

# Report on the Legislative Consent Memorandum for the Product Regulation and Metrology Bill

January 2025

## 1. Background

**1.** The Product Regulation and Metrology Bill (the Bill) was introduced in the House of Lords on 4 September 2024, with second reading taking place on 8 October 2024 and Committee stage starting on 20 November 2024.

**2.** The long title of the Bill states that it is:

*“A Bill to make provision about the marketing or use of products in the United Kingdom; about units of measurement and the quantities in which goods are marketed in the United Kingdom; and for connected purposes.”*

**3.** Standing Order 29.1 provides that the Welsh Ministers must lay a Legislative Consent Memorandum where a UK Bill makes provision in relation to Wales that has regard to devolved matters.

**4.** Rebecca Evans MS, Cabinet Secretary for Economy, Energy and Planning laid a Legislative Consent Memorandum (the LCM) in respect of the Bill on 20 September 2024.



5. On 24 September 2024, the Business Committee referred the LCM to the Economy, Trade and Rural Affairs Committee (“the Committee”) and the Legislation, Justice and Constitution Committee for consideration, with a reporting deadline of 22 November 2024.<sup>1</sup> On 5 November 2024, the Business Committee agreed a new reporting deadline of 10 January 2025.<sup>2</sup>

## 2. The LCM

6. Paragraphs 3 to 6 of the LCM summarise the Bill and its policy objectives.

### Provisions for which consent is sought

7. The LCM notes the Welsh Government’s position:

*“... insofar as the powers in Bill could be used to make provision in the devolved areas of health, economic development, environmental protection and animal and plant health, an LCM is required. The only exceptions, so those provisions in the Bill that do not require an LCM, are Clause (1)(1)(c), Clause 5, Clause 6 and Clause 9(3), which we consider bear more than a loose or consequential connection to reservation C8: weights and measures and do not engage any matters of devolved competence.”<sup>3</sup>*

8. A list of substantive clauses that require consent is set out below, to the extent those clauses apply to regulations made by the Secretary of State in devolved areas.

### Clause 1: Product regulations

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9. Clause 1(1)(a) gives the Secretary of State power to make regulations (in relation to the marketing or use of products in the UK) for the purpose of:

- reducing or mitigating risks presented by products.

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<sup>1</sup> Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Product Regulation and Metrology Bill](#), September 2024

<sup>2</sup> Business Committee, [Revised timetable for consideration: Legislative Consent Memorandum on the Product Regulation and Metrology Bill](#), November 2024

<sup>3</sup> Welsh Government, [Legislative Consent Memorandum: Product Regulation and Metrology Bill](#), paragraph 10

**10.** Clause 1(1)(b) gives the Secretary of State power to make regulations (in relation to the marketing or use of products in the UK) for the purpose of:

- ensuring that products operate efficiently or effectively.

**11.** Clause 1(2) gives the Secretary of State power to make regulations (in relation to the marketing or use of products in the UK) which correspond to, or are similar to, EU law for the purpose of reducing or mitigating the environmental impact of products.

**12.** Clause 1(3) and the Schedule set out a list of products that cannot be captured by regulations made under clause 1.

### **Clause 2: Product requirements**

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**13.** Clause 2 provides further detail on what regulations under clause 1 may include.

### **Clause 3: Enforcement of product regulations**

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**14.** Clause 3 provides for the enforcement of “product regulations”, i.e. regulations made under clause 1.

### **Clause 4: Emergencies**

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**15.** Clause 4 provides that product regulations may be disapplied or modified in case of emergency.

### **Clause 7: Information sharing**

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**16.** Clause 7 provides further detail as to what product regulations (i.e. regulations made under clause 1) and metrology regulations (i.e. regulations made under clause 5) may contain, in particular as regards information sharing.

### **Clause 8: Cost recovery**

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**17.** Clause 8 provides for fees to be charged in respect of costs incurred by relevant authorities in carrying out functions under product regulations or metrology regulations.

## **Clause 9: Consequential amendments of certain Acts**

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**18.** Clause 9 provides for product regulations and metrology regulations to repeal various pieces of primary legislation (such as the Consumer Protection Act 1987 and the Consumer Rights Act 2015) in consequence of the Bill.

## **Clause 10: Interpretation**

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**19.** Clause 10 provides definitions of expressions used in the Bill.

## **Reasons for making these provisions for Wales in the Bill**

**20.** Paragraphs 33 to 34 of the LCM set out the reasons why provision is being made for Wales in the Bill. It notes:

*“The development of a UK wide product safety regime can be seen as key part of the wider ambition to establish and maintain an effective UK internal market. In addition, it will have additional benefits in terms of health and safety of products, notably in respect of fire safety. This Bill provides the UK Government with the necessary powers in line with this broader aim. In this sense, it is sensible and practical to support the UK Government efforts to achieve this aim which is of clear interest to all parts of the UK, including Wales.”<sup>4</sup>*

## **Financial implications**

**21.** The LCM refers to the Impact Assessment provided alongside the Bill, which provides a “qualitative analysis” for the measures sought in the Bill. The LCM notes that “not financial implications have been identified at this stage”, but that “further advice will be submitted should this position change”.<sup>5</sup>

## **Welsh Government position on consent**

**22.** The LCM concludes:

*“We are supportive of this bill with respect to its role in facilitating the smooth functioning of the UK Internal Market. However, further engagement is required with UK Government*

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<sup>4</sup> Welsh Government, Legislative Consent Memorandum: Product Regulation and Metrology Bill, paragraph 33

<sup>5</sup> Welsh Government, Legislative Consent Memorandum: Product Regulation and Metrology Bill, paragraph 35

*on the enabling powers in clauses 1(1)(a), 1(1)(b) and 1(2), and the role of the Welsh Ministers and the Senedd in this area. I will provide further updates to the Senedd on the Welsh Government's position in relation to this Bill following further engagement.”<sup>6</sup>*

## Policy position

**23.** One of the Bill's aims is described in the Explanatory Notes as:

*“ensuring that the law can be updated to allow a means of recognising new or updated EU product requirements, with the intention of preventing additional costs for businesses and provide regulatory stability.”<sup>7</sup>*

**24.** The extent to which the Bill could result in active/passive UK-EU alignment and divergence depends on the exercise of its powers by the Secretary of State.

**25.** The Explanatory Notes acknowledge that:

- the “overwhelming majority” of UK legislation governing product regulation (and covering most consumer products) is assimilated law. Both UK and Welsh Ministers have broad powers to change assimilated law under the Retained EU Law (Revocation and Reform) Act 2023. UK Ministers can do so in devolved areas without obtaining Senedd consent;
- EU membership provided for mutual recognition and mandated conformity markings which ceased to apply to the UK at the end of the Brexit transition period. The UK subsequently created a UK-only system (UK Conformity Assessment or UKCA) while also allowing certain goods that meet EU requirements continued access to the UK market.

**26.** This section on the Explanatory Notes simply concludes:

*“The Bill would provide the Secretary of State with the ability to update relevant legislation to allow the UK to maintain high product standards.”<sup>8</sup>*

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<sup>6</sup> Welsh Government, Legislative Consent Memorandum: Product Regulation and Metrology Bill, paragraph 36

<sup>7</sup> Product Regulation and Metrology Bill, [Explanatory Notes](#), paragraph 4

<sup>8</sup> Product Regulation and Metrology Bill, [Explanatory Notes](#), paragraph 6

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### 3. Committee consideration

**27.** The Committee considered the LCM at its meeting on 16 October 2024. At this meeting Members agreed to send Luke Fletcher MS as representative to the Legislation, Justice and Constitution Committee’s evidence session with Rebecca Evans MS, Cabinet Secretary for Economy, Energy and Planning on the LCM due to be held on 4 November.<sup>910</sup>

**28.** At this session, the Cabinet Secretary confirmed that the Bill was in development prior to the UK General Election in July by the former UK Government but that the Welsh Government welcomes its aims to regulate product safety and “essentially to make things simpler and clearer for businesses”.<sup>11</sup>

**29.** The Cabinet Secretary also confirmed that the Bill does not impact the UK-EU Trade and Cooperation Agreement, on whose terms UK-EU trade is conducted post-Brexit. However, the Cabinet Secretary advised “but it might be in terms of the regulations that come underneath it”. She confirmed that officials from different Welsh Government departments had had specific discussions on this aspect of the Bill.

**30.** Luke Fletcher MS asked the Cabinet Secretary a number of questions regarding the implications of the Bill on Wales-EU trade, the UK internal market and for Welsh businesses.

**31.** The Cabinet Secretary told the LJC Committee the Bill will:

*“allow the law to be updated to recognise new or updated EU product requirements. And the intention then is to prevent unnecessary costs and inconvenience to businesses, providing that regulatory stability. So, clearly, that's in the interest of UK businesses and Welsh businesses.”<sup>12</sup>*

**32.** The Cabinet Secretary went on to highlight that there are around 2,500 pages of legislation that routinely need technical updates. She argued this Bill will “ensure that we are aligned with EU standards, ensuring that businesses are

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<sup>9</sup> [Economy, Trade and Rural Affairs Committee, 16 October 2024](#) and [Legislation, Justice and Constitution Committee, 4 November 2024](#)

<sup>10</sup> Legislation, Justice and Constitution Committee, 4 November 2024, paragraph 2

<sup>11</sup> Legislation, Justice and Constitution Committee, 4 November 2024, paragraph 13

<sup>12</sup> Legislation, Justice and Constitution Committee, 4 November 2024, paragraph 81

able to access the EU market and prevent passive divergence”. She went on to highlight that:

*“that was something that we were concerned about very much in the Senedd during that period when we were talking about Brexit and how Brexit would look. So, this aims to prevent that.”<sup>13</sup>*

**33.** The Cabinet Secretary summarised her view saying:

*“[the Bill] should be positive for businesses to provide them with that clarity and the ability then to access the EU market.”<sup>14</sup>*

**34.** When Luke Fletcher MS stated that the Bill would make it easier for EU products to enter the UK market, the Cabinet Secretary replied “Yes”.

**35.** On 14 November Luke Fletcher MS reported back to the Committee on these exchanges. Members agreed to write to the Cabinet Secretary with follow up questions around:

- Any concerns Welsh Government might have on the Bill’s development;
- Any engagement Welsh Government have undertaken on the Bill with Welsh businesses or their Trade Advisory Group;
- Which regulations the Bill might extend to;
- How the Bill will interact with other post-Brexit trade arrangements; and
- The potential impact of the Bill on Welsh industries.<sup>15</sup>

**36.** The response to this letter was received on 11 December 2024.<sup>16</sup>

**37.** In the letter, the Cabinet Secretary points to the consultation and engagement work carried out by the UK Government prior to the Bill’s introduction, and states that:

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<sup>13</sup> Legislation, Justice and Constitution Committee, 4 November 2024, paragraph 81

<sup>14</sup> Legislation, Justice and Constitution Committee, 4 November 2024, paragraph 83

<sup>15</sup> ~~Letter to the Cabinet Secretary for Economy, Energy and Planning, 20 November 2024~~

<sup>16</sup> Letter from the Cabinet Secretary for Economy, Energy and Planning, 11 December 2024

*“There is not a need for a Wales specific impact assessment in relation to this Bill, given the nature of the provisions and the UK Government’s previous consultation and engagement work.”*

**38.** The Cabinet Secretary also confirms that no detailed analysis on specific sectors is available at this stage. The letter later confirms that:

*“There are certain products that do not come under the remit of the Bill as they have their own legislative instruments. For example, medical devices and automotive. Therefore, there continues to be different market access, and specifically import requirements and EU recognition, for those products not covered by the Bill.”*

**39.** The Cabinet Secretary adds that the UK Government “has also confirmed that it intends to engage with relevant stakeholders in Wales with respect to developing any regulations under the Bill.”

**40.** In response to whether the views of the Welsh Government’s Trade Policy Advisory Group have been sought, the Cabinet Secretary responds that:

*“we have not sought the views of TPAG members whose focus is on international trade. However, we are aware from our regular engagement with them that they are supportive of closer alignment with the EU which this Bill provides the framework for. As the Bill does not create any mutual recognition or equivalency arrangement for product regulation, Welsh businesses will still need to ensure they meet EU regulations when exporting to the EU.”*

**41.** On which EU regulations the Bill might extend to, the Cabinet Secretary states, without further detail, that:

*“The Bill will provide UK government with the power to create closer alignment with the EU by choosing which EU regulations, now and in the future, they wish the alignment to be achieved in.”*

**42.** On whether there are any particular EU regulations that may benefit Welsh exporters, the Cabinet Secretary confirms:



*“Welsh importers can potentially benefit from the arrangements set out in the Bill as the UK continues to recognise EU product regulations and product markings (CE marking). There are some limited benefits for Welsh exporters as they will continue to need to demonstrate that they meet EU regulations when exporting to the EU. This is not a bilateral arrangement, and the EU does not recognise UK standards and regulations as equivalent.”*

**43.** The Cabinet Secretary again notes that engagement continues with the UK Government, including on possible amendments “to ensure the Bill respects and reflects devolution”, and that further information on the UK Government position is anticipated “in the coming weeks”.

## Our view

### Policy

**44.** The framework nature of the Bill presents numerous challenges for the Committee to undertake thorough scrutiny of the Bill and the Welsh Government’s Legislative Consent Memorandum. Its true impact is currently unknown and will be set out in regulations made by the relevant Secretary of State in the future. In simple terms, the Bill has the potential to significantly change the regulatory landscape (in both devolved and non-devolved areas) but it does not set out how the landscape might change.

**45.** As far as the Committee can see, from this LCM, the Bill and the letter from the Cabinet Secretary, the implications for Wales-EU trade are unknown. The Bill would empower the Secretary of State to choose to recognise an indeterminate number of current or future EU regulations, or none at all. The breadth of possibilities and their subsequent effects are therefore difficult to quantify, which makes thorough scrutiny challenging, if not impossible. As the Committee responsible for trade, we find the limited information available to us concerning.

**46.** The Cabinet Secretary indicated to the LJC Committee that the Bill would be positive for Wales-EU trade. This was later described to us in correspondence as being a “potential” benefit for importers (in relation to recognition of CE markings) and “limited benefit” to exporters (who must continue to meet EU standards). As the UK nation most reliant on exporting to the EU, we welcome measures which facilitate EU market access for Welsh business. However, the Bill provides only for the UK to unilaterally recognise EU product requirements. It

does not, and could not, provide for reciprocal UK-EU mutual recognition, nor market access.

**47.** For this reason, we question whether the Bill may inadvertently provide less incentive to the EU to consider offering the UK preferential trading terms in future, including as part of the upcoming implementation review of the Trade and Cooperation Agreement. The extent to which this may materialise will depend on regulations made by UK Ministers.

**48.** Also for this reason, we note that the Cabinet Secretary advises that the Bill will “provide clarity and the ability to access the EU market” for Welsh businesses. We are not clear on how the Bill does provide this clarity and question how the Cabinet Secretary can be certain that future regulations will do so.

**49.** The Cabinet Secretary made reference to 2,500 pages of legislation that routinely require technical updates, and how regulations made under the Bill could go some way to alleviate this issue through automatic recognition. However, we are concerned this may inadvertently shift responsibility away from governments and onto businesses who may not have adequate resources to keep up.

**50.** For this reason, we sought to better understand steps taken by the Welsh Government to engage with the business community and to ensure that any unwelcome unintended consequences may be averted. We note that in response to our letter, the Cabinet Secretary only refers to engagement work being carried out by the UK Government, and we would suggest that the Welsh Government should seek to be involved, where possible, in this work.

**51.** We note also that the views of the Welsh Government’s own Trade Policy Advisory Group have not been sought, despite its remit recently extending to cover UK-EU trade.

**52.** The Committee notes the Welsh Government’s support for the Bill, but is further concerned that the Welsh Government still does not clarify whether it recommends that consent is given on the grounds that “further engagement is needed with UK Government”. Despite our request, the Welsh Government has not confirmed what amendments it would like to see in order to recommend consent is given. The Cabinet Secretary says only that discussions are ongoing on amendments “to ensure the Bill respects and reflects devolution”. The Welsh Government should provide the Committee with an update on the on-going discussions as soon as possible.

## Consent

**53.** The Committee agrees with the Welsh Government that consent is needed for the clauses as outlined in the LCM. Namely 1(1)(a), 1(1)(b), 1(2), 1(3), 2 – 4 and 7 – 10, to the extent those clauses apply to regulations made by the Secretary of State in devolved areas.

**54.** Due to the limited information available, particularly in light of limited information regarding the impact of this Bill on Wales-EU trade and Welsh businesses, the Committee could not come to an informed position on whether or not to recommend granting consent.

**Recommendation 1.** The Welsh Government should provide the Committee with an update on the on-going discussions between Welsh and UK Government regarding his Bill as soon as possible.

**Recommendation 2.** The Welsh Government should, as a matter of urgency, set out what changes to the Bill it requires in order for it to be in a position to recommend consent.