



Northern Ireland
Assembly

Windsor Framework Democratic Scrutiny
Committee

OFFICIAL REPORT (Hansard)

Directive (EU) 2024/2853 on liability for
defective products and repealing Council
Directive 85/374/EEC

28 November 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Philip McGuigan (Chairperson)
Mr David Brooks (Deputy Chairperson)
Dr Steve Aiken
Mr Jonathan Buckley
Ms Joanne Bunting
Mr Declan Kearney
Ms Emma Sheerin
Mr Eóin Tennyson

Witnesses:

Mr Dennis Cunningham Department for the Economy
Mr Colin Jack Department for the Economy

The Chairperson (Mr McGuigan): I welcome Dennis Cunningham, head of the consumer affairs branch, Department for the Economy, and Colin Jack, head of business and employment regulation division, Department for the Economy.

Dr Aiken: Chair, I need to make a declaration of interest. I know one of the witnesses fairly well. I am talking about our early morning activities and working through the church. I need to make that declaration of interest. It is OK. I will refrain from asking Colin any questions.

The Chairperson (Mr McGuigan): Thank you. I welcome Dennis and Colin to the meeting. I will hand over to you to present evidence on the EU regulation.

Mr Colin Jack (Department for the Economy): The product liability directive was adopted by the EU on 23 October. It has been in development for the past couple of years and comes into force on 9 December 2026. It replaces a previous product liability directive that was passed in 1985 and transposed into legislation here by the Consumer Protection (Northern Ireland) Order 1987. It is really just modernising the regime around the liability of manufacturers and distributors of products that are unsafe or defective so that consumers, who are injured or badly affected by defective products, are entitled to some form of compensation.

It reflects that the world has changed since then. In 1987, my exposure to the digital age consisted of having a Sinclair ZX Spectrum. It is trying to take account of the fact that the internet has developed, software is important, we have smart products, we are moving towards having autonomous cars and so on. The ways in which people can be adversely affected by defective products are changing.

The legislation here is a mixture of devolved and reserved matters. The Department for Business and Trade (DBT) generally takes the lead because consumer issues are complex. It has consulted on product liability as part of its product safety review, which was launched in August 2023. It raised the issue of the need to update product liability legislation in that consultation, and we are aware that the responses that it received are in favour of updating the legislation.

Although we are not yet aware of the final decision of the UK Government on what they intend to do about this directive in England, Scotland and Wales, we know that it will apply here. They have certainly been reviewing the relevant policy area, which points to a likelihood that they will, if not fully, largely replicate this directive in GB. That is where it appears to be heading at the moment. We understand that they are working on an updated explanatory memorandum (EM). The Committee has a previous explanatory memorandum that was produced in 2022.

Mr Dennis Cunningham (Department for the Economy): Just to add to that, from a consumer protection perspective, it is good news, just like other consumer protection legislation. We have recently been dealing with the Digital Markets, Competition and Consumers Act 2024, and there is a recognised need, across Europe and worldwide, to bring them in line with modern technologies and software. Legislation on consumer protection has not really addressed online capability; there have been gaps. So this directive is recognised as an attempt to fill those gaps, which can be only a good news story for people who, unfortunately, suffer an injury in Northern Ireland. They should be able to get some kind of recourse and liability compensation.

The Chairperson (Mr McGuigan): Thank you. On the point about the British Government updating the memorandum, is there any indication of when that updated EM is likely to be completed?

Mr Jack: I do not have an absolute answer to that, but I have heard discussion that it should certainly be within the next month. Early December was the time frame that I heard.

The Chairperson (Mr McGuigan): Secondly, they will have consulted with businesses, groups and organisations in the North. Has there been any impact or people raising issues with yourselves in relation to this potential new legislation?

Mr Jack: We are not aware of any, but we would probably need to do more research on that to be absolutely sure. These are complex areas, and it is difficult for any individual country to develop legislation on this type of issue on its own. The markets in products are global. In particular, the types of products that this directive has been updated to take account of tend to be developed and marketed globally. The issues that arise for consumers and businesses everywhere on this issue are largely the same.

The Chairperson (Mr McGuigan): You indicated that, on the whole, it is positive legislation and that you expect the British Government, if not to fully align with it, to introduce legislation in a similar vein.

Mr Jack: Yes, that would be our expectation. This is an update of the directive that enhances consumer protection. It increases, I believe, the level of compensation to which consumers are entitled if they are adversely affected by a defective product, so, yes, it is positive legislation.

Mr Brooks: All the comments have been about it being positive legislation for consumer protection. You spoke about the balance to be struck there. From our position, our role as a Committee is to make sure that that balance is right for Northern Ireland. With anything that the EU does around regulations such as this, there will, I presume, always be an argument that it is a positive and good thing and that there is good reason why we are doing it. We have to look at it from a Northern Ireland perspective. You could argue that raising the minimum wage is a good thing, but businesses might say that it will have a negative impact on them. I make that comparison because it is similar here. Consumer protection is good, but the Committee needs to understand more fully what impacts, if any, it may have on our businesses.

Do you accept that there is a risk in raising consumer protections in the way that the EU has done with this and that we need to understand whether it will lead to increased costs for those who operate here and who sell to here, perhaps from GB. That risk of divergence and so on may have an impact on which companies are willing to supply their products to Northern Ireland, or, if they continue to do that, they may have to raise costs to cover their liability.

Mr Cunningham: That is a very valid concern. In response, all we can say is that in the discussions that we have had with DBT officials, they seemed to indicate that they did not see that this was at all likely to have any detrimental impact on what becomes available on the shelves in Northern Ireland.

You quite rightly referred to other areas of legislation where you could say the same thing. The application of legislation to protect consumers and, indeed, for ensuring fair competition for businesses actually predates the EU. It has been going on since the late 1800s. We are fortunate that, in the consumer protection field, there has always been a pragmatic approach by businesses and by Governments so that businesses can operate smoothly wherever they are. So I would take some comfort that history suggests that there will be a consistent approach when it comes to consumer protection matters.

Mr Brooks: I agree, largely, but the Committee cannot take that on trust and on the idea that, eventually, they are likely to align in future. We have to have our eyes open because this is, essentially, the only lever that we have open to us. It is, at this stage, a case of having an inquiry to make sure that all the stakeholders who may be affected have the opportunity at least to feed into our work. That is a decision that we will take here today. I appreciate your feedback.

Mr Jack: This is the type of issue where, from a business perspective, the fewer different regulatory regimes that they have to comply with, the better. In the consultation that was undertaken by DBT last year —

Mr Brooks: It is divergence that would cause the issue rather than the regulations themselves.

Mr Jack: — it appears that the balance of the responses has been in favour of moving broadly in line with the EU on this —

Mr Brooks: I do not disagree with that.

Mr Jack: — for GB as well as here.

Mr Cunningham: The real risk to businesses, whether they are located in Northern Ireland or online, is if they produce defective products. That is the real risk that they face and a cost that they face, but consumers have to be protected and have to have the right to some kind of redress.

Mr Buckley: We have heard a lot recently about the general product safety regulation and the concerns that it might bring to businesses supplying into Northern Ireland. Is it likely that this will significantly overlap?

Mr Cunningham: As Colin said, in the August 2023 review consultation, it was for exactly that reason that they identified at that time the need to marry the liability legislation in the same manner.

Mr Buckley: OK. It is disappointing that we do not have an updated UK explanatory memorandum at this stage to make a clear decision. Thank you.

The Chairperson (Mr McGuigan): I have a final point. David mentioned the issue of divergence. I know that it is different, but, in the EM that we have been provided with, both the Scottish and Welsh Administrations have come back and said that they have no issue with the legislation. Does that still stand today?

Mr Jack: We believe that that position remains the same. It would be much easier for the Committee today if it had the updated EM available to it from DBT.

Mr Cunningham: The responses to the consultation that DBT did on the product safety review, where it asked for people's views about liability, mirrored the concerns that the directive suggests about needing to redefine "product" to include a wider definition and about allowing consumers to reduce the number of barriers to their redress. That has come out in that consultation, but Colin is correct to say that, until we see the formal position from the UK Government on a revised explanatory memorandum, that is the only position that we, as officials, can take.

The Chairperson (Mr McGuigan): Thank you. Nobody else has indicated that they want to ask a question. I thank Dennis and Colin for presenting the evidence to us today. Gentlemen, thank you very much.

Mr Jack: Thank you.