

The Welsh Government's Legislative Consent Memorandum on the Product Regulation and Metrology Bill

November 2024



1. Background

1. The Product Regulation and Metrology Bill¹ (the Bill) was introduced in the House of Lords and had its First Reading on 4 September 2024. It is sponsored by the Department for Business and Trade.

2. The long title to the Bill states that it is a Bill to:

“Make provision about the marketing or use of products in the United Kingdom; about units of measurement and the quantities in which goods are marketed in the United Kingdom; and for connected purposes.”²

3. The Explanatory Notes to the Bill provide the following background:

“The United Kingdom (UK)’s product safety and metrology framework is derived from European Union (EU) law and has developed over the past four decades, whilst the UK was a member of the EU. On leaving the EU, the UK set up an independent UK regime, which the Government considers needs 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 Bill intends to ensure the UK is better placed to address modern day safety issues to protect consumers, harness opportunities that deliver economic growth, and ensure a level playing field for responsible businesses operating online or on the high street. The Bill is intended to enable the UK to maintain high product standards, supporting businesses and economic growth, by allowing the UK Parliament the power to update relevant laws.”³

4. At the time this report was agreed, the Bill was at Committee stage in the House of Lords.

¹ [Product Regulation and Metrology Bill](#), as introduced

² [Product Regulation and Metrology Bill](#), as introduced

³ UK Government, [Product Regulation and Metrology Bill. Explanatory Notes](#), paragraphs 2 to 3

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that the Welsh Ministers must lay a legislative consent memorandum where a UK Bill makes provision in relation to Wales that has regard to devolved matters.
6. On 20 September 2024, Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴
7. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Economy, Trade, and Rural Affairs Committee should report on the Memorandum by 22 November 2024.⁵ On 5 November 2024, Business Committee agreed a revised reporting deadline of 10 January 2025.⁶

Provisions for the which the Senedd's consent is required

8. The Welsh Government's assessment, as set out in paragraphs 7 to 29 of the Memorandum, is that consent is required for the following clauses and Schedule to the Bill:
 - Clause 1(1)(a) – The Secretary of State may by regulations make provision, in relation to the marketing or use of products in the United Kingdom, for the purpose of reducing or mitigating risks presented by products
 - Clause 1(1)(b) – The Secretary of State may by regulations make provision, in relation to the marketing or use of products in the United Kingdom, for the purpose of ensuring that products operate efficiently or effectively
 - Clause 1(2) – The Secretary of State may by regulations make provision, in relation to the marketing or use of products in the United Kingdom, which corresponds, or is similar, to a provision of relevant EU law for the purpose of reducing or mitigating the environmental impact of products
 - Clause 1(3) – The Secretary of State may not make regulations under subsection (1) or (2) that relate to products listed in the Schedule

⁴ Welsh Government, [Legislative Consent Memorandum](#) – Product Regulation and Metrology Bill, 25 July 2024

⁵ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Great British Energy Bill](#), 17 September 2024

⁶ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Great British Energy Bill](#), 5 November 2024

- Clause 2 – Product requirements
- Clause 3 – Enforcement of product regulations
- Clause 4 – Emergencies
- Clause 7 – Information Sharing
- Clause 8 – Cost Recovery
- Clause 9 – Consequential amendment of certain Acts
- Clause 10 – Interpretation
- Schedule – Excluded Products

9. In the Memorandum, the Cabinet Secretary states:

“... insofar as the powers in Bill could be used to make provision in the devolved areas of health, economic development, environmental protection and animal and plant health, an LCM is required. The only exceptions, so those provisions in the Bill that do not require an LCM, are Clause (1)(1)(c), Clause 5, Clause 6 and Clause 9(3), which we consider bear more than a loose or consequential connection to reservation C8: weights and measures and do not engage any matters of devolved competence.”⁷

UK Government view on the need for consent

10. In the Explanatory Notes to the Bill, the UK Government specifies that the Bill requires the legislative consent of the Senedd, and agrees that consent is required for clauses 1 to 4 (in part) and 7 to 11 (in part).⁸

11. In the Memorandum, the Cabinet Secretary notes that:

“Within their devolved analysis the UK Government further stated that the vast majority of the powers that they anticipate exercising under the Bill will relate to reserved matters only within the Government of Wales Act (2006).

⁷ Memorandum, paragraph 10

⁸ Explanatory Notes to the Product Regulation and Metrology Bill, as introduced, Annex A

However, they also acknowledge there may be circumstances in which exercise of powers in Clause 1(1)(a), 1(1)(b) and 1(2) could potentially touch upon areas beyond these broad reservations.”⁹

12. Within the UK Government's delegated powers memorandum for the Bill, the following justification is provided for the regulation-making powers in clause 1:

“A delegated power is needed in order to ensure that the Secretary of State is able to respond swiftly to any new risks and hazards that might arise in this area, as well as ensuring continuity across the United Kingdom internal market. This will include an ability to maintain continuity with relevant EU law where it is deemed appropriate and, in the United Kingdom's best interests to do so, but also the ability to make different provision to the EU.”¹⁰

Financial implications

13. At paragraph 35 of the Memorandum, the Cabinet Secretary provides the following assessment of the Bill's provisions in relation to Wales that have regard to devolved matters:

“The Impact Assessment provided alongside the Bill provides a qualitative analysis for the measures sought [by] the Bill. It provides details of the market failures the enacting powers would help reduce and provide examples of how the powers could be used. The use of the enabling powers would be subject to secondary legislation and impact assessments quantifying the impacts. Therefore, no financial implications have been identified at this stage; however further advice will be submitted should this position change.”

The Welsh Government's position

14. Standing Order 29.3(iii) provides that a legislative consent memorandum must explain whether it is considered appropriate for devolved provision to be made by means of a Bill.

⁹ Memorandum, paragraphs 31-32

¹⁰ UK Government, [Product Regulation and Metrology Bill, Delegated Powers Memorandum](#), 5 September 2024

15. In the Memorandum, the Cabinet Secretary acknowledges the broad aims of the Bill:

“The development of a UK wide product safety regime can be seen as key part of the wider ambition to establish and maintain an effective UK internal market. In addition, it will have additional benefits in terms of health and safety of products, notably in respect of fire safety. This Bill provides the UK Government with the necessary powers in line with this broader aim. In this sense, it is sensible and practical to support the UK Government efforts to achieve this aim which is of clear interest to all parts of the UK, including Wales.”¹¹

16. The Cabinet Secretary goes on to say, however:

“... further engagement is needed with UK Government on the breadth of the regulation making powers at [clauses] 1(1)(a), 1(1)(b) and 1(2). Our initial analysis is that these powers could be used in a way which would significantly impinge on devolved competence in respect of the wider sphere of economic development but also environmental protection and other areas.”¹²

17. The Cabinet Secretary concludes at paragraph 36 of the Memorandum:

“We are supportive of this bill with respect to its role in facilitating the smooth functioning of the UK Internal Market. However, further engagement is required with UK Government on the enabling powers in clauses 1(1)(a), 1(1)(b) and 1(2), and the role of the Welsh Ministers and the Senedd in this area. I will provide further updates to the Senedd on the Welsh Government's position in relation to this Bill following further engagement.”

Evidence from the Cabinet Secretary

18. We considered the Memorandum at our meeting on 14 October 2024.¹³ At that meeting, we agreed to invite the Cabinet Secretary to provide oral evidence

¹¹ Memorandum, paragraph 32

¹² Memorandum, paragraph 34

¹³ [Legislation, Justice and Constitution \(LJC\) Committee](#), 26 February 2024

in respect of the Memorandum; an evidence session was subsequently held on 4 November 2024.¹⁴

The Welsh Government's position

19. The Cabinet Secretary told us that, before the Welsh Government could recommend consent, further discussion was required with the UK Government “on the role of Welsh Ministers and of the Senedd”.¹⁵ She also stated that there were “positive discussions both at ministerial level and at official level”¹⁶, and that the UK Government “understand the issues.”¹⁷

20. The Cabinet Secretary committed to provide us with further information on the Welsh Government's position in respect of the Bill as soon as the Welsh Government was able to do so.¹⁸

Engagement with the UK Government

21. The Cabinet Secretary elaborated on engagement between the Welsh Government and the UK Government in respect of the Bill as follows:

“... these are the discussions that we're having currently with the UK Government around what the role of Welsh Ministers and the Senedd would be ... Obviously, our position would be to look for [a] consent [mechanism], so that really gets to the heart of the discussions that we're having with the UK Government and the consideration that we will have to give in terms of whether or not to recommend that the Senedd gives its consent following that. But, of course, there'll be discussions to be had, then, in relation to the specific regulations that will flow from the Bill as well.”¹⁹

22. The Cabinet Secretary also provided further detail about this engagement:

“I met with Lord Leong on 2 October, and, again, we had a really good discussion there. That was very much focused around the role, again, of the Welsh Ministers and of the Senedd ... I was able to set out the Welsh Government's

¹⁴ LJC Committee, 4 November 2024, Record of Proceedings (RoP)

¹⁵ LJC Committee, 4 November 2024, RoP [10]

¹⁶ LJC Committee, 4 November 2024, RoP [10]

¹⁷ LJC Committee, 4 November 2024, RoP [73]

¹⁸ LJC Committee, 4 November 2024, RoP [75]

¹⁹ LJC Committee, 4 November 2024, RoP [16]

principles in this space, how important it is that it is the Senedd that has the chance to have its say and make decisions here for Wales for the things that we have responsibility for. Those discussions were good as well, and we agreed that our officials would work together to try and resolve some of the concerns that we have.”²⁰

23. The Cabinet Secretary confirmed that the Bill was in development before the election of the new UK Government²¹, and, in this respect, an official accompanying the Cabinet Secretary stated as follows:

“... it's important to say as well that we're working with officials who now have the authority to engage with us in a thoroughly ... we go through the detail. Before this point, we didn't have the detail, and in fact a lot of the time we are re-educating about devolution, the Senedd. We have to do that. It takes time.”²²

Framework nature of the Bill

24. The Cabinet Secretary explained to us why she understood the Bill to be of a framework nature:

“... with this particular Bill, the regulations that relate to product safety and metrology span to some 2,500 pages, and, as I understand it, they are frequently updated to keep pace with changes, and that's part of the reason why this is a framework Bill, because things change frequently. Lots of them are technical changes in terms of weights and measures and so on, so I think that that perhaps sets that part of the Bill apart from others.”²³

Delegated powers in the Bill

25. On several occasions, the Cabinet Secretary referred to the Bill including a duty to consult.²⁴ However, no such duty is included in the Bill.

26. It is within the context of these statements about a duty to consult that the Cabinet Secretary expressed a view for a requirement to seek consent to be

²⁰ LJC Committee, 4 November 2024, RoP [45]

²¹ LJC Committee, 4 November 2024, RoP [13]

²² LJC Committee, 4 November 2024, RoP [63]

²³ LJC Committee, 4 November 2024, RoP [22]

²⁴ LJC Committee, 4 November 2024, RoP [16, 45, 47 to 48, 73]

included in the Bill instead.²⁵ She stated that this issue formed the “nub” of discussions with the UK Government²⁶, and that including a requirement to seek consent would be “one of the most simple ways” in which some of the concerns raised by the Welsh Government could be addressed.²⁷

27. However, the Cabinet Secretary also stated that there were “other ways” that the Welsh Government could look to “potentially make changes”.²⁸ An official accompanying the Cabinet Secretary provided examples of such “legislative solutions”:

“... the Environment Act 2021, a Bill that the Senedd did support, would be one example. The coronavirus rent restriction Bill and other sorts of situations that we've looked at, as the Cabinet Secretary has alluded to, also provide more of a legislative scrutiny role for the Senedd rather than just that pure consent role for Welsh Ministers ...”²⁹

Interaction with the UK Internal Market Act

28. We asked the Cabinet Secretary to explain what assessment the Welsh Government had made of the Bill's interaction with the *United Kingdom Internal Market Act 2020* (the UK Internal Market Act). In response, the Cabinet Secretary told us:

“What the Bill will do is allow the law to be updated to recognise new or updated EU product requirements. And the intention then is to prevent unnecessary costs and inconvenience to businesses, providing that regulatory stability. So, clearly, that's in the interest of UK businesses and Welsh businesses. But, as I mentioned earlier, there are around 2,500 pages of legislation spanning areas that routinely need that kind of technical updating. So, that will allow us, really, to ensure that we are aligned with EU standards, ensuring that businesses are able to access the EU market and prevent passive divergence, because that was something that we were concerned about very much in the Senedd during that period

²⁵ LJC Committee, 4 November 2024, RoP [16]

²⁶ LJC Committee, 4 November 2024, RoP [47]

²⁷ LJC Committee, 4 November 2024, RoP [73]

²⁸ LJC Committee, 4 November 2024, RoP [73]

²⁹ LJC Committee, 4 November 2024, RoP [60]

*when we were talking about Brexit and how Brexit would look. So, this aims to prevent that.*³⁰

Relationship with the Trade and Co-operation Agreement

29. We also asked the Cabinet Secretary to explain the relationship between the Bill and the UK-EU Trade and Co-operation Agreement (the Trade and Co-operation Agreement). The Cabinet told us in response:

“... the Bill is a framework Bill, which is why the TCA isn't impacted in that sense, but it might be in terms of the regulations that come underneath it.”³¹

Financial implications

30. Finally, we asked the Cabinet Secretary to set out what regulatory and financial impact assessments had been undertaken by the Welsh Government in respect of the Bill's provisions in relation to Wales that have regard to devolved matters. The Cabinet Secretary's response did not refer to any assessments yet undertaken by the Welsh Government, but rather:

“... the UK Government's impact assessment does provide a qualitative analysis for the measures that are sought, and it does provide details, then, of the kinds of market failures that the Bill is trying to help reduce and gives some examples of how the powers could be used. But, of course, those powers would be subject to the secondary legislation, and, again, that's the kind of space where we would expect to see the impact assessments in more detail in relation to the pieces of secondary legislation that might come forward.”³²

³⁰ LJC Committee, 4 November 2024, RoP [81]

³¹ LJC Committee, 4 November 2024, RoP [14]

³² LJC Committee, 4 November 2024, RoP [27]

2. Committee consideration

31. We agreed our report on the Memorandum on 25 November 2024.

Our view

Provisions requiring consent

32. We note the Welsh Government's assessment of the provisions within the Bill which require the consent of the Senedd, insofar that its powers could be used to make provision in devolved areas such as health, economic development, environmental protection, food packaging and animals.

Conclusion 1. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions within the Bill which require consent of the Senedd in accordance with Standing Order 29.

33. We also note that the UK Government agrees that consent is required for clauses 1 to 4 (in part) and 7 to 11 (in part) of the Bill.

34. We further note, and bring to the Senedd's attention, that the Memorandum is silent on the question of whether the Senedd should consent to the Bill.

35. We however acknowledge the Cabinet Secretary's commitment to keep the Senedd informed about the Welsh Government's position following further engagement with the UK Government. As set out below, we raise a series of concerns about the powers in the Bill. With these in mind, we believe it is imperative that the Cabinet Secretary continues to provide regular updates to the Senedd on the Welsh Government's developing position in respect of the Bill.

Recommendation 1. The Cabinet Secretary should continue to provide regular updates to the Committee and the Senedd on its position in respect of the Bill, to enable it to form a view on whether or not it should provide its consent.

Engagement with the UK Government

36. We note the Cabinet Secretary's comments about there being a good level of engagement between the Welsh Government and the UK Government in respect of the Bill.

37. We also note that, according to the Cabinet Secretary, discussions between the Welsh Government and the UK Government are focused on seeking a role for

the Welsh Ministers and the Senedd when the delegated powers in the Bill are exercised in devolved areas. We turn to this matter later in our report.

38. It is however disappointing and concerning to hear about a lack of understanding of devolution among some officials in the UK Government – especially so after 25 years of the Senedd's existence.

39. We therefore reiterate our view, as expressed to the House of Commons Public Administration and Constitutional Affairs Committee,³³ that while there may have been improvements in individual government departments, collectively we do not believe that there has been enough progress overall to improve the knowledge and understanding of devolution across Whitehall. We believe this to be important because of the adverse impact it can have on legislation made in devolved areas by the UK Parliament and the UK Government, as well as making for inefficient intergovernmental relations.

Framework nature of the Bill

40. We have previously expressed our concern about an increasing use of framework legislation in the context of Bills introduced by the Welsh Government. Within our annual report for 2022/23 we stated that, by their nature, framework Bills take power away from the legislature and give it to the executive, leaving the policy detail for inclusion in regulations which are not subject to the level of line-by-line consideration and engagement afforded by the scrutiny process for primary legislation.³⁴ We also drew attention to our concerns about framework Bills in our annual report for 2023/24.³⁵

41. We are therefore concerned to observe the extensive framework nature of this Bill, as highlighted by the House of Lords Delegated Powers and Regulatory Reform Committee (the DPRR Committee). We note that the DPRR Committee has called for the delegated powers in clauses 1, 2, 3 and 9 to be removed from the Bill, and has stated that those clauses:

“... are an example of what the Committee refers to as “skeleton legislation”. They contain almost no substance about the marketing and use of products but instead give Ministers very broad powers which confer considerable discretion to legislate

³³ House of Commons Public Administration and Constitutional Affairs Committee, Inquiry: Devolution Capability in Whitehall, [DCW0020: Written evidence from the Legislation, Justice, and Constitution Committee](#), 17 October 2023

³⁴ LJC Committee, [Annual Report 2022/23](#), November 2023, paragraph 84

³⁵ LJC Committee, [Annual Report 2023/24](#), November 2024, paragraphs 97 to 101

in that area by statutory instrument. Almost all of the substance of the regulatory regime that is to govern the marketing and use of products (including product safety) is to be left to regulations. Even existing provision in primary legislation may be replaced by provision in regulations.”³⁶

42. We further note that, after it sought further justification in oral evidence from the UK Government on the framework nature of the Bill³⁷, the Committee's concerns were unallayed. It stated in a subsequent report:

“In our view, the delegation to Ministers of law-making powers in this Bill involves legislative power shifting to an unacceptable extent from the democratically appointed legislature to the Executive.

We remain of the view expressed in our Report of 15 October that the Government have failed to provide a convincing justification for the inclusion of skeleton clauses in this Bill that give Ministers such wide powers to re-write in regulations the substance of the regulatory regimes for products and metrology.”³⁸

43. The House of Lords Select Committee on the Constitution (the Constitution Committee) has expressed similar concerns to those raised by the DRRR Committee in respect of the Bill.³⁹

44. We share these concerns, and are not convinced by the Cabinet Secretary's explanation for why – as she understands it – the Bill is so extensively framework in nature. We recognise that the law in this area is predominantly found in subordinate legislation currently, and there may be circumstances in which it becomes necessary to change that legislation frequently. However, as stated by the DRRR Committee, is it unclear why it is necessary for almost all of the substance of this law to be included in delegated legislation made by UK Government Ministers, leaving behind a very limited scrutiny role for legislatures.

³⁶ House of Lords Delegated Powers and Regulatory Reform Committee, [2nd Report of Session 2024-25](#), 15 October 2024, paragraph 18

³⁷ House of Lords Delegated Powers and Regulatory Reform Committee, [16 October 2024 – Product Regulation and Metrology Bill – Oral evidence](#)

³⁸ House of Lords Delegated Powers and Regulatory Reform Committee, [4th Report of Session 2024-25](#), 28 October 2024, paragraphs 6-7

³⁹ House of Lords Select Committee on the Constitution, [2nd Report of Session 2024-25](#), 18 October 2024, paragraphs 5-7

Conclusion 2. We view the Bill as a framework Bill, which takes power away from the legislature and gives it to the executive. As such we support the House of Lords Delegated Powers and Regulatory Reform Committee's calls to remove the wide delegated powers contained in the Bill.

45. If the Bill is enacted, we believe that the Senedd – should it resolve to do so – would have the necessary powers to amend the Bill to the extent that it applies to devolved areas. We believe that the Welsh Government should state whether or not it shares our view, and whether introducing a Bill to amend such provisions could be a way – of last resort – of resolving its concerns in respect of the Bill.

Recommendation 2. The Cabinet Secretary should state:

- whether the Welsh Government believes a Bill introduced in the Senedd could be used to amend the Bill – if enacted – to the extent that it applies to devolved areas; and
- whether the Welsh Government considers that following such an approach would be viable, should it be necessary, to resolve its concerns in respect of the Bill.

Delegated powers in the Bill

46. We note that, in addition to its concerns as referenced above, the DPRR Committee is also “deeply concerned” that the scope of the powers in the Bill “is not constrained by any requirements for consultation, for criteria to be met or for meaningful pre-conditions to be satisfied.”⁴⁰

47. We also note that the Constitution Committee has concluded as follows in respect of the powers in the Bill:

“... when exercising delegated powers in areas of devolved competence, formal engagement with the devolved administrations on the use of such powers should take place. The House [of Lords] may wish to seek clarification from the Government as to the processes of consultation and consent it intends to apply in relation to the Bill's delegated powers in the event that they are used to make regulations in areas of

⁴⁰ House of Lords Delegated Powers and Regulatory Reform Committee, 4th Report of Session 2024-25, 28 October 2024, paragraph 5

devolved competence; in particular, where these powers are used to alter acts of the devolved legislatures.”⁴¹

48. We further note that, with regard to the absence of a mechanism to consult or to seek consent within the Bill, on 29 October 2024 the UK Government issued the following response to the DPRR Committee:

“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. ...

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.”⁴²

49. We acknowledge the Cabinet Secretary's statement – expressed to us on 4 November – that discussions between the Welsh Government and the UK Government are focused on seeking a role for the Welsh Ministers and the Senedd when the delegated powers in the Bill are exercised in devolved areas.

⁴¹ House of Lords Select Committee on the Constitution, 2nd Report of Session 2024-25, 18 October 2024, pages 3-4

⁴² House of Lords Delegated Powers and Regulatory Reform Committee, 6th Report of Session 2024-25, 30 October 2024, paragraph 5

50. However, it is concerning to us that it appears that the UK Government's response to the DPRR Committee – as published only a week prior to the Cabinet Secretary's evidence – states that the Bill does not provide for statutory consultation “because the appropriate level of engagement will depend on the circumstances”. It is of a further concern that the UK Government's response does not make any reference to the role of devolved governments or legislatures.

51. Should the broad nature of the powers in the Bill continue to exist in their current form, we believe it is fundamental that there is a role for the Senedd – or at the very least the Welsh Ministers – when those powers are exercised in devolved areas. In this regard, we note the Cabinet Secretary's view that including a requirement in the Bill to seek the consent of the Welsh Ministers would be “one of the most simple ways” in which the concerns raised by the Welsh Government could be addressed.

52. We however believe that if no additional constraints on these powers are included on the face of the Bill, there ought to be a role for the Senedd if they are exercised in devolved areas. To enable this role, we believe that the Welsh Ministers should be provided with the same powers as those of UK Government Ministers, with the appropriate level of Senedd scrutiny, when it is deemed necessary to exercise them in devolved areas. It is only by this means that the Senedd will be able – although in a limited way – to undertake scrutiny of any subordinate legislation in devolved areas which emanates from the Bill.

Recommendation 3. The Bill should be amended to enable the Welsh Ministers to exercise the delegated powers contained within the Bill in devolved areas.

53. We believe that it is only after the Welsh Government have been unable to secure this commitment from the UK Government that it should pursue the inclusion of other mechanisms in the Bill, such as a requirement to seek the consent of the Welsh Ministers when the powers in the Bill are exercised in devolved areas.

54. We note that the Cabinet Secretary told us that there were “other ways” that the Welsh Government could look to “potentially make changes” to the Bill. We believe that the Cabinet Secretary should provide clarity to the Senedd as to the options under consideration.

Recommendation 4. The Cabinet Secretary should set out the different ways the Welsh Government is seeking the Bill to be amended to ensure a role for the Welsh Ministers and the Senedd.

Flexibility to align or diverge with EU law

55. We note that the DPRR Committee has also raised concerns at the “maximum flexibility” the powers in the Bill will provide to UK Government Ministers enabling them to decide whether to align or diverge with EU law, stating as follows:

“Ministers could, should they so wish, use these powers as a mechanism for ensuring that UK domestic law on product regulation is completely aligned with EU law. Alternatively, they could use the powers to provide for UK domestic law to diverge in significant respects from EU law. Whatever direction Ministers may choose to take the law in—and however significant in policy terms that may be—it is to be done by means of delegated legislation that will be subject only to a relatively low level of parliamentary scrutiny.”⁴³

56. We also note that the Constitution Committee has expressed similar reservations, stating:

“We are concerned by the Government’s justification for these broad powers. In light of the UK’s withdrawal from the EU, it is now possible for Parliament to assess and influence policy development in a range of areas that were once governed by secondary legislation implementing EU law. Where potentially significant changes are to be made to law, whether assimilated former EU law or otherwise, this should be done by primary legislation, giving Parliament the opportunity to undertake detailed scrutiny.”⁴⁴

57. During our consideration of the Welsh Government’s legislative consent memoranda on the Retained EU Law (Revocation and Reform) Bill (now 2023 Act), we expressed our concerns at the broad scope of powers contained in that Bill to save, reform or remove retained EU law (now assimilated law).⁴⁵ Since the Bill’s enactment, we have continued to closely scrutinise the use of its powers.⁴⁶

⁴³ House of Lords Delegated Powers and Regulatory Reform Committee, 2nd Report of Session 2024-25, 15 October 2024, paragraph 32

⁴⁴ House of Lords Select Committee on the Constitution, 2nd Report of Session 2024-25, 18 October 2024, paragraph 11

⁴⁵ LJC Committee, [The Welsh Government’s Legislative Consent Memoranda on the Retained EU Law \(Revocation and Reform\) Bill](#), February 2023, paragraphs 223-239

⁴⁶ LJC Committee, Annual Report 2022/23, November 2023, paragraphs 59-60

58. In light of the concerns raised by committees, we therefore reiterate our view that the powers in the Bill should be constrained, to enable a role for the legislature to undertake detailed scrutiny of potentially significant changes to legislation. If such changes are not made to the Bill, the Bill should instead include a role for the Senedd and the Welsh Ministers when its powers are exercised in devolved areas. It is only by this means that there will be an opportunity for the Senedd and its committees to monitor any decisions to align the law in devolved areas with EU law, or otherwise diverge from EU law.

The Bill's interaction with the UK Internal Market Act and common frameworks

59. We note that the Bill does not make reference to the UK Internal Market Act. Its absence has been highlighted by Professor Thomas Horsley of Liverpool University⁴⁷ as well as the Constitution Committee, which has stated:

"The United Kingdom Internal Market Act 2020 introduced the Market Access Principles to regulate, among other things, trade across the UK in goods and services. These Principles include 'mutual recognition' and 'non-discrimination' in relation to goods. They are designed to ensure alignment across the UK. We note that the Bill makes no reference to the UK Internal Market Act, despite the potential for regulations made under the Bill to encompass the use and marketing of products."⁴⁸

60. It is unclear to us why the Bill does not make reference to the UK Internal Market Act and from the evidence provided to us by the Cabinet Secretary, it continues to be unclear to us to what extent the Bill's provisions will interact with the Act.

61. We however note that the Office of the Internal Market has informed us of its view, at this stage, of the extent of this interaction:

"... there is no interaction between the Bill itself and the UK Internal Market (UKIM) Act 2020 Market Access Principles (MAPs) as the Bill itself is designed to achieve regulatory alignment across the UK in certain policy areas. Consequently, if powers are exercised under the legislation, there would be no regulatory difference in these areas such that a business or

⁴⁷ UK Constitutional Law Association, [Thomas Horsley: Relations Reset or Regression? Devolution and the Product Regulation and Metrology Bill](#), 17 September 2024

⁴⁸ House of Lords Select Committee on the Constitution, 2nd Report of Session 2024-25, 18 October 2024, paragraph 35

other market participant could 'use' the MAPs to trade across the nations of the UK."⁴⁹

62. Notwithstanding the view of the Office of the Internal Market, we believe the matter of the Bill's interaction with the UK Internal Market Act to be of particular importance which requires further clarification. While we note that the Constitution Committee has recommended that the House of Lords seek such clarity from the UK Government⁵⁰, we believe the Welsh Government should similarly provide clarity to the Senedd as to its own assessment of the Bill's interaction with the UK Internal Market Act.

Recommendation 5. The Cabinet Secretary should set out the Welsh Government's assessment of the Bill's interaction with the *United Kingdom Internal Market Act 2020*, and commit to provide such an assessment in any supplementary legislative consent memoranda laid in respect of the Bill.

63. We note that the Constitution Committee has made similar comments in respect of the Bill's interaction with UK common policy frameworks (common frameworks), as follows:

*"... the regulation-making powers under the Bill are so broadly framed that they might permit the Government to circumvent the restrictions imposed by both the UK Internal Market Act and common frameworks, allowing it to act unilaterally in areas where significant steps have already been taken to ensure consensual decision-making and common standard-setting."*⁵¹

64. In June 2023 the then Counsel General and Minister for the Constitution, Mick Antoniw MS, told us that common frameworks "have the potential to be enduring, flexible and increasingly significant governance mechanisms for the policy areas previously governed by EU law."⁵² It is therefore concerning that the Bill's provisions could have a negative impact on the effective operation of common frameworks. As such, we believe that the Welsh Government should also provide clarity to the Senedd on the Bill's potential impact in this area.

⁴⁹ [Letter from the Office of the Internal Market, 13 November 2024](#)

⁵⁰ House of Lords Select Committee on the Constitution, 2nd Report of Session 2024-25, 18 October 2024, paragraph 37

⁵¹ House of Lords Select Committee on the Constitution, 2nd Report of Session 2024-25, 18 October 2024, paragraph 36

⁵² [Letter from the Counsel General and Minister for the Constitution, 22 June 2023](#)

Recommendation 6. The Cabinet Secretary should set out the Welsh Government's assessment of the Bill's interaction with UK common policy frameworks, and commit to provide such an assessment in any supplementary legislative consent memoranda laid in respect of the Bill.