

Product Regulation and Metrology Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business & Trade, have been ordered to be printed as HL Bill 18—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Jones of Whitchurch has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Product Regulation and Metrology Bill [HL] are compatible with the Convention rights.

ENVIRONMENTAL STATEMENTS

Baroness Jones of Whitchurch has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021.

In my view—

(a) the Product Regulation and Metrology Bill [HL] contains provision which, if enacted, would be environmental law, and

(b) the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

NORTHERN IRELAND-GREAT BRITAIN TRADE STATEMENT

Baroness Jones of Whitchurch has made the following statement under section 13C(2)(a) of the European Union (Withdrawal) Act 2018.

In my view the Product Regulation and Metrology Bill [HL] does not contain provision which, if enacted, would have a significant adverse effect on trade between Northern Ireland and the rest of the United Kingdom.

Product Regulation and Metrology Bill [HL]

[AS INTRODUCED]

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Schedule – Excluded products

[AS INTRODUCED]

A

B I L L

TO

Make provision about the marketing or use of products in the United Kingdom; about units of measurement and the quantities in which goods are marketed in the United Kingdom; and for connected purposes

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Product regulation

1 Product regulations

- (1) The Secretary of State may by regulations make provision, in relation to the marketing or use of products in the United Kingdom, for the purpose of—
 - (a) reducing or mitigating risks presented by products; 5
 - (b) ensuring that products operate efficiently or effectively;
 - (c) ensuring that products designed for weighing or measuring operate accurately.
- (2) The Secretary of State may also by regulations make provision, in relation to the marketing or use of products in the United Kingdom, which corresponds, 10
or is similar, to a provision of relevant EU law for the purpose of reducing or mitigating the environmental impact of products.
- (3) But the Secretary of State may not make regulations under subsection (1) or (2) that relate to products listed in the Schedule.
- (4) For the purposes of this Act, a product presents a risk if, when used for the 15
purpose for which it is intended or under conditions which can reasonably be foreseen, it could—
 - (a) endanger the health or safety of persons,
 - (b) endanger the health or safety of domestic animals,
 - (c) endanger property (including the operability of other products), or 20
 - (d) cause, or be susceptible to, electromagnetic disturbance.
- (5) In this Act—

“electromagnetic disturbance” means any electromagnetic phenomenon which adversely affects the operation of a product;

“marketing” means making available on the market; and related terms are to be interpreted accordingly;

“product” means a tangible item that results from a method of production;

“production” means manufacturing, packaging, labelling or any other process or operation carried out (whether on a large or small scale) which impacts on the character of an item;

“relevant EU law” means –

(a) Decision 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products, or

(b) other EU law that has the purpose of harmonising the conditions for the marketing or use of products in the European Union;

“use”, in relation to a product, includes storage, transportation, packaging, labelling or disposal; and related terms are to be interpreted accordingly.

(6) Sections 2 to 4, 7 to 9 and 11 make further provision about the power conferred by this section.

(7) Regulations under this section are referred to in this Act as “product regulations”.

2 Product requirements

(1) Product regulations may make provision about requirements (“product requirements”) that must be met –

(a) in relation to products marketed or used in the United Kingdom;

(b) in order for products to be marketed or used in the United Kingdom.

(2) The regulations may include product requirements in relation to –

(a) the production, components (whether tangible or intangible), composition or other characteristics of products;

(b) the use of products;

(c) the marking of products;

(d) the marketing of products through an online marketplace;

(e) the provision of information (including information about risk) in relation to products to –

(i) persons to whom products are marketed or who use products in the United Kingdom;

(ii) persons mentioned in subsection (3);

(iii) relevant authorities;

(f) the making of statements about products;

(g) the monitoring, assessment, verification or certification of products;

(h) the recording or investigating of complaints;

(i) the production or retention of documents or samples;

(j) co-operation with relevant authorities;

(k) the appointment of authorised representatives.

- (3) The persons on whom product regulations may impose product requirements include—
- (a) a manufacturer of a product or a person carrying out another method of production in relation to a product;
 - (b) a person who markets a product in the United Kingdom; 5
 - (c) a person who imports a product into the United Kingdom for it to be marketed or used in the United Kingdom;
 - (d) a person who—
 - (i) controls access to an online marketplace,
 - (ii) controls the contents of an online marketplace, or 10
 - (iii) acts as an intermediary for a person who controls such access or contents;
 - (e) an authorised representative of a person mentioned in paragraphs (a) to (d);
 - (f) a person carrying out monitoring, assessment, verification or certification of a product; 15
 - (g) a person carrying out activities in relation to the certification or accreditation of a person mentioned in paragraph (f);
 - (h) any other person carrying out activities in relation to a product.
- (4) Product regulations may make provision for or in relation to technical standards relating to product requirements. 20
- (5) Provision described in subsection (4) may include provision about—
- (a) the persons who may prepare technical standards;
 - (b) the procedure by which, and persons by whom, technical standards may be prepared; 25
 - (c) the matters that must or may be covered by a technical standard.
- (6) Product requirements may—
- (a) refer to technical standards published by a person specified in the regulations (including standards as amended from time to time), and
 - (b) provide that meeting a particular technical standard creates a presumption of compliance with a particular product requirement. 30
- (7) Product regulations may provide that a product requirement is to be treated as met if—
- (a) a requirement of relevant EU law specified in product regulations is met, or 35
 - (b) such a requirement is met and conditions specified in the regulations are also met.
- (8) Before making provision described in subsection (7), the Secretary of State must have regard to the social, environmental and economic impact of making the provision concerned. 40

3 Enforcement of product regulations

- (1) Product regulations may designate one or more persons as a relevant authority.

- (2) Product regulations may only designate a person under subsection (1) if the person exercises functions of a public nature.
- (3) Product regulations may make provision conferring on a relevant authority one or more of the following functions—
- (a) monitoring compliance with product regulations; 5
 - (b) investigating suspected non-compliance with product regulations;
 - (c) securing compliance with product regulations;
 - (d) mitigating the effect of non-compliance with product regulations.
- (4) Product regulations may include provision—
- (a) conferring power on a relevant authority to appoint inspectors to carry out functions under the regulations; 10
 - (b) conferring functions on a relevant authority or an inspector, including—
 - (i) power to enter, inspect and search premises;
 - (ii) power to seize and retain products or evidence of non-compliance with product regulations; 15
 - (iii) power to require a person to retain or provide a document or information;
 - (iv) power to dispose of a product or require a person to dispose of a product. 20
- (5) Product regulations may not authorise entry into premises used wholly or mainly as a dwelling without a warrant issued by—
- (a) in England and Wales, a justice of the peace;
 - (b) in Scotland, a sheriff, summary sheriff or a justice of the peace;
 - (c) in Northern Ireland, a lay magistrate. 25
- (6) Provision described in subsection (3)(c) or (d) may include provision conferring power on a relevant authority by notice to require a person to do or cease to do something, including power to—
- (a) require a person to warn others of risks presented by a product;
 - (b) require the marking of a product in respect of risks presented by it; 30
 - (c) prohibit the marketing or use of a product;
 - (d) require the recall of a product or its withdrawal from the market.
- (7) Product regulations may make provision for or in connection with sanctions for—
- (a) non-compliance with product regulations; 35
 - (b) non-compliance with a notice issued by a relevant authority under powers conferred by product regulations;
 - (c) obstruction of, or failure to assist or co-operate with, a relevant authority or an inspector;
 - (d) provision of false or misleading information to a relevant authority or an inspector. 40
- (8) Product regulations may include—

- (a) provision for a relevant authority to accept undertakings relating to compliance with product regulations instead of taking other action;
 - (b) provision for sanctions for non-compliance with such undertakings;
 - (c) provision for the forfeiture of products by court order (or, in Scotland, order of the sheriff). 5
- (9) Provision described in subsection (7) or (8)(b) may include –
- (a) provision creating, or widening the scope of, criminal offences;
 - (b) in relation to England and Wales and Northern Ireland, provision for the prosecution by a relevant authority of criminal offences created or widened under paragraph (a); 10
 - (c) provision conferring power on a relevant authority to impose civil sanctions (including fines).
- (10) Product regulations may make provision about appeals to a court or tribunal.
- (11) Where product regulations contain provision creating a criminal offence, the provision must have the effect that – 15
- (a) the offence is –
 - (i) triable summarily only, or
 - (ii) triable summarily or on indictment;
 - (b) a person guilty of the offence is liable on summary conviction –
 - (i) in England and Wales, to a fine or imprisonment for a term not exceeding 3 months, or to both; 20
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding 3 months, or to both;
 - (c) a person guilty of the offence is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both. 25

4 Emergencies

- (1) Product regulations may provide for a provision in product regulations to be disapplied, or to apply with modifications, in cases of emergency.
- (2) The disapplication or modification may be made subject to conditions. 30

Metrology

5 Metrology regulations

- (1) The Secretary of State may by regulations make provision about the units of measurement that are used to express quantities (whether of goods or other things), including provision about – 35
 - (a) how units of measurement must or may be calculated or determined;
 - (b) how units of measurement must or may be referred to.
- (2) The Secretary of State may also by regulations make provision about –
 - (a) the quantities in which goods must or may be marketed in the United Kingdom, and 40

- (b) the units of measurement that must or may be used to express such quantities.
- (3) Provision described in subsection (2) may include—
- (a) requirements in relation to the marking or packaging of goods;
 - (b) requirements in relation to the monitoring, assessment and verification of the quantities in which goods are marketed in the United Kingdom and the units of measurement used to express such quantities; 5
 - (c) requirements in relation to the retention of documents and information.
- (4) In this section—
- “goods” means tangible items (including packaging or labels); 10
 - “quantity” means quantity expressed by number or a unit of measurement;
 - “unit of measurement” means any unit of measurement, including measurement of length, area, volume, capacity, mass, weight, time, temperature or electrical current. 15
- (5) Sections 6 to 9 and 11 make further provision about the power conferred by this section.
- (6) Regulations under this section are referred to in this Act as “metrology regulations”.
- 6 Enforcement of metrology regulations** 20
- (1) Metrology regulations may designate one or more persons as a relevant authority.
- (2) Metrology regulations may only designate a person under subsection (1) if person exercises functions of a public nature.
- (3) Metrology regulations may make provision conferring on a relevant authority one or more of the following functions— 25
- (a) monitoring compliance with metrology regulations;
 - (b) investigating suspected non-compliance with metrology regulations;
 - (c) securing compliance with metrology regulations;
 - (d) mitigating the effect of non-compliance with metrology regulations. 30
- (4) Metrology regulations may include provision—
- (a) conferring power on a relevant authority to appoint inspectors to carry out functions under the regulations;
 - (b) conferring functions on a relevant authority or an inspector, including— 35
 - (i) power to enter, inspect and search premises;
 - (ii) power to seize and retain goods or evidence of non-compliance with metrology regulations;
 - (iii) power to require a person to retain or provide a document or information; 40
 - (iv) power to dispose of goods or require a person to dispose of goods.

- (5) Metrology regulations may not authorise entry into premises used wholly or mainly as a dwelling without a warrant issued by –
- (a) in England and Wales, a justice of the peace;
 - (b) in Scotland, a sheriff, summary sheriff or a justice of the peace;
 - (c) in Northern Ireland, a lay magistrate. 5
- (6) Provision described in subsection (3)(c) or (d) may include provision conferring power on a relevant authority by notice to require a person to do or cease to do something.
- (7) Metrology regulations may make provision for or in connection with sanctions for – 10
- (a) non-compliance with metrology regulations;
 - (b) non-compliance with a notice issued by a relevant authority under powers conferred by metrology regulations;
 - (c) obstruction of, or failure to assist or co-operate with, a relevant authority or an inspector; 15
 - (d) provision of false or misleading information to a relevant authority or an inspector.
- (8) Metrology regulations may include –
- (a) provision for a relevant authority to accept undertakings relating to compliance with metrology regulations instead of taking other action; 20
 - (b) provision for sanctions for non-compliance with such undertakings;
 - (c) provision for the forfeiture of goods by court order (or, in Scotland, order of the sheriff).
- (9) Provision described in subsection (7) or (8)(b) may include – 25
- (a) provision creating, or widening the scope of, criminal offences;
 - (b) in relation to England and Wales and Northern Ireland, provision for the prosecution by a relevant authority of criminal offences created or widened under paragraph (a);
 - (c) provision conferring power on a relevant authority to impose civil sanctions (including fines). 30
- (10) Metrology regulations may make provision about appeals to a court or tribunal.
- (11) Where metrology regulations contain provision creating a criminal offence, the provision must have the effect that – 35
- (a) the offence is –
 - (i) triable summarily only, or
 - (ii) triable summarily or on indictment; - (b) a person guilty of the offence is liable on summary conviction –
 - (i) in England and Wales, to a fine or imprisonment for a term not exceeding 3 months, or to both; 40
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding 3 months, or to both;

- (c) a person guilty of the offence is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.

Supplementary provisions

7 Information sharing

- (1) Product regulations or metrology regulations may make provision for or in connection with the disclosure of information— 5
- (a) by a relevant authority carrying out functions under product regulations or metrology regulations to a person listed in subsection (2), or
- (b) by a person listed in subsection (2) to such a relevant authority. 10
- (2) Those persons are—
- (a) another relevant authority,
- (b) the emergency services, or
- (c) a person specified, or of a description specified, in product regulations or metrology regulations. 15
- (3) Provision described in subsection (1) may include provision about—
- (a) the circumstances in which information may or must be disclosed;
- (b) the type of information which may or must be disclosed;
- (c) how information disclosed may or may not be used;
- (d) sanctions for non-compliance with provision described in paragraphs (a) to (c) (including provision creating, or widening the scope of, criminal offences). 20
- (4) Except as provided by subsection (5), product regulations or metrology regulations may provide for the processing of information in accordance with the regulations not to be in breach of— 25
- (a) any obligation of confidence owed by the person processing the information, or
- (b) any other restriction on the processing of the information (however imposed).
- (5) A provision of product regulations or metrology regulations is not to be read as authorising or requiring such processing of information as would contravene the data protection legislation (but in determining whether particular processing of data would do so, take into account the power conferred or duty imposed by the provision in question). 30
- (6) In this section— 35
- “the data protection legislation” and “processing” have the same meanings as in the Data Protection Act 2018 (see section 3 of that Act);
- “emergency services” means—
- (a) police, fire, rescue and ambulance services, and
- (b) His Majesty’s Coastguard. 40

8 Cost recovery

- (1) Product regulations or metrology regulations may make provision for a relevant authority to impose fees in respect of any costs incurred by the relevant authority in carrying out functions conferred on the authority by or under such regulations. 5
- (2) The regulations may include provision about—
- (a) who is liable to pay a fee;
 - (b) the circumstances in which a fee is payable;
 - (c) the amount of a fee (including how an amount is to be calculated);
 - (d) reductions, exemptions and waivers; 10
 - (e) how and when a fee is to be paid;
 - (f) the collection and recovery of payments;
 - (g) interest payable on outstanding payments;
 - (h) the resolution of disputes (including appeals to a court or tribunal).
- (3) Provision under subsection (2)(a) may only provide for a person to be liable if they are capable of being directly affected by the carrying out of functions conferred by product regulations or, as appropriate, metrology regulations. 15

9 Consequential amendment of certain Acts

- (1) Product regulations or metrology regulations may, in consequence of any provision made by or under this Act, repeal provision made by Parts 2, 4 and 5 of the Consumer Protection Act 1987. 20
- (2) Product regulations or metrology regulations may, in consequence of any provision made by or under this Act, amend or repeal provision made by—
- (a) the Gun Barrel Proof Acts 1868 to 1978;
 - (b) section 77 and Schedule 5 to the Consumer Rights Act 2015 (investigatory powers etc). 25
- (3) Metrology regulations may, in consequence of any provision made by or under this Act, repeal provision made by the Weights and Measures Act 1985.
- (4) Regulations under this Act may, in consequence of any amendment or repeal made under subsection (1), (2) or (3), amend or repeal provision made by or under an Act passed— 30
- (a) before this Act, or
 - (b) later in the same session of Parliament as this Act.

*Final provisions***10 Interpretation**

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- (1) In this Act—
- “authorised representative” means a person authorised to act on behalf of another person;

- “document” means anything in which information of any description is recorded;
- “domestic animal” means an animal which is not living wild;
- “EU law” means an EU regulation, EU directive, EU tertiary legislation or EU decision (which each have the meanings given in section 20 of the European Union (Withdrawal) Act 2018); 5
- “health”, in relation to a person, means physical or mental health;
- “made available on the market”, in relation to a product or goods, means supplied or advertised for distribution or use on the market, whether in return for payment or free of charge; and related terms are to be interpreted accordingly; 10
- “manufacture” includes assemble, integrate, design and engineer; and related terms are to be interpreted accordingly;
- “marketing” has the meaning given in section 1(5);
- “metrology regulations” has the meaning given in section 5(6); 15
- “mobile application” means application software designed and developed for use by the general public on mobile devices such as smartphones and tablets;
- “online marketplace” means a service on—
- (a) a website, 20
 - (b) a mobile application, or
 - (c) any other platform by means of which information is made available over the internet,
- which facilitates the marketing of products in the United Kingdom by that means; 25
- “premises” includes any land, stall, vehicle, vessel or aircraft;
- “product” has the meaning given in section 1(5);
- “product regulations” has the meaning given in section 1(7);
- “production” has the meaning given in section 1(5);
- “relevant authority” means a person designated as a relevant authority in provision described in section 3(3) or 6(3) (as the case may be); 30
- “relevant EU law” has the meaning given in section 1(5);
- “use”, in relation to a product, has the meaning given in section 1(5).
- (2) The Secretary of State may by regulations amend this section for the purposes of altering the definition of “online marketplace”. 35

11 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Regulations under this Act may—
- (a) make provision generally or in relation to particular cases;
 - (b) make different provision for different purposes; 40
 - (c) make different provision for different areas;
 - (d) make provision about the form and manner in which things must or may be done;

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- (e) make provision about the time by which, or period within which, things must or may be done;
- (f) make provision binding the Crown;
- (g) make consequential, supplementary, incidental, transitional or saving provision. 5
- (3) Regulations under this Act which contain provision specified in subsection (4) (with or without other provision) may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (4) The provision referred to in subsection (3) is— 10
- (a) provision described in section 3(4)(b)(i) and 6(4)(b)(i);
- (b) provision described in section 4;
- (c) provision creating, or widening the scope of, a criminal offence;
- (d) provision described in sections 7 to 9;
- (e) provision described in section 10(2). 15
- (5) A statutory instrument containing regulations under this Act, other than regulations to which subsection (3) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.
- 12 Extent**
- This Act extends to England and Wales, Scotland and Northern Ireland. 20
- 13 Commencement**
- This Act comes into force on the day on which it is passed.
- 14 Short title**
- This Act may be cited as the Product Regulation and Metrology Act 2024.

SCHEDULE

Section 1(3)

EXCLUDED PRODUCTS

- 1 Food as defined in section 1 of the Food Safety Act 1990.
- 2 Feeding stuff and fertiliser as defined in section 66 of the Agriculture Act 1970. 5
- 3 Plants, fruit and fungi.
- 4 Plant protection products as defined in Article 2(1) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market.
- 5 Animal by-products as defined in Article 3(1) of Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption. 10
- 6 Products of animal origin as defined in point 8.1 of Annex 1 to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. 15
- 7 Aircraft as defined in Article 3 of Regulation (EU) No 2018/1139 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency.
- 8 Military equipment as defined in section 7(7) of the Procurement Act 2023. 20
- 9 Medicines and medical devices as defined in the Medicines and Medical Devices Act 2021, other than devices designed for weighing or measuring for medical purposes.

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Ordered to be Printed, 4th September 2024.

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