamentary Procedure: None

Context and purpose

60. Clause 13 provides powers enabling the Secretary of State to require the counterparty to provide information or advice in connection with its functions.

61. This power is important to build the Government's evidence base as projects are developed and to inform future policy. Specifying precisely what information or advice is required, requires analysis of the way in which the SAF market will develop, and may require detailed consultation with the counterparty and stakeholders. The information that may be required may also change over time as well as the stage at which the Department requires it.

Justification for the power

62. The power is necessary to ensure the Secretary of State can obtain the information and advice necessary to understand how the scheme is working in practice, and ensuring that the revenue certainty contracts and levy are working effectively. This information will inform future policy in relation to the scheme. Without such a power, the designated counterparty would have no obligation to share key information and insights with the Department.

63. The Department considers it is appropriate for these powers to require the counterparty to provide information and advice to be delegated to the Secretary of State.

Justification for the procedure

64. Given this power is limited to obtaining information and advice from the designated counterparty (which must be wholly owned by a Minister of the Crown) in connection with the exercise of its function, the Department considers parliamentary scrutiny is not necessary.

65. The power may be needed to be exercised at short notice prior to an allocation round or to inform general policy. It is considered disproportionate that parliamentary scrutiny would be needed on each occasion a request to the counterparty is made.

Clause 14: Financial assistance for designated counterparty

Power conferred on: Secretary of State
Power exercised by: Decision
Parliamentary Procedure: None

Context and purpose

66. This Clause allows the Secretary of State to provide financial assistance (including in the form of grant, loan, guarantee or indemnity, or provision of insurance) to the designated counterparty.

Justification for the power

67. This power will enable the Secretary of State provide financial assistance to ensure that the counterparty can always meets its liabilities under the revenue certainty contracts which will provide reassurance to SAF producers and investors alike. The policy intention is that the counterparty will be fully funded through the levy payments from suppliers of aviation fuel in the UK, but this power will enable to the Secretary of State to provide financial assistance to cover any shortfall that the counterparty may encounter reassuring SAF producers and investors that the counterparty will always be able to meet its obligations under the revenue certainty contracts.

Justification for the procedure

68. The power is limited to providing financial assistance to the designated counterparty (which must be a wholly owned government company) in relation to the exercise of its functions. Given these limitations on the use of the powers and the need to ensure that the power can be exercised when required and likely at short notice, the Department considers that it is appropriate for the use of the power not to be subject to Parliamentary scrutiny.

Department for Transport

15 October 2025