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Economy and Fair Work Committee

Report on the Legislative Consent Memorandum for the Product Regulation and Metrology Bill



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Economy and Fair Work Committee

To consider and report on matters within the responsibility of the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, with the exception of Gaelic; and on matters relating to just transition.



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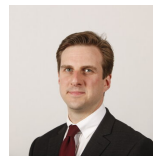
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Introduction

1. The [Product Regulation and Metrology Bill](#) ("the Bill") is a UK Government Bill introduced in the House of Lords on 4 September 2024. Metrology is the science of measurement.
2. A [Legislative Consent Memorandum \(LCM\)](#) was lodged on 24 September 2024 by Kate Forbes, Deputy First Minister and Cabinet Secretary for Economy and Gaelic, and supported by Richard Lochhead, Minister for Business.¹
3. The Economy and Fair Work Committee was [designated as lead committee on 1 October 2024 by the Parliamentary Bureau](#).

The Provisions of the Product Regulation and Metrology Bill

4. The [Explanatory Notes](#) which accompany the Bill state that it—
 - ” 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.²
5. It 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, efficiency, effectiveness, environmental impact and other standards, as well as on metrology issues.
6. The Bill applies to physical products. However, reference is made in the Explanatory Notes to an ability to respond to new, intangible, technologies, such as the use of AI, which may be integrated into physical products.
7. Some products are exempt from the provisions of the Bill. These include food, products of animal origin, aircraft, military equipment, and medicines.

Legislative Consent Memorandum

8. An LCM should normally be lodged within two weeks of the Bill's introduction at Westminster (in this case, 18 September). The Minister for Parliamentary Business wrote to the Presiding Officer on 17 September stating that, due to the pace at which the Bill was developed, and the limited engagement around it, the Scottish Government would not be able to meet this deadline.
9. In his letter, the Minister noted that constructive discussions with the UK Government had taken place, but stated that the Scottish Government required more time to analyse the Bill's implications for Scotland, and to have further discussions with the UK Government.
10. [The Scottish Government lodged its LCM on 24 September 2024.](#)¹

View on provisions within the Bill

11. The Scottish Government's LCM outlines the areas where the legislative consent process is engaged. In general terms, these are as follows—
 - The exemptions to the product standards reservation in the Scotland Act 1998 are not exactly matched by the categories of product exempt from the regulation-making powers in the Bill. This means that any regulations encroaching on the exemptions in the Scotland Act would be within the devolved competence of the Scottish Parliament.
 - The regulation-making powers in the Bill go beyond the reservation for “product safety, liability and labelling” and “technical standards and requirements” in the Scotland Act 1998.
 - The reservation for technical standards and requirements only covers requirements from EU law in place before Brexit. Any technical standards in areas not previously covered by EU law would be within the devolved competence of the Scottish Parliament.
12. Additionally, the LCM states that there are currently no mechanisms within the Bill which would prevent UK Ministers making regulations in devolved areas without the consent of the Scottish Government.
13. The Scottish Government and the UK Government agree that clauses 1 to 4 and 8 to 11 of the Bill engage the legislative consent process. The Scottish Government considers that clause 7 also requires legislative consent. The table below outlines the purpose of each of these clauses.

Table 1: Overview of clauses listed in the LCM

Clause	Power
Clause 1	Regulation-making powers covering product safety, efficiency, effectiveness and environmental impact.
Clause 2	Regulation-making powers to set the conditions which must be met for products marketed or used in the UK. These can include things like technical standards, packaging, certification, and investigation of complaints. It covers intermediaries such as online marketplaces.
Clause 3	Regulation-making powers in relation to enforcement of product regulations.
Clause 5	Regulation-making powers covering required units of measurement and how these are to be calculated.
Clause 6	Regulation-making powers in relation to enforcement of weights and measures requirements.
Clause 7	Regulation-making powers to permit information-sharing between those subject to product or weights and measures regulations and enforcement bodies or emergency services.
Clause 8	Regulation-making powers in relation to fees to cover enforcement and other activities.

14. The Scottish Government does not recommend that consent be given to the Bill in its current form. It is however in discussion with the UK Government on the above clauses and intends to lodge a supplementary LCM to update the Parliament on the outcome in due course.

Committee Consideration

Economy and Fair Work Committee

15. The Committee heard evidence on the LCM from Richard Lochhead, Minister for Business, at its meeting on 11 December 2024.
16. During evidence the Committee noted the complexity of the policy area and that it is difficult distinguish whether issues were reserved or devolved. The Minister agreed noting that the Scottish Government's key concern is—
 - ” the mismatch between what is devolved under the Scotland Act 1998 and what would be excluded under the Bill by the UK Government ... we would like to see what is devolved, according to the 1998 Act, being replicated in the exclusions in the UK Bill.³
17. Members questioned how the Bill would interact with the United Kingdom Internal Market Act 2020 and how different approaches to product regulation between Scotland and other parts of the UK would be impacted. The Committee also asked whether, if the Scottish Government secured the exclusions described above in order to replicate in this Bill what is devolved according to the Scotland Act, the UKIMA could override provision made in Scotland.
18. The Minister confirmed that constructive discussions with the UK Government are ongoing and that a supplementary LCM would be lodged in due course to update the Parliament on the Scottish Government's position on legislative consent.

Delegated Powers and Law Reform Committee

19. The Delegated Powers and Law Reform Committee (DPLRC) considered the delegated powers in the Bill exercisable within devolved competence at its meetings on 29 October and 3 December, and reported on the LCM in its [74th Report, 2024](#).
20. The DPLRC noted the ongoing engagement between both governments and called on them to “ensure they consider the role of the Scottish Parliament as part of those discussions” and that they should be “mindful of the importance of the Scottish Parliament having an effective scrutiny role in relation to the exercise of these powers, and to facilitate that role”.⁴
21. It highlighted the [Constitution, Europe, External Affairs and Culture Committee Report: How Devolution is Changing Post-EU](#), which called for a supplementary agreement between the UK and Scottish governments on the use of delegated powers by UK Ministers in devolved areas.
22. It also restated its agreed position in relation to delegated powers in UK Bills exercisable in devolved areas—
 - the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence,

- where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
- If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision. The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers' consent and may suggest matters for the lead committee to consider.
- As a minimum, powers when exercised by UK Ministers in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.

23. The DPLRC drew the powers to the attention of the Economy and Fair Work Committee and noted that—

” as things stand the power may be exercised within devolved competence by the Secretary of State only. There is no equivalent power conferred on the Scottish Ministers and as such, product regulations will not be laid in the Scottish Parliament. There is no requirement that the Secretary of State obtains the consent of Scottish Ministers before making regulations which make provision within devolved competence, nor is there a consultation requirement.⁴

Conclusion

24. **The Committee notes the conclusions of the Delegated Powers and Law Reform Committee, and shares its concerns that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**
25. **The Committee welcomes the constructive discussions between the Scottish and UK governments. The Committee observes that in the exercise of delegated powers in areas of devolved competence, the Scottish Parliament has a scrutiny role, and it must be able to exercise that effectively.**
26. **The delegated powers in this Bill, within devolved competence, may be exercised by the Secretary of State only. There is no equivalent power for Scottish Ministers and no requirement that the Secretary of State obtain prior consent of the Scottish Ministers, before making any regulations. Accordingly, there is no means by which the Scottish Parliament can exercise its scrutiny function. The Committee supports the Constitution, Europe, External Affairs and Culture Committee's call for a supplementary agreement between the UK and Scottish Governments on the use of delegated powers by UK Ministers in devolved areas to ensure the principle of policy divergence, in line with the devolution arrangements, is respected.**
27. **The Committee notes the position of the Scottish Government as set out in the LCM and that it intends to lodge a supplementary LCM. The Committee will consider the supplementary LCM when lodged and make a recommendation on legislative consent to the Parliament at that point.**
28. **This report is drawn to the attention of the Secretary of State for Scotland and the Constitution, Europe, External Affairs and Culture Committee.**

- [1] Scottish Government. (2024, September 24). Product Regulation and Metrology Bill Legislative Consent Memorandum. Retrieved from <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/product-regulation-and-metrology-bill>
- [2] House of Lords. (2024, September 4). Explanatory Notes. Retrieved from <https://publications.parliament.uk/pa/bills/lbill/59-01/018/en/5901018en01.htm>
- [3] Scottish Parliament. (2024, December 11). Official Report of the Economy and Fair Work Committee, Wednesday 11 December 2024. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/recent-publication?meeting=16163&iob=138071>
- [4] Scottish Parliament. (2024, December 5). Delegated Powers and Law Reform Committee, 74th Report 2024, Legislative Consent Memorandum: delegated powers relevant to Scotland in the Product Regulation and Metrology Bill. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2024/12/5/00c60a4c-2895-4f9b-b04e-12223a57ce73#Introduction>

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