

LEGISLATIVE CONSENT MEMORANDUM

PRODUCT REGULATION AND METROLOGY BILL [HL]

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for the Economy, is:

“That this Assembly endorses the principle of the extension of the provisions of the Product Regulation and Metrology Bill to Northern Ireland”

Background

2. This memorandum has been laid before the Assembly by the Minister for the Economy under Standing Order 42A(2). The Product Regulation and Metrology Bill was introduced in the House of Lords on 4th September 2024. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/3752>
3. The Government will be bringing forward a consent-based amendment at Committee stage to address concerns around the potential for powers to be used in areas of devolved competence. An update will be issued when the amendment is tabled.

Summary of the Bill and its policy objectives

4. The United Kingdom’s (UK) product safety and metrology framework is largely composed of assimilated law derived from European Union (EU) law and covers most consumer products, e.g., toys and cosmetics, and a significant number of industrial products. Whilst the UK was a member of the EU, this legislation provided for systems of mutual recognition and mandated conformity markings used across the EU.
5. The Bill provides the Secretary of State with powers to make UK wide regulations in the area of product safety and regulation and metrology to replace the previous EU obligation informed framework.
6. A significant amount of EU law in respect of product regulation applies in this jurisdiction under the Windsor Framework arrangements and those arrangements will determine much of the legislative provisions apply in this jurisdiction.

7. The Bill provides a power to make regulations that align with EU law for the purpose of mitigating or reducing environmental impact and which refer to product requirements being met if an EU requirement in relevant law is met. This power could potentially be used to align GB with the position here. Given the Department for the Environment, Agriculture and Rural Affairs (DAERA) remit with respect to the environment, it is possible that regulations made under this power may fall under DAERA's competence.
8. There are reservations within Schedule 3 of the NI Act that would appear likely to apply to the subject matter of regulations made under the Bill; namely, units of measurement and UK primary standards (paragraph 28) and consumer safety in relation to goods (paragraph 37). The subject matter of all technical standards and requirements in relation to products (with some exceptions) that had effect immediately before EU exit in pursuance of an obligation under EU law (under paragraph 38) is also reserved and this would likely be applicable when using the powers in Clause 9 to amend existing product/ metrology regulations made under the EU framework previously in place.
9. The powers conferred in the Bill are wide and, where the Windsor Framework does not pertain, the exercise of those powers may impinge upon devolved areas. This is particularly likely in respect of metrology which is only reserved insofar as it relates to units of measurement and UK primary standards.
10. 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.
 - 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 from whom they buy them.
 - 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 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.

The Bill contains 15 clauses and following the inclusion of what is now Clause 9 into the Bill, the updated devolution analysis identifies clauses 1-12 as engaging the legislative consent motion process.

UKG has published guidance [Product safety: checks and balances on developing policy and legislation](#).

11. The Scottish Parliament and Welsh Senedd have published Legislative Consent Memorandums (LCM):

[Scottish Parliament - Legislative Consent Memorandum](#)

[Senedd Wales - Legislative Consent Memorandum](#)

Provisions which deal with a Devolution Matter

12. **Clause 1 – Product Regulations**
13. Clause 1(1) provides the Secretary of State with broad powers to make regulations for the marketing or use of products in the UK for the purpose of safety, ensuring effective or efficient operation and ensuring products designed for weighing or measuring operate accurately.
14. Under Clause 1(2) regulations may be made that correspond with, or are similar to, a provision of relevant EU law for the purpose of mitigating or reducing the environmental impact of products. ‘Relevant EU law’ is defined in s.1(7) as Decision 768/2008/EC of the European Parliament and

of the Council of 9 July 2008 on a common framework for the marketing of products (“Decision 768/2008”) or other EU law that has the purpose of harmonising the conditions for the marketing or use of products in the EU.

15. Clause 1(3) refers to the Schedule which lists products that cannot be included in regulations made under subsections (1) or (2).
16. Clause 1(4) defines a product risk as being when it endangers the health or safety of persons, domestic animals or property or may cause or be susceptible to electromagnetic disturbance.
17. Clause 1(5) requires the Secretary of State to publish a statement setting out how risk will be identified and assessed risks presented by products, which may, under Clause 1(6), be amended or replaced from time to time.
18. Clause 1(7) defines terms used in the Act. Clause 1(8) indicates that further provision is made in Clauses 2-4, 7-10 and 12 about the power in Clause 1. Clause 1(9) defines regulations made under Clause 1 as ‘product regulations’.
19. **Clause 2 – Product Requirements**
20. Clause 2(1) sets out that product regulations may contain requirements that must be met for products that are marketed or used, or in order for products to be marketed or used, in the UK. A ‘product’ is defined in s.1(7) as a tangible item that results from a method of production.
21. Under Clause 2(2), regulations may cover requirements such as, production (defined in s.1(7) as manufacturing, packaging, labelling or any other process or operation carried out (whether large or small scale) which impacts on the character of an item), components (tangible or intangible) or other characteristics; use, installation, marking, marketing through online marketplaces; provision of information (including on risk) to specific persons including consumers, those mentioned in subsection (3) and relevant authorities; making statements about products; monitoring, assessment and certification of products; recording or investigating complaints; production or retention of documents or samples; cooperation with relevant authorities; the appointment of authorised representatives.
22. Under Clause 2(3), product regulations may impose requirements on persons (or their authorised representative) carrying out, manufacturing; marketing; importing, installing, selling via online marketplace a product, a person carrying out monitoring, assessment, verification or certification or a person who accredits a person carrying out those activities; and any other person carrying out activities in relation to a product.

23. Under Clause 2(4), product regulations may include provision for or in relation to technical standards relating to product requirements. Under Clause 2(5), this may include provision on persons preparing technical standards; the procedure by which, and persons by whom, technical standards may be prepared; and the matters that must or may be covered by technical standard. Under Clause 2(6) product requirements can refer to technical standards published by a person specified in regulations and provide that meeting a particular standard creates a presumption of compliance.
24. Under Clause 2(7) product regulations may provide that a product requirement is met if it meets a specific requirement of EU law, or a specific requirement in EU law and conditions set out in regulations. Under Clause 2(8), before making provision under (7), the Secretary of State must have due regard to the social, environmental and economic impact of making the provision concerned. Under Clause 2(9), a reference to intangible components includes software.
25. **Clause 3 – Enforcement of product regulations**
26. Under Clause 3(1), product regulations may designate a person or persons as a relevant authority. As per subsection (2), that person can only be designated if they exercise functions of a public nature.
27. Under Clause 3(3) product regulations may confer a relevant authority with the functions to; monitor compliance; investigate suspected non-compliance; secure compliance; mitigate the effect of non-compliance. Under Clause 3(4), product regulations may include provision conferring power on a relevant authority to appoint inspectors to carry out functions; conferring functions on a relevant authority or inspector including the power to enter, inspect and search premises; seize and retain products or evidence of non-compliance with product regulations; require a person to retain or provide a document or information; dispose of a product or require a person to dispose of a product. Under Clause 3(5)(c), product regulations may not authorise entry into a place used wholly or mainly as a dwelling without, in this jurisdiction, a warrant issued by a lay magistrate.
28. Under Clause 3(6) provision under Clause 3(3) to secure compliance or mitigate the effect of non-compliance may include provision conferring power on a relevant authority to issue notice requiring a person to do or cease to do something including power to warn of risks; require marking of a product in respect of risks; prohibit the marketing or use of a product; require the recall or withdrawal of a product.

29. Under Clause 3(7) product regulations may make provision related to sanctions for non-compliance with regulations; notices issued by relevant authorities; obstruction or failure to assist or cooperate with a relevant authority or inspector; provision of false or misleading information. Under Clause 3(8) product regulations may include provision allowing a relevant authority to accept undertakings relating to compliance; provision for sanctions for non-compliance with undertaking; provision for forfeiture of products by court order. Under Clause 3(9) such provision may include creating or widening the scope of criminal offences; provision for prosecution by a relevant authority; provision conferring power to issue civil sanctions including fines. Under Clause 3(11) product regulations may make provision about appeals to courts or tribunals. Under Clause 3(12), where criminal offence is created the offence must be triable summarily only or triable summarily or on indictment; and, that a person found guilty on summary conviction is, in NI, liable to a fine not exceeding the statutory 4 maximum or imprisonment for a term not exceeding three months or both; a person guilty on indictment is liable to a fine or imprisonment for a term not exceeding two years or both.

30. **Clause 4 – Emergencies**

31. Under Clause 4(1) product regulations may be disapplied or modified in an emergency. Under subsection (2), this may be subject to conditions.

32. **Clause 5 – Metrology Regulations**

33. Clause 5(1) provides the power to make regulations about the units of measurement that are used to express quantities of goods or other things including provision about how units of measurement must or may be calculated or determined and how units of measurement must or may be referred to.

34. Under Clause 5(2), regulations may include provision about the quantities in which goods must or may be marketed in the UK and the units of measurement that must or may be used to express such quantities. Under Clause 5(3), this may include requirements in relation to, marking or packaging of goods; monitoring, assessment and verification of the quantities in which goods are marketed and units of measurement used to express such quantities; and, retention of documents and information.

35. Under Clause 5(4) regulations cannot be made that would prevent or restrict the use of the pint in the marketing of draught beer or cider or milk in returnable containers. A similar provision in the Weights and Measures (Northern Ireland) Order 1981 prevents the Department for the Economy from restricting the use of the pint.

36. Clause 5(5) provides definitions for terms used in Clause 5. Clause 5(6) details that further detail is set out in Clauses 6 to 10 and 12 about the powers conferred in Clause 5. Clause 5(7) defines regulations under Clause 5 as ‘metrology regulations.’
37. **Clause 6 - Enforcement of metrology regulations**
38. Clause 6 provides the power for respect of enforcement of metrology regulations that mirror those granted in Clause 3 for the enforcement of product regulations. Clause 7 - Information Sharing
39. Under Clause 7(1) product and metrology regulations may make provision for the disclosure of information by a relevant authority to certain persons or by those certain persons to a relevant authority. The certain persons are listed in Clause 2(2) as another relevant authority; the emergency services; or a person specified or of a description specified in product or metrology regulations.
40. Under Clause 7(3) provision about information sharing may include provision about circumstances in which information may or may not be disclosed; the type of information that may or must be disclosed; how information may or may not be used; sanctions for non-compliance with information sharing requirements including creating or widening the scope of criminal offences
41. Under Clause 7(4) regulations may specify that information processed in accordance with the regulation does not breach any duty of confidence or other restriction on the processing of personal data except as provided in subsection (5). Under Clause 7(5), a provision of product or metrology regulations cannot authorise processing in breach of data protection legislation. Clause 7(6) provides a definition of data protection legislation and emergency services.
42. **Clause 8 – Cost Recovery**
43. Under Clause 8(1), provision may be made for a relevant authority to impose fees for carrying out functions under the regulations. Under Clause 8(2) provision can include, who is liable; the circumstances when fees can be levied; amount; reductions, exemptions and waivers; how and when payment is to be made; collection and recovery; interest; the resolution of disputes including appeals to courts or tribunals. Under Clause 8(3) a person may only be liable to pay a fee if they are capable of being directly affected by the carrying out of functions conferred by the regulations.
44. **Clause 9 – Application to existing product and metrology provision**

45. Under Clause 9(1) the power to make product regulations includes the power to make regulations in connection with existing product requirements contained in existing regulations if those regulations could have been made under the powers in the Bill. There is a corresponding power in respect of metrology regulations contained in Clause 9(2). Clause 9(3) defines that existing product and metrology requirements are those contained in existing product and metrology provision. Existing product and metrology provision means provision in subordinate legislation made before the passing of the Act or assimilated direct legislation.

46. **Clause 10 – Consequential amendment of certain Acts**

47. Clause 10(1) repeals Part 2 and 4 of the Consumer Protection Act 1987 (“the 1987 Act”). Part 2 of the 1987 Act relates to consumer safety and includes provision providing a power for safety regulations to be made. Consumer safety in relation to goods is a reserved matter under paragraph 37 of Schedule 3 of the Northern Ireland Act 1998 (“the NI Act”). Part 4 of the 1987 Act relates to enforcement of Parts 2 and 3. 12.2

48. Under Clause 10(2), product or metrology regulations made under the Bill may amend or repeal provisions in the Gun Barrel Proof Acts 1868 to 1978 to ensure there is no inconsistency or overlap with regulations made under the Bill. The Gun Barrel Proof Acts deal with the testing and certification of gun barrels by authorised proof houses.

49. Clause 10(3) repeals s.1, (8(1)(a) and 25 and Schedule 1 of the Weights and Measures Act 1985 (“the 1985 Act”). Section 1 of the 1985 Act sets out measurements of length and unit of mass for the UK and Schedule 1 sets out 6 definitions of units of measurements. Section 8(1)(a) prohibits the use for trade of a measurement not included in Parts I-V of Schedule 1; s.25 creates offences relating to transactions in goods and s.25 creates offences relating to transactions in goods; these three provisions only apply in GB.

50. Under Clause 10(4), regulations made under the Bill may repeal or amend legislation in consequence of the repeals or amendments made in Clause 10(1), (2) or (3).

51. **Clause 11 - Interpretation**

52. Clause 11(1) defines terms used within the Bill. Clause 11(2) provides the Secretary of State with a power to amend the definition of “online marketplace”.

53. **Clause 12 - Regulation**

54. Clause 12(1) sets out that regulations must be made by statutory instrument and Clause 12(2) sets out that regulations may make provision, generally or in relation to particular cases; for different purposes; for different areas; on form and manner of how things must or may be done; about time limits; that bind the Crown; and, consequential, supplementary, incidental, transitional or saving provision.
55. Clauses 12(3) and (4) sets out when the affirmative parliamentary procedure will apply to regulations made under the Bill. Under Clause 12(5) the negative procedure will apply to all other regulations made under the Bill.
56. Clause 12(6) requires the Secretary of State to consult such persons as they consider appropriate before making regulations under the Bill.
57. Clause 12(7) sets out that no parliamentary procedure attaches to commencement regulations made under Clause 14, nor is there a requirement to consult.

Reasons for making the Provisions

58. The Bill gives the power to:

- make product regulations for the purpose of reducing or mitigating the risks presented by products used or marketed in the UK; ensure those products operate effectively; and ensure they give accurate measurement readings. Regulations would be able to set ‘product requirements’, including in relation to the marketing of products through an online marketplace.
- make metrology regulations about the units of measurement that must be used to express quantities. Regulations would be able to make provision about how units are to be calculated and how they should be referred to.
- allow regulations to give relevant authorities powers relating to monitoring and investigating compliance, securing compliance and mitigating the effect of non-compliance with product and metrology regulations.
- provide for the creation of new criminal offences and impose civil sanctions for non-compliance with product and metrology regulations
- allows the application of the powers within the Bill to be applied to existing legislation

Reasons for utilizing the Bill rather than an Act of the Assembly

59. The subject of the Bill covers excepted, reserved and transferred matters and it would be excessively complex to extricate the transferred provisions. The existing body of legislation although in the transferred field often already operates on a UK-wide basis and it would for that reason be problematic to legislate for Northern Ireland separately

Consultation

60. There has been no public consultation conducted specifically for the Bill. The previous UK Government conducted a public consultation on the long-term approach to product safety. On the 5 November 2024, the current UK government published an outcome called the ‘Government response to the Product Safety Review and next steps’:

<https://www.gov.uk/government/consultations/smarter-regulation-uk-product-safety-review/outcome/government-response-to-the-product-safety-review-and-next-steps>

The Department for Business and Trade have provided an Impact Assessment:

<https://bills.parliament.uk/publications/56098/documents/5019>

Human Rights and Equality

61. The UK Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Baroness Jones of Whitchurch, Parliamentary Under-Secretary of State (Minister for Legislation) at, has made a statement under section 19(1)(a) of the Human Rights Act 1998 this effect

Financial Implications

62. The Bill contains enabling powers to make reforms to the UK’s product regulation and metrology framework via secondary legislation. The financial implications of the Bill itself are therefore minimal; the resulting secondary legislation may have financial implications for the British Government in terms of preparing and enforcing regulations under the relevant clauses, and for businesses in terms of adherence to regulations, sanctions for non-compliance, or cost recovery.

Summary of Regulatory Impact

- 63. This is an enabling bill, and direct regulatory impacts are limited. Impacts will be dependent on the nature of any future regulations made under the Bill's powers.
- 64. Most future regulations, excepting Metrology, made under the Bill's powers are anticipated to extend to England, Scotland and Wales only as they are likely to be Windsor Framework areas for Northern Ireland.
- 65. Future regulations applying to Britain may limit regulatory divergence between Northern Ireland and Britain due to the Windsor Framework.

Engagement to date with the Committee for the Economy

- 66. A briefing paper was provided to the Economy Committee on 18th November 2024 and written evidence on 20th January. Officials provided oral briefing for their meeting on 29th January 2025.

Conclusion

- 67. The view of the Minister for the Economy is that in the interest of good government that so far as the provisions of the Bill deal with a devolution matter, they should extend to Northern Ireland

Department for the Economy
6th May 2025