

Supplementary Legislative Consent Memorandum

Product Regulation and Metrology Bill

Background

1. This memorandum has been lodged by Kate Forbes MSP, Deputy First Minister and Cabinet Secretary for Economy and Gaelic, in accordance with Rule 9B.3.1(c) of the Parliament's Standing Orders, and is supported by Richard Lochhead MSP, Minister for Business.
2. The Product Regulation and Metrology Bill ("the Bill") was introduced by the UK Government in the House of Lords on 4 September 2024. The Bill is available on the UK Parliament website via this link: <https://bills.parliament.uk/bills/3752>.
3. The Scottish Government lodged an LCM ([LCM-S6-50](#)) on 24 September 2024 recommending that consent be withheld to clauses 1-4 and 7-11 of the Bill as introduced. A supplementary LCM ([LCM-S6-50a](#)) was lodged on 3 March 2025 in respect of a UK Government amendment to the Bill tabled on 12 February 2025, also recommending consent is withheld. This covered clause 9 in the Bill as brought from the Lords.
4. [A UK Government amendment](#) in the name of Justin Madders MP was lodged on 7 May 2025 that makes further relevant provision beyond that covered by LCM-S6-50 and LCM-S6-50a. This amendment was added on 15 May and now forms clause 10 in the Bill as amended at Public Bill Committee.

Content of the Bill

5. The Bill is primarily an enabling Bill which gives power to the Secretary of State to make provisions in relation to the UK's product and metrology regulatory framework.
6. The high-level objectives of the Bill are to:
 - Ensure that product regulations can keep pace with and respond to new technologies and address new challenges, enable recognition of new or updated EU product requirements, including CE marking, or to end recognition of EU product requirements in Great Britain where it is in the interests of UK consumers and businesses.
 - Modernise product safety legislation to clarify duties for online marketplaces and to allow the UK Government to identify new actors in the

supply chain and place obligations on them to protect the safety of consumers.

- Improve enforcement and compliance mechanisms to respond to and reflect the challenges of modern, digital borders and improve data sharing between regulators and market surveillance authorities.
- Ensure appropriate powers are in place to update and future-proof the metrology framework (metrology is the science of measurement).

Provisions which require the consent of the Scottish Parliament

7. The Bill as a whole extends to Scotland. Clauses 1-4 and 7-13 of the Bill as amended at Public Bill Committee engage the legislative consent process. The Scottish Government's initial position regarding current clauses 1-4, 7-8 and 11-13 can be found in LCM-S6-50 and regarding clause 9 in LCM-S6-50a.

8. The UK Government lodged an amendment to introduce a new clause, entitled "Regulations making provision within devolved competence". This is clause 10 of the Bill as amended at Public Bill Committee. This clause provides that the Secretary of State may only make regulations under clause 1 of the Bill in areas of devolved competence with the consent of the Scottish Ministers, unless the provision is merely incidental to, or consequential on, provision outside Scottish devolved competence.

9. The provisions in this clause relate to the exercise of powers under clause 1 and are therefore within the legislative competence of the Scottish Parliament.

10. The UK Government has recently requested consent to this clause together with the other clauses in the Bill covering devolved matters.

Reasons for recommending consent

11. As outlined in LCM-S6-50 and LCM S6-50a, the Bill as introduced would have allowed the Secretary of State to make devolved provision under the powers in clause 1 and related provisions without any prior consent of Scottish Ministers.

12. As a result, the Scottish Government recommended that the Scottish Parliament withhold consent to the Bill unless it was amended in a manner that would give the Scottish Ministers and the Scottish Parliament an acceptable level of control and oversight over these powers. It is the Scottish Government's view that the new clause 10 provides this, and as such it is now possible to recommend granting consent to all clauses of the Bill covering devolved matters.

13. The Scottish Government still has concerns around some aspects of the Bill and the UK Government's handling of the legislative consent process. Despite extensive engagement, it remains unclear why the UK Government requires powers

over certain areas of devolved competence. It is also disappointing that the UK Government has not agreed to provide the Scottish Government with similar powers to take action in devolved areas in this Bill. However, it remains that the amendment represents a significant improvement on the Bill as introduced and that it addresses the Scottish Government's primary concern regarding the Bill.

14. In view of this fact, the Scottish Government has included in this Memorandum a draft Motion on Legislative Consent to recommend consent to all of the relevant provisions in the Bill.

Consultation

15. No public consultation was conducted specifically for the Bill. The previous UK Government conducted a public consultation on the long-term approach to product safety in 2023. [A response](#) to this was published on 5 November 2024, after the introduction of the Bill.

Financial implications

16. It is not anticipated that the Bill will have any financial implications for the Scottish Government.

Post EU scrutiny

17. As outlined in LCM-S6-50 and LCM-S6-50a, the Bill contains powers which would allow the Secretary of State to either diverge or align with EU product regulations, and to amend assimilated law (the law formerly known as retained EU law) within the scope of the Bill. The power to make regulations for the purpose of reducing or mitigating the environmental impact of products may only be used to make provision which corresponds, or is similar, to provision in relevant EU law. The other broad powers to make provision in relation to product safety and the efficiency or effectiveness of products are not similarly constrained. However, the Bill allows product regulations to provide that a product requirement may be treated as being met by meeting specified provision in relevant EU law (and may attach conditions to this), but before making such a provision the Secretary of State must have regard to its social, environmental and economic impact. The new clause introducing a statutory consent mechanism provides a means for the Scottish Ministers to ensure these powers are used appropriately in areas of devolved competence.

18. As the UK's product regulatory framework is largely inherited from the EU and is mainly assimilated law, the Scottish Government would expect that, in many cases, Statutory Instruments (SIs) made under this power would fall under the scope of the Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit.

Conclusion

19. Notwithstanding the remaining concerns the Scottish Government has regarding aspects of this Bill and how the UK Government has approached the legislative consent process, it is the Scottish Government's view that the amendment described at paragraph 8 would provide Scottish Ministers and the Scottish Parliament an acceptable level of control over the use of the Bill's powers in devolved areas. It is therefore also the Scottish Government's view that the Scottish Parliament should consent to all elements of the Bill covering devolved matters.

Draft motion on legislative consent

20. The draft motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, is:

“That the Scottish Parliament agrees that all relevant provisions of the Product Regulation and Metrology Bill, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
May 2025

This Supplementary Legislative Consent Memorandum relates to the Product Regulation and Metrology Bill (UK legislation) and was lodged with the Scottish Parliament on 29 May 2025

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