

Product Regulation and Metrology Bill

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| Lead department | Department for Business and Trade |
| Summary of proposal | The proposal is to deliver reform to the product regulation and metrology framework to ensure that it is sufficiently agile for responding to emerging threats, new technology and changes in EU law. |
| Submission type | Urgent measure – 7 August 2024 |
| Legislation type | Primary legislation |
| Implementation date | 2025 |
| RPC reference | DBT-24002-IA(1) |
| Date of issue | 17 September 2024 |

RPC opinion

| Rating | RPC opinion |
|------------------------|---|
| Fit for purpose | The Department provides sufficient evidence of the problem under consideration; the regulatory inflexibility means the IA has a strong argument for intervention. The IA includes a long-list and short-list of options, but this could be improved by utilising the Green Book's options framework filter and critical success factors. The Department has not provided monetisation of the impacts for the short-listed options but has, instead, provided a qualitative assessment, consistent with RPC guidance. The Regulatory Scorecard could be improved by including further detail of the impacts expected from the related secondary legislation. |

Urgent measure statement

The Department has used the better regulation framework's urgent procedure for this IA given its priority in meeting manifesto commitments, as set out in the Government's legislative programme 2024/25.

Where the Government decide that legislation is required urgently, and there has been insufficient time for an options assessment (OA) to be submitted to the RPC for independent scrutiny in accordance with better regulation framework requirements, departments are required to submit an IA for scrutiny as early as possible. The IA should contain the evidence on the rationale, identification of options and the justification for the preferred way forward that would, normally, be included in an OA. The RPC offers an overall fitness-for-purpose (red/green) rating, informed by the individual red/green ratings for those three categories. The decision to legislate was taken before the RPC had an opportunity to scrutinise an OA/IA, and issue an opinion. This will, nevertheless, allow ministers and other stakeholders to be aware of the assessment that would have taken place at OA stage to reflect in further stages of the legislative process.

RPC summary

| Category | Quality | RPC comments |
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| Rationale | Green | The IA outlines the problem under consideration and the argument for intervention, which is focused on current regulatory inflexibility and existence of market failures. The Department supports this rationale by evidencing cases of inadequate product safety such as fires caused by e-bicycles and e-scooters and non-compliant toys, but this could be improved by developing the evidence base further. |
| Identification of options (including SaMBA) | Green | The IA considers several long-list options but would benefit from using the Green Book's options framework filter. The IA considers alternative options to regulation, justifying why these were not carried forward. The IA would benefit from providing further justification for the reduced selection of short-listed options. The IA includes a sufficient SaMBA. |
| Justification for preferred way forward | Green | The Department has provided a qualitative assessment, consistent with RPC guidance. However, some potential impacts, such as familiarisation costs, are missing. The IA could have benefitted from providing more clarity on the counterfactual scenario and consideration of any potential mitigations for SMBs. |

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| Regulatory Scorecard | Weak | Despite the Department indicating that it does not expect any direct impact on social welfare, businesses or households because the Bill contains only enabling powers, the Regulatory Scorecard should provide a summary of its assessment of the total expected impacts from both the primary and related secondary legislation, as the Department has done in other areas of the IA. |
| Monitoring and evaluation | Satisfactory | The IA outlines that the Office for Product Safety and Standards (OPSS) Industry Attitudes Tracker will be used to monitor and assess the impact of the proposals, as well as external surveys and the OPSS Public Attitudes Tracker, but it would benefit from including further detail on the nature of these data. |

Summary of proposal

The product regulatory framework in the UK covers the majority of consumer products as well as a significant number of industrial products, from cosmetics and toys, through pyrotechnics to heavy machinery and pressure equipment. Over 2,500 pages of secondary legislation ensure that UK consumers and workers are protected.

The majority of the UK's product safety and metrology framework is derived from EU law developed over the past four decades. As technology and regulation continues to develop, the UK needs powers to address current, or future, threats and hazards, and ensure a continuous supply of safe goods on the UK market. The Bill intends to enable the UK to make the choice to mirror, or diverge from, updated EU rules, to ensure high product safety standards are maintained while supporting business and economic growth.

The Department considers two options within the IA:

- **Option 0: Do Minimum** – the Government retain the current system in GB, which provides only limited powers to make any amendments to product legislation (as incorporated into UK law following the UK's exit from the EU), beyond those that are necessary to support scientific and technological change.
- **Option 1: Powers in primary legislation (preferred option)** - enact the powers as detailed in the summary of the proposal. In summary these are:
 - Ensure that the law can be updated
 - Respond to new product risks and opportunities
 - Identify actors and place duties upon those in the supply chain

- Enable improvements to compliance and enforcement
- Update the legal metrology framework

The analysis makes a qualitative assessment of the costs and benefits of the preferred option because it provides powers to take future action. Secondary legislation would enact changes under the preferred option. The IA does not, therefore, provide monetised NPSV or EANDCB figures.

Rationale

Problem under consideration

The IA outlines the problem under consideration, referencing the inability of existing regulation to address the rapid growth of online business models, update or amend the existing legislative framework implemented to either keep pace with developments and risks from new technology, or recognise EU law where appropriate. The Department supports this rationale by evidencing cases of inadequate product safety such as fires caused by e-bicycles and e-scooters and non-compliant toys.

However, the IA could be improved by drawing more explicitly on consultation evidence and stakeholder feedback to develop further the evidence base to support the problem under consideration. In particular, the IA could provide more detail on the evidence from stakeholders who highlighted the uncertainty regarding whether The General Product Safety Regulations 2005' definition for distributors covers online marketplaces and whether they are, therefore, subject to the same obligations, including more information on the proportion of stakeholders who highlighted this risk for the industries they represent. Equally, the IA could benefit from providing examples of emerging categories of consumer goods and market structures that are not covered by the existing product safety regulation framework.

Argument for intervention

The IA's argument for intervention is focused on the current regulatory inflexibility, the existence of market failures and the strong argument that all current powers expire by 2026. The IA states that the current regulatory regime for product safety has become limited in what it can achieve in a modern marketplace, which could hinder the UK's ability to grow the economy, meaning the IA has a strong argument for intervention. As technology continues to develop (such as the growth in online marketplaces), the UK needs powers to address current, or future, risks that it may pose for product safety, while harnessing the opportunities for new technologies to deliver growth.

The IA also references the existence of market failures, such as information asymmetries and negative externalities, but could benefit from providing relevant evidence to support these arguments, particularly on how they relate to updating the metrology framework.

The Department's arguments on long lead times for many manufacturing products and the need to consider compliance with product safety requirements during the design stage of a product supports the importance of the Bill to provide clarity on product safety standards to support the certainty and stability necessary for investment.

The IA considers well, the consequences if government does not intervene, detailing the risks to the ease of doing business in the UK, consumer safety, supply chains and international trade. In particular, there will be a divergence in regulation between Northern Ireland and GB under the Windsor Framework. The Department supports these arguments by evidencing the potential cost incurred if businesses needed to undertake testing requirements for more than one product safety standard (such as CE and UKCA). The IA could benefit from the inclusion of international case studies to support the argument for intervention, showing examples of negative consequences if governments do not align product safety standards with key trading partners.

Objectives and theory of change

The IA discusses several high-level objectives and the intended outcome with a proportionate amount of detail. However, the Department would benefit from fully applying the SMART objectives framework when forming the objectives. The provided objectives are specific, achievable and realistic but do not consider the measurability and time-limited aspects of the SMART framework.

The logic map, although fit for purpose, would benefit from referencing any broad evidence, research findings or examples for how the final outcomes and impacts would be generated by the preferred option to reform the product safety regulation framework. The IA notes that further logic maps will be developed to accompany specific proposals taken forward through secondary legislation.

Identification of options (inc. SaMBA)

Justification for the short-list options

The Department discusses several interventions that have been considered to achieve the aims of the policy, including utilising existing powers and tackling high-risk issues that demand immediate resolutions. Although this discussion effectively forms a long-list, the Department would benefit from organising these options into a clear long-list with an ordered and structured format for ease of comparison. The IA would also benefit from using the Green Book's options framework filter, detailing how research and the advice of experts had been used to generate the long-list, as well as providing more qualitative detail on each option and the associated risks.

The Department could also use the Green Book's critical success factors (CSFs) to display a systematic process of how the long-listed options were discarded to produce the short-list. The use of CSFs could provide a clearer argument for why certain options were discounted. For instance, the IA has discarded using the Consumer Protection Act as it does not capture all of the products in scope, a decision that could be supported by not meeting a strategic-fit CSF.

By setting out the different measures in the Bill more independently, differentiating the wide range of measures into separate options in both the long-list and the short-list in the IA, the IA would be able to provide more detail on the metrology measure and provide clarity around the increment of change and the 'do-minimum' option.

Consideration of alternative options to regulation

The IA considers alternative options to regulation, including implementing incremental changes through existing regulation (such as through the Consumer Protection Act), issuing new statutory guidance for the current framework and providing training materials. The options assessment could be improved by considering other forms of non-regulatory instruments, such as potential changes to standards and accreditation organisations (which could establish an improved criteria for product quality), and could have considered the success of regulatory and non-regulatory instruments in comparable sectors (such as the food safety sector).

The IA provides sufficient justification for regulatory change in place of non-regulatory options, stating that due to decades of layering of legislation and a limited ability to tackle emerging business models, legislative change is required. This justifies why the non-regulatory options are not carried forward to the appraisal of short-listed options.

SaMBA and medium-sized business (MSB) assessment

The Department has provided a sufficient SaMBA. The IA explains why exemptions for SMBs are not appropriate, stating that regulation of product safety and standards must apply to all firms in order to be effective. Furthermore, the Department uses ONS UK business population estimates to demonstrate that the majority of businesses covered by OPSS regulation and policies are SMBs, with DBT estimating that 90 per cent of manufacturers affected by the metrology measure are small and medium-sized. It is reasonable, therefore, to assume that the majority of the intended policy objectives would not be met if these businesses were exempt.

However, the IA would benefit from integrating this part of the SaMBA into its options identification section. (The assessment of disproportionate impacts and appropriate mitigations for SMBs falls within Section 6 of the template - "Description of shortlisted policy options carried forward").

The IA has considered the possible impacts of the preferred option on SMBs, detailing that they could face disproportionate familiarisation costs but, overall, there are not expected to be disproportionate impacts as they are likely to benefit from the proposals, as they will provide a clearer and more consistent framework, making it easier for businesses to understand and comply with relevant regulation. Equally, enforcement approaches will be designed to protect SMBs by taking into consideration the size of a business when calculating fines. Nevertheless, the IA would benefit from considering any potential mitigations for SMBs.

Justification for preferred way forward

Identifying impacts and scale

The Department has not provided an NPSV calculation or a full monetisation of the impacts for the short-listed options. This is because the powers themselves do not result in costs or benefits to business or households. The IA confirms that costs and benefits would be analysed further for the related secondary legislation. The IA's approach is consistent with RPC guidance on assessment of the impacts of the primary legislation and the Department has provided a qualitative assessment, using case studies and indicative figures, to illustrate the likely scale of impacts, including estimating the size of the potential markets involved.

However, the IA's qualitative assessment appears limited in places, and the IA would benefit from providing further quantification to justify the selection of the preferred option. For instance, the IA could provide indicative estimates of the data set-up costs required to create a new data gateway under the compliance and enforcement measure, as well as indicative estimates of enforcement costs and the compliance

costs to business from updating the metrology framework. Although these figures may be uncertain, they would be useful to illustrate potential impacts further.

The IA states that familiarisation costs have not been estimated for the Bill as the powers are enabling and do not directly change business requirements. However, the IA should consider monetising this impact, as it is likely that businesses would need to understand the primary legislation. Furthermore, the IA could monetise or provide an early indicative estimate of the familiarisation impact that is expected from secondary legislation.

There are some potential missing impacts in the qualitative assessment, such as labour costs associated with obtaining conformity assessments. Furthermore, although the proposal gives the power either to align dynamically with *CE* requirements, or to end recognition of them, the benefits assessment appears skewed towards the former. Therefore, in addition to the existing discussion of the costs, the IA could benefit from setting out any potential benefits of divergence from *CE* recognition.

Similarly, the IA focuses its discussion on the impacts of aligning with *CE* or UKCA markings and could have considered the impacts of aligning with alternative regulations and standards. Furthermore, the IA could have discussed the potential risks associated with choosing to align with one standard (in this case the *CE* marking) over standards developed in other jurisdictions, given this will result in divergence with existing and evolving standards elsewhere.

Counterfactual

The IA states that the counterfactual scenario is where the Bill is not implemented, and the Government retain the current regulatory system, which is unable to make amendments to product legislation or enable recognition of new, or updated, EU product regulation. However, the counterfactual scenario appears unclear at times. The IA could benefit from clarifying the counterfactual position for the proposal to respond to new product risks and opportunities, as it is not clear whether, in the absence of an updated product safety framework, this would be on a product-by-product basis (such as to regulate new e-vehicles).

Evidence and data

The IA has used data from a range of sources to support its assessment of the short-list, including OPSS research, Home Office values and ONS data.

The IA could benefit from discussing further the use of data from the Product Safety Review consultation. In particular, further information could be provided on the representativeness of the responses and stakeholders who were consulted, and the IA could benefit explaining and justifying some of the results from the consultation,

such as the reference to 37 per cent of respondents giving “nuanced responses” to a question on the introduction of improvement notices, civil monetary penalties, and enforcement undertakings.

Selection of the preferred option

Overall, the qualitative appraisal of the short-list is appropriate to justify the selection of the preferred option. The IA has set out the potential costs and benefits from each measure in the Bill, supporting the overall argument for implementing the primary legislation and selecting the preferred option.

Regulatory Scorecard

Throughout the IA, the Department has identified and assessed the scale of some of the impacts of the Bill, including those that are expected when policies are enacted via secondary legislation, in the form of case studies. This approach is consistent with RPC guidance on assessment of impacts in primary legislation where there is uncertainty over the contents of the related secondary legislation (scenario 2). However, the Regulatory Scorecard should also reflect this more specifically. Despite the Department indicating that it does not expect any direct impact on social welfare, businesses or households because the Bill contains only enabling powers, the Regulatory Scorecard should provide a summary of its assessment of the total expected impacts from both the primary and secondary legislation, as the Department has done in other areas of the IA. The following sub-sections present specific comments on Part A and Part B of the Regulatory Scorecard.

Part A

Although the Department provides an estimate of the scope of businesses affected by the Bill (316,205 businesses), the scorecard could benefit from providing a more granular assessment on the market size of key sub-markets affected by it, building on the analysis presented of the market for e-vehicles, which the Department highlighted as an area where safety concerns exist.

The IA highlights that businesses will incur familiarisation costs. However, the IA could benefit from providing an early monetised estimate of potential familiarisation costs based on previous product safety reforms. The IA also highlights a range of potential benefits to business, including from a clearer, and more consistent, regulatory framework, and reduced costs associated with product recalls and insurance claims for negligence in the workplace. Although these business impacts are non-monetised, the IA should include these impacts within the Regulatory Scorecard.

The IA presents the avoided future detriment to households (such as the prevention of physical harm and property damage) as a main benefit of the regulation, but states that it is not currently possible to monetise this. While a non-monetised approach is appropriate, the Department could have done more to illustrate the scale of these potential benefits, such as conducting general research and utilising case-studies of previous product safety changes and international examples to support better the description of potential benefits to households.

Part B

The IA acknowledges that secondary legislation, enabled by the Bill, could have impacts on wider government priorities, which will be assessed separately, such as product safety regulation acting as a barrier to entry, updating product regulation with international partners to support international trade and environmental protection from product-related harms. However, the IA could be improved by expanding the assessment of potential barriers to entry, highlighting markets and groups of consumer products on which the secondary legislation could have an impact, and discussing if SMBs would be disadvantaged disproportionately as a result. The IA could also benefit from providing examples of product-related harms to the environment that secondary legislation could potentially address.

The IA would also have benefitted from presenting the innovation impacts that might occur from the proposal, particularly in how the framework might encourage innovative design by allowing the UK to keep pace with technological advances, such as artificial intelligence. Alternatively, the IA could also discuss how the framework might impose barriers that have an impact on the scope of innovative products that businesses can bring to the market.

The Department could also benefit from using examples of existing regulation and international comparisons to support its description of impacts and types of innovative products that the Department might expect to emerge in the GB market because of new product standards.

The IA should consider the risk of requirements to achieve a *CE* marking being increased by the EU in excess of what the UK would consider to be proportionate. Furthermore, where conformity with EU regulation is seen as a benefit in the trade section, there is no mention of potential barriers to non-EU trade, which forms a higher share of UKCA imports. The IA should also provide clarity on whether divergence from the EU and compliance with a UKCA standard is likely to be more, or less, costly than *CE* standard for overseas producers, as this is important to understanding the overall trade impact. If compliance with a UKCA standard is more costly than *CE* marking for overseas producers (such as the cost increasing from being required to conduct separate conformity assessments), then this should be shown as a benefit in the scorecard.

Monitoring and evaluation

The IA states that the timings of post-implementation reviews (PIRs) for each policy for the related secondary legislation will be determined in accordance with that policy's requirements, but it could benefit from confirming the exact timings for when the Department intends to carry out these PIRs.

The IA outlines that the OPSS Industry Attitudes Tracker will be used to monitor and assess the impact of the proposals, as well as external surveys and the OPSS Public Attitudes Tracker. In particular, the industry tracker will be used to evaluate how the changes have an impact on the perceived burden and clarity for business.

The IA could benefit from including further detail on the nature of this qualitative and quantitative data, and how it will be gathered. This could include identifying the key research questions that will be used in the attitudes trackers, the metrics and indicators that will be gathered in the Public Attitudes Tracker and how these will be used to evaluate the success of the proposals. In particular, the IA could detail how the causality between the proposed measure and tracker data will be established, as it is not clear how it will be possible to directly associate data from households with the changes specifically made to product safety regulation. This would allow the Department to evaluate accurately the effectiveness of the proposals and to measure the success of the objectives.

Regulatory Policy Committee

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