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Dear Colleagues,

PRODUCT REGULATION AND METROLOGY BILL

Second Reading of the Product Regulation and Metrology Bill took place on Tuesday 8 October 2024. During the debate a number of important issues were raised which I was unable to address during my closing speech. I therefore wanted to write to Peers on these issues at the earliest opportunity. I would be very happy to meet to discuss these issues, or any others, further ahead of Committee.

Product Safety Review

A number of Peers including Lord Sandhurst and Lord Johnson raised questions over the publication of responses to the Product Safety Review. As Peers are aware, the Office for Product Safety and Standards (OPSS) undertook a review of the UK product safety framework - the 'Product Safety Review', which was announced in 2019. A Call for Evidence ran during 2020-2021 receiving 178 responses and a response was published in November 2021: <https://assets.publishing.service.gov.uk/media/619f54abd3bf7f0559e1da5f/uk-product-safety-review-call-for-evidence-response2.pdf>.

A public consultation ran last year between August and October 2023. There were 126 written responses to the consultation. The responses were from a wide range of stakeholders, including 35 Trade Associations or business representative organisations, 32 businesses, 20 Local Government organisations, and 4 consumer representative organisations. During the consultation period 53 stakeholder events were undertaken reaching over 400 individual stakeholders. Information gleaned was used to develop our understanding of what legal powers were needed to update the framework.

The Review considered a range of proposals to improve the current product safety framework including options around online marketplaces, utilising digital approaches and improving enforcement.

The previous government did not publish a response to the consultation prior to calling the 2024 General Election. Unfortunately, it was not possible to publish a summary of responses in advance of our Second Reading debate, but I am working with officials to ensure there is a meaningful update prior to the Bill's Committee stage.

Common Frameworks

In relation to Commons Frameworks, an issue raised by Lord Fox, following the winding down of the Lords Common Frameworks Scrutiny Committee, the Lords Constitution Committee have taken over the role of monitoring the development of the Common Frameworks programme. That Committee published a report on 27 September 2024 (*The Governance of the Union: Consultation, Cooperation and Legislative consent*) which discussed the programme in some detail. The Government will respond to this report in due course.

There are 32 policy Common Frameworks currently in development. These are at the following stages of development:

- 1 Framework is fully implemented and has published its second annual report.
- 19 have been published and fully scrutinised by all relevant legislatures and are therefore provisionally operational – they are in the process of being reviewed and updated for final publication and full implementation as soon as possible.
- 8 Frameworks have been published and undergoing their outstanding scrutiny from the NI Assembly. Following completion of scrutiny, they will also be updated and published in final form.
- 1 Framework is operating provisionally and has recently been cleared for publication for scrutiny once it has been reviewed.
- 1 Framework has undergone stakeholder engagement and is currently being reviewed before ministerial agreement to publish for scrutiny is sought.
- 1 Framework is at an earlier stage but discussions for progressing it are currently ongoing.
- 1 Framework has been progressed but the case for whether it is required is currently under review.

Lord Fox also noted that whilst product regulation is a reserved issue, the effects of the product being regulated are often not reserved. The Department for Business and Trade have existing engagement forums with devolved governments. These forums will allow for discussion on regulations to be made under the Act. Clauses within the Bill, in part, relate to matters which are within devolved competence. We are seeking legislative consent from the Scottish Parliament, Senedd Cymru and Northern Ireland Assembly. I will keep Lords updated on discussions with devolved governments on this matter.

Northern Ireland

Baroness Lawlor in particular asked about Northern Ireland. The powers in the Bill will provide the flexibility to ensure product safety and metrology regulation, now and in the future, is tailored to the needs of the UK as a whole.

Clauses 1 and 5 of the Bill provide the enabling powers to make secondary legislation. This will allow the UK to set and update its own product-related rules, as well as provide a choice whether or not to recognise relevant EU product requirements on a UK-wide basis, to

support the interests of our businesses and consumers. The powers in this Bill, which are conferred on a UK-wide basis, will ensure we can continue to respond to any new EU legal developments that may have internal market impacts and facilitate the continued smooth flow of goods between Great Britain and Northern Ireland.

Northern Ireland's businesses in all scenarios will continue to have full unconditional and unfettered access to the market in Great Britain.

UK Internal Market Act 2020

A number of Peers including Lord Johnson, Lord Fox and Lord Frost asked questions regarding the interaction of this Bill with the UK Internal Market Act 2020. As noble Lords will know, the UK Internal Market Act ensures qualifying goods legally sold in Northern Ireland, can also be sold across the UK. It also provides that products manufactured in or imported into one part of Great Britain can be sold in any other part of Great Britain.

The Product Regulation and Metrology Bill serves a different purpose. This Bill provides powers for the UK Government to, among other things, address modern day safety issues, harness opportunities that deliver economic growth, and begin to deliver a level playing field between the high street and online marketplaces powers.

Relationship with the EU

A number of Peers, including Lord Frost, Lord Jackson and Baroness Lawlor raised the interaction of this Bill with the Government's wider reset of relations with the EU.

I want to reassure Peers that the primary purpose of the powers in the Bill is to allow the UK to ensure its domestic product regulation and metrology framework continues to keep people safe and ensure accurate measurements.

Now that we have left the EU, we have the opportunity to make our own rules based on what works best for our consumers and businesses. This is a standalone piece of post-Brexit legislation which provides the powers to do this. The Government has been clear that there will be no return to the customs union, single market or free movement. This Bill gives us the powers to set our own rules, and to recognise EU rules where it is in our interest. Future changes made using these powers will be subject to appropriate Parliamentary scrutiny.

As Peers will know, existing product regulation provides that businesses can rely on corresponding EU provision to satisfy the requirements of domestic regulation in a number of areas, subject to certain conditions. A measure allowing certain products to continue using the CE mark received cross-party and business support when debated in Parliament earlier this year. This Bill allows similar provision to be made in the future, as domestic and EU product regulations are updated, and where it is in the interests of the UK to do so. Likewise, where it is in the UK's interest, we will use the powers in the Bill to diverge from the EU and stop recognising those corresponding provisions. This ensures the UK product regulatory framework can be updated to support economic growth, provide regulatory stability and protect consumers.

Metrology and Regulatory Policy Committee (RPC)

Baroness Crawley raised two issues relating to metrology regulations and the Impact Assessment of the Bill.

In relation to metrology regulations, I would like to reassure Peers that the accuracy of measuring and weighing equipment is in fact captured by the Bill. Clauses 1 and 2 of the Bill provide enabling powers to make secondary legislation in respect of measuring instruments and non-automatic weighing instruments [as such instruments fall under the definition of “product” in Clause 1(5) and Clause 1(1)(c) covers “*ensuring that products designed for weighing or measuring operate accurately*”]. This includes testing and verifying instruments [which are covered by Clause 2(2)(g) “*the monitoring, assessment, verification or certification of products*”].

In relation to the Impact Assessment, I was pleased with the RPC’s “Fit for purpose” rating for the assessment of the power’s impacts. Subject to receiving Royal Assent of this Bill, my officials will continue to develop the policies and associated draft secondary legislation that would utilise the powers provided. I would like to reassure Peers that the secondary legislation will be accompanied by proportionate analysis and an impact assessment, where required under the Better Regulation Framework. However, additional impact analysis for those measures would not be required at this stage.

When do the Regulations apply to Businesses/Individuals and the Use of Clause 4

In relation to the questions raised by Baroness Brinton, current legislation sets out a variety of supply chain roles, including the key roles of manufacturers (or producers), importers and distributors. These supply chain roles may be undertaken by individuals as well as by businesses. The Bill will enable the responsibilities of supply chain actors to be rationalised and modernised, including to reflect the development of new business models that were not anticipated by current legislation, such as online marketplaces. It will allow supply chain duties to be tailored appropriately and ensure the legislation can be kept up to date and effective as business and supply chain models continue to evolve in future.

I can also confirm that the exercise of Clause 4, which allows for certain product regulations to be temporarily disapplied, or to apply with modifications, in an emergency, will be subject to the draft affirmative legislative procedure, meaning that any regulatory changes made under Clause 4 will be scrutinised by both Houses before coming into force.

SPS-related Products and Free Trade Agreements

Viscount Trenchard asked whether the Bill excludes food and SPS products. The Product Regulation and Metrology Bill takes broad enabling powers to ensure we have the ability to deliver an effective regulatory regime across a range of product sectors. This legislation is underpinned by a necessarily expansive definition of “product” in the Bill, which ensures that particular products are not inadvertently excluded. The rationale for products listed in the Schedule is that many of these excluded products are subject to separate legislation so do not need to be covered by powers in the Bill. The schedule includes food; feeding stuff and fertilizer; plants, fruit and fungi; plant protection products; animal by-products; and products of animal origin (as well as a number of other sectors).

In relation to Viscount Trenchard’s query on the impact of the Bill on existing Free Trade Agreements, I can confirm the Government will continue to have control over UK rules.

The Bill provides greater flexibility in setting and updating our product-related rules, as well as recognising those of key trading partners such as the EU, which will help to support trade and consumer choice.

In developing our trade strategy, we are clear that Free Trade Agreements – while not the only tool – are an important lever for driving growth. The Government has announced its intention to publish an ambitious trade strategy which will consider the range of trade tools to drive economic growth, in addition to announcing its intention to deliver the UK's Free Trade Agreement programme.

The powers will be used to make changes to legislation where it is in the UK's best interest.

Environmental impacts

Peers also raised questions regarding the references to environmental impact in the Bill. This Bill is not intended to deal with all environmental protection matters and the Government has powers under other legislation to manage the environment more generally.

Many products, however, are required to meet multiple product regulations, including those covering the environmental impact of products. Powers in this Bill will enable us to choose to update our laws in line with, or to recognise, changes to EU product regulations which address the environmental impacts of goods, where this is in the interest of our businesses and consumers. However, the power does not compel identical provision to the EU rules, as it is recognised that modifications or adaptations may be appropriate for a UK context. This is why we have separated out the powers in Clause 1(2).

Without this separate sub-clause, our ability to update regulations in scope of the current CE recognition approach would be limited. We know from engagement with industry that our recognition of many EU product requirements such as those for Machinery and Ecodesign enjoys business support, has reduced costs and will support growth, which is the main mission of this government. Industry now needs regulatory stability, which requires the ability for the UK to manage changes to EU regulations that we currently recognise.

We acknowledge that the powers within the Bill are UK wide and powers related to environmental regulations under clause 1(2) may interact with devolved competence. We are engaging devolved governments on this matter. I do not want to pre-empt the outcome of those discussions, but I believe we can find a suitable resolution with devolved governments.

REACH

Lord Fox and Lord Browne of Ladyton also raised whether REACH was in scope of the Bill. Though the Bill is not intended to cover REACH specifically, chemicals have not been excluded from its scope as we need to ensure we are able to regulate the use of chemicals in certain products, such as cosmetics and toys.

The UK Government has existing powers, under the Environment Act (2021) and within The REACH Regulations 2019 to update UK REACH. We are currently considering the best approach to chemicals regulation in the UK and will set out priorities and next steps in due course.

VAT

Finally, Lord Lucas raised a number of points concerning VAT – and I know he has tabled some amendments in this regard. VAT collection is the responsibility of HMRC and the policy for VAT set out in the VAT Act 1994 which was updated to include online marketplaces in the Finance Act 2021.

Bike Thefts

Finally, Lord Redesdale raised the issue of bike thefts, and that any online platform should include in the information given the security marking numbers of a bike. I can confirm that the Bill would enable the Government to set out requirements relating to the information that should be collected from sellers and provided to consumers on online marketplaces, for the purposes of ensuring that products comply with product regulations and are safe. The Noble Lord raises an interesting point but one that lies beyond the scope of this Bill.

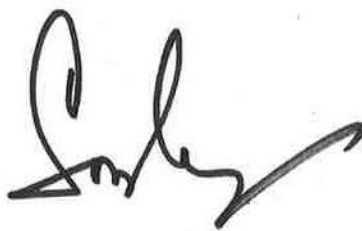
The Government recognises that a key part of making acquisitive crime less attractive to criminals is making stolen goods harder to sell on. The Home Office continues to work closely with policing and academic leads to examine what more can be done to tackle the disposal markets for stolen goods and reduce the profit from acquisitive crime. Police Crime Prevention Initiatives (PCPI) are a police-owned organisation working on behalf of the Police Service, to deliver a wide range of crime prevention and demand reduction initiatives. This includes a project to create a Property Marking Course. This e-learning course will be available to all police forces across the UK for officers and staff to improve their knowledge and understanding of the use of property marking as an effective crime prevention tool.

The Home Office continues to work closely with police, including Opal – the national police intelligence unit - and academics on serious organised acquisitive crime, to better understand the disposal routes used to sell stolen goods, and how organised crime groups are linked to this crime.

I hope that this letter is useful to Peers, and I reiterate my commitment at Second Reading, that I am happy to meet with Peers to discuss any questions they have on the Bill as it progresses through the House.

I am placing a copy of this letter in the libraries of both Houses.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Leong', written in a cursive style.

**Lord Leong CBE
Lord in Waiting (Government Whip)**