



Department for
Business & Trade

Justin Madders MP
Parliamentary Under-Secretary of State
Minister for Employment Rights,
Competition and Markets
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Lord Leong CBE
Lord in Waiting (Government Whip)
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

The Baroness Drake CBE
Chair, Constitution Committee
House of Lords
London
SW1A 0PW

T: +44 (0) 020 4551 0011
W: www.gov.uk/dbt

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Dear Baroness Drake,

PRODUCT REGULATION AND METROLOGY BILL: GOVERNMENT RESPONSE

Introduction

We would like to begin by thanking the Select Committee on the Constitution for its report of 18 October and for its important work.

The Department for Business and Trade is grateful for the Select Committee's recommendations. As the Committee notes, its concerns about the use of delegated powers in the Bill were also raised by the Delegated Powers and Regulatory Reform Committee in its report of 15 October¹. We would like to draw the Committee's attention to the UK Government's response to that report of 28 October. The UK Government recognises that the Bill memorandum could have contained more detail on how we intend to use the delegated powers and the specific circumstances that justify the use of powers, with appropriate safeguards, in this case.

Recommendations

The Select Committee has raised 6 points in their report, some of which have been considered in the UK Government response to the Delegated Powers and Regulatory Reform Committee on 28 October.

¹ <https://publications.parliament.uk/pa/ld5901/ldselect/lddelreg/17/1704.htm>

We have provided our initial views on your Committee's additional points below. We look forward to continuing to work with the Committee and Noble Lords as the Bill progresses.

Recommendation relating to national security: *The House may wish to seek assurance that the exclusions listed in the Schedule to the Bill are sufficient to allow national security interests to be protected.* (Paragraph 18)

We appreciate and share the Select Committee's concerns regarding issues of national security. We would like to reassure the Select Committee that this Bill – though not focused on national security – supports the protection of national security interests. It aims to ensure that products, including those which may be used in critical national infrastructure, or which may have components potentially vulnerable to cyber-attack, are safe.

Recommendation on decision making with respect to EU law: *We draw the powers in clauses 1(2) and 2(7) to the attention of the House. These delegated powers are so broadly drawn that deciding to pursue closer (or weaker) EU alignment is left entirely to the discretion of the Government. We are of the view that such a significant policy decisions should properly be scrutinised by Parliament and implemented by way of primary legislation.* (Paragraph 21)

We appreciate the Select Committee's view regarding the issue of making decisions on EU alignment or diversion.

Since we left the EU the UK has, subject to certain conditions, continued to recognise conformity with EU rules as sufficient to demonstrate they meet the UK's requirements for goods to be made available in the UK, for a range of product areas. In May 2024, secondary legislation was passed to continue recognition of certain EU requirements, including the CE marking, for 21 product regulations. That legislation makes reference in UK provisions to specific provisions in EU legislation, as it stood at the date the legislation was passed. This received cross-party support in both Houses and came into effect on 1 October 2024.

Clause 2(7) of the Bill allows the UK to continue to recognise conformity with new or updated EU product requirements as sufficient to demonstrate they meet the UK's requirements for goods to be made available in the UK, if in the interests of our businesses and consumers, and subject to appropriate conditions. Together, Clauses 1 and 2(7) provide the UK, under the scrutiny of Parliament, with the sovereign choice to recognise, or end recognition, of EU laws in a way that is right for our businesses and consumers.

Clause 1(2) of the Bill provides the UK with the option to update domestic product regulations that address the environmental requirements of goods, in line with similar or corresponding EU product requirements. This does not limit the UK to making identical provisions to the EU. Increasingly, product regulations take into account the environmental impact of goods. Without Clause 1(2), our ability to update those UK requirements within scope of the current CE recognition approach would be limited. We know from engagement with industry that being able to respond to changing product regulations pragmatically and consistently, provides regulatory stability and certainty, which supports growth.

We would like to reaffirm that the UK Government has taken care to consider the appropriate level of parliamentary scrutiny for secondary legislation made under this Bill. Many changes made under clause 1(2) or 2(7) will be very minor updates to address technical changes to the requirements we currently recognise.

Those regulations which we consider will be of particular interest to the House, such as those creating or widening the scope of a criminal offence, will be subject to the draft affirmative procedure. Where the UK is amending regulations under 1(2) or 2(7), and the change is more than a minor technical amendment, it is likely that a criminal offence will need to be amended, bringing the SI under the affirmative procedure.

Recommendation on criminal offences: *Clauses 3(9) and (11) and 6(9) and (11) should be amended to remove powers to create, or widen the scope of, criminal offences by delegated legislation. (Paragraph 25)*

We appreciate and recognise the Select Committee's concerns that new criminal offences should be made by primary legislation. This issue was previously raised in the report of the Delegated Powers and Regulatory Reform Committee and addressed in the UK Government's response. We would like to reiterate and reassure the Select Committee that these clauses were given very careful consideration.

These clauses enable the UK to consolidate and simplify investigation, intervention, and sanction powers from various legislation used to enforce product regulations. Enforcement powers are scattered across a myriad of legislation developed over a period of decades. This proliferation was necessary to mitigate the downsides of having broad, untailed provision in primary legislation which worked against proportionality and legal certainty but has led to a system where powers overlap in both effect and use, while also creating ambiguity and potential gaps in the system.

Any exercise of these powers to create or widen the scope of a criminal offence, or to create new powers of entry, will be subject to parliamentary scrutiny under the affirmative procedure.

Recommendation on Henry VIII powers: *We recommend the House seeks clarification from the Government as to why the power in clause 9(4) is necessary, given that the Government, and indeed Parliament, are in a position to ensure that future draft legislation is compatible with the provisions in the Bill. (Paragraph 29)*

We are grateful to the Select Committee for the chance to clarify why the power in clause 9(4) is necessary. Clause 9(4) grants the power to make consequential changes to Acts not specifically listed in the Bill through delegated legislation. This would allow the UK Government to make minor, technical changes to ensure clarity and cohesion across the legislative framework, without the need to introduce primary legislation for every amendment. For example, the power in Clause 9(4) is likely to be used to update legislative references in existing primary legislation where they are affected by regulations made under the Bill using the powers in Clause 9(1) to (3). It is not intended to be used to make

substantive policy changes. This clause is intended to facilitate necessary technical adjustments swiftly and effectively.

The Select Committee is correct to note that, in the future, legislation can take into account the amendments made under Clause 9 and need not therefore be subject to the power in Clause 9(4). This is why the power to amend future legislation is limited to Acts passed in the same session as the Bill, but there will be a short period before regulations are made under Clause 9(1) to (3) in which provision could be made in another enactment without this knowledge, which then necessitates minor or technical consequential amendment to be made for the purpose of clarity and legal certainty.

Recommendation on use of delegated powers in areas of devolved competence: *The House may wish to seek clarification from the Government as to the processes of consultation and consent it intends to apply in relation to the Bill's delegated powers in the event that they are used to make regulations in areas of devolved competence; in particular, where these powers are used to alter acts of the devolved legislatures. (Paragraph 34)*

We recognise the Select Committee's concerns regarding the use of the Bill provisions to make regulations in areas of devolved competence. We would like to reiterate that we remain fully committed to maintaining a constructive and collaborative relationship with the Devolved Governments, ensuring their views are heard and reflected as we move forward with this important legislation. Many of the regulations made under this Bill will concern technical areas in relation to product regulation and metrology. These matters are largely reserved – although some do touch on devolved areas.

Consequently, the UK Government has, and will continue to, discuss product regulation and metrology matters with the Devolved Governments. To facilitate discussion, a copy of the Bill was shared with the Devolved Governments on 4 September. This followed several meetings at official level to discuss policy content within the scope of the Bill. Lord Leong, as responsible Minister for this Bill in the House of Lords, has also met with counterpart ministers in the Devolved Governments. We will continue to engage with the Devolved Governments.

Recommendation on the United Kingdom Internal Market Act 2020 and common frameworks: *The House may wish to ask the Government to explain how, in the making of regulations under the Bill, it will continue to ensure conformity with the Market Access Principles under the UK Internal Market Act 2020, and the broader commitment within that Act to intra-UK alignment. The House may also wish to seek clarification on what steps will be taken to ensure that regulations made under the Bill are consistent with the common frameworks already agreed and with those still under discussion. (Paragraph 37)*

We appreciate and recognise the Select Committee's request for clarification concerning continued conformity with the UK Internal Market Act in light of the provisions of this Bill. The UK Internal Market Act's principles of mutual recognition and non-discrimination apply to legislation on goods and services by the UK and Devolved Governments, ensuring continued frictionless intra-UK trading.

Those principles apply where there is divergence between the regulations that apply in different areas of the UK to ensure businesses only need to comply with one set of regulations in one UK nation to be able to trade across the UK, even if the UK and Devolved Governments choose to regulate aspects of the market differently in their jurisdictions. This Bill does not seek to change that position. Rather it gives powers to enable regulations to be made to ensure products are safe and accurate, and to make provisions about units of measurements and the quantities in which goods are sold.

In practice, most regulations made under the Product Regulation and Metrology Bill will not lead to divergence across the UK. Where there is no divergence between different parts of the UK, the UKIM principles will not have any impact. In the event of different regulations applying in non-reserved areas, the UKIM Act will operate as it does now to ensure the smooth functioning of the UK internal market, including that Qualifying Northern Ireland goods will continue to enjoy unfettered access to the market across the whole of the UK.

Conclusion

We are grateful to the Select Committee for highlighting these matters and hope this letter will reassure the Select Committee that we take its concerns seriously. We share its commitment to ensuring that delegated legislation is used appropriately and is subject to sufficient safeguards; these are matters upon which we are further reflecting. We also understand the important role of the Devolved Governments and will continue to work constructively with them on this important Bill, which is needed to ensure products are safe, and will support both innovation and growth.

We very much look forward to continuing to work with the Select Committee and the whole House as the Bill progresses.

We will be placing a copy of this response in the libraries of both Houses.

Yours ever,



JUSTIN MADDERS MP
Minister for Employment Rights,
Competition and Markets
Department for Business and Trade



LORD LEONG CBE
Lord in Waiting (Government Whip)