

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
WINDSOR FRAMEWORK**

**DIRECTIVE (EU) 2024/2853 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

Submitted by the Department for Business and Trade on 04 December 2024.

SUBJECT MATTER

1. This Directive (EU) 2024/2853 on liability for defective products repeals and replaces the existing Product Liability Directive 85/374/EEC1 (1985 PLD), with effect from 9 December 2026. The objective of the 1985 PLD was to provide a system for compensating consumers who suffer physical injury or damage due to defective products, on a strict liability basis (that is, without having to prove negligence).
2. Currently, the “producer”, the importer and any person who supplied the product can be held strictly liable for defects in products they have supplied that cause personal injury, death or damage to private property. Where a person has suffered such damage, they can claim compensation. The replacement Directive (2024 PLD) introduces new provisions to address liability for products such as software (including artificial intelligence systems) and digital services that affect how the product works (eg navigation services in autonomous vehicles). It also alleviates the burden of proof for victims under certain circumstances and extends from 10 years to 25 years (from the placing of a product on the market) the time limit for making a claim when the latency of an injury prevented a claim within 10 years.
3. In particular it aims to:
 - i. ensure liability rules reflect the nature and risks of products in a digital age and a circular economy;
 - ii. ensure there is always a business that can be held liable for defective imported products;
 - iii. ease the burden of proof in complex cases and ease restrictions on making claims while ensuring a fair balance between the interests of manufacturers, injured persons and consumers; and
 - iv. ensure legal certainty by aligning the PLD with the new legislative framework, with product safety rules, and by codifying PLD-related case law.
4. Any transposition required will need to be completed by 9 December 2026.

SCRUTINY HISTORY

5. On 7 June 2018 the Department for Business, Energy and Industrial Strategy deposited EM 9096/18 on the report evaluating the Product Liability Directive. Neither the House of Commons European Scrutiny Committee nor the House of Lords European Affairs Committee reported substantively on that EM.
6. On 28 October 2022 the Department for Business, Energy and Industrial Strategy deposited EM 13134/22 on the proposal for a Directive on liability for defective products. Neither the House of Commons European Scrutiny Committee nor the House of Lords European Affairs Committee reported substantively on that EM.

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for the Department for Business and Trade has responsibility for product liability policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. Consumer protection policy is partly devolved and partly reserved to Westminster. The 1985 PLD was implemented via Part 1 of the Consumer Protection Act 1987 in respect of England, Wales and Scotland. Scotland and Wales have not raised any concerns.
9. In Northern Ireland, the 1985 PLD was implemented by the Consumer Protection (Northern Ireland) Order 1987.

LEGAL AND PROCEDURAL ISSUES

10. The new rules will apply from 9 December 2026 – so any legislative provisions necessary to comply with the 2024 PLD should be brought into force by this date.

POLICY IMPLICATIONS

11. To facilitate its dual access to both the UK Internal Market and the EU Single Market, Northern Ireland applies a subset of EU rules relating to product regulation – and this includes in relation to product liability. Accordingly, the 2024 PLD will apply to products placed on the Northern Ireland market or put into service on or after 9 December 2026, which is the date that transposing legislation must come into force.

12. Key changes include:

- a. **Definition of a product** – the new PLD provides an updated definition of product (including software and AI) and **widens the scope of damage** to include psychological harm and loss or corruption of data.
- b. **Who is liable** – under the new Directive, more traders, including online marketplaces (referred to in the Directive as a “provider of an online platform”) can be found liable in certain circumstances.
- a. **Easing the burden of proof** – to ease the evidential issues that consumers can face in proving the defect or that the defect caused damage, the 2024 Directive amends the existing rules. For example, the new law sets rules around mandatory disclosure by companies of technical information to the injured person in court. In addition, products would be subject to a rebuttable ‘presumption of defectiveness’ in national courts in certain cases, for example if the product in question did not comply with legal requirements under relevant product safety legislation, or it “clearly malfunctioned”.

13. The 2024 PLD will continue to be a wholly civil regime – but in short will mean consumers in Northern Ireland will have certain additional means to take recourse through the courts for defective products. For the avoidance of doubt, it in no way imposes any rules governing which products may be placed on the market or the standards they must meet, and there is no evidence to suggest that it will affect choice for consumers in Northern Ireland.

14. The Government is considering the product liability legislation as it applies in England, Wales and Scotland, as we also believe it necessary to update it to bring it in line with recent technological developments. We will in due course set out our intentions for our planned update, which we will consider doing on a UK-wide basis.

15. The UK will continue to make decisions that benefit the UK interest. These decisions will be made by the Government, in consultation with expert groups, to determine what is best for the UK. To enable updates to the product liability regime in Great Britain, primary legislation will be required.

CONSULTATION

16. On 2 August 2023 the previous Government published a consultation on the UK’s approach to product safety: the Product Safety Review (PSR). The PSR included a proposal to review the UK’s civil product liability regime in light of technological developments and asked for examples where the current product liability regime:

a) is unclear because of technological developments (e.g., lack of clarity about who is responsible for safety of an AI/smart product or when software is updated); or

b) doesn't enable consumers to seek fair redress; or

c) doesn't provide businesses with clarity and confidence to develop new products.

17. Respondents to the consultation were in favour of updating the UK's product liability regime to reflect developments in technology and changing business models, but provided little detail on the specifics that should be addressed. The Government will continue to develop its policy on product liability. In developing this new model, the Government will look at updates being made internationally, in order to deliver a solution that best meets the needs of the United Kingdom.

FINANCIAL IMPLICATIONS

18. At this stage, we consider that there is unlikely to be substantive financial implications attached with the Directive, but we will keep this assessment under review.

MINISTERIAL NAME AND SIGNATURE

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

Justin Madders MP

Minister for Employment Rights, Competition and Markets

Department for Business and Trade