



Windsor Framework Democratic Scrutiny Committee

**Inquiry into Directive (EU) 2024/2853 of the
European Parliament and of the Council of 23
October 2024 on liability for defective products and
repealing Council Directive 85/374/EEC**

Ordered by the **Windsor Framework Democratic Scrutiny Committee**
to be published 19 December 2024.

Report: NIA 63/22-27 Windsor Framework Democratic Scrutiny Committee

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Purpose and Membership

Purpose

The Windsor Framework Democratic Scrutiny Committee is a standing committee of the Northern Ireland Assembly established under [Schedule 6B to the Northern Ireland Act 1998](#).

The purpose of the Committee is to assist with the observation and implementation of [Article 13\(3a\)](#) and [Article 13\(4\)](#) of the Windsor Framework.

The functions of the Committee include:

- (a) the examination and consideration of new EU acts and replacement EU acts;
- (b) the conduct of inquiries and publication of reports in relation to replacement EU acts;
- (c) engagement with businesses, civil society and others as appropriate in relation to replacement EU acts;
- (d) engagement with the UK Government in relation to replacement EU acts;
- (e) engagement with Ministers and Northern Ireland departments in relation to replacement EU acts;
- (f) the collation and publication of evidence collected as part of its other activities; and
- (g) dealing with other matters (including legislative proposals which may become new EU acts or replacement EU acts) which the Committee considers to be connected with its purpose or other functions.

A replacement EU act means an EU law which updates, by amending or replacing, any of the relevant¹ EU laws *which already apply in Northern Ireland, as listed under Annex 2 of the Windsor Framework*. Areas of EU law that apply in Northern Ireland include legislation on goods, animal and plant health rules, rules on agricultural production, VAT and excise on goods, and state aid rules. The EU's Customs Code also applies to goods entering Northern Ireland. There is a procedure by which members of the Assembly may seek to prevent the application of a replacement EU act (an emergency brake mechanism known as the Stormont Brake). Further information on the Stormont Brake can be found [here](#).

A new EU act means a new EU law which falls within the scope of the Windsor Framework, but which neither amends nor replaces an EU act listed in the Annexes. The Northern Ireland Assembly has a role, by means of an “applicability motion”, in setting out its position on whether a new EU act should be added to the list of EU laws applicable in Northern Ireland. Further information on applicability motions can be found [here](#).

¹ Relevant EU laws are those EU instruments referred to in the third subparagraph of Article 5(1) of the Windsor Framework, the first indent of heading 1 of Annex 2 to the Framework or headings 7 to 47 of Annex 2 to the Framework.

Membership

The Committee has nine members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

Mr Philip McGuigan MLA (Chairperson)²

Mr David Brooks MLA (Deputy Chairperson)

Mr Eóin Tennyson MLA³

Ms Kate Nicholl MLA⁴

Mr Jonathan Buckley MLA⁵

Mr Peter Martin MLA⁶

Mr Declan Kearney MLA

Ms Emma Sheerin MLA

Dr Steve Aiken OBE MLA

² Mr Philip McGuigan MLA replaced Mr Declan Kearney MLA as Chairperson of the Committee on 09/02/2024.

³ Mr Eóin Tennyson MLA replaced Ms Sorcha Eastwood MLA as a member of the Committee on 22/04/2024.

⁴ Ms Kate Nicholl MLA replaced Ms Connie Egan MLA as a member of the Committee on 09/09/2024. Ms Connie Egan MLA replaced Mr Patrick Brown MLA as a member of the Committee on 20/05/2024.

⁵ Mr Jonathan Buckley MLA replaced Mr Stephen Dunne MLA as a member of the Committee on 16/09/2024. Mr Stephen Dunne MLA replaced Mr Jonathan Buckley MLA as a member of the Committee on 03/06/2024.

⁶ Mr Peter Martin MLA replaced Ms Joanne Bunting MLA as a member of the Committee on 02/12/2024.

Introduction

1. This report sets out the conclusions of an inquiry by the Windsor Framework Democratic Scrutiny Committee ('the Committee') into a published replacement EU act: [Directive \(EU\) 2024/2853](#) of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC.
2. The Directive is a replacement EU act because it repeals and replaces the existing Product Liability Directive 85/374/EEC, as listed in the Windsor Framework at Article 5(4), Annex 2, heading 8, indent 8.
3. The replacement EU act applies in Northern Ireland under Article 13(3) of the Windsor Framework but is subject to the mechanism set out in Article 13(3a) of the Windsor Framework. This mechanism provides for a replacement EU act, or relevant parts of a replacement EU act, not to apply in Northern Ireland if the United Kingdom Government ('UK Government') notifies the EU within two months of the act's publication in the EU Official Journal.
4. The UK Government may only make this notification if it is satisfied that the conditions in Article 13(3a) of the Windsor Framework have been met and that the procedures set out in its [Unilateral Declaration on the involvement of the institutions of the 1998 Agreement](#) have been followed. These procedures provide, amongst other things, that 30 MLAs from at least two parties (and excluding the Speaker and Deputy Speakers) will need to notify the UK Government of their wish that the emergency brake mechanism should be applied.
5. If the UK Government is satisfied that the necessary conditions have been met, it will notify the EU in the Joint Committee. The EU law will not apply in Northern Ireland in its new form two weeks later. The older version of the EU law will still apply. The relevant law would then be discussed in the EU-UK Joint Committee under the process for new EU laws - Article 13(4). The UK Government must not agree (apart from in exceptional circumstances) to adopt

the new law unless the Assembly has passed a motion with cross-community support, known as an applicability motion.

6. The replacement EU act in question - Directive (EU) 2024/2853 - was published in the EU Official Journal on 18 November 2024. The UK Government formally notified the Committee of the act's publication on 21 November 2024.
7. Under paragraph 8(1) of Schedule 6B to the Northern Ireland Act 1998, the Committee must decide no later than five working days after the day on which it was notified of the replacement EU act whether it wishes to hold an inquiry. In reaching a decision, paragraph 8(2) of Schedule 6B requires the Committee to have regard to whether it appears likely that the replacement EU act:
 - significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces; and
 - would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.
8. The Committee may also have regard to any other matters it considers appropriate.

The Replacement EU Act

9. Directive (EU) 2024/2853 repeals and replaces the existing Product Liability Directive 85/374/EEC (PLD), updating the rules around ‘strict liability’, where consumers can claim compensation for defective products without having to prove fault on the part of the manufacturer. It aims to enhance consumers’ access to compensation, for example by expanding the scope of liability rules to encompass software products (including Artificial Intelligence) and electronic goods that operate using software, such as autonomous vehicles. It also aims to ensure consumers have a liable party to pursue if damage or injury is caused by a faulty good they bought online from outside the EU Internal Market.
10. In order to achieve these aims, changes made by the Replacement EU Act include (but are not limited to):
 - Incorporating software products (including Artificial Intelligence), and electronic goods that operate using software, within the definition of “product” for the purposes of the liability regime;
 - Requiring companies to disclose relevant evidence in court proceedings concerning compensation for damage caused by a defective product;
 - Establishing the circumstances in which there may be a rebuttable “presumption of defectiveness”, such as when the product did not comply with EU product safety legislation or “clearly malfunctioned”;
 - Creating a legal presumption, where a product is proven to be defective and the damage the claimant suffered is consistent with the defect in question, that the defect was the cause of that damage;
 - Clarifying that damage to digital property, such as digital content wiped from a hard drive, falls within the scope of the act;

- Lowering the threshold of property damage required for a no-fault claim;
- Expanding liability for both manufacturers of products with digital elements, and the producers of any software linked to those products;
- Extending liability to those who refurbish or substantially alter products and then place them back on the market; and
- Holding EU-based “Fulfilment Service Providers” (FSPs) - such as fulfilment branches for online marketplaces - liable for compensation (in the absence of another EU-based liable party) in cases involving products bought online directly from a non-EU manufacturer.

The Committee's Decision on Whether to Hold an Inquiry

11. The Committee met on 28 November 2024 to decide whether or not to hold an inquiry into Directive (EU) 2024/2853.
12. To assist it in reaching a decision, the Committee considered legal advice on whether it appeared likely that the replacement EU act differed significantly (in whole or in part) from the content or scope of the old Directive which it seeks to amend or replace. The Committee noted that the legal advice indicated that the published replacement act significantly differs, in whole, from the content or scope of the EU instrument which it replaces.
13. The Committee also considered whether it appeared likely that the replacement EU act would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist. It did this by: examining an assessment of impact provided by the Department for the Economy (DfE); listening to evidence from DfE officials; and considering the UK Government's Explanatory Memorandum (EM) dated 25 October 2022, which was produced when the act was at proposal stage.
14. The Committee also considered relevant correspondence published by the House of Commons European Scrutiny Committee and the House of Lords European Affairs Sub-Committee on the Windsor Framework.
15. The assessment of impact, the EM, and the correspondence published by the Westminster scrutiny committees, can be found at **Appendix B**. The Official Report ('Hansard') of the evidence session can be found at **Appendix C**.
16. Having had regard to whether it appears likely that Directive (EU) 2024/2853:
 - significantly differs (in whole or in part) from the content or scope of the EU instrument which it replaces; and

- would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist,

the Committee decided to hold an inquiry into that act. This [decision](#) was published on the Committee's webpage.

The Inquiry Process

17. In conducting an inquiry, paragraph 9(2) of Schedule 6B to the Northern Ireland Act 1998, requires the Committee to “seek substantive discussion and engagement” with the UK Government, the relevant Northern Ireland Minister or department, and, to the extent that the Committee considers appropriate, representatives of businesses and civil society affected by the replacement EU act, or who would be affected, if the act was to apply in Northern Ireland. The Committee may also consider any matters it deems appropriate.
18. The Committee had to conclude its inquiry and publish a report setting out its conclusions no later than 15 working days before the end of the two-month scrutiny period. The scrutiny period started when the replacement EU act was published in the EU Official Journal on 18 November 2024, and therefore ends on 18 January 2025.
19. The Committee considered matters relating to its inquiry, including making a decision on whether to conduct an inquiry, at four meetings. The Minutes of Proceedings can be found at **Appendix A**.
20. At its meeting on 28 November 2024, the Committee agreed to seek substantive discussion and engagement with the UK Government. It therefore wrote to the UK Government to seek its views on whether applying, or not applying, the replacement EU act would have an impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist. In considering the matter of divergence, details of the position in England, Scotland and Wales were also requested. The UK Government responded by way of an updated EM. A copy of the Committee’s correspondence, dated 29 November 2024, and the updated EM, dated 4 December 2024, can be found at **Appendix B**.
21. At this meeting, the Committee also agreed to seek substantive discussion and engagement with the relevant Northern Ireland department which was DfE.

Therefore, it requested that departmental officials attend the Committee meeting on 5 December 2024, to give oral evidence.

22. Further, the Committee agreed to seek substantive discussion and engagement with representatives of business and civil society. Key stakeholders were identified by the Assembly's Research and Information Service (RaISe), as being affected, or who would be affected, if the replacement EU act was to apply in Northern Ireland - the list of stakeholders identified by RaISe is at **Appendix D**. The Committee opted to use Citizen Space as a platform to facilitate this engagement. The survey, which was publicised widely, was also open for response by any other representatives of business and civil society as well as members of the public. No responses were received.⁷
23. A DfE official attended the Committee meeting on 5 December 2024, to give oral evidence. The Hansard of the oral evidence session can be found at **Appendix C**.
24. Following the oral evidence session, the Committee agreed to commission research from the RaISe into the likely cost implications posed by the replacement EU act for businesses based in GB which supply products to Northern Ireland, including likely impacts on the cost of liability insurance premiums and any other associated costs. The response from RaISe, advising that the research could not be provided, is at **Appendix B**. The Committee also wrote to the Consumer Council for Northern Ireland to seek its views on the same issue. A copy of the Committee's correspondence, and the response from the Consumer Council, dated 5 December 2024, can be found at **Appendix B**.
25. The Committee deliberated on the evidence received at its meeting on 12 December 2024. The evidence received is not rehearsed in this report; a

⁷ The British Standards Institution wrote to the Committee on 10 December 2024 providing a nil response – see Appendix D.

complete picture of the written and oral evidence can be found in the Appendices.

26. At its meeting on 19 December 2024, the Committee agreed its Inquiry report and that it should be published.

The Committee's Conclusions

27. In reaching its conclusions, the Committee has carefully considered all the evidence provided to it. The Committee has focused in particular on the two conditions that must be satisfied if the Stormont Brake is to be pulled.
28. In relation to the legal question of whether the replacement EU act significantly differs (in whole or in part) from the content or scope of the EU instrument which it replaces, the Committee noted the legal advice it commissioned which indicated that the replacement EU act significantly differs, in whole, from the content or scope of the EU instrument which it replaces.
29. The Committee recognised that the replacement EU act contains significant new provisions, which go beyond what was contained in the original EU instrument, including extending liability for defective products to “Fulfilment Service Providers” (FSPs) – such as fulfilment branches for online marketplaces – in cases where products are bought online from outside the EU Internal Market (and there is no other EU-based liable party).
30. Having considered its commissioned legal advice, the Committee concluded that the replacement EU act significantly differs, in whole, from the content or scope of the EU instrument which it replaces.
31. In relation to the question of whether the replacement EU act would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist, the Committee considered the evidence received from the UK Government and the written and oral evidence it received from DfE officials.
32. In considering this evidence, the Committee took the view that for an act to have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist, that significant impact must be negative.
33. Having considered the evidence received from the UK Government and the Department for the Economy, the Committee concluded that the replacement

EU act would not have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.

Next Steps

34. Having reached its conclusions, the Committee's Inquiry report will be issued to all Members of the Legislative Assembly for further consideration.
35. The Committee's Inquiry report will also be issued to the Committee for the Economy for information.

Links to Appendices

Appendix A: Minutes of Proceedings

View Minutes of Proceedings from evidence sessions related to the report:

[Minutes of Proceedings – 28 November 2024](#)

[Minutes of Proceedings – 5 December 2024](#)

[Minutes of Proceedings – 12 December 2024](#)

[Minutes of Proceedings – 19 December 2024](#)

Appendix B: Memoranda and Other Papers

View Memoranda and Other Papers considered by the Committee:

[UK Government Explanatory Memorandum on the proposed EU Act – 25 October 2022](#)

[Department for the Economy Assessment of Impact on the published EU Act – 27 November 2024](#)

[Extracts from Fourteenth Report of Session 2022–23 by the House of Commons European Scrutiny Committee](#)

[Correspondence published by the House of Lords European Affairs Sub-Committee on the Windsor Framework Session 2022-23](#)

[Correspondence to the UK Government – 29 November 2024](#)

[UK Government Explanatory Memorandum on the published EU Act – 4 December 2024](#)

[Response from the Consumer Council – 5 December 2024](#)

[Response from RalSe – 10 December 2024](#)

Appendix C: Minutes of Evidence

View Minutes of Evidence of Committee meetings related to the report:

[Minutes of Evidence – 28 November 2024](#)

[Minutes of Evidence – 5 December 2024](#)

Appendix D: Consultation Responses

[RaISe – Potential Witness List](#)

[Correspondence from the British Standards Institution \(nil response\) – 10 December 2024](#)

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