



Windsor Framework Democratic  
Scrutiny Committee

# OFFICIAL REPORT (Hansard)

Regulation (EU) 2024/3110 laying down Harmonised  
Rules for the Marketing of Construction Products and  
repealing Regulation (EU) No 305/2011:  
Departmental Evidence

16 January 2025

# NORTHERN IRELAND ASSEMBLY

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Construction Products and repealing Regulation (EU) No 305/2011:  
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**Members present for all or part of the proceedings:**

Mr David Brooks (Deputy Chairperson)  
Dr Steve Aiken  
Mr Jonathan Buckley  
Mr Declan Kearney  
Ms Kate Nicholl  
Ms Emma Sheerin  
Mr Eóin Tennyson

**Witnesses:**

Mr Stephen Bradshaw	Department for Infrastructure
Mr David Porter	Department for Infrastructure
Mr Shane Doris	Department of Agriculture, Environment and Rural Affairs
Mr John Burke	Department of Finance

**The Deputy Chairperson (Mr Brooks):** We welcome David Porter, director of engineering, and Stephen Bradshaw, deputy director of procurement and commercial, from the Department for Infrastructure; John Burke, deputy director of properties division, from the Department of Finance; and Shane Doris, director of environmental resources policy, from the Department of Agriculture, Environment and Rural Affairs. Thank you for attending the Committee. Please, brief the Committee.

**Mr David Porter (Department for Infrastructure):** Thank you, Chair, for the opportunity to talk to the Committee. I am the director of engineering in the Department for Infrastructure, and that makes me the chief highway engineer for Northern Ireland. I have also been asked to deliver the opening statement on behalf of all the Departments. A number of the Departments are represented, but the opening statement sets out the position across the various Departments. We will try to give the Committee some insight into the impacts that the construction products regulations will have.

In summary, the impacts are limited according to the information that we hold in the Department. At the outset, I will reassure the Committee that the hesitancy is not because we do not want to share the information. It is genuinely because we do not have the information. We will explain to the Committee what we have, and if we say that we do not know, it is because we genuinely do not know. It is not because we are playing clever with the Department or the Committee; it is genuinely the position.

As you know, the regulation is a reserved matter that is led by the Ministry of Housing, Communities and Local Government (MHCLG), and enforcement is a role that falls to councils here or the Secretary of State for Housing, Communities and Local Government, supported by the Office for Product Safety

and Standards (OPSS). The Northern Ireland Departments are largely consumers of products that are subject to these regulations, and each Department will have to assess how the revisions may impact its operations, and it will vary across Departments.

I am from the Department for Infrastructure, so I will give an example of how the regulation will impact DFI. That will be useful to understand how the Department consumes the products, and why I cannot give information on the wider impact. DFI purchases construction projects through contracts. We do not buy individual products; we buy the A5, A6 or a waste water treatment works, and the contractor or subcontractor supplies the materials. That is the first scenario, and it would not be an unusual scenario for other Government Departments. A Department may want to build a hospital, school, road or water treatment works, and it contracts the project out. By virtue of that, the Department is availing of construction products but not directly because it is through a contract.

The Department for Infrastructure has direct labour, and occasionally it buys products. The direct labour is the industrial operatives who carry out road and watercourse maintenance, and to carry out their function, they need certain materials. In some cases, the Department buys materials directly, such as cement. The Department will stock the cement in its stores, and if a manhole or gully needs to be reset, we will use that material. Therefore, the Department could get embroiled in the construction regulations.

The third way in which we might be affected is that, in some circumstances, Departments specify construction materials or our policy points to the use of a certain construction product. For example, if a developer builds a private street and does not want to maintain it, they enter into a private streets agreement. If the road is built to the appropriate standard, the Department will, at some point, adopt the private street. To demonstrate that the street is at the correct standard, the Department sets the standard. Whilst the Department does not have its hands on the construction product regulations, by virtue of setting the technical standards, we have an interest in them. We are in the space, where we will specify the use of particular black-top mixes, the specification for a gully or the size and nature of a construction material used to form a pipe. That is part and parcel of what we do.

A Department could specify something in construction, and although it might look as though it has responsibility, that is separate from the construction products regulation. Just because we specify a particular asphalt mix — it includes construction materials — does not mean that the responsibility for enforcing or dealing with the construction product regulation transfers to the Department. It is a reserved matter. It sits with the Ministry, as I described, and enforcement is done locally through the councils.

No Department has the expertise, resources or data to assess the impact on wider society. We can comment on how it would impact on our Departments, typically, in those three areas where we are buying by contract, buying directly or specifying. We can comment on that, but we do not have information on the impact on wider society.

**Dr Aiken:** May I interject? David, thanks very much. This is just a quick one. If I am reading this correctly, you will specify the technical specifications for something that is likely to be done. Basically, it will have to be done in compliance with this rule and regulation, so it has to be within the CE regulation. Regardless of whatever happens, the contractor will have to use the CE stuff, otherwise you would not be in compliance with the rules and regulations.

**Mr Porter:** Correct. Yes. In that scenario, we would check whether they have a CE certificate, and, if they have laid the material properly and to the agreed layout, the road would be suitable for adoption. In the event that they use a material that is not CE marked, we would deal with that through the contract or the private streets determination, under which we would say, "You cannot demonstrate that these materials meet the specification. Therefore, we are not adopting the road". You would then need to reach an agreement to get the material removed or find a different way of getting it approved. In the scenario where they use a material that has a questionable CE marking, we would refer that to the council for enforcement.

**Dr Aiken:** Let us take as an example, just to get my head round this, the construction part of the A5. Given that this is likely to come in within 24 months, will all the construction materials that will be used to build the A5 have to be CE marked?

**Mr Porter:** Yes.

**Dr Aiken:** OK.

**Mr Porter:** I talked about the impact on the Department and how the Departments do not have information on the impact on wider society. However, we have tried, as best we can, to give the information on the impact of the new regulations on our Department and an indication of the impacts that they may have on wider society. The assessment is difficult, as any impact will depend on how the UK Government choose to develop the regulations for GB. Therefore, we are relying on the UK Government's explanatory memorandum, which was published only in the last 36 hours. In essence, it states that there is no significant impact on trade envisaged or expected.

We have worked with the Ministry of Housing, Communities and Local Government, and DOF, in particular, had some limited engagement in the latter part of the last calendar year on the regulations, although that was fairly light touch and, crucially, did not address plans for the development of the GB regulations. It was only in the middle of December that Departments became aware that new regulations would be published over the Christmas holiday period. Recognising that that timeline would cause difficulties, our Departments have worked together to provide the Committee with as much information as possible in advance of its meeting last week. It was a tricky situation in that, at that stage, the explanatory memorandum (EM) had not been published. There was a draft, and we were aware of the draft, but it had not, at that stage, been published. It was a difficult situation in that that document had not been made public. We encouraged our DOF colleagues and MHCLG to publish the explanatory memorandum at the earliest possible opportunity. We also set out the difficulties that late or non-publication would cause. That was taken on board, and the explanatory memorandum has now been published. The UK Government does not anticipate that the revised regulations will result in significant impacts for those selling construction materials between Northern Ireland and GB.

**Dr Aiken:** Paragraph 25 of the financial implications of the explanatory note is classic Civil Service-ese. It states:

*"Details of the likely potential costs are uncertain at this time".*

It then states, however:

*"we do not anticipate significant Northern Ireland-specific financial implications",*

even though they do not know what the potential costs are. They are mutually contradictory statements. It is classic Sir Humphrey-speak.

**Mr Porter:** Yes.

**Dr Aiken:** Paragraph 14 refers to the impact of the regulations on Northern Ireland, and lists five points. You do not have to be a member of the Construction Employers Federation to notice that each one of those has a significant cost. I am confused. I cannot make head nor tail of this EM. You cannot say one thing and then do another.

**Mr Porter:** My understanding — and maybe others will come in — is they are not saying that the regulations will not have a cost. There is a financial burden to the regulations. There is no differentiation between the costs that will be incurred in Northern Ireland and the costs elsewhere.

I will go through the five points. You have to provide more information on a product. That does not come for free. There will be a cost to that. Provided that that cost is reasonable and allows for better-informed decisions, then that is a reasonable cost. There will be costs associated with introducing the regulations. There just will not be a differentiation between Northern Ireland and GB.

**The Deputy Chairperson (Mr Brooks):** If we can just hold any other questions to the end, we can make progress on the presentation. Thank you.

**Mr Porter:** It might be helpful if I drew a couple of points out of the memorandum. I will jump forward to the differences. It provides more clarity on the development of standards through the inclusion of a three-year plan. It brings reuse and recycled products within the scope of the regulations. It expands the scope of the regulations to bring online marketplaces and fulfilment service providers into scope.

It introduces new requirements for placing construction products on the market, such as a requirement to provide information on the product's environmental suitability. Again, that is an example of something that does not come for free. There is going to have to be some testing in order to be able to demonstrate that. It cannot be just a statement saying, "This will cause no harm". You have to be able to demonstrate that. That is where there is a cost to these; it is just not differential.

It seeks to enable better information sharing between bodies that are responsible for ensuring conformity within the regulations. There are improvements to market surveillance and enforcement, and the establishment of a construction products database, which integrates with the digital product passport envisaged by the Ecodesign for Sustainable Products Regulations (ESPR), which will become mandatory in 2027.

We understand that the UK Government consider that the new regulations will introduce the following new requirements in Northern Ireland: they will require manufacturers to maximise the use of recycled materials; they will require details of the environmental sustainability of a product to be provided and on its packaging; they will require products to be designed so that they can be used for as long as possible by making information available on repairs and the availability of spare parts for 10 years after placing the product on the market; they will require digital labelling through the digital product passport; and they will provide information about the installation and deinstallation of a product.

I am conscious of your time, Chair, so I will just make a couple of closing remarks. Colleagues are in attendance from other Departments and may be able to answer some of your specific questions on how the regulations impact on some other Departments. I reiterate, however, that this is a reserved matter, and any impact on the supply or availability of goods will be highly dependent on what the UK Government choose to do with the equivalent regulations for GB. Currently, the regulations across Northern Ireland, GB and the EU are largely in sync, and I understand that the GB regulations will be reviewed over the course of this year. The explanatory memorandum suggests a direction of travel for the GB regulations that is closer to the EU regulations, but those decisions will be taken in London after the Committee and the Assembly have had to take their decision.

Thank you for the opportunity to come to the Committee. I hope that those opening remarks are helpful. As I said, we are happy to answer questions as best we can. I emphasise that, if we do not know the answer, we will have to say that we do not know. It will not be because we are trying to be evasive. Thank you for listening.

**The Deputy Chairperson (Mr Brooks):** Thank you very much. The Committee is used to the fact that some of this information sits in London, but we are thankful that our Departments come to us, because, largely, you are the relationship gatekeepers with some of our key stakeholders on some of these issues.

I have a couple of questions before I open the meeting to others. The UK Government, in talking about the scale of trade, said:

*"a high-level figure is unlikely to provide conclusive insights into the impact the Regulation will have. This is because the size of the construction trade is not reflective of the extent to which the Regulation may benefit or impact individual businesses, which cannot be modelled uniformly — especially given the exemptions for small businesses that are contained within the Regulation and which the Committee has noted."*

They also noted:

*"this information is not held by the Cabinet Office and relevant public bodies would need to be engaged to see if any modelling had been undertaken."*

In view of that, have any Departments undertaken such modelling of how the regulation may impact on trade in construction products from GB to NI?

**Mr Porter:** DFI certainly has not carried out any such modelling.

**Mr John Burke (Department of Finance):** I do not believe so. It comes back to the issue that it is principally a reserved matter. Where did that statement come from?

**The Deputy Chairperson (Mr Brooks):** It is in the EM.

**The Committee Clerk:** Sorry, Chair, may I correct you? It was a response that the Committee received to correspondence that it issued to the Cabinet Office last week.

**The Deputy Chairperson (Mr Brooks):** Oh yes, it is in the letter.

Are you aware of any public body that is carrying out that modelling?

**Mr Porter:** No.

**The Deputy Chairperson (Mr Brooks):** Thank you very much. I will come back to you. That will be an action for the Committee hereafter.

On microenterprises in Northern Ireland, the UK Government said:

*"whilst the Government welcomes the Regulation taking into account the unique needs of small businesses, this is not data that we would be able to provide. For the same reasons as above, instead we would encourage the Committee to engage with the relevant public authorities."*

Do you have any information on how many Northern Ireland businesses fall into the microenterprise category as set out in the regulation? Would the simplified procedures be effective in reducing the burden of costs and regulation on SMEs and microenterprises?

**Mr Porter:** We have no answer to that. We have done no assessment of it.

**The Deputy Chairperson (Mr Brooks):** OK. Thanks very much. Again, we will probably have an action to come back to that.

**Mr Buckley:** I understand that this is a difficult matter to quantify, particularly as there are so many moving parts, which may be why there are so many Departments before us.

I will specify why it is of such interest for the Committee to know the levels of trade. The EU impact assessment, in its original form, reckoned that there would be an 8% cost increase for affected businesses. Those were the EU's words, so the Committee set itself the task of trying to ascertain those levels.

It is still difficult to ascertain, from the UK Government's explanatory memorandum and, indeed, subsequent letters that we have received, what those levels of trade are, because they determine that it would not have any bearing, but that is all based on the premise that the UK Government follow a similar procedure. I know that that is the place that you guys are in. In a letter that we received from Paul Flynn about this on 16 January, he said:

*"I would also highlight the Government's conclusion in the Explanatory Memorandum that the revised CPR, combined with planned domestic reforms, is not likely to result in significant impacts in the terms mentioned."*

That is if they do; if they do not, what are the consequences for the scale of trade in terms of the increase in costs for your Departments? Is there any way to quantify that?

**Mr Porter:** Again, no, not at the minute. However, I thought about the answer in respect of the Department, not the local economy or smaller SMEs. I tried to think of a useful example through which you could gain an insight into the potential problem. I came up with the example of bituminous materials. There is no facility to make those in Northern Ireland, so 100% of the bitmac or bituminous materials — the raw material — is imported. We recently carried out an exercise —

**Mr Buckley:** Imported from where?

**Mr Porter:** That is a super question. We recently carried out an exercise — not because of this but because of a separate contractual issue that we were dealing with. Under our contracts, we pay an index. Our contracts last for so long that you cannot say to a contractor, "Give me a price on day 1, and, in four years' time, that's going to be the same price". There is an index-linked element, and the Department knows that, as inflation impacts on contracts, we, as the clients, pay for that. It has been clear during the Ukraine war that those were getting out of sync. That is not an unusual situation.

Sometimes, indices get out of sync and then rectify themselves, but they got out of sync, and the gap kept widening, as a result of which we had to do a particular piece of work for bituminous materials to work out a reasonable response. We had to dig into exactly the question that you asked about where the material comes from, and we had to identify a good proxy to work out what the index is. None of the material comes from Northern Ireland; 100% of it comes from Europe.

We also widened out that exercise to the GB market. We engage with the Mineral Products Association here, which wanted to engage with its colleagues in the Mineral Products Association in GB to see whether they were experiencing the same thing. It carried out the same exercise, which revealed that 70% of the bituminous material in GB also comes from Europe.

**Mr Buckley:** If you were to follow that to its natural conclusion —

**Mr Porter:** It depends on what the UK Government decide.

**Mr Buckley:** That is the point. We have vague flirtation with the fact that that may be the case. One of the papers states:

*"The UK Government will consider the relative merits of the EU's revised CPR as part of developing its proposals for reform as set out above."*

There are no guarantees. What if that did not happen but the EU assessed that it is an 8% cost increase for affected businesses? Those affected businesses are Northern Ireland businesses in the context that I have described. Are you following?

**Mr Porter:** Yes.

**Mr Buckley:** You described a complex picture in your Department of a pie split between contract, the direct purchase of construction products, and a specification of the type of construction. How does that pie split, and which one of those sectors would be most impacted by something such as that? Is that answerable now? I know that it is quite complex.

**Mr Porter:** In money terms, the biggest spend by far would be the contract works, but I suspect, assuming that the 8% is right, and depending on what the UK Government do, that it would have the same relative impact in percentage terms on each of those sectors, because they are all equally reliant on materials.

**Mr Buckley:** That is for one particular Department. I imagine that others are the same. If there were an 8% increase across the board for affected businesses, and if the construction products regulation (CPR) did not apply in GB, what would be the cost implications to the Northern Ireland Executive from a finance and procurement perspective?

**Mr Burke:** I come at it from a slightly different branch. We deal with some of the policy matters, and we were really here to provide a bit of reassurance on a different matter. However, it seems very clear that, if there were a restriction on the supply of products, or if all products were to go up by 8%, or if some did and some did not but we had to buy the CPR ones, it would have an impact in the same way.

**Mr Buckley:** I do not expect anyone to have the answer here and now, but are we able to ascertain the potential cost, particularly from the public-sector perspective — finance and procurement — if that were applied to Departments across the board?

**Mr Burke:** I would have to take that away. You might use a very rough rule of thumb, which is possibly totally inappropriate — my quantity surveyor colleagues might go nuts — but, if you were to say that half of building work is labour and half is materials, and the price of materials has increased by 8%, is it, perhaps, 4%? I do not know whether I have got that ratio right — maybe it is two thirds labour to one third materials — but that might be a way of looking at it. There will be regime change in GB in any case, so we go back to the question of whether it is about the difference or the relative difference. The other question to ask about the 8%, which I was not aware of — I am sure that it was there, but I have not seen it — is whether it is about the combined effects of construction product regulation, which is an existing regime, or about the change. All the issues and the potential risk of divergence because the EU adopts a new standard or way of doing things or because GB decides on

a new way of doing things, are already there under the current regime. Do the changes increase or change the risk? Possibly, but a lot of the revised construction products regulations that have just been made are essentially very similar to the regime that is already there. However, there is the list of new requirements in the EM that you noted.

**Mr Buckley:** Again, I can only read what the EU impact assessment said. It was not specific on that point, so it would be interesting to know.

**Mr Porter:** It would be worth drawing out with the UK Government how much of the 8% increase is baseline as a result of the change in the regulations generally and how much of it would be a result of divergence.

**Mr Buckley:** I do not expect it today, but would it be possible for the relevant Departments — it could be centralised — to ascertain what that 8% would mean for the public sector? I know that it is not just about the public sector, but, while you are in front of us, I am looking at your Departments. Would it be possible to try to ascertain that?

**Mr Porter:** We could take it away.

**Mr Buckley:** OK.

**Mr Porter:** It would be useful if we could see —

**Mr Buckley:** It is in the original EU impact assessment, and I am sure that the clerk could provide that.

**Mr Porter:** We could have a look at that.

**Mr Buckley:** I have a final question on the conversations with the UK Government (UKG) about where they are on this. I suppose it is probably all about vague flirtation, saying "It looks good; that is where we are aiming". Is anyone in a position to give an update on how advanced the conversations are with the UKG about the potential to follow the CPR?

**Mr Porter:** As we said, we have engaged with the UK Government to understand what is in the memorandum. It will be for the UK Government to decide —

**Mr Buckley:** Has there been any specific engagement with any of your Departments with UKG post the —

**Mr Burke:** Not on that specific matter because it is a reserved matter and for them to lead on.

**Mr Buckley:** It is a reserved matter, but the EM says that the policy intent crosses over to the Northern Ireland Executive and that there is therefore engagement with them. We are told that throughout different explanatory memorandums as we get them. They change significantly over time, believe it or not, but the principle remains that, where there is an overlap with devolved institutions, there is continual conversation about the impacts.

**Mr Porter:** There has been engagement. More recently, even as late as yesterday, we had further engagement with them about the content of the EM, but I am not aware of a discussion of the specific question of subsequent decisions.

**Mr Buckley:** So, the latest conversations between your individual Departments and UKG are essentially on the content of the EM, with no further updates on where they are in their process of deciding to incorporate CPR in the planning of their domestic reforms.

**Mr Porter:** That is correct. The most recent conversations have been about that document and the EM.

**Mr Buckley:** Thank you very much.

**Mr Tennyson:** Thank you, David and your team, for your evidence so far. At paragraph 20 of the updated EM, the Government make reference to:



*"manufacturers moving goods from Great Britain are likely to meet these new requirements in order to also continue supplying the EU market."*

Do we have any indication — I suspect that the answer is no — of the proportion of businesses selling the products affected by this regulation that supply both the EU market and the domestic GB market at the moment?

**Mr Porter:** I do not have that information. I am not sure that that even came up in any of the conversations that we have had.

**Mr Tennyson:** OK, no problem at all. The only other question that I had was about the potential impact of the regulation, should it apply, and we have talked about that. Do you have any assessment of the impact on businesses in Northern Ireland, or, indeed, what the impact might be on the public sector, were the regulation not applied?

**Mr Porter:** It would depend on what scenario you run and what is put in its place. All that we can do is go by what the EM says. It looks like that will not be the scenario. Therefore, no impact — or no significant change; certainly, no differential change — is envisaged.

**Mr Burke:** Is there not the issue that, if it were not applied here, the existing CPR regime would continue here, so you would end up — heaven forbid — with three different regimes? You would have the new EU regime for the EU, the old EU regime operating here and a GB regime.

**Mr Buckley:** Is that a question of trivergence?

**Mr Porter:** You would have a GB version, yes. Again, however, given what the EM says, that is unlikely. There is unlikely to be a differential. We are taking that at face value, but I understand that this Committee's purpose is to scrutinise that and reassure itself that that is the case.

**Mr Buckley:** I want to overlap with Eóin's point. This is an interesting one. The old CPR regulation that exists in GB has carried over post exit. In the case of that potential trivergence, that would occur only if GB moved away from what is currently in existence. Am I right on that?

**Mr Porter:** It would have to take a conscious decision.

**Mr Burke:** For the broad technical standard, that might be correct, but the regulations that were introduced in GB were changed after Brexit: part of the regulations are concerned with affixing a CE mark, and GB is no longer authorised to do that. You would have to look carefully at that change. Is that branding or stamp the only change? Is that all that changed? There is some small but potentially significant change there.

**Dr Aiken:** I have a techie engineering question on something that came up in the Finance Committee, which has always been worried about what was going on in the Grenfell inquiry and the changes in building materials. You talked about the use of recycled materials, and one of the real questions that came out of the Grenfell inquiry was about how materials were being used, recycled and put in position. There are also the fire safety regulations. What happens if, because of Grenfell, the GB regulations are at a higher level than the CE regulations and marks? Does that mean that we would, potentially, be putting lesser specification materials into our construction materials under the CE regulations rather than the GB regulations? I am talking particularly about fire-retardant materials and some of the other construction materials.

**Mr Burke:** I can speak to that a little. There are lots of strands to that — one of the changes that you might notice if you look at the old CPR and the new CPR is that it goes from 39 pages to 106 pages, and I do not know how that all accumulates or where that all goes — but, essentially, under the current CPR regime, you have a declaration of performance. The idea is that you have a harmonised technical standard of assessment. It sets out the metrics. A very straightforward example is that you might have to describe your pipework in centimetres rather than inches so that there is a common technical way of doing the assessment. If you are doing a fire test, it may be that you are testing the way that something combusts rather than the way in which a flame spreads over it or something. The new regulations set that out so that there is a common technical language. The old regulations do not say what that minimum performance is; that was generally left to building regulations and building

codes. The devolved Administrations usually followed developments in the rest of the UK or England on that and brought the standard up to where it was in England.

You were talking about a common framework as opposed to a performance standard. There seems to be a spirit of moving that on a little bit in the revised regulations, with the EU saying, "Nonetheless, this should be the minimum standard". The technical assessment bodies and groups and the standards institutes that look at those harmonised ways of doing assessments could also say what a minimum product conformity standard is. It is quite complex, and I am not sure how it is developed, but, if that were to happen, it is very unlikely that the UK would not be ahead of the game or in the game in trying to keep that consistent.

**Dr Aiken:** With the indulgence of the Chair, when I was Chair of the Finance Committee, that was the one thing that made me nervous. When we were dealing with Grenfell, a particular company decided to come and tell us that, because it met CE standards, it exceeded GB standards. Subsequent to a very public inquiry, which I reference here again, it is clear that it did not or that it deliberately manipulated the rules, the test or whatever it happened to be. A concern that we have as MLAs is that, if this comes through, we may open ourselves up to accepting lower standards than the rest of our nation. Will that be the case, or will the standards be the same, particularly when it comes to safety regulations? That is what makes me quite nervous.

**Mr Burke:** The vast majority of those really ought to be addressed, particularly where they are significant. Putting products on the market is a reserved matter — we are not able to govern that — but the products that you install are a matter for building regulations, so you have control of that.

**The Deputy Chairperson (Mr Brooks):** There are no further questions. Thank you very much for your attendance and briefing.