



Windsor Framework Democratic Scrutiny Committee

Inquiry into Regulation (EU) 2024/2865 of the European Parliament and of the Council of 23 October 2024 amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures

Ordered by the **Windsor Framework Democratic Scrutiny Committee**

to be published 19 December 2024.

Report: NIA 64/22-27 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,

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.

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](#).

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 Sorchá 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 of 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: [Regulation \(EU\) 2024/2865](#) of the European Parliament and of the Council of 23 October 2024 amending Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures.
2. The Regulation is a replacement EU act because it amends [Regulation \(EC\) No 1272/2008](#) of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directive 67/548/EEC and Directive 1999/45/EC, and amending Regulation (EC) No 1907/2006. [Regulation \(EC\) No 1272/2008](#) is listed in the Windsor Framework at Article 5(4), Annex 2, heading 23, indent 11.
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.⁷
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

⁷ The emergency brake mechanism applies to EU acts referred to in the first indent of heading 1 and in headings 7 to 47 of Annex 2 to the Windsor Framework and to Article 2(1)(c) of Council Regulation (EC) 1186/2009 setting up a Community system of reliefs from customs duty.

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 - Regulation (EU) 2024/2865 - was published in the EU Official Journal on 20 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. The replacement EU act amends Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures (the 'CLP Regulation'). The CLP Regulation implements the UN globally harmonised system (GHS) for classification and labelling of chemicals. It aims to protect human health and the environment while ensuring a level playing field for all suppliers of chemical substances and mixtures in the EU single market.
10. The amendments to the CLP Regulation are intended to:
 - improve protection against hazardous chemicals by ensuring they are identified and classified appropriately and in the same way across the EU;
 - improve communication of hazards by making labels more accessible and understandable for users of chemicals (e.g. minimum font size, greater use of fold-out labels, voluntary digital labelling of chemicals);
 - provide companies with more flexibility;
 - address legal gaps and ambiguities of CLP provisions and strengthen compliance (chemicals suppliers must be established in the EU (or NI), including for distance sales); and
 - adapt CLP requirements to apply to different methods of sale e.g. refillable containers and online sales.

The Committee's Examination of the Proposed Replacement EU Act

11. At its meeting on 12 September 2024, the Committee considered information provided by the Executive Office on proposed new and replacement EU acts that had started their legislative passage before the Committee was established.
12. The proposed EU act, [COM/2022/748: Proposal for a Regulation amending Regulation \(EC\) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures](#), was identified by the Committee as an act that might have a significant impact, and was likely to be notified as a published act before end 2024. Therefore, the Committee agreed that consideration of the proposed act should be given priority even though it had not been the subject of a notification from the UK Government.
13. The Committee considered matters relating to its examination of the proposed replacement EU act, including its decision to consider the proposed act, at four meetings. The Minutes of Proceedings can be found at **Appendix A**.
14. Following its decision to consider the proposed act, the Committee agreed to request legal advice on whether it appears likely that the proposed replacement EU act significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces. The Committee also requested a departmental assessment of impact on the proposed EU act, to consider 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.
15. At its meeting on 10 October 2024, the Committee agreed to schedule a briefing from Legal Services and an oral evidence session with departmental officials. The Committee also agreed to seek views, via Citizen Space, from stakeholders identified by the Assembly's Research and Information Service (RaISe) as being affected, or who would be affected, if the proposed replacement EU act was to apply in Northern Ireland – a list of the stakeholders identified by RaISe

can be found at **Appendix D**. A link to the draft agreed text, adopted by the Council of the European Union, was included in the survey. The survey closed on 12 November 2024.

16. The assessments of impact from the Department for the Economy (DfE) and the Department of Health (DoH) on the proposed EU act can be found at **Appendix B**. A response from the Department of Justice (DoJ) can also be found at **Appendix B**.
17. At its meeting on 24 October 2024, the Committee received legal advice and noted that the legal advice indicated that the proposed replacement EU act significantly differs, in part, from the content or scope of the EU instrument which it amends.
18. At this meeting, the Committee also heard oral evidence from departmental officials. The Official Report ('Hansard') of the evidence session with the DfE, DoH, and DoJ can be found at **Appendix C**.
19. The Committee also considered the UK Government Department for Work and Pensions Explanatory Memorandum (EM) on the proposed EU act, dated 1 February 2023, as well as relevant reports published by the House of Commons European Scrutiny Committee and correspondence published by the House of Lords European Affairs Sub-Committee on the Windsor Framework. The EM and publications by the Westminster scrutiny committees can be found at **Appendix B**.
20. The Committee wrote to the UK Government to request an updated EM and further details relating to the proposed EU act. A copy of the Committee's correspondence and the response, dated 7 November, which indicated that an updated EM was being prepared, can be found at **Appendix B**. The Committee also wrote to HM Revenue and Customs (HMRC) to request information on the scale of trade between Great Britain and Northern Ireland in the chemicals sector. HMRC indicated to the Committee Secretariat that the updated UK Government EM would provide the information requested. However, the information was not included in the EM. The UK Government responded separately in relation to the matter and the response, dated 11 December 2024, can be found at **Appendix B**.

21. At its meeting on 21 November 2024, the Committee considered the only response to its Citizen Space survey on the proposed EU act, which was from Fuels Industry UK. The response can be found at **Appendix D**.

The Committee's Decision on Whether to Hold an Inquiry

22. The Committee met on 28 November 2024 to decide whether or not to conduct an inquiry into the *published* EU act: Regulation (EU) 2024/2865.
23. To assist it in reaching a decision, the Committee considered legal advice on whether it appeared likely that the published replacement EU act differed significantly (in whole or in part) from the content or scope of the old Regulation, which it seeks to amend or replace. The Committee noted that the legal advice indicated that the published replacement act significantly differs, in part, from the content of the EU instrument which it amends.
24. The Committee also considered whether it appeared likely that the published 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 all the evidence gathered as part of its consideration of the proposed EU act; considering the assessments of impact provided by DfE, DoH and DoJ; and, listening to evidence from DfE, DoH and DoJ officials.
25. The evidence gathered as part of the Committee's consideration of the proposed replacement EU act and the assessments of impact can be found at **Appendix B**. The Hansard of the evidence session can be found at **Appendix C**.
26. Having had regard to whether it appears likely that Regulation (EU) 2024/2865:
 - 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,

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

The Inquiry Process

27. 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.
28. 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 20 November 2024, and therefore ends on 20 January 2025.
29. 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**.
30. At its meeting on 28 November 2024, the Committee agreed to write 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. A copy of the Committee’s correspondence, dated 29 November 2024, can be found at **Appendix B**. The UK Government responded by way of an updated EM (4 December 2024). Additionally, the Committee asked the UK Government to comment on the response received from Fuels Industry UK to its consultation on the proposed EU act. A copy of the UK Government’s response, dated 11 December 2024, can be found at **Appendix B**.
31. At this meeting, the Committee also agreed to seek substantive discussion and engagement with the relevant Northern Ireland departments - DfE, DoH and

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

32. Further, the Committee agreed to seek substantive discussion and engagement with representatives of business and civil society. Key stakeholders were identified by RalSe and Fuels Industry UK (through contact with the Committee Secretariat), as being affected, or who would be affected, if the replacement EU act was to apply in Northern Ireland - a list of the stakeholders identified by RalSe can be found at **Appendix D**. The Committee opted to use Citizen Space as a platform to facilitate this engagement.
33. A survey asking for views on the impact of the replacement EU act was launched on 29 November 2024. 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.
34. Departmental officials attended the Committee meeting on 5 December 2024, to give oral evidence as requested. The Hansard of the oral evidence can be found at **Appendix C**.
35. Following this evidence session, the Committee agreed to write to the Health and Safety Executive to request feedback on its consultation with stakeholders relating to the potential impact of the replacement EU act. A copy of the Committee's correspondence, and the response dated 11 December 2024 (included as part of a response from the UK Government), can be found at **Appendix B**.
36. At its meeting on 12 December 2024, the Committee considered the responses to its Citizen Space survey. Two responses were received and these can be found at **Appendix D**.
37. The Committee deliberated on the evidence received at its meeting on 12 December 2024. The evidence received is not rehearsed in this report; a complete picture of the written and oral evidence can be found in the Appendices.

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

The Committee's Conclusions

39. 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.
40. 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 amends or replaces, the Committee noted the legal advice it commissioned on the act, and considered on 28 November 2024, which indicated that the replacement EU act significantly differs, in part, from the content or scope of the EU instrument which it amends.
41. **Having considered its commissioned legal advice, the Committee concluded that the replacement EU act significantly differs, in part, from the content or scope of the EU instrument which it amends.**
42. 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 evidence received from the UK Government, written and oral evidence received from DfE, DoH and DoJ officials, and the responses to its Citizen Space survey.
43. 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.
44. **Having considered evidence received from the UK Government, the Department for the Economy, the Department of Health, the Department of Justice, and the responses to its Citizen Space survey, the Committee concluded that it was unable to reach a view on 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.**

Next Steps

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

Links to Appendices

Appendix A: Minutes of Proceedings

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

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

[Minutes of Proceedings – 10 October 2024](#)

[Minutes of Proceedings – 24 October 2024](#)

[Minutes of Proceedings – 21 November 2024](#)

[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:

Consideration of the proposed EU Act:

[Department for the Economy Assessment of Impact on the proposed EU act – 4 October 2024](#)

[Department of Health Assessment of Impact on the proposed EU act – 8 October 2024](#)

[Response from the Department of Justice on the proposed EU act – 3 October 2024](#)

[UK Government Explanatory Memorandum on the proposed EU act – 1 February 2023](#)

[Extracts from the House of Commons European Scrutiny Committee Twenty-first and Twenty-second Reports of Session 2022-23, and correspondence from the UK Government](#)

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

[Response from the UK Government – 7 November 2024](#)

Consideration of the published EU Act:

[Department for the Economy Assessment of Impact on the published EU act – 25 November 2024](#)

[Department of Health Assessment of Impact on the published EU act - 25 November 2024](#)

[Department of Justice Assessment of Impact on the published EU act - 26 November 2024](#)

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

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

[Response from the UK Government \(regarding Fuels Industry UK submission, information from the HSE, and trade data from HMRC\) – 11 December 2024](#)

Appendix C: Minutes of Evidence

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

[Minutes of Evidence – 24 October 2024 \(DfE, DoH, DoJ\)](#)

[Minutes of Evidence – 28 November 2024 \(DfE, DoH, DoJ\)](#)

[Minutes of Evidence – 5 December 2024 \(DfE, DoH, DoJ\)](#)

Appendix D: Consultation Responses

[RaISe – Potential Witness List on the proposed EU act](#)

[RaISe – Potential Witness List on the published EU act](#)

View responses to the Committee's consultation:

[Consultation Response on the proposed EU act](#)

[Consultation Responses on the published EU act](#)

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