

# PRODUCT REGULATION AND METROLOGY BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Product Regulation and Metrology Bill [HL] as introduced in the House of Lords on 4 September 2024 (HL Bill 18).

- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Product Regulation and Metrology Bill [HL] contains measures that relate to the UK product safety, regulation and metrology framework.

## Policy background

- 2 The United Kingdom (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. On leaving the EU, the UK set up an independent UK regime, which the 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.
- 3 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.
- 4 The Bill aims to support economic growth, provide regulatory stability and deliver more protection for consumers by:
  - 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.
  - 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.
  - ensuring that 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 provide 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.
  - 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.

## Legal background

- 5 The product regulatory framework in the UK covers most consumer products, for example toys and cosmetics, and a significant number of industrial products too, such as lifts and pressure equipment. The overwhelming majority of this legislation is assimilated law, transposed into UK law while the UK was part of the EU and then assimilated following the EU exit process. Much of the legislation is secondary legislation, made, at least in part, using powers in the European Communities Act 1972, powers which were also used to regularly update that secondary legislation.
- 6 Whilst the UK was a member of the EU, the legislation also provided for various systems of mutual recognition and mandated conformity markings that are used across the EU. On EU exit, powers under the European Union (Withdrawal) Act 2018, were used to create a UK only system, using the UK Conformity Assessment (UKCA) marking. However, to ensure a continued flow of goods, provision was also made to allow certain goods that meet current EU requirements on the market across the UK. The Bill would provide the Secretary of State with the ability to update relevant legislation to allow the UK to maintain high product standards.
- 7 Domestic legislation originally enacted to deal with product safety and metrology – the Consumer Protection Act 1987 and the Weights and Measures Act 1985 (respectively) were drafted before the shift in consumer buying behaviour and do not contemplate the technological advances that have taken place since then, for example the widespread use of new actors in the supply chain, such as online marketplaces.
- 8 Finally, the enforcement of product and metrology regulation is contained in a number of pieces of legislation including the Consumer Rights Act 2015, the Consumer Protection Act 1987, as well as some secondary legislation. The provisions of these pieces of legislation are not always consistent. Furthermore, they allow for limited civil enforcement measures. This Bill would provide the ability to rationalise enforcement provisions currently contained in existing legislation and provide for more civil sanctions, where appropriate.
- 9 A summary of the legal changes in each area of the Bill can be found in the commentary section.

## Territorial extent and application

- 10 The Bill will extend and apply to England, Wales, Scotland and Northern Ireland. Clause 12 sets the territorial extent of the Bill. There is a convention that the UK Parliament will not normally legislate about matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. Aspects of the Bill may fall within devolved competence. In line with the Sewel Convention, the UK Government will seek the legislative consent of the Devolved Legislatures for provisions that engage the Legislative Consent Motion process.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions.

# Commentary on provisions of Bill

## Product regulations

### Clause 1: Product regulations

- 12 Clause 1(1) gives the Secretary of State 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 Clause 1(2) provides that in addition to the matters listed in clause 1(1), the Secretary of State may make provision for the purpose of reducing or mitigating the environmental impact of products where the EU makes provision in that area.
- 14 Clause 1(3) excludes products listed in the Schedule from the scope of product regulations.
- 15 Clause 1(4) and (5) set out the meanings of key terms including: “risk” in relation to products under typical or reasonably foreseeable use conditions (that is, where a product endangers the health or safety of individuals, domestic animals or property or causes electromagnetic disturbance); what constitutes “marketing” in the UK ; and that products for the purposes of the Bill are tangible items that are manufactured or result from another method of production.
- 16 Clause 1(6) makes clear that further provisions of the Bill give more detail on what is included in the clause 1 power. Clause 1(7) sets out that regulations made under clause 1 are “product regulations”.

### Clause 2: Product requirements

- 17 Clause 2(1) sets out that product regulations (under clause 1) may set out requirements that relate to the conditions to be met for products which are marketed or used in the UK.
- 18 Clause 2(2) provides that the regulations may cover requirements relating to the characteristics of a product such as how it is manufactured or produced, its components (which may be intangible, such as software) or composition or other characteristics; requirements for marketing or use (which includes packaging, storage or transportation), and provision when products are marketed on an online marketplace. Provisions concerning statements about products, monitoring, assessments, certification and verification of products, recording or investigating complaints, production or retention of samples or documents, and cooperation with relevant authorities are other examples of provisions that can be made. Product regulations may also include provision about information about products, including information about risk that must be provided to consumers, other people who engage in activities in relation to the product, and relevant authorities.
- 19 Clause 2(3) gives examples of the persons on whom product regulations may impose requirements. This includes manufacturers, those who market a product (such as distributors and retailers) in, or import a product to, the UK and a person who controls access to, or contents of, an online marketplace or an intermediary. It also allows requirements to be placed on the authorised representatives of persons conducting product related activities. It extends to requirements on a person carrying out monitoring, assessment or verification of a product, or a person carrying out certification or accreditation activities on such a person. Clause 2(3)(h) makes clear that this is not an exhaustive list and requirements may be placed on any other person carrying out activities in relation to a product.
- 20 Clause 2(4) states that product regulations may make provision for and in relation to technical standards relating to product requirements and clause 2(5) provides that product regulations may set out what is to be covered by a technical standard and who may prepare them, as well

as the procedure by which technical standards may be prepared. Clause 2(6) explains that product requirements may include provision about published standards and that meeting a particular standard creates a presumption of compliance with a particular product requirement.

- 21 Clause 2(7) 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) and clause 2(8) states that before making provision described in subsection (7) the Secretary of State must have regard to the social, environmental and economic impact before so exercising the power.

### Clause 3: Enforcement of product regulations

- 22 Clause 3(1) and (2) provide that product regulations may designate a body as a relevant authority, but only if it exercises functions of a public nature. This can include the Secretary of State as well as other bodies exercising public functions.
- 23 Clause 3(3) enables regulations to be made in relation to the monitoring of compliance, investigating suspected non-compliance, ensuring compliance and mitigating the effect of non-compliance with product safety.
- 24 Clause 3(4) states that product regulations may make provision conferring powers on relevant authorities to appoint inspectors to carry out functions under the regulations. Regulations may include powers that allow inspectors appointed by relevant authorities powers of entry, search, inspection, as well as the ability to seize and retain products or other evidence of non-compliance. Product regulations may also make provision conferring a power on a relevant authority or an inspector to require a person to retain or provide a document or information, as well as a power to dispose of a product (either requiring a person to do so or for the authority or inspector to do so themselves). Powers under Clause 3(4) apply to premises including vehicles (see clause 10).
- 25 Clause 3(5) makes clear that product regulations may not authorise entry into premises used wholly or mainly as a dwelling without a warrant issued by a Justice of the Peace, sheriff (in Scotland), or a lay magistrate (in Northern Ireland).
- 26 Clause 3(6) states that any provisions under clause 3 may also allow a relevant authority to give notice to require a person to do something or to stop doing something, such as warning others of the risks relating to a product or require a product to display markings relating to such risks; prohibit or withdraw or require the recall of the product from the market.
- 27 Clause 3(7) states that regulations may be made for, and in connection with, sanctions for non-compliance with product regulations, non-compliance with a notice, the obstruction of, or failure to, assist or cooperate with relevant authorities or an inspector, or for providing false or misleading information to a relevant authority or an inspector.
- 28 Clause 3(8) makes clear that product regulations allow a relevant authority to agree to an undertaking by persons to be conducted to secure compliance with product regulations in place of enforcement actions; and put sanctions in place for a failure to comply with such agreements. Provisions under this clause may also cover forfeiting of products by court order or order of the sheriff.
- 29 Clause 3(9), (10) and (11) provides that any provisions in product regulations may include creating criminal offences, prosecution by relevant authorities of such offences, and the powers to impose civil sanctions including monetary fines. Where they concern criminal offences, those offences created must be tried summarily or on indictment and be punishable

by a fine or with a prison sentence. The provisions may also allow for an appeal against any decisions made by the relevant authority.

#### Clause 4: Emergencies

- 30 Clause 4 provides that product regulations may disapply or modify regulatory requirements in response to emergencies, which may be subject to conditions.

## Metrology

#### Clause 5: Metrology regulations

- 31 Clause 5(1) provides the Secretary of State may make regulations which make provision about the units of measurement that must be used to express quantities (whether of goods or other things). It also sets out that such regulations may include provision about how units of measurement are to be calculated, determined, or must and may be referred to.
- 32 Clause 5(2) provides that the Secretary of State may make regulations concerning the quantities in which goods may or must be marketed in the United Kingdom, and the units of measurement that may or must be used to express such quantities.
- 33 Clause 5(3) states that such regulations may include setting requirements for the marking or packaging of goods; monitoring, assessing and verifying the quantities and units of goods being marketed, and the retention of documents and other information.
- 34 Clause 5(4) clarifies the meaning of the key terms, stating that 'goods' means any tangible item; 'quantity' means quantity expressed by number or a unit of measurement; and "unit of measurement" means any unit of measurement, including measurement of length, area, volume, capacity, mass, weight, time, temperature or electrical current.
- 35 Clause 5(5) makes clear that further provisions of the Bill give more detail on what is included in the clause 5 power. Clause 5(6) provides that these provisions are known as metrology regulations.

#### Clause 6: Enforcement of metrology regulations

- 36 Clause 6(1) and (2) provide that metrology regulations may designate a body as a relevant authority, but only if it exercises functions of a public nature. This can include the Secretary of State as well as other bodies exercising public functions.
- 37 Clause 6(3) enables regulations to be made in relation to the monitoring of compliance, investigating suspected non-compliance, ensuring compliance and mitigating the effect of non-compliance with metrology regulations.
- 38 Clause 6(4) states that metrology regulations may make provision conferring powers on relevant authorities to appoint inspectors to carry out functions under the regulations. Regulations may include powers that allow inspectors appointed by relevant authorities powers of entry, search, inspection, as well as the ability to seize and retain products or other evidence of non-compliance. Metrology regulations may also make provision conferring a power on a relevant authority or an inspector to require a person to retain or provide a document or information, as well as a power to dispose of a product (either requiring a person to do so or for the authority or inspector to do so themselves). Powers under Clause 6(4) apply to premises including vehicles (see clause 10).
- 39 Clause 6(5) makes clear that metrology regulations may not authorise entry into premises used wholly or mainly as a dwelling without a warrant issued by a Justice of the Peace, a sheriff (in Scotland), or a lay magistrate (in Northern Ireland).



- 40 Clause 6(6) states that any provisions under clause 6 may also allow a relevant authority to give notice to require a person to do something or to stop doing something to comply with metrology regulations.
- 41 Clause 6(7) states that regulations may be made for, and in connection with, sanctions for non-compliance with metrology regulations, non-compliance with a notice, the obstruction of, or failure to, assist or cooperate with relevant authorities or an inspector, or for providing false or misleading information to a relevant authority or an inspector.
- 42 Clause 6(8) makes clear that metrology regulations allow a relevant authority to agree to an undertaking by persons to be conducted to secure compliance with metrology regulations in place of enforcement actions; and put sanctions in place for a failure to comply with such agreements. Provisions under this clause may also cover forfeiting of products by court order or order of the sheriff..
- 43 Clause 6(9), (10) and (11) provide that any provisions in metrology regulations may include creating criminal offences, prosecution by relevant authorities of such offences, and the powers to impose civil sanctions including monetary fines. Where they concern criminal offences, those offences created must be tried summarily or on indictment and be punishable by a fine or with a prison sentence. The provisions may also allow for an appeal against any decisions made by the relevant authority.

## Supplementary provisions

### Clause 7: Information sharing

- 44 Clause 7(1) enables product regulations or metrology regulations to be made permitting the sharing of information between persons specified in clause 7(2).
- 45 Clause 7(2) provides that the information sharing regulations may be made to include a relevant authority, the emergency services, or any other person named in product or metrology regulations.
- 46 Clause 7(3) provides that such regulations may cover the circumstances in which information can or must be disclosed, the type of information which may or must be disclosed, how disclosed information may or may not be used and sanctions for non-compliance, including potential criminal offences.
- 47 Clause 7(4) provides that product or metrology regulations may specify that information processed in accordance with a regulation does not breach any duty of confidence or any other restriction on the processing of personal data, except as provided for by clause 7(5), which makes clear that regulations must not be read as authorising processing in breach of the data protection legislation taking into account the power or duty imposed by the regulation.
- 48 Clause 7(6) provides a definition of data protection legislation and the emergency services. Data protection legislation in this clause has the same meaning as in the Data Protection Act 2018.

### Clause 8: Cost recovery

- 49 Clause 8(1) to (3) enables provisions to be made for fees to be imposed in respect of any costs incurred by relevant authorities in carrying out functions conferred on the authority. It sets out what such provisions may cover for example, who would be liable for a charge, the circumstances in which a charge may apply, the amount of the charge including any reductions, exemptions or waivers that may apply.

## Clause 9: Consequential amendments of certain Acts

- 50 Clause 9(1) enables regulations to repeal Parts 2, 4 and 5 of the Consumer Protection Act 1987 in order to ensure that there is no overlap with regulations made under this Bill.
- 51 Clause 9(2) enables regulations to amend or repeal the Gun Barrel Proof Acts 1868 to 1978 and section 77 and Schedule 5 of the Consumer Rights Act 2015 in order to ensure that there is no overlap or inconsistency with regulations made under this Bill.
- 52 Clause 9(3) enables metrology regulations to repeal provisions under the Weights and Measures Act 1985 in order to ensure that there is no overlap with regulations made under this Bill.
- 53 Clause 9(4) makes clear that other legislation may be amended in consequence of any repeal of, or amendment to, the Acts specified above (for example, to remove or update references to provisions repealed or amended by those Acts).

## Final provisions

### Clause 10: Interpretation

- 54 Clause 10(1) defines key terms used in the Bill.
- 55 Clause 10(2) provides Secretary of State with the power to amend the definition of “online marketplace” (defined in clause 10(1)).

### Clause 11: Regulations

- 56 Clause 11(1) sets out that regulations made under powers in the Bill must be made by statutory instrument and sets out the parliamentary procedures that must be followed when using those powers.
- 57 Clause 11(2) makes clear that regulations made under the Bill may include making provision generally or in relation to particular cases, making different provision for different purposes or areas and consequential, supplementary, incidental, transitional or saving provision (amongst other things).
- 58 Clause 11(3) and (4) set out when the affirmative parliamentary procedure will apply to regulations under the Bill. These include when making provision for a power of entry or creating, or widening the scope of, a criminal offence and where amending primary legislation (amongst other things).
- 59 Clause 11(5) provides that the negative procedure will apply to all other regulations made under the Bill.

### Clause 12: Extent

- 60 The provisions of the Bill extend to England and Wales, Scotland and Northern Ireland.

### Clause 13: Commencement

- 61 The Bill comes into force on the day on which the Bill is passed.

### Clause 14: Short title

- 62 Clause 14 provides that the short title of the legislation will be the Product Regulation and Metrology Act 2024.

## Schedule: Excluded products

- 63 The Schedule lists the products not within the scope of the provisions in clause 1.

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## Commencement

- 64 Clause 13 provides for commencement of the provisions of this Bill.
- 65 The provisions of this Bill will come into force on the day on which the Act receives Royal Assent.

## Financial implications of the Bill

- 66 An Impact Assessment has been prepared for the Bill. The Bill contains enabling powers to make reforms to the UK's product regulation and metrology framework via secondary legislation. The financial implications of the Bill itself are therefore minimal; the resulting secondary legislation may have financial implications for the Government in terms of preparing and enforcing regulations under the relevant clauses, and for businesses in terms of adherence to regulations, sanctions for non-compliance, or cost recovery. The accompanying Impact Assessment examines the economic and financial impacts of the Bill further.

## Parliamentary approval for financial costs or for charges imposed

- 67 This section will be completed when the Bill transfers to the House of Commons.

## Compatibility with the European Convention on Human Rights

- 68 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Baroness Jones of Whitchurch, Parliamentary Under-Secretary of State (Minister for Legislation) at the Department for Business and Trade, has made a statement under section 19(1)(a) of the Human Rights Act 1998 this effect.

## Duty under section 20 of the Environment Act 2021

- 69 Baroness Jones of Whitchurch, Parliamentary Under-Secretary of State (Minister for Legislation) at the Department for Business and Trade, is of the view that the Bill as introduced into the House of Lords contains provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, a statement that the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law has been made.

## Duty under section 13C of the European Union (Withdrawal) Act 2018

- 70 As required under the Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024 which amend the European Union (Withdrawal) Act 2018 the Minister in charge of a Bill will need to make a written statement about the consistency of that Bill with the UK internal market.

71 The Government have determined that the Bill does contain provisions that affect trade between Northern Ireland and the rest of the UK but the provision(s) will not have a significant adverse effect on such trade. Accordingly, Baroness Jones of Whitchurch, Parliamentary Under-Secretary of State (Minister for Legislation) at the Department for Business and Trade, has made a statement under section 13C(2)(a) of the European Union (Withdrawal) Act 2018 this effect.

## Annex A – Territorial extent and application in the United Kingdom

72 The Bill extends to the whole of the UK.

73 The information provided is the view of the UK Government.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 2	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 3	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 4	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 5	Yes	Yes	No	Yes	No	Yes	In part
Clause 6	Yes	Yes	No	Yes	No	Yes	In part
Clause 7	Yes	Yes	No	Yes	No	Yes	No
Clause 8	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 9	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 10	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 11	Yes	Yes	In part	Yes	In part	Yes	In part
Clause 12	Yes	Yes	No	Yes	No	Yes	No
Clause 13	Yes	Yes	No	Yes	No	Yes	No
Clause 14	Yes	Yes	No	Yes	No	Yes	No
Schedule	Yes	Yes	No	Yes	No	Yes	No

### Subject matter and legislative competence of devolved legislatures

74 There is a convention (“the Sewel Convention”) that the UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.

75 See the table above for a summary of the position regarding territorial extent and application in the UK. The table also summaries the position regarding legislative consent motions. Legislative Consent Motions will be sought from each of the devolved legislatures.

# **PRODUCT REGULATION AND METROLOGY BILL [HL]**

## **EXPLANATORY NOTES**

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