

Economy and Fair Work Committee  
Wednesday 18 June 2025  
20<sup>th</sup> Meeting, 2025 (Session 6)

## Supplementary Legislative Consent Memorandums – Product Regulation and Metrology Bill

### Note by the Clerk

#### Introduction

1. The [Product Regulation and Metrology Bill](#) is a UK Government Bill introduced in the House of Lords on 4 September 2024. Metrology is the science of measurement. [The Bill completed its third reading in the second house](#) (in this case, the House of Commons) on 4 June 2025.
2. The Scottish Government lodged a [Legislative Consent Memorandum \(LCM\)](#) on 24 September 2024. The Parliamentary Bureau designated the Economy and Fair Work Committee as the lead committee to consider the LCM and report its views to the Parliament.
3. On [11 December 2024](#), the Committee heard evidence on the LCM from Richard Lochhead, then Minister for Business. The Minister confirmed that the Scottish Government did not recommend the Parliament gives its consent to the relevant provisions of Bill. He noted that discussions with the UK Government were ongoing, and a supplementary LCM would be lodged in due course. The Committee [published its report on 13 January 2025](#).
4. A supplementary LCM was lodged on 3 March 2025 (**Annexe A**) following amendments to the Bill. The Scottish Government maintained its position of not recommending consent, while reiterating that discussions with the UK Government were ongoing.
5. A second supplementary LCM was lodged on 29 May 2025 (**Annexe B**), following further amendments, recommending that the Parliament gives its consent to the relevant provisions to the Bill.
6. The Committee will now consider both supplementary LCMs.

#### Legislative Consent Process

7. Under the Sewel Convention, the UK Parliament will not normally legislate on matters devolved to the Scottish Parliament without its consent. [Chapter 9B of the Parliament's Standing Orders](#) sets out the rules and procedures for seeking legislative consent under the convention.
8. When a Bill goes through the UK Parliament, the Scottish Government must prepare a Legislative Consent Memorandum if it—

- makes provision applying to Scotland for any purpose within the legislative competence of the Parliament;
  - alters the legislative competence of the Scottish Parliament (its powers to make laws); or
  - alters the executive competence of the Scottish Ministers (their powers to govern).
9. The Product Regulation and Metrology Bill falls under Rule 9B.1.1 of the Standing Orders, as it makes provisions applying to Scotland for purposes within the legislative competence of the Parliament.

## Product Regulation and Metrology Bill

10. The Bill is primarily an enabling Bill conferring wide-ranging powers on the Secretary of State to make provisions in relation to the UK's product safety and metrology regulatory framework.
11. The [Scottish Government states](#) that the Bill would—
- “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).”

## Supplementary Legislative Consent Memorandum

12. The supplementary LCM lodged on 3 March (**Annexe A**) stated that amendments to the Bill did not resolve the Scottish Government's core concern about the need for a mechanism to seek Scottish Ministers' consent when powers are used in devolved areas.
13. While noting that discussions with the UK Government were ongoing, the Scottish Government did not recommend that the Parliament gives its consent to the relevant provisions of the Bill.

## Second supplementary Legislative Consent Memorandum

14. A second supplementary LCM was lodged on 29 May (**Annexe B**), following a further amendment that would require the Secretary of State to seek the consent of Scottish Ministers when making regulations in devolved areas under Clause 1, unless the provision is incidental to, or consequential on, provision outside Scottish devolved competence.
15. The Scottish Government states that this amendment provides Scottish Ministers and the Scottish Parliament with “an acceptable level of control over the use of the Bill’s powers in devolved areas” and therefore now recommends that the Parliament gives its consent to the relevant clauses in the Bill.

## Legislative Consent Motion

16. A draft Legislative Consent Motion is included in the second supplementary LCM—

“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.”

## Delegated Powers and Law Reform Committee Consideration

17. The Delegated Powers and Law Reform Committee (DPLRC) considered the delegated powers in the Bill exercisable within devolved competence at its meeting on 10 June.
18. [In its report](#), the DPLRC reiterated its long-standing position that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
19. It highlighted the powers conferred and noted that the Bill had been amended to include a requirement that the Secretary of State to obtain the consent of Scottish Ministers before making regulations under Clause 1 in areas of devolved competence.
20. The DPLRC stated that, in many cases, the exercise of this power would fall under the scope of the [SI Protocol 2](#). It noted however that there will be cases where this protocol will not apply, and called for the Scottish Government to facilitate the Scottish Parliament’s scrutiny of any decisions by Scottish Ministers to consent to the making of regulations which do not fall within the scope of SI Protocol 2.
21. The DPLRC also noted the power may be exercised within devolved competence by the Secretary of State with no equivalent power conferred on

the Scottish Ministers and as such, product regulations will not be laid in the Scottish Parliament.

## **Evidence Session**

22. The Committee will hear evidence on the supplementary LCMs from—

- Richard Lochhead, Minister for Business and Employment; and
- Dr Pieter van de Graaf, Head of International Trade Flows and Regulations, Scottish Government.

**23. Following this evidence session, members are invited to—**

- **consider what to include in the Committee report; and**
- **to agree to consider a draft report in private at a future meeting.**

**Clerks to the Committee  
June 2025**

# Supplementary Legislative Consent Memorandum

## Product Regulation and Metrology Bill

### Background

1. This supplementary 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 at the UK Parliament website: [Product Regulation and Metrology Bill \[HL\] - Parliamentary Bills - UK Parliament](#).
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.
4. A UK Government amendment to introduce a new clause, entitled "Application to existing product and metrology provision", after clause 8 in the name of Lord Leong was lodged on 12 February 2025 that makes further relevant provision beyond that covered by LCM-S6-50. A running list of amendments tabled up to and including 12 February is available at the UK Parliament website: [HL Bill 18—R—Running List 12 February | UK Parliament](#).

### Content of the Bill

5. The Bill is primarily an enabling Bill which gives wide-ranging powers to the Secretary of State to make provisions in relation to the UK's product safety 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 conformity assessment (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. Initially, the UK Government's published view was that clauses 1-4 and 8-11 of the Bill engage the legislative consent process in the Scottish Parliament. The Scottish Government agreed with this assessment but also considered that clause 7 required consent. The UK Government has since agreed. The Scottish Government's position regards clauses 1-4 and 7-11 as introduced can be found in LCM-S6-50.

## **New clause after clause 8**

8. The UK Government has lodged an amendment to introduce a new clause, entitled "Application to existing product and metrology provision", after clause 8 that enables the Secretary of State to use the powers in clause 1 to amend or supplement provision in existing secondary legislation (which may include secondary legislation with the status of assimilated law) or assimilated direct legislation regarding products regulations and requirements.
9. The new clause extends the scope of the power in clause 1 and related provisions. As devolved provision can be made under clause 1 in relation to regulations containing product technical requirements and standards (those excluded from the Scotland Act 1998 C8 reservation), as well as regulations in relation to product efficiency and regulations relating to mitigating the environmental impact of products, then this amendment expands the scope of the Secretary of State's proposed powers within devolved areas.
10. The Bill does not currently contain any consent mechanism which would prevent the Secretary of State from using the powers in devolved areas without the consent of Scottish Ministers. It would be within the Scottish Parliament's legislative competence to make similar provision for Scotland in respect of these areas. Therefore it is the Scottish Government's view that this amendment requires the consent of the Scottish Parliament. The UK Government's position on whether the new clause covers devolved matters remains unclear.
11. The new clause introduces similar powers in relation to metrology regulations. Metrology is reserved under Section C9 (weights and measures) of schedule 5 of the Scotland Act 1998. Therefore, legislative consent is not required for those aspects of the amendment.

## **Reasons for not seeking legislative consent**

12. Section 28(8) of the Scotland Act 1998 recognises that the UK Government will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. UK Parliament Bills, and amendments to such Bills, require the consent of the Scottish Parliament if they contain provisions applying to Scotland and which are for devolved purposes or if they alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers.
13. As described above, the Scottish Government is currently of the view that the proposed new clause after clause 8 relates to devolved matters by expanding the scope of powers of the Secretary of State in areas of devolved competence as proposed by the Bill.
14. As the underlying issues around devolution outlined in LCM-S6-50, and which apply to the new clause after clause 8, have yet to be addressed, it is the Scottish Government's view that the Scottish Parliament should similarly withhold consent to this amendment until such time as any further government amendments are lodged which adequately address those issues.
15. In view of this fact, the Scottish Government has included in this Memorandum a draft Motion on Legislative Consent to withhold consent.
16. However, the Scottish Government remains of the view that, should the Bill be amended in such a manner that would give the Scottish Government and the Scottish Parliament an acceptable level of control and oversight over the proposed powers created by the Bill, the Scottish Government will lodge a supplementary memorandum recommending consent.

## Consultation

17. 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. The response is available at: [Government response to the Product Safety Review and next steps | Office for Product Safety & Standards \(www.gov.uk\)](#).

## Financial implications

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

## Other relevant considerations

19. Discussion with the UK Government around potential changes to the Bill are ongoing and could yet alter the Scottish Government's position.

## Post EU scrutiny

20. As stated at paragraph 8, the amendment expands the scope of the power in clause 1 so that the Secretary of State may amend or supplement existing

subordinate legislation or assimilated direct legislation, including Scottish legislation. The relevant forms of secondary legislation may include secondary legislation with the status of assimilated law (assimilated direct legislation being just one particular form of assimilated law). It enables the Secretary of State to amend or supplement such legislation for instance to provide for continued recognition of CE marking. The Secretary of State would be granted powers also to make changes to devolved provisions (including in Scottish law), to align with new or updated EU product regulations. However, this does not limit the power of the Secretary of State to make changes to existing regulations to *diverge* from EU regulations.

## Conclusion

21. It is the recommendation of the Scottish Government that the Scottish Parliament does not grant legislative consent to clauses 1-4 and 7-11 of the Product Regulation and Metrology Bill as introduced and the subsequent amendment to add after clause 8, a clause on the application to existing product and metrology provision.

## Draft motion on legislative consent

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

“That the Parliament refuses consent to all the relevant provisions in the Product Regulation and Metrology Bill, introduced to the House of Lords on 4 September 2024, and refuses consent to the subsequent amendment to add after clause 8, a clause on the application to existing product and metrology provision, being considered by the UK Parliament.”

Scottish Government  
March 2025



# Second 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. 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