

SUPPLEMENTARY MEMORANDUM

PRODUCT REGULATION AND METROLOGY BILL

Supplementary Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1 This supplementary memorandum has been prepared by the Department for Business and Trade (“DBT”) for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Product Regulation and Metrology Bill (“the Bill”). It supplements the memorandum which was submitted and published on 30 August 2024 before the introduction of the Bill on 4 September 2024 and should be read in conjunction with that memorandum. This memorandum addresses the Government amendments tabled at Lords Report stage.

Having carefully considered the observations and recommendations made by the Committee in the Report dated 15 October 2024 and the evidence session on 16 October, and concerns raised during debates in the House of Lords at Committee stage, the DBT has decided to make targeted amendments to provisions in the Bill which confer powers to make delegated legislation. This memorandum explains the amendments and how they seek to substantially address the Committee’s concerns.

B. SUMMARY OF THE BILL AND SUMMARY OF AMENDMENTS

2. The Committee is referred to the memorandum published on 30 August 2024 for the summary of the Bill. The amendments being tabled at The House of Lords Report stage do not add any further Parts or Schedules to the Bill. In summary, they:

- Introduce a consultation requirement before the powers in the Bill can be used.
- Apply the affirmative resolution procedure to additional provisions.
- Clarify the scope of clauses 1 and 5.
- Reduce the scope of the power in clause 1 by adding provision to the Schedule.
- Reduce the number of Henry VIII powers.

C. DELEGATED POWERS

3. The three delegated powers referred to in the 30 August memorandum are:

(a) Clause 1: Product regulations (framing power);

(b) Clause 5: Metrology regulations (framing power);

(c) Clause 10(2): Interpretation (power to amend the definition of “online marketplace”).

The amendments tabled at House of Lords Report stage do not introduce any new delegated powers. They do, however, amend the application of the delegated power in Clause 1, and, in some cases, the delegated power at Clause 5. Accordingly, the analysis below sets out how each of the amendments impact relevant clauses.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 1: Product regulations (power to make product regulations)

Power conferred on: Secretary of State

Power exercised by: Regulations

Effect of amendment on parliamentary procedure: in addition to provisions attracting the affirmative procedure as at Introduction (and set out in the memorandum of 30 August) the first time the following three provisions are relied upon is now subject to the affirmative procedure: clause 2(2)(d) (marketing through an online marketplace) clause 2(3)(d) (online marketplace operators) and clause 2(3)(h) (other persons carrying out activities in relation to a product), when that provision is relied upon in respect of each new category of person.

Purpose and context of amendment

The amendment to the Excluded Products Schedule at page 12, line 17 adds products used or specifically designed for the purpose of operating or controlling aircraft, training persons in the operation or control of aircraft or ensuring the safe operation or control of aircraft. These exclusions are both subject to exceptions for toys (for unmanned aircraft only) and radio equipment (for unmanned aircraft and products designed for the purposes of controlling unmanned aircraft etc.) The effect of this amendment would be to remove such products from the scope of the Bill.

Justification

The aviation-related products described above are already regulated by a bespoke regulatory regime. Aircraft themselves are already excluded from the scope of the Bill, and this amendment adds the products described above as there is no need for the Bill to confer powers to regulate these products. It is right and proper that Bill powers are

limited to where they are expected to be needed. The exemptions from these exclusions are required so that unmanned aircraft (drones) which are toys will be able to be regulated under the powers in the Bill, so that their particular end users (children and their carers) can be taken into account when considering the risks presented by those toy drones, which are regulated under the bespoke aviation regime. With regard to radio equipment, this needs to be able to be regulated in respect of drones under specific radio equipment provision, which is not sufficiently covered by the bespoke aviation regime, in order to (amongst other things) protect the radio spectrum. This will therefore need to be able to be covered by the Bill, as it is currently under the existing Radio Equipment Regulations 2017.

Clause 2 (Product requirements)

Purpose and context of amendments

The amendments at page 2, line 28 page 3, line 7 and page 3 line 40 clarify that product requirements may include requirements relating to the installation of products, that product requirements may be imposed on the installers of products and that intangible components of products include software.

Justification

These amendments respond to Peers' concerns that it should be clear on the face of the Bill that product requirements can relate to installation and be imposed on installers, and that software that is a component of a product can be subject to product requirements. The amendments improve transparency and clarify the scope of the clause 1 power.

After Clause 8, insertion of new clause: "Application to existing product and metrology provision"

Purpose and context of amendment

This amendment enables the Secretary of State to use the full scope of the delegated powers in clauses 1 and 5 to amend or supplement provision in legislation about products and metrology which is in force before the passing of the Bill, where that provision could have been made under the powers in the Bill. This amendment clarifies that where provisions in the Bill use the terms "product regulations" or "metrology regulations" these include existing provision in existing legislation that would be able to be made under the Bill.

Justification

This will allow amendment of product and metrology regulations which are in force at the time of the passing of the Bill. It will allow us to ensure that any such product and metrology regulations can adapt to changing circumstances and thus remain fit for

purpose, and address modern safety issues and technological developments. For example, currently, because of the way the Bill is drafted, powers in the Bill could not be used to amend existing Regulations to provide for different information sharing provisions under clause 7, because clause 7 is limited to relevant authorities carrying out functions under “product or metrology regulations” which are defined respectively as provision made under clauses 1 or 5. Without this amendment, in order to make such changes to existing legislation, the functions of relevant authorities would have to be revoked and replaced potentially with the identical provision just so that they could share safety information with another relevant authority. This is not in line with the primary intention of the use of the powers in the Bill, which is to be able to modernise and improve existing legislation, rather than any wholesale revocation and replacement. The procedure when using this power to amend existing product or metrology regulations remains the same: to take the example of information sharing again, clause 7 is subject to the affirmative procedure and so any amendment to existing regulations relating to information sharing will be subject to the affirmative procedure. This is a technical but necessary amendment to give full effect to the policy of being able to use Bill powers to update and modernise the current body of law.

Clause 9 (Consequential amendments of certain Acts)

Purpose and context of amendments

The amendments at page 9, line 19 repeals Parts 2 and 4 of the Consumer Protection Act 1987 and removes from the Bill the power to repeal Parts 2, 4 and 5 of that Act.

The amendment to line 25 removes from the Bill the power to make consequential amendments to section 77 of and Schedule 5 to the Consumer Rights Act 2015.

The amendment at line 27 repeals specified provisions of the Weights and Measures Act 1985 and removes the power to repeal provisions of that Act.

The amendment at line 30 is consequential on the amendments to repeal certain provisions on the face of the Bill.

Justification

These amendments significantly reduce the number of Henry VIII powers and instead repeal certain provisions of primary legislation on the face of the Bill. Commencement orders will be used to repeal those provisions at an appropriate time, in regulations made under the Act, to remove duplication in the statute book or provide for regulatory continuity (for example, in metrological standards). This will increase transparency and Parliamentary scrutiny. It responds to concerns raised by the Committee and by Peers and recognises the importance of minimising the use of Henry VIII powers.

This will leave only two such Henry VIII powers in the Bill. Firstly, to update the 1868 to 1978 Gun Barrel Proof Acts. This is an extremely focused area of legislation and retaining this power will ensure it remains up to date to reflect modern supply chains and practices in gun sales and proofing. The second use of a Henry VIII power is retained to keep the Bill's definition of 'online marketplace' up to date and future-proof. This is because we expect the diversity and market share of online marketplace businesses to continue to grow, with the way that UK consumers purchase products continually evolving in ways we may not fully be able to predict.

Clause 10 (Interpretation)

Purpose and context of amendments

The amendments on page 10 in lines 19 and 20 amend the definition of "online marketplace" to include a feature of a service, or a service on part of a website.

The definition of "product requirements" is amended to apply to the whole Bill.

Justification

The amendments make clear that the definition captures online marketplaces which are a feature of larger services or websites such as Facebook. This responds to concerns raised by Peers in debate.

The amendment to the definition of "product requirements" is consequential on another amendment.

Clause 11 (Regulations)

Purpose and context of amendment

The amendment at page 11, line 10 applies the affirmative resolution procedure to additional provisions, being the first use of the power relating to matters set out in clauses 2(2)(d) and 2(3)(d) regarding online marketplaces and the first use of the power at clause 2(3)(h) with respect to new categories of actors in the supply chain. This means that categories of persons not in scope of clause 2(2)(a) to (g) who are being regulated for the first time will be subject to the affirmative procedure.

Justification

This additional level of Parliamentary scrutiny responds to concerns raised by the Committee and by Peers with respect to the scope of the regulation-making powers in the Bill.

Purpose and context of amendment

The first amendment at page 11, line 18 inserts a new subsection which imposes a duty on the Secretary of State to consult such persons as they consider appropriate before making regulations under the Bill.

Justification

This new statutory consultation duty responds to concerns raised by Peers regarding the absence of such a duty from the face of the Bill. The amendment aims to reassure the Committee and Peers of the DBT's commitment to transparency as well as ensuring that the right expertise is heard and considered before any regulations are made.

Purpose and context of amendment

A further amendment at page 11 line 18 inserts a new subsection providing that subsections (2) to ((6)) do not apply to regulations under section 13. This amendment is consequential on the amendment to allow new subsections of clause 9 to be brought into force by regulations.

Justification

Clause 13 (Commencement)

Purpose and context of amendment

The amendment at page 11, line 21 amends the commencement clause to provide for new subsections (1) and (3)) of section 9 to be brought into force by commencement regulations made by the Secretary of State. This makes clear that there is no Parliamentary procedure attaching to commencement regulations.

Justification

Consistent with common practice, commencement regulations under this Bill are not subject to any Parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulations enables the provisions to be brought into force at the appropriate time.

Department for Business and Trade

12 February 2025