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Our ref: MCB2024/10471

25 November 2024

Dear Stuart,

Thank you for your correspondence of 30 October, regarding Product Regulation and Metrology Bill.

I am grateful for the Committee's questions and welcome the opportunity to clarify the use of delegated powers in the Product Regulation and Metrology Bill ("the Bill"). We also recognise the concerns raised in the Scottish Government's Legislative Consent Memorandum ("the LCM") lodged on 24 September.

The Committee requested responses to 5 questions to assist in its consideration of the LCM:

- **Why it (the UK Government) considers it appropriate that the principal aspects of the policy of the Bill are to be established through subordinate legislation;**

Product regulation 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 toys and cosmetics, to industrial products like pressure equipment. 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. There are 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in this technical area, leaving innovative business models and product manufacturers with uncertainty over how outdated regulation applies to them.

Rather than replace wholesale a regime that generally works well and is understood by businesses, 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 body of regulation, for example to clarify the responsibilities of different models of online marketplaces.

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 1985](#), 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 in continuity of approach to use primary legislation to set out the detail of such regulation. The UK 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 additional parliamentary scrutiny in these cases.

The UK government has considered the Bill's use of delegated powers and has taken steps to restrict the scope as much as possible. In clause 2 and onwards, the Bill sets out the detail of what the regulations will cover to make it as clear as possible what provisions the delegated legislation will contain. 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, as well as to provide the capacity for regulation to adapt to support innovation and growth.

- **How it envisages that this power may be used in relation to devolved matters;**

Clauses 1 and 5 of the Bill set out the purposes for which regulations may be made under the Bill. Many of the regulations made under this Bill will concern technical areas in relation to product regulation and metrology. These matters are largely reserved – although some do touch on devolved areas. To the extent that the powers in clause 1 may be exercised in areas of devolved matters (for example, to ensure they operate efficiently and effectively; or to reduce their environmental impact - where this is to make corresponding or similar provision to a provision of EU law) they are likely to involve the subject matter of EU technical regulations and standards as they stood at IP completion date, which is reserved. However, as EU law develops, there are conceivable scenarios where the exercise of the powers could potentially cover matters of devolved competence.

- **Why it considers it appropriate that the power has been conferred so that it is exercisable by the Secretary of State alone in relation to devolved matters;**
- **Why it considers it appropriate that when the power is exercised by the Secretary of State in relation to devolved matters, there is no requirement to obtain the consent of the Scottish Ministers.**

Taking these two questions together, the UK government recognises the concerns regarding the use of the Bill provisions to make regulations in areas of devolved competence and those raised in Scottish Government's Legislative Consent Memorandum. We remain committed to maintaining a constructive and collaborative relationship with the Scottish Government, to ensure views are heard and reflected as we move forward with this important legislation.

To this end, a copy of the Bill was shared with the Scottish Government on 4 September. This followed several meetings at official level to discuss policy content within the scope of the Bill. Lord Leong, as responsible Minister for this Bill in the House of Lords, also met with Scottish Minister for Business, Richard Lochhead on the 29 October 2024 to discuss the Bill. UK Government officials have, and will, continue to closely engage with Scottish Government officials and to work through the detail of the concerns raised and met recently on the 6 November to explore possible solutions.

- **Whether it (the UK Government) intends to amend the Bill to either ensure the power is conferred solely on the Scottish Ministers in relation to devolved matters, or to require the Secretary of State when exercising the power in relation to devolved matters to obtain the consent of the Scottish Ministers?**

We are considering the matters raised by the Scottish Government and Scottish Parliament regarding the Bill. I am encouraged by the positive and constructive engagement on these issues to date and I am determined that both governments can work collaboratively to find a suitable solution. We would be happy to keep the Committee updated on further discussions as we move towards a resolution.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Justin Madders', with a horizontal line underneath.

JUSTIN MADDERS MP

Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets