

LEGISLATIVE CONSENT MEMORANDUM

PRODUCT REGULATION AND METROLOGY BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru¹ if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Product Regulation and Metrology Bill was introduced in the House of Lords on 4 September 2024. The Bill can be found at: [Product Regulation and Metrology Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)

Policy Objective(s)

3. The UK Government’s stated policy objectives are to preserve the UK’s status as a global leader in product regulation, protect consumers and support growth. The UK’s product safety and metrology framework is derived from European Union (EU) law and has developed over the past four decades, whilst the UK was a member of the EU. On leaving the EU, the UK set up an independent regime, which the UK Government considers needs to be able to adapt to new technologies such as Artificial Intelligence (AI), as well as to reflect the shift in both what consumers buy and how they buy it.
4. The Bill intends to ensure the UK is better placed to address modern day safety issues to protect consumers, harness opportunities that deliver economic growth, and ensure a level playing field for responsible businesses operating online or on the high street. The Bill is intended to enable the UK to maintain high product standards, supporting businesses and economic growth, by allowing the UK Parliament the power to update relevant laws.
5. The Bill aims to support economic growth, provide regulatory stability and deliver more protection for consumers by:
 - responding to new product risks and opportunities to enable the UK to keep pace with technological advances, such as AI, and address issues such as incidents from ingesting button batteries and fire risks associated with e-bikes.

¹ Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

- identifying new and emerging business models in the supply chain, ensuring the responsibilities of those involved in the supply of products, such as online marketplaces (which are online platforms that connect third-party sellers to consumers for distance sale and purchasing of products), are clear and modernised for increasingly complex supply chains, to support consumers' confidence in the products they buy and whom they buy them from.
- ensuring 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 providing regulatory stability.
- enabling improvements to compliance and enforcement reflecting the challenges of modern, digital borders. This Bill seeks to enable the Government and its regulators to tackle non-compliance and target interventions by allowing greater sharing of data between regulators and market surveillance authorities.
- updating the legal metrology framework, which governs the accuracy of weights and measures for purchased goods. This seeks to give consumers and business confidence in what they are buying and to allow for technological progress, including in support of net zero aims and infrastructure, for example enabling innovation whilst ensuring energy smart meters are accurate in their readings.

Summary of the Bill

6. The Bill is sponsored by the Department of Business and Trade. The key provisions:
 - Creates new powers to allow the Secretary of State to make regulations in relation to certain products in the UK for the purpose of product safety.
 - Allows for continued recognition of new or updated EU product requirements.
 - Contains a power which enables requirements to be imposed on specific actors in the supply chain, including online markets.
 - Confers powers to allow tailored enforcement provision to be made, including the creation of criminal offences and new civil sanctions (including fines).
 - Contains powers to make provision for a charging regime which will allow the relevant authority (as defined) to recover some of the costs attributable to the operation of the regulatory regime.

- Contains powers to allow the Secretary of State to make regulations permitting or requiring the sharing of information between relevant public bodies, the emergency services and other organisations which may be specified in the regulations in connection with functions under the Act.

Provisions in the Bill for which consent is required

7. Welsh Government has concluded that there are relevant provisions in the Bill which, for the purposes of Standing Order 29, are within the legislative competence of the Senedd and therefore a Legislative Consent Memorandum (LCM) is required.
8. We consider that the subject matter of the Bill engages the competence test in section 108A(2)(c) of the Government of Wales Act 2006, in that it relates to the following subject reservations in Schedule 7A to the Government of Wales Act 2006: product standards, safety and liability (section C7 Government of Wales Act 2006), consumer protection (section C6 Government of Wales Act 2006) and telecommunications and wireless telegraphy (Section C9).
9. We also considered the restrictions specified in section 108A(2)(d) and set out in Schedule 7B to the Government of Wales Act 2006. We particularly considered paragraphs 4 and 5 of Schedule 7B. Paragraph 4 concerns criminal offences. We determined that no restriction applied in these circumstances. Paragraph 5 prevents an Act of the Senedd from making amendments to certain UK Acts, in particular in this case, the United Kingdom Internal Market Act 2020. We concluded that no restriction applied in these circumstances.
10. Therefore, 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
11. It is therefore our view that the below clauses require consent:

Clause 1: Product Regulations

12. The power within Clause 1(1)(a) could be used to reduce or mitigate risks presented by products that endanger the health of a person, distinct and separate to any risks to that person's safety. The use of the word "health" in Clause 1(4), broadens the scope of how the power could be exercised beyond simply product safety (a reserved matter) and enables provision to be made for public health purposes, which is an area within the Senedd's legislative competence.

13. Clause 1(1)(b) provides a regulation making power for the Secretary of State to make provision in relation to the marketing or use of products in the UK for the purpose of ensuring that products operate efficiently or effectively.
14. It is our view that the efficient and effective operation of products is not an essential component of product standards, safety or liability. Neither product efficiency nor product effectiveness are specifically mentioned in the reservation for product standards, safety or liability at Section C7, paragraph 79, or anywhere else within Schedule 7A.
15. It is our view that the matters of product efficiency and/or effectiveness would more likely relate to the wider sphere of economic development – which is a devolved matter and therefore within the legislative competence of the Senedd and/or other efficiencies, such as environmental efficiencies, which may also be devolved.
16. Clause 1(2) provides the Secretary of State with power to make regulation which corresponds or is similar to EU law for the purpose of reducing or mitigating environmental impact of products. Powers are reserved to the UK Government in respect of technical standards and requirements in relation to products that had effect immediately before IP completion day in pursuance of an obligation under EU law (Section C7, paragraph 77, Schedule 7A). However, in our view it is possible that the power in Clause 1(2) could be used to make amendments to technical standards and requirements that went beyond what was in existence at IP completion day, and as such, could extend further than the reservation in paragraph 77. Furthermore, applying SO 29, and the competence test in section 108A of the Government of Wales Act 2006, there is also an argument that the Senedd could legislate to regulate the marketing or use of products in Wales (which corresponds, or is similar, to a provision of relevant EU law), for the purpose of reducing or mitigating environmental impact; environmental protection being within the legislative competence of the Senedd.
17. The restriction upon the power in Clause 1(1) and 1(2) imposed by Clause 1(3) and the accompanying Schedule is insufficiently wide so as to extend to all the current exceptions to the reservations in section C6 and C7 of Schedule 7A, which relate to food, food products and food contact materials; agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment). As a result, the provisions of Clause 1(1)(a), 1(1)(b) and 1(2) of the Bill would permit the Secretary of State, by virtue of Clause 1(3), to make regulations for a purpose within the legislative competence of the Senedd.

Clause 2 Product Requirements

18. Clause 2(3) makes provision in relation to accreditation of persons carrying out monitoring, assessment and certification of products. Accreditation of bodies that certify conformity to technical standards of products is specifically reserved by paragraph 78 of section C7, Schedule 7A). However given our view on the potential for the Senedd to legislate using the powers in Clause 1, we consider that the reservation is ancillary to the main regulation making powers within Clause 1(1)(a), 1(1)(b) and Clause 1(2), and is therefore within the scope of the LCM in accordance with section 108A(7) Government of Wales Act 2006.

Clause 3: Enforcement of product regulations

19. Clause 3 concerns the enforcement of “product regulations”, which are defined by Clause 1(7) as regulations made under Clause 1.
20. Clause 1(1)(a), 1(1)(b) and Clause 1(2) contain regulation making provisions that could be contained within an Act of the Senedd. It is therefore our view that Clause 3 falls within the remit of any LCM to the extent that its provisions are supplementary to the regulation making powers in Clause 1(1)(a), 1(1)(b) and Clause 1(2) which we consider to be within the legislative competence of the Senedd, at least in part, and will therefore engage the LCM process for the purpose of Standing Order 29 of the Senedd’s Standing Orders.

Clause 4: Emergencies

21. Clause 1(1)(a), (1)(b) and (2) contain regulation making provisions that could be contained within an Act of the Senedd, at least in part. It is therefore our view, in accordance with the reasons set out above in respect of the other clauses, that Clause 4 falls within the remit of any LCM to the extent that its provisions are supplementary to the regulation making powers in Clause 1(1)(a), (1)(b) and (2) which we consider to be within the legislative competence of the Senedd, at least in part, and will therefore engage the LCM process for the purpose of Standing Order 29 of the Senedd’s Standing Orders.

Clause 7: Information Sharing

22. Clause 1(1)(a), (1)(b) and (2) contain regulation making provisions that could be contained within an Act of the Senedd, at least in part. It is therefore our view that Clause 7 falls within the remit of any LCM to the extent that its provisions are supplementary to the regulation making powers in Clause 1(1)(a), (1)(b) and (2) which we consider to be within the legislative competence of the Senedd, at least in part, and will therefore engage the LCM process for the purpose of Standing Order 29 of the Senedd’s Standing Orders.

Clause 8: Cost Recovery

23. Clause 1(1)(a), (1)(b) and (2) contain regulation making provisions that could be contained within an Act of the Senedd, at least in part. It is therefore our view that Clause 8 falls within the remit of any LCM to the extent that its provisions are supplementary to the regulation making powers in Clause 1(1)(a), (1)(b) and (2) which we consider to be within the legislative competence of the Senedd, at least in part, and will therefore engage the LCM process for the purpose of Standing Order 29 of the Senedd's Standing Orders. We consider that the provisions within Clause 8 that relate to metrology regulations have more than a loose or consequential connection to the law relating to weights and measures, which is reserved by virtue of paragraphs 81 and 82 in Section C8 of Schedule 7A to GoWA 2006.
24. It is therefore our view that those elements of Clause 8 do not fall within the legislative competence of the Senedd and do not engage the LCM process for the purpose of Standing Order 29 of the Senedd's Standing Orders

Clause 9: Consequential amendment of certain Acts

25. In our view, Clause 1(1)(a), 1(1)(b) and Clause 1(2) contain regulation making provisions that could be contained within an Act of the Senedd, at least in part.
26. It is therefore our view that Clause 9 (save for subsection (3) which relates specifically to the reservation C8 – weights and measures) falls within the remit of any LCM to the extent that its provisions are incidental or consequential upon, or supplementary to, the regulation making powers in Clause 1(1)(a), 1(1)(b) and Clause 1(2) which we consider to be within the legislative competence of the Senedd, at least in part, and will therefore engage the LCM process for the purpose of Standing Order 29 of the Senedd's Standing Orders.

Clause 10: Interpretation

27. Clause 10(1) provides definitions which are applied and have relevance in the interpretation and application of the Bill provisions. It is therefore our view that these provisions fall within the remit of any LCM to the extent that these references are used in those Clauses of the Bill and where those Clauses require or may require an LCM.
28. We consider that subsection(2) falls within the remit of any LCM to the extent that its provisions are incidental or consequential upon, or supplementary to, the regulation making powers in Clause 1(1)(a), 1(1)(b) and Clause 1(2) which we consider to be within the legislative competence of the Senedd, at least in part, and will therefore engage the

LCM process for the purpose of Standing Order 29 of the Senedd's Standing Orders.

Schedule: Excluded Products

29. Given that our view is that Clause 1(3) is within the legislative competence of the Senedd, we consider that the Schedule would also be within legislative competence, if regulations were being made under Clause 1(1)(a), (b) or (2) in relation to devolved areas. Furthermore, the products listed in the Schedule to the Bill are narrower in scope than those comprised in the exceptions to Sections C6 and C7 of Schedule 7A to GOWA 2006. As a result, the provisions of Clause 1(1)(a), (1)(b) and (2) of the Bill would permit the Secretary of State to make regulations for a purpose within the legislative competence of the Senedd, at least in part.

UK Government view on the need for consent

30. The UK Government (as stated in the Explanatory Notes to the Bill) specifies that the Bill requires the legislative consent of the Senedd, via a LCM and confirms that in their view a LCM process will be engaged with respect to Clauses 1-4 (in part) and Clauses 7-11 (in part).

31. Within their devolved analysis the UK Government further stated that the vast majority of the powers that they anticipate exercising under the Bill will relate to reserved matters only within the Government of Wales Act (2006).

32. However, they also acknowledge there may be circumstances in which *exercise of powers* in Clause 1(1)(a), 1(1)(b) and 1(2) could potentially touch upon areas beyond these broad reservations:

Reasons for making these provisions for Wales in the Product Regulation and Metrology Bill

33. 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.

34. However, further engagement is needed with UK Government on the breadth of the regulation making powers at 1(1)(a), 1(1)(b) and 1(2). Our initial analysis is that these powers could be used in a way which would significantly impinge on devolved competence in respect of the wider sphere of economic development but also environmental protection and other areas.

Financial implications

35. The [Impact Assessment](#) provided alongside the Bill provides a qualitative analysis for the measures sought the Bill. It provides details of the market failures the enacting powers would help reduce and provide examples of how the powers could be used. The use of the enabling powers would be subject to secondary legislation and impact assessments quantifying the impacts. Therefore, no financial implications have been identified at this stage; however further advice will be submitted should this position change.

Conclusion

36. 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 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.

Rebecca Evans MS
Cabinet Secretary for Economy, Energy and Planning
20 September 2024