

House of Lords: Report stage briefing

The Product Regulation and Metrology Bill

House of Lords

February 2025



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Law Society of Scotland's Constitutional Law and Human Rights Committee welcomes the opportunity to comment on the Product Regulation and Metrology Bill¹ (the Bill) ahead of Report Stage in the House of Lords scheduled for 24 February 2025.

General comments on proceedings in Grand Committee

In Grand Committee on 27 November 2024, Lord Hope Lord Fox, and Lord Thomas of Cwmgiedd, tabled a new clause which stated in subsection (1) Product regulations may not be made until the Secretary of State has consulted the devolved administrations as to their impact and effect on the marketing and use of products in the areas within the United Kingdom over which they have legislative competence. In introducing the debate on the new clause Lord Hope said: "As I am sure the Minister understands, the Sewel convention does not extend to delegated legislation—that is the concern that I have in moving this amendment—so it cannot be said that UK Ministers are required by convention to seek the consent of the devolved Administrations before exercising these powers. There is at least a risk that, unless something is said about this in the Bill, these powers could be exercised to engage matters that are not reserved to the UK Ministers in ways that would impinge significantly on devolved competence without the devolved Administrations being involved.

The Minister, Lord Hunt of Kings Heath responding to the debate said: "We believe that we have, in our first five months, begun to reset the relationship between ourselves and the devolved Governments. We want to work constructively with them. For instance, the noble Lord, Lord Fox, mentioned the input from the Welsh Assembly Government. We are considering it very carefully at the moment; my noble friend has also had some fruitful discussions with Scottish Ministers. That is the way we see ourselves going forward in future.". Lord Hunt went further: "On the Sewel convention and secondary legislation, I was a Whip on the Scotland Bill, and I remember the discussions involving Lord Sewel. I take the point made by the noble and learned Lord, but it would certainly not be our intention that, because of



the convention, we could simply put through secondary legislation without seeking the input of the devolved Governments, certainly Scotland. We would not take forward regulations without engagement with the devolved Governments". The Minister also undertook to "ensure that consultation takes place with the devolved Governments regarding regulations made under the Bill, whether or not the products in question fall under a common framework.": [Product Regulation and Metrology Bill \[HL\] - Hansard - UK Parliament](#)

[The Scottish Government's Legislative Consent Memorandum](#)

The Scottish Government states in its Legislative Consent Motion that it considers it is currently unclear as to why the Bill confers power to the Secretary of State in areas of devolved competence "except that the UK Government seeks wide-ranging powers on products to cover potential future technological, societal and legislative developments". Further, the Scottish Government states that the Bill does not currently contain any consent mechanism which would prevent the Secretary of State from using the powers in devolved areas without the consent of Scottish Ministers even though this could lead to divergence from EU law on devolved matters and/or repeal Scottish legislation: [Legislative Consent Memorandum](#).

Most recently the Chancellor of the Duchy of Lancaster Rt Hon Pat McFadden MP, wrote on 27 January 2025 to Stuart MacMillan MSP, Convenor of the Delegated Powers and Law Reform Committee of the Scottish Parliament stating: "The UK Government is committed to working with the Scottish Government to deliver effective outcomes for the people of Scotland. This includes having frequent discussions with the Scottish Government on secondary legislation to be made by UK Ministers that includes provisions within devolved competence. UK Government departments are committed to maintaining good communication with their Scottish Government counterparts when developing such legislation, reflecting respect for the devolution settlements and the roles of the Scottish Government and Parliament. In addition, the UK and Scottish Governments' central legislation and constitution teams meet regularly to identify and address any issues in making secondary legislation. These meetings are part of the UK Government's wide programme of engagement to work with the Scottish Government and other devolved governments in the interests of people across the UK.": [Microsoft Word - 20250127 CDL to DPLRC](#).

The Economy and Fair Work Committee of the Scottish Parliament issued its report on the Legislative Consent Memorandum for the Product Regulation and Metrology Bill on 13 January 2025. "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. 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. 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. 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.”: [Report on the Legislative Consent Memorandum for the Product Regulation and Metrology Bill](#).

The Bill is also silent on how it will interact with the United Kingdom Internal Market Act 2020. These points are explored in greater depth by Thomas Horsley in “Relations Reset or Regression? Devolution and the Product Regulation and Metrology Bill” published by the UK Constitutional Law Association.



For further information, please contact:

Michael P Clancy OBE, WS, FRSE,
Director Law Reform,
The Law Society of Scotland
michaelclancy@lawscot.org.uk