

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

6th Report of Session 2024–25

**Institute for Apprenticeships
and Technical Education
(Transfer of Functions etc)
Bill [HL]**

**Product Regulation and
Metrology Bill: Government
Response**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 29 July 2024, and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

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Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Sixth Report

INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION (TRANSFER OF FUNCTIONS ETC) BILL [HL]

1. There is nothing in this Bill which we would wish to draw to the attention of the House.

PRODUCT REGULATION AND METROLOGY BILL [HL]: GOVERNMENT RESPONSE

2. We considered this Bill in our 2nd¹ and 4th² reports of the current session. The Government have responded by way of a letter from Justin Madders MP, the Parliamentary Under-Secretary of State Minister for Employment Rights, Competition and Markets, and Lord Leong CBE (Government Whip). The response is printed at Appendix 1.

1 DPRRC, *2nd Report* (Session 2024–25, HL Paper 17)

2 DPRRC, *4th Report* (Session 2024–25 HL Paper 23)

APPENDIX 1: PRODUCT REGULATION AND METROLOGY BILL [HL]:GOVERNMENT RESPONSE

Letter from Justin Madders MP, Parliamentary Under-Secretary of State, Minister for Employment Rights, Competition and Markets at the Department for Business and Trade [DBT] and Lord Leong CBE, Government Whip, to the Rt Hon. Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

We would like to begin by thanking the Delegated Powers and Regulatory Reform Committee for its report of 15 October, as well as for providing us with the opportunity to give evidence before the Committee in the session of 16 October. Our response also addresses the Committee's supplementary report of 28 October. The Committee's work in aiding the House to scrutinise bills is appreciated, and the Government always carefully considers the Committee's findings.

The Department for Business and Trade is grateful for the Committee's broad support for the Bill's aims, as well as its observations.

We accept the Committee's observations that the memorandum could have contained more detail on how we intend to use the delegated powers, and the specific circumstances that justify the use of powers, with appropriate safeguards, in this case. We therefore hope this further information is helpful to the House.

However, the Government is unable to accept the Committee's recommendations that the delegations of power in clauses 1, 2, 3, 5, 6 and 9 should be removed from the Bill, or the general premise that any delegation of powers to update this area of law is inappropriate. Removal of the powers would mean that there would be no ability to amend existing regulations nor to make new laws. This vast body of law is vital to ensuring consumers are protected and businesses have certainty.

We therefore thought it would be helpful to set out some of the key points raised in the evidence session for the benefit of the whole House. We look forward to continuing to work with you, as well as other Noble Lords, as the Bill progresses. We will write further to report if there are further updates.

Use of delegated powers and framework legislation

The Government acknowledges the Committee's concerns about the use of framework legislation and understand the importance of parliamentary scrutiny and taking a proportionate approach to granting powers to the executive. We also want to reassure the Committee that careful thought has been given across Government on the approach taken in the Bill towards delegated powers, and we are confident that it is appropriate in the specific policy context.

However, secondary legislation cannot be equated to unrestrained executive power and has an important role to play in supporting the Rule of Law. As discussed at the evidence session, in the particular context of product and metrology regulation, only secondary legislation can give the level of precision and detail, and capacity for highly technical or fast paced updates, that are required by the constitutional principles of legal certainty and proportionality. The need to innovate and avoid playing catch-up was also acknowledged as one of the Bill's key objectives.

Product regulation in particular covers a very wide variety of different products, with existing secondary legislation running to over 2,500 pages and covering

everything from consumer products such as toys³ and cosmetics⁴ to industrial products like pressure equipment.⁵ This means that each element of regulation, such as requirements to be met, responsibilities of actors, conformity testing and recording, are tailored and circumstance-specific with no universal elements that are appropriate for setting out in primary legislation without compromising on effectiveness and applicability, or resorting to broad principles that work against legal certainty in this technical area. We have, however, set out detail of what the regulations will cover in clause 2 onwards to make it as clear as possible what provision the delegated legislation will contain.

We would also like to reassure the Committee that the approach we are taking in the Bill is not without legislative precedent. In the case of the Bill, we drew upon the precedent of Schedule 11 of Building Safety Act 2022 which took the same approach and for similar reasons. In that case that Act set out a clear intention to create a new regulatory framework with the first use of its powers, before using them to keep that framework updated. In our case, we intend to use the Bill's delegated powers to make incremental changes to update and build on the very large and well-established existing framework, for example to clarify the responsibilities of different models of online market-places. We accept that we did not make this intention sufficiently clear to the Committee in our memorandum, and we will reflect on ways in which we can make the intended use of the powers clearer to Parliament.

This is consistent with the approach that we have historically taken with these regulations (initially using powers in the Consumer Protection Act 1987 and the Weights and Measures Act 1985⁶, and, as these powers became unsuitable over time, more recently the section 2(2) power of the European Communities Act 1972). It would represent a break of continuity of approach to use primary legislation to set out the detail of such technical regulation.

Scrutiny of delegated legislation

The Government has taken care to consider the appropriate level of parliamentary scrutiny for secondary legislation made under the Bill, by setting out various circumstances where use of the powers will require the draft affirmative procedure which will ensure that the legislation cannot be passed without a debate and approval in both Houses. This includes every time a criminal offence's scope is broadened or a new penalty is set, or if primary legislation is amended. We have not made provision for the made affirmative (urgent) procedure to apply even in relation to clause 4 (emergencies), as we recognise the appropriateness of parliamentary scrutiny in these cases.

We agree with the Committee about the need for an appropriate balance between the need for swift and nimble regulation, and appropriate constraints, and will reflect further on whether this balance has been achieved in all areas.

Consultation and Transparency

Whilst there is no statutory consultation provision set out in the Bill because the appropriate level of engagement will depend on the circumstances, the Department is committed to continue its practice to consistently consult and engage with stakeholders on legislative changes, including in cases of emergency.

3 Toys (Safety) Regulations 2011 ([SI 2011/1811](#))

4 The Cosmetic Products (Safety) Regulations 2008 ([SI 2008/1284](#))

5 Pressure Equipment (Safety) Regulations 2016 ([SI 2016/1105](#))

6 Weights and Measures Act 1985, [chapter 75](#)

For example, when the Office for Product Safety and Standards began its Product Safety Review in 2019, it was right and proportionate, given the breadth of the question, to begin with a Call for Evidence in 2021, using responses from this to develop a full public consultation in 2023. In contrast, in a more technical area, such as updates to the chemical restrictions in cosmetics products, a Call for Data is first issued, before the Scientific Advisory Group on Chemical Safety considers that data and presents an opinion. This opinion is then published, and officials consult with industry on the detail ahead of amending legislation, if necessary. It would not be appropriate in the case of the latter to run a full, public consultation.

Products legislation is also subject to World Trade Organization notification requirements, meaning draft legislation is frequently published for comment at least 60 days before the legislation can proceed to become law. There are also other overarching existing duties that must be taken into account when making secondary legislation, such as having special regard to Northern Ireland's place in the UK internal market and customs territory under section 46 of the United Kingdom Internal Market 2020, the Environmental Principles Duty as set out in the Environment Act 2021, and the Public Sector Equality Duty from section 149 of the Equality Act 2010.

The Department shares the Committee's commitment to transparency, as well as ensuring that the right expertise is heard and considered before regulation is made, and, notwithstanding these processes which routinely take place, will endeavour to meet the Committee's points.

Powers to amend or repeal primary legislation

We recognise the Committee's concerns that the powers in the Bill to amend or repeal primary legislation may appear as though we are intending to replace existing primary legislation with secondary legislation and accept that we should have given more provenance to the fact that our intentions are limited and specific and the powers in the Bill are limited accordingly. These powers are only intended to be used to:

- Repeal enforcement provisions for the reasons outlined in the section below (entitled "power to set the ingredients of criminal offences"). In the case of the Consumer Rights Act 2015⁷ this is expressed as a power to amend because these existing provisions are utilised in other policy areas and will need to remain in force for those purposes.
- Repeal powers to ensure that redundant legislative provisions no longer remain on the statute book, where this may lead to legislative confusion. In the case of the Consumer Rights Act 2015 this is expressed as a power to amend because these existing powers are utilised in other policy areas and will need to remain in force for those purposes.
- Replace technical provision in the Gun Barrel Proofing Acts 1855, 1868 and 1978⁸ so these can be modernised and kept up to date.
- Make consequential amendment to technical provision in the Weights and Measures Act 1985 so that the metrology framework as a whole can be modernised and kept up to date.

7 [Consumer Rights Act 2015](#)

8 [Gun Barrel Proofing Acts 1855, 1868 and 1978](#)

Affirmative power to set the ingredients of criminal offences

We appreciate and recognise the Committee’s comments on the powers in the Bill to set the ingredients of criminal offences in secondary legislation and wish to reassure the Committee that this decision was also given very careful consideration. We valued the opportunity to set out our reasoning in more detail at the oral evidence session. As the Committee recognises, there are circumstances where setting out detailed and precise requirements in secondary legislation is the only way to give proper effect to the requirements of legal certainty—i.e. the constitutional principles that the law must be accessible, clear and predictable, and that questions of legal right and liability should be resolved by application of the law rather than the exercise of discretion. In the specific circumstances of product and metrology regulation, good law making requires the proportionality and effectiveness of enforcement and sanctions to be carefully calibrated against the specific and detailed obligations set out in secondary legislation, rather than set out in broad provisions that leave too much discretion to sentencing guidelines.

This is the approach that was taken in Schedule 11 of the Building Safety Act 2022, which the Committee recognised as containing “important delegated powers”⁹.

Previous attempts to include criminal enforcement provisions in primary legislation—for example in the Consumer Protection Act 1987 and the Consumer Rights Act 2015—have proved ineffective as they have shown to be too broad to give the precision and detail needed, meaning that as products, consumer behaviour and business models evolve, users of the legislation lack clarity about how the legislation applies to them. Previously, this lack of precision and clarity has been mitigated by the application of more detailed enforcement provisions, “layered on top” of the primary legislation in secondary legislation made under section 2(2) of the European Communities Act 1972, but this in turn has led to confusion in the enforcement landscape that further undermines legal certainty. Enforcement bodies and industry have made it clear to us that this existing system does not work well in practice, creating confusion for users of the legislation, barriers to enforcement, and puts people at risk.

Conclusion

We hope that the further explanations in this letter and in the oral evidence session demonstrate to the Committee that, whilst the Government cannot accept its recommendation to remove clauses from the Bill, we take its concerns seriously and share its aims of striking the right balance between opportunity for stakeholder engagement and parliamentary scrutiny on the one hand, with the speed and flexibility needed to ensure products are safe, and to support innovation and growth on the other, while providing for the tailored and detailed legislative provision required to give effect to legal certainty.

We very much look forward to continuing to work with the Committee and the whole House as the Bill progresses to Committee and would be open to further discussions if that would be helpful.

28 October 2024

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Declarations of interest

For the business contained in this report, Members declared the following interests:

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

President, Chartered Trading Standards Institute (CTSI)