

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
NORTHERN IRELAND PROTOCOL**

13134/22

COM(2022) 495

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on liability for defective products**

Submitted by the Department for Business, Energy and Industrial Strategy on 25
October 2022

SUBJECT MATTER

1. This proposal is for a Directive on liability for defective products, repealing and replacing the existing Product Liability Directive 85/374/EEC1 (PLD). The objective of the PLD is to provide an EU-level system for compensating consumers who suffer physical injury or damage due to defective products.
2. The PLD was adopted in 1985. The European Commission states that the intention of this proposal is to address the perceived issues created by an increasingly digital and circular economy, emerging technologies, and perceived barriers to making claims (such as the lower limit for making claims and the challenges of proving defects in complex products such as those which are smart or AI-enabled).
3. The European Commission states that the proposed Directive aims to ensure the functioning of the EU internal market, free movement of goods, undistorted competition between market operators and a high level of protection of consumers' health and property.
4. In particular it aims to:
 - i. ensure liability rules reflect the nature and risks of products in a digital age and a circular economy;
 - ii. ensure there is always a business in the EU that can be held liable for defective products bought directly from manufacturers outside the EU;

- iii. ease the burden of proof in complex cases and ease restrictions on making claims while ensuring a fair balance between the interests of manufacturers, injured persons and consumers; and
 - iv. ensure legal certainty by aligning the PLD with the new legislative framework, with product safety rules, and by codifying PLD-related case law.
5. If this proposal is ratified, the proposal is that Member States would need to bring forward the necessary legislation to transpose and comply with this Directive within twelve months of it coming into force. The current PLD is listed in Annex 2 to the Northern Ireland Protocol and therefore under the terms of the Protocol, since this new Directive replaces the existing one, it would apply in Northern Ireland, were it to be ratified.

SCRUTINY HISTORY

6. This is the first consideration of this proposal for which an Explanatory Memorandum has been produced.
7. On 7 June 2018 the Department of Business, Energy and Industrial Strategy deposited EM 9096/18 on the EU's report evaluating the Product Liability Directive. Neither the House of Commons European Scrutiny Committee nor the House of Lords European Affairs Committee reported substantively on that EM.

MINISTERIAL RESPONSIBILITY

8. The Secretary of State for the Department for Business, Energy and Industrial Strategy has responsibility for product liability legislation.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

9. The PLD is implemented via Part 1 of the Consumer Protection Act 1987 in respect of England, Wales and Scotland. Scotland and Wales have not raised any concerns.
10. In Northern Ireland, the PLD is implemented the Consumer Protection (Northern Ireland) Order 1987.
11. As the current PLD (that this proposed Directive is intended to replace) is included in Annex 2 of the Northern Ireland Protocol, Northern Ireland has an

interest as it would apply there, were it to be ratified. We are discussing the proposal with them.

LEGAL AND PROCEDURAL ISSUES

12. As the proposal is in scope of the Northern Ireland Protocol as it replaces a Directive that is listed in Annex 2, it would apply in Northern Ireland and implementing legislation would therefore need to be taken forward. The proposal is that provisions necessary to comply should be brought into force within 12 months of the Directive coming into force. The proposal is still to be ratified.

POLICY IMPLICATIONS

13. The proposal was adopted by the EU Commission on 28 September 2022 and has been passed to the European Parliament and Council of the EU. If ratified, it would apply to products placed on the Northern Ireland market or put into service 12 months after the Directive comes into force.

14. The UK will continue to make decisions that benefit the UK interest. These decisions will be made by the Government, in accordance with expert groups, to determine what is best for the UK.

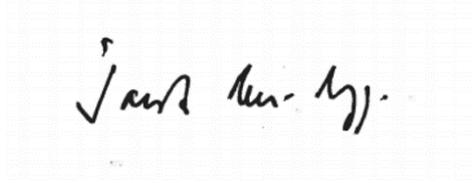
CONSULTATION

15. There has been no consultation on this change in the UK. In accordance with the Northern Ireland Protocol, the changes made by this Directive would need to be implemented in Northern Ireland.

16. The Devolved Administrations have been consulted on this Explanatory Memorandum. Scotland and Wales have not raised any concerns. Northern Ireland has an interest as, if ratified, the proposal will apply in Northern Ireland. We are discussing the proposal with them.

FINANCIAL IMPLICATIONS

17. There are no financial costs to Great Britain. With regards to Northern Ireland, there are costs to developing legislation but at this stage they have not been assessed.

A handwritten signature in black ink on a light-colored, textured background. The signature reads "Jacob Rees-Mogg" in a cursive, slightly slanted script.

Rt Hon. Jacob Rees-Mogg MP

Secretary of State

Department for Business, Energy and Industrial Strategy