

Rebecca Evans AS/MS
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Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio



Mike Hedges MS
Chair, Legislation, Justice and Constitution Committee
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Llywodraeth Cymru
Welsh Government

26 June 2025

Dear Mike,

Thank you for the Legislation, Justice and Constitution Committee's report on the Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No. 3) on the Product Regulation and Metrology Bill.

Please find enclosed my response to the issues raised in the report.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style.

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Welsh Government's Supplementary Legislative Consent Memoranda (Memorandum No.2 and Memorandum No.3) on the Product Regulation and Metrology Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's report

June 2025

Introduction

The Product Regulation and Metrology Bill (the Bill) was introduced in the House of Lords on 4 September 2024. At the time of publication, the third committee stage was complete and the Bill was in its final stages before receiving Royal Assent.

The Bill makes provision about the marketing or use of products in the United Kingdom and the units of measurement and the quantities in which goods are marketed in the United Kingdom.

On leaving the EU, the UK set up an independent regime, which the UK Government (UKG) considered was needed to be able to adapt to new technologies such as Artificial Intelligence (AI), as well as to reflect the shift in both what consumers buy and how they buy it. The UKG believe they need new powers to address current and future threats and ensure a continued supply of safe goods.

It was the view of both the UK and Welsh Governments that the Bill required the legislative consent of the Senedd. To this end a Legislative Consent Memorandum was laid in the Senedd on 20 September 2024.

The Legislative Consent Memorandum outlined a number of reasons for the Welsh Government to support the Bill. However, it also highlighted that the Bill, as currently drafted, will in effect lead to the Welsh Government having less powers to introduce reforms in a range of areas, as compared to the period when the UK was part of the EU Single Market. Therefore, it stated, further engagement is required with UK Government with respect to the enabling powers within the Bill and the role of Welsh Ministers and the Senedd.

Following this, the Legislation, Justice and Constitution (LJC) Committee and the Economy, Trade and Rural Affairs (ETRA) Committee laid their respective reports on the 29 November 2024 and the 13 January 2025.

On 24 March 2025, the Cabinet Secretary laid a supplementary legislative consent memorandum (Memorandum No. 2) in respect of “a number of technical and substantive amendments” tabled for consideration at Lords Report stage between 17 February and 5 March 2025.

On 12 May 2025, the Cabinet Secretary laid a further supplementary legislative consent memorandum (Memorandum No. 3) in respect of an amendment tabled by the UK Government on 7 May 2025 for consideration at Commons Committee stage. This provided details of an amendment containing a consent mechanism which requires the Secretary of State to obtain the consent of the Welsh Government before legislating on matters of devolved competence, other than where the legislation contains incidental or consequential matters within devolved competence.

The LJC Committee report on the Supplementary Legislative Consent Memoranda (Memorandum No.2 and Memorandum No.3) on the Bill was published on the 2 June 2025, and a Legislative Consent Motion for the Bill was agreed in Plenary on 3 June 2025.

Response to the Recommendations

Recommendation 1

The Committee recommends that:

The Cabinet Secretary should provide further detail about the Welsh Government’s engagement with the UK Government in respect of the Bill and should share relevant correspondence with the Committee.

Response: Accept in part

Officials met regularly with the UK Government during the Bill’s passage through the UK parliament. Within these meetings UK Government shared information on proposed amendments and discussions focused on the possible inclusion of a consent mechanism.

The Cabinet Secretary for Economy, Energy and Planning met Justin Madders MP, Minister for Employment Rights, Competition and Markets to discuss the Bill, and

a series of correspondence followed which set out Welsh Government's concerns about the need to ensure the Bill is amended to respect devolution. That correspondence took place in the space of confidential inter-governmental discussions, in the manner recognised by the Inter-Institutional Relations Agreement.

Following this engagement, the inclusion of a consent mechanism was secured which essentially means secondary legislation in devolved areas cannot be made under this Bill without the agreement of Welsh Ministers.

The Welsh Government remains constantly engaged in a dialogue with the UK Government at a Ministerial level with respect to our concerns on their approach on recent UK Bills and legislating in devolved areas.

Recommendation 2

The Committee recommends that:

The Cabinet Secretary should confirm whether consideration was given to raising the Welsh Government's concerns in respect of the Bill at interministerial group level, and to also escalating these concerns to the Interministerial Standing Committee.

Response: Accept

Consideration was given to raising Welsh Government's concerns at the Business and Industry Interministerial Group, however it was decided that the Cabinet Secretary would engage directly with the Minister with responsibility for the Bill, Justin Madders MP, which led to an agreeable outcome.

As stated above, Welsh Government remains constantly engaged in a dialogue with the UK Government at a Ministerial level with respect to their approach on legislating in devolved areas.

Recommendation 3

The Committee recommends that:

The Cabinet Secretary should, within six months, conduct a full assessment of legislative competence to ascertain whether primary legislation may be introduced into the Senedd to amend the Bill, if enacted, to the extent that it applies to devolved areas, and should provide its assessment to the Committee.

Response: Reject

Welsh Government's recommendation to the Senedd to give consent to the legislative consent motion was based on the overall conclusion that the Bill represented a positive outcome. Given those conclusions, and the Senedd's consent to the motion, Welsh Government would not currently intend to bring forward legislation to amend the Bill in this Senedd.

Recommendation 4

The Committee recommends that:

The Cabinet Secretary should set out the Welsh Government's assessment of how a potential dispute between the governments of the UK about whether clause 1 regulations make provision in devolved areas may be resolved, and whether the courts could be asked to decide on such a matter.

Response: Accept

Were such issues to arise, Welsh Government would endeavour to engage with UK Government to avoid the need for any further escalation. In the event of agreement not being achieved, the dispute resolution processes would remain available, as would legal mechanisms, which underpin the fundamental safeguard afforded through a statutory provision.

Recommendation 5

The Committee recommends that:

The Cabinet Secretary should set out the Welsh Government's assessment of the impact of the carve-out in subsection (2) of amendment NC1, and its assessment of how intergovernmental disputes about what is deemed to be "incidental" or "consequential" provision may be resolved.

Response: Accept

The consent mechanism, as drafted, represents a legislative safeguard for devolution in that it places a restriction upon the UK Government's ability to use the regulation making powers within the Bill, where those regulations impact upon devolved areas. The wording of the carve-out mirrors that within section 108A Government of Wales Act 2006 and effectively means that where a provision which impacts upon devolved areas is considered ancillary to the main purpose of the regulations, consent will not be required.

As stated above, were such issues to arise, we would endeavour to engage with UK Government to avoid the need for any further escalation. In the event of

agreement not being achieved, the dispute resolution processes would remain available, as would legal mechanisms, which underpin the fundamental safeguard afforded through a statutory provision.

Recommendation 6

The Committee recommends that:

In responding to recommendation 5, the Cabinet Secretary should set out the Welsh Government's understanding of the relevance of the phrase "merely incidental to, or consequential on, provision outside Welsh devolved competence" in subsection (2) of amendment NCI and whether it has any concerns about its inclusion.

Response: Accept

The inclusion of the relevant phrase "merely incidental to, or consequential on, provision outside Welsh devolved competence" is on balance considered a proportionate legal caveat in this case, due to the complicated mixture of devolved and reserved interests. The phrase "incidental to, or consequential on" is a well-known formulation, which has been used within several provisions of Government of Wales Act 2006; most notably for these purposes in section 108A, which deals with the scope of the Senedd's legislative competence. As such we consider it to be an acceptable inclusion.

Recommendation 7

The Committee recommends that:

The Cabinet Secretary should set out the Welsh Government's assessment of the interaction of the Bill, as amended, on UK common policy frameworks.

Response: Accept

As previously stated, the interaction with individual common frameworks will be dependent on the manner in which the delegated powers are purported to be exercised, as well as the existence of other delegated powers relevant to the respective framework areas. Our expectation remains that where the exercise of powers are relevant to an individual framework, the engagement and decision making processes set out for that particular framework area would be relevant.
