

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

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REGULATION (EU) 2024/1781 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A FRAMEWORK FOR SETTING ECODESIGN REQUIREMENTS FOR SUSTAINABLE PRODUCTS AND REPEALING DIRECTIVE 2009/125/EC

Jointly submitted by the Department for Energy Security and Net Zero, the Department for Environment, Food and Rural Affairs, and the Department for Business and Trade — 4 July 2024

SUBJECT MATTER

1. The EU has adopted a regulation establishing a framework for setting Ecodesign requirements for sustainable products. The Ecodesign for Sustainable Products Regulation (ESPR) is framework legislation that confers powers to set targeted product-specific requirements.
2. The regulation updates, modernises and extends the existing framework that ensures energy-related products are manufactured to be sustainable, while repealing the current legislative framework (the Ecodesign Directive 2009/125/EC). The regulation extends the scope of products which can be regulated from energy-related products to all physical products (with certain exceptions). It also allows for the setting of a wider range of requirements to make products more durable, reliable, reusable, upgradable, repairable, easier to maintain, refurbish and recycle, and energy and resource efficient.
3. ESPR is framework legislation, this means it does not set the specific measures but it enables the later adoption of product specific measures (or horizontal measures where common ecodesign requirements will apply to a group of products with similarities). ESPR will, in general, only be used to set requirements for products where existing legislation does not already apply, or when existing legislation does not sufficiently address the sustainability of those products.
4. The Commission aims to publish a three-year working plan in March 2025, which will confirm the initial products to be regulated under ESPR and is expected to include:
 - Iron and Steel,
 - Aluminium,
 - Textiles,
 - Furniture,

- Tyres,
 - Detergents,
 - Paints,
 - Lubricants,
 - Chemicals,
 - Energy-related products, and
 - Information and communication technology products and other electronics.
5. The process for developing each delegated regulation will follow the model under the existing Ecodesign Directive. Each regulation will be supported by a Preparatory Study and Impact Assessment. An Ecodesign Forum will be established in the form of a Commission expert group to ensure consultation with all interested parties. This will be open to all stakeholders and experts in the product lifecycle. ESPR requires the Commission to ‘take into account’ the views expressed by the Ecodesign Forum when preparing Ecodesign requirements. Product-specific requirements will be introduced using delegated acts.
6. Delegated acts will also make provisions related to:
- a. *Digital product passports (DPPs)*—which will be introduced for products regulated under ESPR to improve transparency. The DPP will be a single, digital entry point to access product information throughout the product life cycle via a unique product identifier (e.g. QR code). The precise information to be included in the digital product passport will be specified in the delegated acts - but may include information on environmental footprint and recycled content.
 - b. *Unsold goods requirements*—in particular (i) an obligation on economic operators to disclose information on their destruction¹ of unsold consumer goods and any prevention measures, and (ii) a more targeted prohibition of destruction of unsold goods - expected initially in relation to textiles. Certain derogations and exemptions are expected for small and micro businesses. Measures to ban the destruction of unsold textiles are broadly aligned with proposals in Maximising Resources Minimising Waste (MRMW) published in July 2023, subject to finalisation of products in scope.
 - c. *Green procurement*—to require contracting authorities to use green procurement criteria to purchase specific groups of products.

¹ Destruction covers the last three activities in the waste hierarchy, including other recovery, recycling and landfill. Preparation for reuse including refurbishment does not count as destruction.

- d. *Market surveillance*—in relation to the requirements above, and to take further administrative measures to improve the efficacy of market surveillance processes (e.g. in relation to the types of checks that can be conducted, reporting requirements on market surveillance authorities, and internal governance arrangements).
- 7. Transitional measures will be in place to preserve measures under the existing ecodesign framework.
- 8. Delegated legislation is expected to the following indicative timetable:
 - a. Mid 2025—Acts of unsold goods destruction ban & exemptions
 - b. Late 2025—Acts on Digital Product Passport registry, service providers, data carriers, digital credentials
 - c. 2026—adoption of the first product-specific ESPR measures
 - d. 2027/2028—first product requirements start to apply

SCRUTINY HISTORY

- 9. The Regulation was outlined in an explanatory memorandum on the proposal published on 18 July 2022.²

MINISTERIAL RESPONSIBILITY

- 10. The Secretary of State for Energy Security and Net Zero has overall responsibility for existing Ecodesign and Energy Labelling Regulations and energy efficiency policy, and for ESPR to the extent that it applies to energy-related products.
- 11. The Secretary of State for Environment, Food and Rural Affairs has responsibility for resource efficiency policy in as much as it contributes to the minimisation of waste and protection of the natural environment.
- 12. Beyond this, departmental responsibility will depend on the product in question.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

- 13. Ecodesign requirements for energy-related products is a reserved matter under the devolution settlements for Scotland, Wales and Northern Ireland. However, delegated acts under ESPR made in relation to other products could cover areas of devolved competence - such as chemicals and waste.
- 14. For the products other than energy-related products, the interest of devolved governments will depend on the status of the individual products.

² Available at:

https://assets.publishing.service.gov.uk/media/62d7ebf08fa8f50bfafb09dd/EM_7854-22.pdf

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

15. Article 114 of the Treaty on the Functioning of the European Union, which is to be used for measures aiming at the establishment and functioning of the internal market.

iii. Timetable for adoption and implementation

16. The Regulation will enter into force on the 20th day following its publication in the Official Journal of the European Union on 28 June 2024, but no substantive impacts are expected until delegated acts are prepared - the expected timetable for which is set out at paragraph 8 above.

POLICY AND LEGAL IMPLICATIONS

Domestic Policy Context

17. Under the Ecodesign for Energy-Related Products Regulations 2010, which is based on the current Ecodesign Directive, 29 energy-related product groups in Great Britain are regulated to ensure they meet specific measures relating to their energy usage. This reduces their environmental impact, improves their energy efficiency, and cuts greenhouse gas emissions.

18. With regards to digital passports - the Environment Act 2021 gives the Government the enabling powers to set eco-design and information requirements for most products, which could include digital product passports. This is in early policy development. The Government's MRMW publication suggests product passports could be a part of a broader product policy framework including extended producer responsibility, eco-design and/or consumer information requirements. 107 pieces of ecolabelling evidence collected as part of a 2023 review by DESNZ, Defra and DfT indicated that ecolabels have potential to shift consumer and business behaviour towards achieving net zero and environmental goals. Informal conversations with stakeholders in the furniture sector have suggested they could help with sorting and storage of products, and that there is also a demand from customers at the higher end of the market for more environmental product information.

Potential Impacts in Northern Ireland

19. ESPR replaces the existing Ecodesign Directive which is listed in Annex 2 of the Windsor Framework. Any application of ESPR in Northern Ireland would therefore be subject to the democratic scrutiny process set out in Article 13(3a) of the Windsor Framework, where the measures are in scope.

20. Subject to the democratic scrutiny mechanisms described above, NI manufacturers might therefore need to apply new ecodesign requirements to products in scope of the Regulation. Any such impacts would depend on the delegated acts brought forward under this new framework, which the Government will keep under careful review.
21. There will be limited impact on the movement of goods between Great Britain and Northern Ireland. Companies in Northern Ireland can continue to sell products manufactured in Northern Ireland across the whole of the UK under the legal guarantees on Northern Ireland's permanent unfettered access to the rest of the UK. Through this, goods moving from Northern Ireland into Great Britain will be able to bear the CE marking. Goods moving from Great Britain to Northern Ireland are unlikely to be affected as they are likely to comply in any case with the new regulations. This is because the overwhelming majority of Great Britain-based businesses serving the Northern Ireland market also export to the EU market.

CONSULTATION

22. No consultation is planned with outside organisations in regards to ESPR by the Government. The EU has provided its own impact assessment for this legislation.
23. The ESPR is the result of joint working between three key Departments in the European Commission: Energy, Environment and Growth. This reflects the wide ambition of the ESPR and this joint-responsibility is shadowed in GB with DESNZ responsible for energy-related products, DEFRA for waste and specified products and DBT responsible for specified products.

FINANCIAL IMPLICATIONS

24. Financial implications will depend on the content of the individual delegated acts but will be kept under careful review as the detail on those acts become available.