



House of Commons
European Scrutiny Committee

**Fourth report of
Session 2022–23**

Documents considered by the Committee on 22 June 2022

Report, together with formal minutes

*Ordered by The House of Commons
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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) can be downloaded from GOV.UK: <https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents>. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: <https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/>.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—<https://webarchive.nationalarchives.gov.uk/search/>—by restricting searches to <https://europeanmemoranda.cabinetoffice.gov.uk/>

Staff

The current staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Hannah Barlow (Committee Specialist), Joanne Dee (Deputy Counsel for European and International Law), Alistair Dillon and Leigh Gibson (Senior Committee Specialists, European Affairs Unit), Nat Ireton (Committee Operations Officer), Daniel Moeller (Committee Operations Manager), Foeke Noppert (Senior Committee Specialist, European Affairs Unit), Indira Rao MBE (Counsel for European and International Law), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk).

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1 Northern Ireland Protocol: the new EU Construction Products Regulation¹

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).² It forms part of a wider [Sustainable Products Initiative](#),³ 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 CEN⁴ and approved by the European Commission).⁵ If a construction product has been assessed under the Regulation in one EU country, it carries the EU’s “CE” mark⁶ 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”⁷ 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).⁸ 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.⁹

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),¹⁰ including the Aluminium Composite Material (ACM) cladding that played a key role at Grenfell.¹¹

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.¹² 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,¹³ 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;¹⁴
- 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.¹⁵ 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;¹⁶ 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).¹⁷

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,¹⁸ 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.¹⁹ 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 Memoranda²⁰ and carried out an extensive [impact assessment](#) with industry and other stakeholders.²¹ 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).²²

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.

Formal Minutes

Wednesday 22 June 2022

Members present:

Sir William Cash, in the Chair

Jon Cruddas

Margaret Ferrier

Mr Marcus Fysh

Mr David Jones

Marco Longhi

Craig Mackinlay

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.10 agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 29 June 2022 at 1.45 pm

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Independent, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Independent, Newton Abbot*)

[Greg Smith MP](#) (*Conservative, Buckingham*)