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The Rt Hon. the Lord Lansley CBE
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By email

10 December 2024

Dear Andrew

Product Regulation and Metrology Bill – power to designate international standards and listing of relevant authorities.

During the third day of committee for the Product Regulation and Metrology Bill (the Bill) on the 27 November, you raised a number of questions for which I wanted to provide a response.

Power to designate international standards

Thank you for tabling Amendment 38 to enable product regulations to be met through complying with international technical standards.

When the UK was a member of the EU, we were under a duty to implement EU obligations. EU product legislation sets out that where there is a standard adopted by one of the three recognised European Standards Organisations and its reference is published in the Official Journal of the European Union, then following that standard gives rise to a rebuttable presumption of conformity with the EU product regulation essential requirements that the standard covers.

Whilst the power in section 11 of the Consumer Protection Act 1987 ("the CPA") is wide enough to have been able to implement these EU obligations (and were used in some instances), other developments in EU law, particularly concerned with the definition of "risk", conformity assessment bodies, and enforcement measures, meant that the powers in the CPA were no longer suitable for full implementation of the EU product requirements. Later implementation therefore relied on section 2(2) of the European Communities Act 1972.These EU standards were called harmonised standards and the process for harmonising standards was set out in a separate EU Regulation. When we left the EU, there was no provision in domestic law to ensure a proper process for designating standards. Therefore, delegated powers in the EU Withdrawal Act 2018 were used to amend each relevant piece of product regulation to define what designated standards are and set out the process that the Secretary of State must follow when designating standards, as well as adding the British Standards Institution (BSI) to the recognised standardisation bodies in addition to the three European Standards Organisations. These provisions were later amended by the European Union (Future Relationship) Act 2020 to permit the designation of

standards adopted by international standardising bodies. Therefore, the administrative power to designate a standard is set out in each relevant individual product regulation.

The Bill provides powers to enable the Secretary of State to create product regulation and clause 2(6) of the Bill preserves the power to designate standards adopted by an international standardisation body, as well as other standardisation bodies.

I trust this sufficiently addresses your concern and clarifies that for current and future product regulations, we can designate international standards to give presumption of conformity to essential requirements.

Listing of relevant authorities

Turning to your points related to Lord Sharpe's Amendment (60), I would like to clarify why we have taken the approach of specifying enforcers in regulations.

Requirements introduced through product or metrology regulations will require enforcement. As has been made clear, this Bill is intended to ensure we have a targeted regulatory regime for a range of diverse sectors related specifically to product safety and metrology. In this way, it differs from the Consumer Rights Act 2015. Whilst a key focus of the Bill is protecting consumers from unsafe products, its ambit goes much wider – for example, non-consumer products such as machinery, lifts, and pressure equipment are also covered. As a result, a range of enforcement authorities must be able to exercise functions in regulations made under the Bill. Given that regulations will set out precise and detailed enforcement provisions and sanctions, it should follow that the detail of enforcers should also be set out in the relevant regulations. Setting out the detail of a relevant authority in the regulations will also ensure that a new enforcement authority is able to enforce those regulations immediately.

It is not possible to anticipate all authorities that will exercise enforcement functions, without first setting out the requirements that must be enforced. Requirements will be set out within regulations for specific sectors and will evolve as time passes to meet new needs of the sector. For example, if a new regulator was to be created to enforce online marketplace provisions or products that contain an intangible component, such as AI, a static list of enforcers in primary legislation would likely become dated. It would be unacceptable if there was an acute risk to safety and a particular regulator not named in primary legislation was unable to enforce.

To prevent primary legislation from becoming outdated, it may be possible to take a broad approach and empower as many authorities as possible to anticipate future needs. However, that could result in inappropriately empowering authorities who do not need access to powers, which is disproportionate and would not lead to precision or clarity for enforcement authorities.

The Consumer Rights Act 2015 consolidated lists of authorities that already existed in other legislation. It was not a new approach but rather a sweeping consolidation. If this Bill listed enforcers, we know that gaps will appear for two reasons: first, our experience on the CRA, is that gaps appeared shortly after it was implemented; and second, the evolution of product sector technologies and supply chains is faster than ever before, exacerbating the need to ensure a future proofed approach. Enforcement will need to be able to respond immediately to new requirements that address what could be very serious emerging

dangers. The time taken to make an amendment would leave that regulator unable to enforce in the interim.

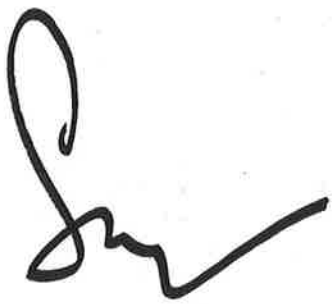
Given that there are clear similarities between Schedule 5 of the CRA and this Bill it is very reasonable for the Noble Lord to question why we should not simply use the list provided within that Schedule. Whilst we cannot predict who will need access in the future, we know that the list provided in the CRA is inappropriate for the purposes of the Bill. Schedule 5 of the CRA provides a list of enforcers who may access powers within the Schedule. The list would be inappropriate to copy across. Enforcers on the CRA's list who should not be empowered under this Bill include the Competition and Markets Authority, who enforce an entirely different regulatory regime relating to unfair market practices rather than product safety; the Civil Aviation Authority and the Office for Gas and Electricity Markets (Ofgem). These bodies are unlikely to exercise functions under product or metrology regulations.

The approach taken in this Bill was chosen because it allows us to fully protect consumers and ensure that businesses have clarity. When new regulations are introduced, they must be enforceable immediately or consumers will be left with limited protections and good faith businesses could suffer to those saving on costs by not complying with their regulatory duties.

I hope my letter has provided additional clarity and reassurance regarding the important issues that were raised in the debate.

I am copying this letter to all Noble Lords who spoke in the debate. I am also depositing a copy of this letter in the Library of the House.

Yours Sincerely,



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