

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NUMBER 2)**

### **Product Regulation and Metrology Bill**

1. This legislative consent memorandum (LCM) 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 Cymru if a UK Parliamentary Bill makes provision in relation to Wales that has regard to devolved matters.
2. The Product Regulation and Metrology Bill (“the Bill”) was introduced into the UK Parliament, the House of Lords, on 4 September 2024. The Bill can be found at: [Product Regulation and Metrology Bill \[HL\]](#)
3. The original LCM was laid on 20 September. This can be found at: [LEGISLATIVE CONSENT MEMORANDUM PRODUCT REGULATION AND METROLOGY BILL](#)
4. A number of technical and substantive amendments to the Bill were tabled at House of Lords Report Stage between the 17 February and 5 March. These amendments comprised government amendments and agreed non-government amendments. Some of these amendments make provision with regard to devolved matters and therefore within the scope of SO29.

## Policy Objectives

5. 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.
6. 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.
7. 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.
8. The Bill aims to support economic growth, provide regulatory stability and deliver more protection for consumers by:
  - a. 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.
  - b. 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.
  - c. 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.
  - d. 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**

9. The Bill is sponsored by the Department of Business and Trade.
10. The key provisions of the Bill are listed in the original LCM. This can be found at: [LEGISLATIVE CONSENT MEMORANDUM PRODUCT REGULATION AND METROLOGY BILL](#)

## **Amendments for which consent is required**

11. The amendments for which consent of the Senedd is required are set out below.

## **Original provision**

### Clause 1: Product Regulations

12. Clause 1 provides the Secretary of State with the authority to enact regulations with the intention of guaranteeing that products marketed or used in the UK reduce or mitigate any risk presented by those products, give accurate readings and operate efficiently and effectively.
13. 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.
14. 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.
15. Clause 1(2) provides the Secretary of State with power to make regulations 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.
16. 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. 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.

17. 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.

### **Amendments to Clause 1**

18. The amendment is a substantive amendment, requiring the Secretary of State to publish a statement setting out how they expect to identify and assess risks presented by products for the purpose of Clause 1.

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

#### **Original Provision**

19. Clause 2 provides a detailed description of the types of requirements that may be included within product regulations made by the Secretary of State under powers conferred by Clause 1.
20. 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.

### **Amendments to Clause 2**

21. The amendments are technical amendments, providing that product regulations may include requirements relating to the installation of products and that those requirements can be imposed on installers of products.

## Clause 10: Interpretation

### **Original Provision**

22. Clause 10 provides the interpretation provisions for the Bill, and a Henry VIII power to amend the definition of “online marketplace” in this clause.
23. 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.
24. 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.

### **Amendments to Clause 10**

25. The amendments are technical amendments which make changes to the definition of “online marketplace” and insert the definition of “product requirements”, thereby applying that definition to the whole of the Bill. The insertion of “product requirements” is consequential on the insertion of a new clause after Clause 8 (see below).

## Schedule: Excluded Products

### **Original Provision**

26. The Schedule provides a list of excluded products for which the Secretary of State is unable to make regulations under the Bill.
27. 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.

### **Amendments to the Schedule**

28. The amendment removes the existing reference to “aircraft” and replaces it with more detailed provisions which add certain products used or specifically designed for the purpose of operating or controlling aircraft, training persons in the operation or control of aircraft or ensuring safe operation or control of aircraft, to the list of excluded products in the Schedule.

### New Clause (After Clause 8)

29. The new clause is a substantive provision which enables the Secretary of State to use the powers in clauses 1 and 5 to amend or supplement provision in existing legislation about products and metrology, where that provision could have been made under the powers in the Bill.
30. This clause makes provision in relation to the devolved matter of in particular environmental protection. It would be within the Senedd's legislative competence to make provision to amend subordinate Welsh legislation which corresponded to a provision of relevant EU law, for the purpose of reducing or mitigating the environmental impact of products, where the technical standards in that relevant EU law came into effect on or after IP completion day. Metrology regulations would be outside the legislative competence of the Senedd.

### **UK Government view on the need for consent**

31. 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). Therefore, the UK Governments view in relation to the need for consent for clauses 1, 2, 10 and the Schedule remains unchanged. With regards to the new clause, UKG acknowledge that it requires the consent of the Senedd, and we agree with this assessment.

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

32. The UK Government has highlighted that the primary intention of the powers in the Bill is to modernise and improve existing legislation, rather than any wholesale revocation and replacement. It also highlighted that the new clause outlined above is a technical but necessary amendment to give effect to the policy of utilising Bill powers to update the current body of law without unnecessarily revoking and then duplicating it.

### **Financial implications**

33. No financial implications have been identified at this stage; however further advice will be submitted should this position change.

### **Conclusion**

34. The Welsh Government are supportive of the amendments, insofar as it supports the UK Government's objective to develop a UK wide product safety regime which can be seen as key part of the wider ambition to establish and maintain an effective UK internal market. However, my officials and I are continuing to engage with UK Government on the enabling powers in clauses 1(1)(a), 1(1)(b) and 1(2), and the impact on devolution. 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**

**24 March 2025**