

# 1 Northern Ireland Protocol: the new EU Construction Products Regulation<sup>1</sup>

---

**This EU document is politically important because:**

- It would make significant changes to the way the EU regulates construction products, including by introducing new EU-wide minimum safety and environmental requirements for components and materials used in the construction industry. This may have implications for the UK because EU rules in this area currently still apply in Northern Ireland under the Protocol in the Withdrawal Agreement, and goods lawfully on the market there can typically be sold freely into the rest of the UK even if they do not meet post-Brexit rules in force in Great Britain. Exports of such products to the EU, which exceeded £4 billion in 2020, are also likely to be affected.
- However, an Explanatory Memorandum submitted by the Department for Levelling Up, Housing and Communities in May 2022 did not provide any substantive assessment of how the EU proposal might affect the UK market for construction products or, by extension, UK policy relating to issues such as building safety.

## Action

- We have written to the Minister for Building Safety and Fire, Lord Stephen Greenhalgh, to seek further clarification of the potential implications of the new EU Construction Products Regulation for the UK, in particular under the Northern Ireland Protocol.

## Overview

1.1 In March 2022, the European Commission published a [legislative proposal](#) for a significant overhaul of the EU’s 2011 “[Construction Products Regulation](#)” (CPR).<sup>2</sup> It forms part of a wider [Sustainable Products Initiative](#),<sup>3</sup> aimed at improving how we use everyday products in an environmentally and economically efficient way.

1.2 The current CPR is a complex piece of legislation, but in essence it establishes a mandatory framework for the performance assessment of construction products (for example joints, cement and fire doors) sold within the EU. The CPR allows the detailed description of their performance to be set out in a common technical ‘language’ that can be used by builders, engineers, architects, and public authorities across the EU to facilitate cross-border trade in these goods, provided there is an approved technical

---

1 Proposal for a Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011; COM(2022) 144; Legal base: Article 114 TFEU; ordinary legislative procedure; QMV; Department: Department for Levelling Up, Housing and Communities; Devolved Administrations: Northern Ireland Executive consulted; ESC number: 42043.

2 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.

3 Communication from the Commission: On making sustainable products the norm, COM(2022) 140, 30 March 2022.

specification available for the product in question (which must normally be produced by the independent European standardisation organisation CEN<sup>4</sup> and approved by the European Commission).<sup>5</sup> If a construction product has been assessed under the Regulation in one EU country, it carries the EU’s “CE” mark<sup>6</sup> and should be permitted for sale in all EU Member States without further checks or assessments. However, whether a particular product can be *used* for or in a specific construction project depends on the building regulations applicable in the EU country in question, as requirements relating to issues such as building safety and energy efficiency are set by individual Member States, not centrally by the EU.

1.3 The current Regulation does not set EU-wide minimum performance *requirements* for specific construction products, for example in terms of fire retardant, sound insulation or energy efficiency properties. The Commission’s recent legislative proposal would change that. Under the proposed Regulation, the EU would set “mandatory minimum requirements”<sup>7</sup> governing the actual performance of construction products in both safety and environmental terms (rather than only how their performance is *assessed*, as is currently the case).<sup>8</sup> Those would cover, for example, risks of mechanical or structural failure, fire safety, recyclability and toxicity. Products would have to meet these baseline requirements before they could be marketed anywhere in the EU. Consequently, the use of the “CE” mark on construction products would be extended to signify the manufacturer’s declaration that the EU’s existing performance assessment framework has been followed, but also that any applicable product requirements have been observed. However, regulations governing construction works—in particular, how finished structures would have to perform in terms of safety and sustainability—would remain a national responsibility. The proposal would also update EU rules in a number of related areas, for example the responsibilities of trading standards authorities, “green” public procurement involving construction, requirements for 3D-printed components and the responsibilities of the legal representatives of non-EU manufacturers selling construction products into the EU. It also envisages a more explicit legal basis for EU exchange of information on safety risks relating to construction products with non-EU countries, for example the UK.

1.4 These policy changes are not set in stone: the draft legislation put forward by the Commission is now being considered by the European Parliament and the EU Member States in the Council of Ministers, who must jointly agree on the legal text. They are likely to make substantive amendments as part of that process. The timetable for the legislative process is unclear at this stage: it could take a number of years, given the safety, environmental and economic implications of the proposal.<sup>9</sup>

4 CEN is the “European Committee for Standardisation”, an independent organisation that produces voluntary technical standards for a range of goods and services.

5 In practice, this reliance on standards produced by CEN has been subject to delays. See: European Commission, [Impact Assessment SWD\(2022\) 88](#) (30 March 2022).

6 In practical terms, the “CE” mark on construction products indicates the manufacturer has drawn up a “Declaration of Performance” in accordance with the Construction Products Regulation.

7 European Commission, [“Refined Indicative Options for the Review of the Construction Products Regulation, version 2”](#) (8 April 2020), p. 24.

8 Because of the inherent complexities and variations involved, these EU-wide product requirements would not be contained in the Construction Products Regulation itself. Rather, they would be set by the European Commission for a product, or a family of such products, at a later stage through “Delegated Acts” (essentially a type of EU Statutory Instrument). Voluntary technical standards that would allow manufacturers to meet these new requirements would be produced by the European Standardisation Organisations.

9 The 2011 EU Construction Products Regulation took approximately three years from the publication of the original European Commission proposal to its formal adoption by the Council and European Parliament.

1.5 The UK left the European Union over two years ago and regulation of the construction sector has already evolved rapidly since Brexit, not least because of the 2017 Grenfell Disaster. In particular, earlier this year Parliament passed the [Building Safety Act 2022](#). While the scope of that legislation is far wider than the EU Construction Products Regulation, the Act also—in Schedule 9—empowers Ministers to issue detailed regulations relating to the safety and marketing of construction materials. Those provisions were included in particular to allow for the creation of a general safety requirement for products that are not covered by either the CPR nor the [General Product Safety Directive](#) (GPSD),<sup>10</sup> including the Aluminium Composite Material (ACM) cladding that played a key role at Grenfell.<sup>11</sup>

1.6 Even so, the European Union’s policy on construction products remains relevant for the UK for a number of reasons:

- first, under the “[Protocol on Ireland and Northern Ireland](#)” which the UK and EU ratified as part of the overall [Withdrawal Agreement](#) in early 2020, EU legislation on goods remains directly applicable in Northern Ireland. Because of this arrangement, the existing EU Construction Products Regulation still applies there, and the proposed new EU legislation—including any minimum safety and environmental requirements for construction materials—would take effect in Northern Ireland automatically as well in due course.<sup>12</sup> That means such goods—including where brought in from the rest of the UK—would have to meet the new EU product requirements or face removal from the Northern Irish market. To the extent that the Regulation imposes different requirements than UK regulations under the Building Safety Act, there could be parallel legal regimes for construction products in effect in the UK. While the Government has been seeking to alter the operation of the Protocol to reduce the direct application of EU law in Northern Ireland,<sup>13</sup> having in June 2022 published a [Bill](#) to amend the operation of the Protocol in UK domestic law, the outcome of that process is not clear at this stage;<sup>14</sup>
- second, under the terms of the [Internal Market Act 2020](#), most products compliant with EU rules that are lawfully for sale in Northern Ireland (and therefore still carry the EU’s “CE” mark) also have “unfettered access” to the entire UK market without any further checks or trade barriers. That is the case even if they do not meet British product requirements. The Government is currently phasing in the “UKCA” mark in Great Britain to replace the “CE” mark, but CE-marked construction products normally remain legal for sale in England, Scotland and Wales if they are brought in from Northern Ireland.<sup>15</sup> As such, any changes to

10 Directive 2001/95/EC on general product safety. A proposal to replace the Directive with a new General Product Safety Regulation (GPSR) is currently under consideration in Brussels. See: European Scrutiny Committee, Twentieth Report of Session 2021–22, [chapter 1](#) (30 March 2022).

11 Department for Levelling Up, Housing and Communities, “[Building Safety Bill: Explanatory Notes](#)” (July 2021), para. 999.

12 Under Article 13(3) of the Protocol, references to EU legislation listed as applying in Northern Ireland—including the 2011 Construction Products Regulation—should be read as “amended or replaced” by the EU. The UK will not be formally involved in the legislative process however, since it is no longer an EU Member State.

13 Cabinet Office, “[Northern Ireland Protocol: the way forward](#)” (CP 502, July 2021).

14 Northern Ireland Protocol Bill. 2022. (HC Bill, 2022–23). London: The Stationery Office. Bill and Explanatory Notes available from: <https://bills.parliament.uk/bills/3182>.

15 Because of the Protocol, the UKCA mark is not used in Northern Ireland.

EU rules in this area could have implications for the UK market as a whole, including with respect to the environmental standards of products used in the UK construction industry;<sup>16</sup> and

- third, from a trade policy perspective, new EU requirements for construction products are likely to affect British sales of such goods to the EU market (which were valued at £4.2 billion in 2020, representing 58 per cent of total UK exports of construction materials that year).<sup>17</sup>

1.7 Because of these factors, we consider that a careful assessment of the potential implications of the Commission’s proposal for the UK is imperative. In particular, we are mindful of the fact that the new Regulation, which envisages new EU-wide safety requirements for construction materials that would also apply in Northern Ireland, could have implications for UK building safety policy. The safety of high-rise residential buildings in particular has of course been of significant public concern following the 2017 Grenfell Disaster (which, as we noted above, in turn precipitated the passing of the [Building Safety Act 2022](#)). In addition, the interplay between the Protocol and the Internal Market Act could add unwanted complexity to the market for construction products in Great Britain, for example if materials with the “CE” mark brought in from Northern Ireland circulate in parallel to products with the “UKCA” mark while the underlying regulatory requirements for which these marks are used to declare compliance diverge over time. The environmental and sustainability aspects of the European Commission proposal also overlap with the Government’s own “net zero” Heat and Buildings Strategy and the Resources and Waste Strategy,<sup>18</sup> meaning that the broad direction of travel is similar and a coordinated approach may merit some consideration to avoid unnecessary obstacles to trade.

1.8 Regrettably, however, an [Explanatory Memorandum](#) (EM) on the impact of the EU proposal for the UK submitted by the Minister for Building Safety and Fire (Lord Stephen Greenhalgh) failed to provide any meaningful assessment of these potential complexities despite acknowledging that “this [EU] regulation will apply to the UK in respect of Northern Ireland, by virtue of the provisions of the Northern Ireland Protocol” and would likely increase trade barriers for British exports.<sup>19</sup> In particular, it did not make an attempt at clarifying what the proposal might mean for the UK market in construction products, for overlapping use of the CE and UKCA marks, or for building safety considerations (especially in Northern Ireland where the Regulation may apply directly). There is also no information on what plans, if any, the Government has to engage with relevant stakeholders within the EU system to ensure that the UK’s interests—including those

16 This would remain so even if the Northern Ireland Protocol was changed in line with the Government’s proposals, under which goods that meet EU rules would still be automatically legal for sale in Northern Ireland and hence benefit from “unfettered access” to the British market. The Government has proposed a “dual regulatory” regime under which traders in Northern Ireland could choose whether to comply with EU or UK product rules.

17 Office for National Statistics, “Monthly Statistics of Building Materials and Components Commentary, March 2022” (6 April 2022), p. 11.

18 The Resources and Waste Strategy ([‘Our Waste, our Resources: a Strategy for England’](#)) was originally published in 2018, with a second progress Report ([‘Resources and Waste Strategy: Monitoring Progress’](#)) published in November 2021.

19 Department for Levelling Up, Communities and Housing, [Explanatory Memorandum on the proposal for an EU Construction Products Regulation](#) (9 May 2022), p. 4. In particular, the Memorandum cites the European Commission’s own impact assessment, which estimates that the proposal would increase annual costs for manufacturers “by approximately 8% of their baseline costs”, including for “GB manufacturers who wish to place their products on the NI and/or EU markets”, as a result “making trade more difficult for them”.

of companies exporting construction products to the EU—are effectively represented as the final shape of the legislation is negotiated. How the Government’s Northern Ireland Protocol Bill, which was published in June 2022, would affect the application of EU construction products rules in Northern Ireland also remains unclear.

1.9 The paucity of the Minister’s latest Memorandum contrasts sharply with the Government’s approach when the current EU Construction Products Regulation was negotiated over a decade ago. Then, it produced detailed Explanatory Memoranda<sup>20</sup> and carried out an extensive [impact assessment](#) with industry and other stakeholders.<sup>21</sup> While the new Regulation may only apply in Northern Ireland and not the UK as a whole (without prejudice to the Government’s efforts to reform the Protocol), that does not mean that its implications there would be any less significant and therefore less in need of Government attention. Indeed, given the nature of the Commission proposal, the impacts of the new EU CPR in Northern Ireland are complex. They could be *more* far-reaching than when the existing rules took effect in 2011 and—through the Internal Market Act—affect the market for construction materials UK-wide. We also note from the Minister’s Memorandum that this policy area is not devolved to the Northern Ireland Executive meaning that, subject to the progress of the current Northern Ireland Protocol Bill, implementation of the new Regulation in respect of Northern Ireland would be the responsibility of the UK Government.

## Conclusions and action

1.10 Any meaningful parliamentary scrutiny of the implications of the proposed new EU Construction Products Regulation for the UK is necessarily reliant on information we receive from the Minister about the Government’s own assessments in that regard. We have therefore written to the Minister to seek more information from the Government on its assessment of the implications of the proposal, both for the UK under the Northern Ireland Protocol, and for British exports to the EU. We intend to make a more comprehensive Report to the House on the implications of the EU proposal in due course in light of the Minister’s reply, also taking into account any relevant developments in relation to the operation of the Protocol more generally.

### **Letter to the Minister for Building Safety and Fire (Lord Stephen Greenhalgh)**

The Committee today considered your Explanatory Memorandum (EM) of 9 May on the proposal for a new EU Construction Products Regulation, which would introduce significant changes to the way the EU regulates construction materials (in particular by introducing mandatory minimum safety and environmental requirements for such products).<sup>22</sup>

We were disappointed that your Memorandum, while acknowledging that this new legislation may apply directly in Northern Ireland under the terms of the Protocol on

20 European Scrutiny Committee, First Report of the Session 2010–11 (8 September 2010, HC 428), [chapter 33](#).

21 Department for Communities and Local Government, “[Impact assessment of the European Commission’s proposed Construction Products Regulation](#)” (August 2009).

22 Proposal for a Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011; Commission reference: COM(2022) 144; ESC number: 42043.



Ireland/Northern Ireland, did not contain any substantive assessment of the potential ramifications of the proposal for the market in construction products in Northern Ireland (and, by extension, for the wider UK market given that goods on the market in Northern Ireland (which must meet EU requirements) usually have “unfettered access” to Great Britain). Similarly, it did not make clear if its implications for your Department’s policy on the role to be played by regulation of construction products to improve the safety of dwellings and other structures under the Building Safety Act 2022 had been considered, nor allow us to meaningfully compare the EU and UK approaches to environmental standards for such products. We are also concerned about the wider risk of legal and practical complexities arising from the parallel existence of two statutory regimes for construction products in the UK, in a market where clarity and safety are paramount.

While we appreciate that the Government is actively seeking to alter how the Protocol operates, having published a Bill to that effect earlier this month, the outcome of that process is unclear and we are keen to understand the implications of the proposed Regulation under the terms of the Protocol as it currently exists. In any event, we note that construction products that meet EU requirements would continue to be legal for sale in Northern Ireland even under the Government’s own proposals for reform of the Protocol.

With that in mind, we would be grateful if you could write to us with more information on the potential implications of the EU’s proposed Construction Products Regulation for the UK, in particular with respect to the following issues:

- What is the Government’s assessment of the risk that Northern Ireland could, in the future, operate under a legal regime for construction products that is different in substance from the one the Government foresees for the rest of the UK? Could this lead to disruption of supply chains of construction products into Northern Ireland if existing products made in Great Britain do not meet the new EU requirements as and when the new Regulation takes effect?
- Conversely, given the Government’s policy of “unfettered access”, what could be the implications for the market in Great Britain if the Regulation as proposed would have to be implemented under the terms of the Northern Ireland Protocol? In particular, is there any risk that construction products that do not meet UK requirements, especially in terms of safety, could lawfully enter the supply chain in England, Scotland and Wales from Northern Ireland?
- Given that the Commission wants to legislate for binding minimum safety requirements for construction products at EU-level (and by extension for Northern Ireland), what assessment has the Government made of the impact of the proposal for the UK, and for Northern Ireland in particular, from a building safety perspective? If the Government has no concerns in that regard, for example because UK building safety regulations will not be directly affected even if the EU were to set minimum safety requirements for individual construction products in Northern Ireland, it would be helpful to have this formally on the record.
- With the potential interplay between the EU Construction Products Regulation, the Northern Ireland Protocol and the Internal Market Act 2020 in mind, how does the Commission proposal compare to the Government’s own preferred

approach to safety and environmental requirements for construction products? Is the Government considering similar measures to introduce more specific binding product requirements in terms of performance of construction products, beyond the general safety requirement foreseen by the Building Safety Act 2022?

- The proposal for a Construction Products Regulation foresees a power for the European Commission to establish requirements for “green public procurement” of construction products, including selection and award criteria. Would this be binding on the UK under the Protocol in respect of public procurement in Northern Ireland?
- How is the Government engaging with stakeholders in the industry to understand the potential ramifications of the proposed Regulation for British exports of construction materials to the EU?
- The EU Construction Products Regulation foresees cooperation between the European Commission and “third countries” like the UK, including the option of systematic exchange of information on known safety and regulatory issues in relation to construction products (to be captured on the EU side in a centralised Construction Products Database). Would the UK have access to that information automatically if the Regulation applies as a matter of EU law in Northern Ireland under the Protocol? If not, is it Government policy to agree an arrangement with the EU to that effect, given that Article 95 of the EU/UK Trade and Cooperation Agreement foresees this possibility and the UK is already seeking a similar exchange of market surveillance data with the EU in relation to faulty consumer products?

We look forward to receiving your assessment at the earliest opportunity.

## 4 Windsor Framework: the EU Construction Products Regulation and UK building safety policy<sup>27</sup>

**This EU document is legally and politically important because:**

- The proposal would make significant changes to the EU Construction Products Regulation, which remains in effect in Northern Ireland (NI) under the Windsor Framework. As a result, this new EU law could affect the UK's domestic regulation of construction products under the Building Safety Act 2022, enacted following the Grenfell disaster. The Government has indicated it is considering whether full or partial voluntary alignment with the new EU law would be in the UK's interest.

### Action

- Write to the Minister to clarify the impact of the EU proposal for the UK.
- Draw to the attention of the Business and Trade Committee, the Levelling Up, Housing and Communities Committee, and the Northern Ireland Affairs Committee.

### Overview

4.1 Since early 2022, the EU has been considering [draft legislation](#) for a significant overhaul of its 2011 “[Construction Products Regulation](#)” (EU CPR).<sup>28</sup> This sets out how the performance of certain (but not all) materials used in construction works should be described to prospective buyers and users, for example in terms of safety-relevant aspects like fire resistance or compressive strength, before they can be sold anywhere in the European Union.<sup>29</sup>

4.2 Although the UK of course left the EU in January 2020, EU policy relating to the regulation of construction products remains relevant for the UK. The Government has preserved the framework created by the 2011 EU CPR as “retained EU law” in Great Britain (GB), and is planning reforms in parallel under the Building Safety Act 2022. In addition, under the [Windsor Framework](#) (previously known as the NI Protocol), the current EU CPR remains directly applicable in NI and any future changes to the legislation would, by default, also take effect there. Under the [Internal Market Act 2020](#), goods that meet EU product requirements that are on the market in NI can normally also be lawfully sold into GB without further checks or assessments, even if they do not meet divergent safety requirements that otherwise apply under UK law after Brexit. Taken together, this means

27 Proposal for a Regulation laying down harmonised conditions for the marketing of construction products; COM(2022) 144; ESC number: 42043.

28 Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products.

29 Given the current controversy around the use of “Reinforced Autoclaved Aerated Concrete” (RAAC) in buildings across the UK, and its implications for their structural integrity, we would note that EU legislation on construction products did not govern the use of this material in any way: RAAC was used in the UK [from the 1950s until the mid-1980s](#), but the EU did not introduce its first legislation relating to construction products until 1989 in the form of Construction Products Directive ([Directive 89/106/EEC](#))



that within the UK’s domestic market, EU law on construction products will continue to cut across the provisions of the 2022 Act that aim to improve the safety of such products. These were drawn up in response to regulatory weaknesses highlighted by the 2017 Grenfell Tower disaster.<sup>30</sup>

4.3 In our [first Report](#) on the proposed new EU CPR, published in June 2022, we put a number of questions to the Department for Levelling Up, Housing and Communities (DLUHC) on these matters.<sup>31</sup> We received a letter from the Minister for Building Safety (Lee Rowley MP) in reply in March 2023, as discussed further below, and since we last considered the proposal the Building Safety Act was enacted and the negotiations on the new EU Regulation have progressed significantly in Brussels. We have therefore revisited our initial assessment of the potential legal and policy consequences of the new EU Construction Products Regulation for the UK under the Windsor Framework in paragraphs 19 to 34 of this chapter, but we will first briefly describe the current EU CPR and the nature of the proposed changes to provide the necessary context.

## The current EU Construction Products Regulation

4.4 The current EU CPR is a complex piece of legislation, even for industry practitioners.<sup>32</sup> In essence, it establishes a framework for assessing the performance of certain construction products—like cement or panelling—in terms of relevant “essential requirements”, such as fire resistance or mechanical strength.

4.5 More specifically, the Regulation allows a construction product’s performance to be described in a common technical ‘language’, in a document known as a “Declaration of Performance” (DoP). The product must also be affixed with the EU’s well-known “CE” mark, indicating that its performance has been described in accordance with the Regulation. This Declaration and mark together form a ‘passport’, making it easier for the product to be marketed in different jurisdictions because it can be used by relevant parties across the European Union to help assess the product’s potential suitability for a particular building or structure. Once a construction product carries the “CE” mark, it must normally be permitted for sale in all EU Member States without further checks or assessments. However, the option exists for national authorities to have a construction product withdrawn from its market if it “does not achieve the declared performance and presents a risk”.<sup>33</sup>

4.6 The principal aim of the Regulation is to facilitate cross-border trade in these goods between EU countries, by establishing of a uniform approach to product description. It does not directly regulate the minimum acceptable performance of specific construction materials,<sup>34</sup> or their contribution to building safety.<sup>35</sup> Indeed, it is important to stress

30 Department for Levelling Up, Housing and Communities (DLUHC), [Explanatory Notes accompanying the Building Safety Bill](#) (5 July 2021), p. 184.

31 European Scrutiny Committee, Fourth report of Session 2022–23 (HC 119–iv), [chapter 1](#) (28 June 2022).

32 Ministry of Housing, Communities and Local Government (MHCLG), [“Independent Review of Building Regulations and Fire Safety: Hackitt review”](#) (May 2018), p. 6.

33 See article 56 of Regulation 305/2011. In practice, many EU countries also maintain national assessment regimes for construction products that overlap with the EU CPR because of concerns about the adequacy of harmonised standards and ETAs. See: European Commission, [Impact Assessment SWD\(2022\) 88](#) (30 March 2022).

34 The harmonised standards (and EADs) might in effect require a minimum level of performance of a product against a specific characteristic, such as fire resistance, but this is not necessarily the case. See: MHCLG, [“Hackitt review”](#) (May 2018), p. 92.

35 DLUHC, [“Independent Review of the Construction Product Testing Regime”](#) (20 April 2023), p. 19.

that the EU CPR does not govern whether a particular construction product with the “CE” mark can safely be *used* in a specific building or other project.<sup>36</sup> Instead, the rules governing construction works, including overall building and fire safety requirements, are set solely by individual Member States and not centrally by the EU. In the UK, this is done principally by means of the [Building Regulations 2010](#) under the [Building Act 1984](#), the [Fire Safety Order 2005](#) and, more recently, the [Building Safety Act 2022](#) (to which we return below). These can provide, as official Government guidance does in the UK, that Declarations of Performance issued pursuant to the EU CPR can inform assessments as to the suitability of a particular product for use in a specific structure. This also means that the “CE” mark on construction products has a very different purpose from when it is used under EU law on many other types of products, such as electrical or machinery items, where it typically is taken to denote the product is ‘safe for use’.

4.7 There is a further complexity to the scope of the EU CPR in terms of the actual products that it covers. For the purposes of a “Declaration of Performance”, the relevant characteristics of different construction products vary significantly between them depending on their purpose and intended use. Therefore, the EU CPR does not apply to all construction materials by default. Instead, products are *only* covered by the requirement to draw up a Declaration, and carry the “CE” mark, if there is a relevant EU-approved technical specification in place against which a particular construction product can have its performance assessed. This can be done in one of two ways:

- The first is for the European Commission to approve a technical standard developed by the independent organisation CEN for a particular product.<sup>37</sup> Where a construction product is covered by a relevant “harmonised standard”, the mechanisms set out in the Regulation become mandatory: the manufacturer *must* assess the product as provided for in the EU CPR, issue a Declaration of Performance and affix it with the EU’s “CE” mark before it can be sold in the EU.<sup>38</sup>
- The second way to allow a manufacturer to affix the “CE” mark to its product is to pay for a “European Technical Assessment” (ETA). This is a voluntary mechanism, under which a product is assessed against a “European Assessment Document” (EAD), a technical specification drawn up at a manufacturer’s request where no harmonised standard for the product is available. EADs must also be approved by the European Commission. If a manufacturer chooses to apply an ETA to its product, issuance of a Declaration of Performance and use the “CE” mark becomes compulsory.

4.8 There are still many existing technical standards that are relevant to construction products and building safety but which are outside the EU CPR framework. Indeed, because of the slow progress in developing harmonised EU-wide standards under the Regulation to date, the majority of construction products—for example, including the composite fire doors and aluminium cladding that contributed to the Grenfell disaster<sup>39</sup>—

---

36 By its nature, a construction product is an intermediate good intended for use in a larger structure in combination with other products. As such, whether it is appropriate or safe depends on wider considerations than could be uniformly assessed at product level under the Regulation.

37 CEN is the Comité Européen de Normalisation or European Committee for Standardisation.

38 Certain exemptions exist under Article 5 of Regulation 305/2011.

39 Grenfell Tower Inquiry, [Phase 1 Report, Volume IV](#) (October 2019), chapters 23 and 24.

are still outside the mandatory scope of the EU CPR altogether.<sup>40</sup> Those construction products do not, and indeed *may not*, carry the “CE” mark. Within the EU, they are regulated at the product-level only by any applicable domestic legislation set by individual Member States.<sup>41</sup> The lack of harmonised standards has also meant that manufacturers have subjected far more products to voluntary European Technical Assessments, and achieve “CE” status that way, than anticipated when the EU CPR was agreed in 2011.<sup>42</sup>

4.9 The relevant harmonised standard or EAD also specifies, based on the possible safety risks, which parts of the technical performance assessment can be carried out ‘in-house’ by the manufacturer, and which require the use of an independent assessor known as a “Notified Body” (such as the British Board of Agrément in the UK).<sup>43</sup> The involvement of a Notified Body is typically needed for assessment of characteristics of a product that have more significant safety implications.

## The new EU Construction Products Regulation

4.10 The European Commission published its [proposal for the new EU Construction Products Regulation](#) in March 2022. Once finalised and approved by EU legislators, this new legislation will—broadly speaking—maintain the design of the current legislation, for example the mandatory performance assessment against harmonised standards. However, it would also make a number of significant changes compared to the 2011 EU CPR, namely by:

- allowing the Commission to establish ‘fall-back’ technical specifications for the assessment of the performance of particular construction product, instead of using a harmonised standard developed by CEN. This is intended to be used only where the traditional standardisation process is considered too slow or otherwise unsatisfactory. Like harmonised standards, these technical specifications would be mandatory for manufacturers when assessing the performance of relevant products, before the “CE” mark can be used. The aim is to ensure out-of-date technical specifications under the EU CPR are updated more efficiently, and to bring more construction products within scope of the legislation;
- empowering the European Commission, for the first time, to set legally-binding minimum performance requirements for specific building materials in EU law itself (for example, depending on the product, in terms of toxicity, recyclability or fire resistance). These would come in addition the relevant technical standards or specifications used to describe the product’s performance.<sup>44</sup> However, the proposed Regulation does not envisage a general safety requirement for all construction products, in contrast to the UK Building Safety Act 2022;

40 DLUHC, [Explanatory Notes accompanying the Building Safety Bill](#) (5 July 2021), p. 184.

41 Construction products may also be covered by voluntary certification schemes as a way of providing quality or performance assurance.

42 See: European Commission, [Impact Assessment SWD\(2022\) 88](#) (30 March 2022), p. 16.

43 This process is known formally as “Assessment and verification of constancy of performance” or AVCP.

44 Consequently, the use of the “CE” mark on construction materials made in conformity with EU rules would come to signify not only the manufacturer’s declaration that a product’s performance has been described in accordance with the relevant standard, but also that applicable product-specific performance requirements set by EU law have been complied with. Manufacturers would have to issue a Declaration of Conformity as well as a Declaration of Performance.

- establishing a new EU-wide construction products database, alongside an explicit legal basis for possible exchange of information on such products and known safety risks with non-EU countries like the UK. The new Regulation would also require a new “Digital Product Passport” for individual types of construction products to improve traceability throughout the supply chain. These are intended to allow information set out in the Declaration of Performance to be “stored, shared and accessed durably” (sometimes known as ‘smart CE marking’); and
- making various additional changes, including clarifying the options for EU countries to maintain national testing requirements for products within the scope of the EU CPR; clarify obligations for the independent “Notified Bodies” carrying out assessments of construction products against technical specifications; set stricter “market surveillance” obligations for trading standard authorities; and require non-EU manufacturers selling such products into the EU to pay for a legal representative based within the Union.

4.11 As of September 2023, the European Parliament and the EU’s Council of Ministers, where the 27 Member States are represented, are engaged in “trilogue” negotiations to agree on the final text of the new EU Construction Products Regulation. If agreement is found and the legislation is formally adopted before the end of 2023, the new Regulation is expected to take effect by late 2025 or early 2026.

## UK construction products policy and the Building Safety Act 2022

4.12 In parallel to these legislative changes at EU-level, the UK has also embarked on its own process of regulatory reform for construction products after Brexit. The 2011 EU CPR has formed the basis for that process, as it continues to apply in NI and has also been ‘retained’ in domestic law for GB with only technical adjustments.<sup>45</sup> This means that the regulation of construction products in the UK has not undergone any substantive change since withdrawal from the EU, even though that legal framework was designed for an entirely different context. All EU harmonised standards in place when the UK left the EU Single Market on 31 December 2020 were also “designated” by the Government for the same purpose. Notably however, the EU’s “CE” mark is due to be replaced by the “UKCA” mark in GB, also denoting that a construction product is subject to a Declaration of Performance on the basis of a UK “designated standard”.

4.13 While the 2010 UK Building Regulations that govern building safety make no direct reference to the EU Regulation, the Government’s official guidance on how those regulations should be applied in practice does. For example, the current “[Approved Document 7](#)” on materials and workmanship in construction works states that the presence of the “CE” mark can be used to “assess the suitability of a material for use for a specific purpose”.<sup>46</sup> This shows a direct link between UK building safety policy and the EU CPR.<sup>47</sup> Indeed, the recent [Independent Review of the Construction Products Testing Regime](#) concluded:

45 See the [Construction Products \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) and the [Construction Products \(Amendment etc.\) \(EU Exit\) Regulations 2020](#).

46 DLUHC, “[Approved Document 7: materials and workmanship](#)” [accessed 24 August 2023].

47 Government documents relating to the current Regulation prepared by the then-Department for Communities and Local Government (DCLG) for this Committee, to facilitate EU parliamentary scrutiny while the UK was an EU Member State, have also been submitted as evidence to the Grenfell Tower inquiry.

“[...] In the absence of additional national requirements, trust in all aspects of a product’s performance relies upon compliance with that [EU Construction Products] Regulation and its effective enforcement through the UK’s Construction Products Regulations 2013. Thus, a system originally designed to serve a single market is now expected to perform a much heavier role; and over the last 30 years, although the UK has been an influential participant in the process, it has depended upon the EU to set the regulatory framework for products. This has led to a hollowing out of expertise in the UK, with consequent examples of over-reliance upon the standards and statutory guidance displacing professional judgement; with false or unsubstantiated claims for product performance not being recognised for what they are; and, although Member States remain responsible for surveillance and enforcement, with the authorities responsible for both [in the UK] lacking the experience or capacity to hold to account those acting in breach of the regulations.”<sup>48</sup>

4.14 While the regulatory framework has therefore mostly remained unchanged since Brexit, the 2017 Grenfell disaster highlighted that there was no mandatory regulation of individual types of construction products at all under UK law if they were not covered by the EU CPR.<sup>49</sup> The wider building safety framework had also failed to prevent unsuitable and unsafe products being used on high-rise structures throughout the country, including the Grenfell Tower.<sup>50</sup> The 2018 [Hackitt Review](#) therefore recommended that the law should be changed to ensure that “all products used in construction are properly tested, certified, labelled and marketed”, which would make it easier to know “whether the right products are being used”. [Schedule 11](#) to the [Building Safety Act 2022](#) has since conferred powers on Ministers to use secondary legislation to regulate *all* construction products put on the market in the UK (and to make amendments to the retained EU CPR in GB). The Building Safety Act itself does not make substantive changes in that regard: the Government is currently preparing detailed regulations using those powers. While a draft was made public in 2021, they are yet to be formally laid before Parliament for approval.<sup>51</sup> We return to the Government’s draft regulations in more detail below, because the direction of UK legislative reform in this area is relevant in the context of the continued application of the EU CPR in NI under the Windsor Framework. In particular, the Government has noted that the regulation of construction products under the 2022 Act may operate differently in NI, because there the EU Regulation will take precedence, and this may have consequences for the regime UK-wide.

## The Government’s position

4.15 Because of the continued application of the EU Construction Products Regulation in NI, the then-Minister for Building Safety and Fire (Lord Stephen Greenhalgh) submitted an [Explanatory Memorandum](#) on the EU CPR proposal on 9 May 2022. However, the

48 DLUHC, “[Independent Review of the Construction Product Testing Regime](#)”, p. 9.

49 DLUHC, [Explanatory Notes accompanying the Building Safety Bill](#) (5 July 2021), p. 184. There are voluntary product certification schemes in the UK, for example, the British Board of Agrément (BBA), that may provide information on the performance of a product against a relevant non-CPR standard. See: MHCLG, “[Independent Review of Building Regulations and Fire Safety: Hackitt review interim report](#)” (December 2017), p. 66.

50 Grenfell Tower Inquiry, [Phase 1 Report, Volume IV](#) (October 2019), chapter 26, para. 26.4.

51 Schedule 11 to the 2022 Act confers the relevant regulation-making power on Ministers, and also provides more detail about what the resulting regulations “may” provide for.



Memorandum failed to provide any meaningful assessment of its potential implications for the UK regulatory framework for construction products. This was despite the fact that the Building Safety Bill was then before Parliament, with an explicit acknowledgement that its provisions on safety of construction products would apply differently in NI because of EU law.<sup>52</sup> The Memorandum did however note that the new law would likely increase trade barriers for British exports of construction materials to Europe.<sup>53</sup>

4.16 In our [initial Report on the proposal for a revised EU CPR](#) in June 2022, we concluded that the new Regulation “could have implications for UK building safety policy” because of its application in NI under what was then known as the NI Protocol, and therefore “a careful assessment of the potential implications [...] for the UK is imperative”.<sup>54</sup> We wrote to the Minister with a [series of detailed questions](#) in that context at the same time, and eventually received a reply from his successor, Lee Rowley MP, on 27 March 2023.<sup>55</sup> This did not provide a substantive response to the matters we raised, <sup>but</sup> instead noted that the Government would “examine the merits of the Commission’s proposals and consider whether they should be fully or partially implemented in [GB]”. Therefore, as we return to below, continued alignment of the UK regulatory framework for construction products with the new EU CPR is apparently still a possibility. The Minister also said he “would very much value the contribution of the Committee into the development of these reforms”.

## Analysis

4.17 While we note the Minister’s statement that the new EU CPR is also likely to affect UK exports of construction products to Europe, our analysis here centres on how the proposed new EU Construction Products Regulation might interact with the regulation of such products in UK law, especially under the Building Safety Act 2022. This is our primary focus at this stage because the Grenfell Tower inquiry has heard evidence about the link between building safety and the regulatory framework for testing, labelling and certification of construction products in the UK.<sup>56</sup> There are a number of ways in which the new EU Regulation might affect that framework within the UK domestic legal order.

### *The new EU Construction Products Regulation in Northern Ireland*

4.18 First, the new EU CPR once adopted by the EU will by default apply directly within NI because of the Windsor Framework (as given effect in UK law by [section 7a](#) of the [European Union \(Withdrawal\) Act 2018](#)),<sup>57</sup> unless the new “[Stormont brake](#)” mechanism is applied to the final Regulation within two months of its publication in the EU Official Journal.<sup>58</sup>

52 DLUHC, [Explanatory Notes accompanying the Building Safety Bill](#) (5 July 2021), p. 232.

53 DLUHC, [Explanatory Memorandum on the proposal for an EU Construction Products Regulation](#) (9 May 2022), p. 4.

54 European Scrutiny Committee, Fourth report of Session 2022–23 (HC 119–iv), [chapter 1](#) (28 June 2022).

55 Letter from Lee Rowley to Sir William Cash, Chair of the European Scrutiny Committee (27 March 2023) (not yet published).

56 Grenfell Tower Inquiry, [Phase 1 Report, Volume IV](#) (October 2019), chapter 23, para. 23.61.

57 See Article 13 of the Windsor Framework.

58 More information on the “Stormont brake” is set out in our Eighteenth Report of Session 2022–23 (HC 119–xvi), [chapter 1](#) (30 May 2023). If were hypothetically to be used in this case, the current 2011 EU Construction Products Regulation would remain in effect in Northern Ireland.



4.19 If the new EU CPR does take effect in NI in due course, it would mean that the changes to the regulation of construction products as described in paragraph 11 above would apply in that market. In many ways, that would represent a continuation of the status quo. As is the case now, any construction products sold in NI would have to have their performance assessed against any applicable mandatory EU harmonised standards (or, in the future, ‘fall-back’ technical specifications adopted by the European Commission in the absence of such a standard). Construction products from the rest of the EU that comply with the Regulation, carrying the “CE” mark, would in principle be free to be placed on the NI market without further tests.<sup>59</sup>

4.20 Because this is largely a continuation of the status quo, the practical implications of the new Regulation may only become apparent over time (as the EU updates its list of harmonised technical specifications and a larger range of building materials, that are currently subject only to UK law when sold in NI, come within its scope). However, construction products on the NI market would also have to conform to any obligations that are entirely new, such as any minimum safety requirements for specific construction materials or the introduction of the “digital product passport”.<sup>60</sup> The continued application of the EU CPR may also affect the implementation in NI of the provisions of the Building Safety Act relating to construction products. We return to this below.

### *The new EU Construction Products Regulation in Great Britain*

4.21 The continued application of EU legislation on construction products in NI could also have wider implications for the regulation of (and market in) such products across the entire United Kingdom. This is because products that are on the market in NI in compliance with the EU CPR under the Windsor Framework also have ‘unfettered access’ to the GB market as set out in [section 47](#) of the [Internal Market Act 2020](#). Under this law, so-called “qualifying NI goods” (QNIGs)—broadly speaking, products lawfully on the market in NI—can also normally be sold from there to buyers in the rest of the UK without further checks, documentation, testing or assessment (and therefore, in this case, without needing to carry the “UKCA” mark).<sup>61</sup>

4.22 We return to the practical implications of this “QNIG” route below. However, it should also be noted that, for the time being, the Government continues to permit “CE”-marked construction products imported directly from Europe on the GB market without further testing or assessments in the UK in any event.<sup>62</sup> This means that construction products sold in England, Wales and Scotland do not yet need to show the “UKCA” mark

59 Products that did not comply with the new EU CPR could not normally be put on the market there, even if they would be legal for sale in the rest of the UK. Performance assessments for construction products under the EU CPR for materials to be placed on the market in Northern Ireland are not valid in the EU. These products have to show the “UK(NI)” mark and are not recognised in the EU. This resulted from the EU’s desire to avoid the UK being continued to serve as a ‘hub’ for technical assessments for products placed on the EU market because of Northern Ireland’s unique arrangement. See Article 6 of the Windsor Framework.

60 It is unclear if the proposed requirements for “green public procurement” of construction products, including selection and award criteria, would binding on the UK in respect of public procurement in Northern Ireland.

61 DLUHC, “[Construction Products Regulation in Northern Ireland](#)” [accessed 24 August 2023]: “Once we legislate to give effect to the relevant provisions, products meeting Northern Ireland requirements and bearing the CE marking [...] and which are qualifying Northern Ireland goods, will be able to be placed on the entire UK market on an ongoing basis”.

62 Since Brexit, UK-based Notified Bodies can no longer carry out performance assessments that are recognised for the purposes of the EU CPR. This means manufacturers cannot issue a Declaration of Performance for use in the EU using such an assessment carried out in the UK, even if the underlying regulatory systems are still mostly identical.

even if they are *not* “qualifying NI goods”.<sup>63</sup> This arrangement is intended to end in June 2025, but the Government has not yet legislated for this. In August 2023, the Department for Business and Trade for the third time [extended](#) the acceptance of “CE”-marked manufactured goods like electronics on the GB market, this time indefinitely (meaning the “UKCA” mark is now effectively optional for such products, rather than mandatory). DLUHC has not (yet) announced a similar extension for construction products, but we note that the Construction Products Association has warned of the “the cost and burden caused by the [UK]CA Mark scheme” for that sector.<sup>64</sup>

### *The parallel application of EU and UK laws on construction products*

4.23 In our view, the Windsor Framework combined with the “unfettered access” route could impact directly on the application of the new UK regulations in this area currently being prepared by the Government.

4.24 At present, the regulation of construction products in GB is near enough identical to the regime that applies in the EU and NI under the EU CPR, because that Regulation has been preserved as “retained EU law” domestically with only technical modifications. Therefore, building materials with the “CE” mark—whether “qualifying NI goods” or not—would currently typically also have been permitted onto the GB market if they had had their performance assessed under UK law instead. By extension, there is no difference in the construction products that can be placed on the GB and NI markets. In practice, that also means that the “UKCA” and “CE” marks on construction products currently continue to denote the same thing.

4.25 However, unlike the policy to allow construction products imported from Europe with only the “CE” mark, which is due to end in 2025, it is the Government’s intention that “qualifying NI goods” can be put onto the GB market with only the “CE” mark for as long as the Windsor Framework is in effect. Moreover, under the Internal Market Act this would normally still be permitted even as and when there is substantive divergence between the EU CPR (as applicable in NI) and the regulation of construction products in the rest of the UK.<sup>65</sup> This was acknowledged explicitly in the Government’s draft Construction Product Regulations published in October 2021, to which we referred in paragraph 16 above.<sup>66</sup> These regulations would have left the overall framework of the EU CPR as ‘retained’ in law in GB mostly untouched, but also contained proposals for two notable new safety-related provisions that would in principle apply UK-wide:

---

63 However, “CE”-marked construction products that are not QNIGs are only permitted for sale in Great Britain provided they were assessed against a technical standard that is also [approved by the UK](#). In post-Brexit terminology, “harmonised standards” are [now known](#) as “designated standards” in the UK. All EU harmonised standards in force under the EU CPR on 31 December 2020 were carried over onto the UK list of “designated standards”, which has not been updated since.

64 Construction Products Association, “[CPA Warns About Continuing Impact of CA Mark](#)” (1 August 2023).

65 For example, in Northern Ireland it is still legally possible to place a product on the market with a “CE” mark on the basis of a harmonised standard approved by the EU which has not been ‘designated’—approved—for that same purpose by the UK Government. Those products might then also, as “qualifying NI goods”, be put on the market in Great Britain. We are not aware of any evidence that this is currently widespread in practice, even if legally possible.

66 DLUHC, Draft Construction Products Regulations 2022 (14 October 2021). Please note these appear to no longer be available on the Government website.

- First, a new general safety requirement will be introduced for all construction products placed on the market in the UK, whether or not they are subject to a “designated standard”. This would require businesses “not [to] make a construction product available on the market unless it is a safe product”; and
- Second, a new category of construction products would be listed specifically as “safety-critical”, for which the Government will commission new standards to ensure mandatory performance assessments can be made in the absence of a UK designated standard.<sup>67</sup> The expectation is that products on this list will be subject to a “higher level of scrutiny” throughout their life cycle. DLUHC has said that introducing this category of products was needed, in part, “to manage obligations” under the Windsor Framework.<sup>68</sup>

4.26 The purpose of these changes is to create “mandatory requirements, including for safety” for all construction products being placed on the UK market, and to establish a legal basis for regulators to intervene “when products are shown to be unsafe”.<sup>69</sup> For safety-critical products, the obligation for manufacturers to issue a Declaration of Performance aims to ensure that potential users have “access to accurate information about the product’s performance to enable an appropriate product selection to be made”. Enforcement of the new rules is intended to be a shared responsibility between local trading standards authorities and a new “[Construction Products Regulator](#)”, to be based within the existing Office for Product Safety and Standards (OPSS).

4.27 It is significant that neither of the two new safety mechanisms described in the draft UK regulations are found in the current or proposed EU CPR. This means that it is not clear how (or indeed if) these new requirements would apply in NI at all to products within the scope of the EU Regulation, since a construction product that meets the relevant performance assessment obligations under the EU CPR can normally be sold in NI without any further requirements. The draft 2021 UK regulations contained a specific provision to that effect, which the Government explained was intended to ensure that the new safety regime would not prevent “a lawfully CE marked construction product being able to be placed on the market in NI” in order to “meet the United Kingdom’s obligations” under the Windsor Framework.<sup>70</sup> Similarly, the draft regulations stated that construction products carrying the “CE” mark which are qualifying NI goods “may be made available on the market of GB” provided a UK-based company has attached its details to the product.<sup>71</sup> However, it is not clear from the Explanatory Notes to the draft regulations how these provisions would operate in practice and to what extent they will allow any stricter or divergent UK safety standards to prevail in relation to products in scope of the EU CPR. We are looking to clarify this with the Minister as a matter of urgency.

4.28 The 2021 version of the UK regulations were an initial draft only. The final version has not been formally laid in Parliament for approval as of September 2023. As such, it is not clear at this stage whether (and if so when) these new safety requirements for

67 DLUHC, “[Independent Review of the Construction Product Testing Regime](#)” (20 April 2023).

68 Idem, p. 94. This also noted that the “safety-critical” category was introduced “to meet the requirements of WTO rules”.

69 DLUHC, [Impact Assessment accompanying the Building Safety Bill](#) (July 2021), p. 31, para. 149.

70 See Part 6 of the draft Construction Products Regulations 2022 (14 October 2021).

71 See Part 7 of the draft Construction Products Regulations 2022.

construction products will be introduced in UK law, and how any derogations related to products placed on the UK market under the EU CPR as made applicable by the Windsor Framework will be drafted.

4.29 However, with both the EU and the UK preparing new legislation in this area, the *de facto* alignment that has linked the two regulatory regimes since Brexit may no longer exist in the future. Over time, the “UKCA” and “CE” marks may then also come to denote different things in relation to the same construction product. That may occur, for example, if the EU and UK approve divergent standards or product requirements for a particular material. Overall, this arrangement could result in two substantively different regulatory frameworks for the marketing of construction products being operative: the general “UKCA” route under UK law with any applicable new safety requirements under the 2022 Act, and the “CE” route for products to which the EU CPR applies (subject to any relevant provisions in the future UK regulations). In this context, we note that both the 2018 [Hackitt Review](#) and the subsequent 2023 [Independent Review of the Construction Product Testing Regime](#)<sup>72</sup> explicitly referred to the need for a less complicated system of regulating construction products to contribute to overall building safety.<sup>73</sup>

4.30 Aside from the uncertainty about exactly how any new UK safety requirements will apply to “CE”-marked products lawfully on the market, this could also create broader regulatory complexity for both market participants and public authorities in certain cases. For example, after June 2025, the fact that a construction product carries only the EU’s “CE” mark, and not the “UKCA” mark, may not be sufficient in and of itself to determine whether it has lawfully been placed on the market in GB (since it might be a “qualifying NI good”). It is unclear how this might affect liability if building safety issues arise linked to such a product. It is not apparent to us how those purchasing and using construction products will be expected to differentiate between “CE”-marked construction products that are lawfully on the market as qualifying NI goods, and those that are not, after June 2025. We also note that goods shipped from NI to GB are not routinely checked (and do not require anything akin to customs documentation) when crossing the Irish Sea because of the Government’s “unfettered access” policy, so it is not clear how public authorities will in practice differentiate between “CE”-marked products that are QNIGs and those that are not when they enter England, Scotland and Wales from NI.

4.31 Of course, the continued application of the EU CPR in NI (and the “unfettered access” route for “CE”-marked construction products into GB this entails) does not affect the UK’s domestic building and fire safety rules. Even if building materials that would not conform to UK product rules are legally for sale on the basis only of their “CE” mark, their potential users would still have to assess on a case-by-case basis whether they would be suitable given the relevant safety requirements as applicable to a particular construction project. In any event, we cannot know to what extent manufacturers, importers and contractors may choose to use the “unfettered access” route to bring “CE”-marked construction products to the GB market and consider their use in building works as and when UK and EU regulatory regimes diverge substantively. It may be that it is not

72 DLUHC, “[Independent Review of the Construction Product Testing Regime](#)” (20 April 2023).

73 For example, Recommendation 1 of the Independent Review called for measures “to improve the accessibility of legislation and guidance, and to promote understanding of the regime for the regulation and assessment of construction products”. *Idem*, p. 83.

practically or commercially viable, or entail reputational, legal or insurance risks that could in effect deter the practice. However, we have not to date received any assurances from the Minister to that effect (see paragraphs 17 and 18 above).

4.32 The fact that some construction products that only meet EU requirements will still have a lawful route onto the GB market may also impact on the development of the UK's own regulatory approach. Indeed, the matter of divergence from the EU in this area has previously been noted by the Government itself,<sup>74</sup> and more recently by the Independent Review of the Construction Products Testing Regime.<sup>75</sup> The Government's finalised Construction Product Regulations under the Building Safety Act 2022 have yet to be published after the initial 2021 draft was made available, and we note in that context that the Minister's letter to us, dated 27 March 2023, suggested explicitly that the Government is considering whether full or partial alignment of domestic law with the new EU CPR is in the UK's interest. However, in his letter he did not elaborate on the reasons why.<sup>76</sup> The construction products manufacturing industry itself has also in the past expressed support for continued alignment between UK and EU rules to reduce costs to trade and ensure continued supply of construction products for use in GB.<sup>77</sup>

## Conclusions and action

4.33 We consider the EU's forthcoming new EU Construction Products Regulation may have significant implications for the UK as a result of its continued application in NI under the Windsor Framework. This may, in turn, also impact on the regulatory regime in this area in GB, because of the “unfettered access” provisions of the Internal Market Act. By extension, given the links between the regulation of individual construction products and the Building Regulations and its associated guidance, overall UK building safety policy may also be affected by this new EU legislation.

4.34 We are concerned about the inherent complexity of a system where EU and UK law apply in parallel within the UK in a sector like construction products, where clarity and safety are paramount. In particular, we are looking for assurances about the manner in which the two major new innovations envisaged for the UK construction products regime—the general safety requirement and the new category of “safety-critical” products—will apply to products which are covered by the EU CPR within the UK legal order. Coming to meaningful conclusions about the practical impact of this regulatory overlap is difficult at this stage, given that neither the EU legislation nor the new UK construction product regulations have been finalised, and the practical implications may shift over time as requirements for specific types of construction products change under the two regimes.

4.35 We are also hampered by the lack of any substantive analysis of these matters provided by the Government to date, either in its Explanatory Memorandum or the subsequent letter. We presume, however, that the new EU CPR is being taken into account in the drafting

74 MHCLG, [“Building a Safer Future: Proposals for reform of the building safety regulatory system”](#) (June 2019), p. 93.

75 DLUHC, [“Independent Review of the Construction Product Testing Regime”](#) (20 April 2023), p. 75.

76 We note that the new EU CPR foresees the possibility of “third countries” like the UK having full access to the EU's construction products database, but only “provided that their legislation is aligned with this Regulation or that they recognise certificates issued by notified bodies or European technical assessments in accordance with this Regulation”.

77 DLUHC, [“Independent Review of the Construction Product Testing Regime”](#) (20 April 2023), p. 76.



of the new Construction Product Regulations, given that the initial version of October 2021 explicitly recognised that EU law in this area could lead to the dis-application of the elements of the new safety framework for construction products in certain circumstances. We also note in that context that, in the Minister’s letter, partial or full UK alignment with the new EU CPR is explicitly mentioned and has not been ruled out. The EU CPR may also have wider implications for the UK which we have not considered at this stage. Notably, as the previous Minister himself told us, it is likely to impact on British exports to the EU (which will need to adhere to any new regulatory requirements and formalities). From a building safety policy perspective, the EU Regulation may also open up potential opportunities for cooperation between the UK and EU on construction product traceability and exchange of product safety data.

4.36 We have written to the Minister for Local Government and Building Safety (Lee Rowley MP) to seek an update on how the new EU CPR is affecting the development of UK construction products policy; for its assessment of the practical implications of two different regulatory regimes for construction products applying within the UK in parallel; and to take forward the Minister’s offer of working with the Committee as the implications of the new EU Regulation are worked through. A copy of that letter is annexed to this Report. In anticipation of his reply, we draw our latest assessment to the attention of the Business and Trade Committee, the Levelling Up, Housing and Communities Committee, and the Northern Ireland Affairs Committee.

### ***Letter to the Minister for Local Government and Building Safety (Lee Rowley MP)***

The Committee today again considered the proposal for a new EU Construction Products Regulation, which would introduce significant changes to the way the EU regulates construction materials (including, but not limited to, by introducing mandatory minimum safety and environmental requirements for some products).<sup>78</sup>

Our latest assessment of the potential ramifications of the EU CPR for the UK will be set out in our First Report of Session 2023–24. We remain of the view that this Regulation is likely to have implications for the planned reforms of the UK’s own safety regime for construction products enacted in the aftermath of the Grenfell disaster under Schedule 11 to the Building Safety Act 2022. It appears to us that:

- The current EU CPR continues to directly govern the market in construction products in NI, and the new Regulation intended to replace it will also by default apply in NI under Article 13 of the Windsor Framework; and
- Construction products compliant with requirements under the EU CPR (both in its current or updated iteration) on the market in NI in turn normally have “unfettered access” to the market in the rest of the UK without further tests or assessments under the Internal Market Act 2020.

It is unclear to us how the new safety requirements envisaged by the draft Construction Product Regulations published by your Department in 2021 would apply to construction

---

<sup>78</sup> Proposal for a Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011; Commission reference: COM(2022) 144; ESC number: 42043.



products which have had their performance assessed under the EU Regulation and carry the “CE” mark. We are concerned about two regulatory regimes for construction products operating in parallel within the UK domestic legal order in a market where clarity and safety are paramount, as identified by the Hackitt Review. We note, also, your latest letter’s reference to the possibility of the substance of the new EU Regulation also being ‘fully or partially implemented’ in GB. While we appreciate that legislative negotiations are on-going in Brussels, the direction of travel for the new EU CPR is clear. Moreover, the question of how any new UK safety requirements will apply to “QNIG” construction products that are placed on the market on the basis of their “CE” mark would be relevant even in the absence of EU regulatory reform, since this would still entail divergence between the UK and EU legal frameworks.

We would therefore ask you to provide a more substantive response to matters identified by the Committee, in particular in relation to the following matters:

- Recognising that the new EU CPR is still being finalised but its likely overall substance has emerged, what is the Government *initial* assessment of how that Regulation might affect the UK under the Windsor Framework and the Internal Market Act?
- What is the Government’s assessment of the continued application of the EU CPR (whether in its current or proposed form) in NI for a) the coherence of the new UK regulatory framework for construction product safety, including the use of the “UKCA” mark and; b) for overall building safety policy?
- More specifically, would the Government’s proposed general safety requirement under Schedule 11 of the Building Safety Act 2022 apply to construction products placed on the market in NI that only carry the “CE” mark under the EU CPR? Similarly, would the general safety requirement apply to “CE”-marked construction products which are then placed on the GB market from NI as QNIGs without further “UKCA” testing?
- Similarly, how would standards listed by the Secretary of State for construction products designated as “safety-critical” apply to products for which an EU harmonised standard exists under the EU CPR when a manufacturer wants to place a product on the market in NI or, as a QNIG, in GB? In particular, can you confirm the UK standard would prevail if in the future there is a conflict between an EU harmonised standard and a UK safety-critical standard for the same product? Will all safety-critical products sold anywhere in the UK be required to show the “UKCA” mark?
- Your Department told the Independent Review of the Testing Regime for Construction Products that the proposals to designate safety-critical construction products were needed in part “to manage obligations under the [Windsor Framework]”. In what sense were these required because of the UK’s obligations under the Framework?
- How will interested parties, including the new Construction Products Regulator, be able to differentiate between “CE”-marked construction products that are QNIGs and those that are not, once they are on the market in GB?

- Your letter of 27 March refers to the possibility of full or partial alignment with the proposed new EU Construction Products Regulation in GB. Could you elaborate on why this is an option that is being considered, and when do you expect to be able to provide more clarity on the Government’s policy in that regard?
- What is the timetable for the laying of the new UK Construction Product Regulations in Parliament, and is it the intention to produce these before the new EU CPR is agreed?
- Has the Government definitively decided *not* to further extend the unilateral acceptance of “CE”-marked construction products which are not QNIGs onto the GB market beyond June 2025?

We look forward to receiving your reply by the end of January. Please do not hesitate to contact the Clerk of the Committee if your officials would like to discuss any of these issues further.



## Department for Levelling Up, Housing & Communities

Sir William Cash MP  
European Scrutiny Committee  
House of Commons  
London  
SW1A 0AA

**Lee Rowley MP**

*Parliamentary-Under Secretary of State for  
Local Government and Building Safety*

**Department for Levelling Up, Housing and  
Communities**

4th Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF

27 March 2023

Dear Sir William Cash MP,

### **Northern Ireland Protocol: the new EU Construction Products Regulation**

Thank you for your letter of 22 June 2022, addressed to Lord Greenhalgh.

I am responding as the Minister now responsible for this area in my role as Parliamentary-Under Secretary of State for Local Government and Building Safety. Please accept my sincere apologies for the delay in my response.

The government announced on 9 December that ending recognition of CE marking for construction products will be delayed until June 2025. We will take the opportunity in this period to reform the regulatory regime for construction products to ensure that it is fit for purpose. We have taken further powers to regulate the sector through the Building Safety Act 2022, but it is clear from the evidence presented to the Grenfell Tower Public Inquiry that more work is needed to fully address the failings of the construction products industry, including reform of the existing regulatory framework. As part of this work, we will examine the merits of the Commission's proposals and consider whether they should be fully or partially implemented in GB. This means that at this time, it is not possible to fully address the committee's questions about the potential impact of the Commission's proposals on the UK market.

I would very much value the contribution of the committee into the development of these reforms. I would welcome the committee's views on how my department can best engage with the committee to do this. My officials would be very happy to discuss an approach with the committee's clerks if that would be helpful.

I am copying this letter to Clive Betts MP, Chair of the Levelling Up, Housing and Communities Committee and the Secretariat of that Committee; to Lord Kinnoull, Chair of the House of Lords European Affairs Committee, and the Secretariat of that Committee; and to Les Saunders, EU Document Scrutiny Manager, Foreign, Commonwealth & Development Office.

With every good wish,

**Lee Rowley MP**

Parliamentary-Under Secretary of State for Local Government and Building Safety

# European Scrutiny Committee

House of Commons London SW1A 0AA

Tel (020) 7219 3292 Email [escom@parliament.uk](mailto:escom@parliament.uk) Website [www.parliament.uk/escom](http://www.parliament.uk/escom)

From: Sir William Cash CH MP

15 November 2023

Lee Rowley MP

Minister for Local Government and Building Safety

Department for Levelling Up, Housing and Communities

2 Marsham Street

London SW1A 4DF

## **Windsor Framework: the EU Construction Products Regulation and UK building safety policy**

The Committee today again considered the proposal for a new EU Construction Products Regulation, which would introduce significant changes to the way the EU regulates construction materials (including, but not limited to, by introducing mandatory minimum safety and environmental requirements for some products).<sup>1</sup>

Our latest assessment of the potential ramifications of the EU CPR for the UK will be set out in our Twenty-third Report of Session 2022-23. We remain of the view that this Regulation is likely to have implications for the planned reforms of the UK's own safety regime for construction products enacted in the aftermath of the Grenfell disaster under Schedule 11 to the Building Safety Act 2022. It appears to us that:

- The current EU CPR continues to directly govern the market in construction products in NI, and the new Regulation intended to replace it will also by default apply in NI under Article 13 of the Windsor Framework; and
- Construction products compliant with requirements under the EU CPR (both in its current or updated iteration) on the market in NI in turn

---

<sup>1</sup> Proposal for a Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011; Commission reference: COM(2022) 144; ESC number: 42043.

normally have “unfettered access” to the market in the rest of the UK without further tests or assessments under the Internal Market Act 2020.

It is unclear to us how the new safety requirements envisaged by the draft Construction Product Regulations published by your Department in 2021 would apply to construction products which have had their performance assessed under the EU Regulation and carry the “CE” mark. We are concerned about two regulatory regimes for construction products operating in parallel within the UK domestic legal order in a market where clarity and safety are paramount, as identified by the Hackitt Review. We note, also, your latest letter’s reference to the possibility of the substance of the new EU Regulation also being ‘fully or partially implemented’ in GB. While we appreciate that legislative negotiations are on-going in Brussels, the direction of travel for the new EU CPR is clear. Moreover, the question of how any new UK safety requirements will apply to “QNIG” construction products that are placed on the market on the basis of their “CE” mark would be relevant even in the absence of EU regulatory reform, since this would still entail divergence between the UK and EU legal frameworks.

We would therefore ask you to provide a more substantive response to matters identified by the Committee, in particular in relation to the following matters:

- Recognising that the new EU CPR is still being finalised but its likely overall substance has emerged, what is the Government *initial* assessment of how that Regulation might affect the UK under the Windsor Framework and the Internal Market Act?
- What is the Government’s assessment of the continued application of the EU CPR (whether in its current or proposed form) in NI for a) the coherence of the new UK regulatory framework for construction product safety, including the use of the “UKCA” mark and; b) for overall building safety policy?
- More specifically, would the Government’s proposed general safety requirement under Schedule 11 of the Building Safety Act 2022 apply to construction products placed on the market in NI that only carry the “CE” mark under the EU CPR? Similarly, would the general safety requirement apply to “CE”-marked construction products which are then placed on the GB market from NI as QNIGs without further “UKCA” testing?
- Similarly, how would standards listed by the Secretary of State for construction products designated as “safety-critical” apply to products for which an EU harmonised standard exists under the EU CPR when a manufacturer wants to place a product on the market in NI or, as a QNIG,

in GB? In particular, can you confirm the UK standard would prevail if in the future there is a conflict between an EU harmonised standard and a UK safety-critical standard for the same product? Will all safety-critical products sold anywhere in the UK be required to show the “UKCA” mark?

- Your Department told the Independent Review of the Testing Regime for Construction Products that the proposals to designate safety-critical construction products were needed in part “to manage obligations under the [Windsor Framework]”. In what sense were these required because of the UK’s obligations under the Framework?
- How will interested parties, including the new Construction Products Regulator, be able to differentiate between “CE”-marked construction products that are QNIGs and those that are not, once they are on the market in GB?
- Your letter of 27 March refers to the possibility of full or partial alignment with the proposed new EU Construction Products Regulation in GB. Could you elaborate on why this is an option that is being considered, and when do you expect to be able to provide more clarity on the Government’s policy in that regard?
- What is the timetable for the laying of the new UK Construction Product Regulations in Parliament, and is it the intention to produce these before the new EU CPR is agreed?
- Has the Government definitively decided *not* to further extend the unilateral acceptance of “CE”-marked construction products which are not QNIGs onto the GB market beyond June 2025?

We look forward to receiving your reply by the end of January. Please do not hesitate to contact the Clerk of the Committee if your officials would like to discuss any of these issues further.

I am copying this letter to Clive Betts, Chair of the Levelling Up, Housing and Communities Committee and its Clerk, Previn Desai; to Simon Hoare, Chair of the Northern Ireland Affairs Committee and its Clerk, Stephen Habberley; to Lord Ricketts, Chair of the House of Lords European Affairs Committee, and to Jarek Wisniewski, Clerk of that Committee; and to Les Saunders at the Foreign, Commonwealth and Development Office.

**CHAIR**