

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

**7799/22 + Addds 1-5, COM (2022) 144  
SWD(2022)87, 88, 89 & SEC(2022)167**

**Proposal for a Regulation of the European Parliament and of the Council  
laying down harmonised conditions for the marketing of construction  
products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU)  
305/2011**

**Add 1: Annexes 1-7**

**Add 2: SWD(2022)87: Subsidiarity Grid**

**Add 3: SWD(2022)88: Impact Assessment**

**Add 4: SWD(2022)89: Summary of Impact Assessment**

**Add 5: SEC(2022)167: Regulatory Scrutiny Board Opinion**

**Submitted by the Department for Levelling Up, Housing and Communities on 9  
May 2022**

**SUBJECT MATTER**

1. This is a European Commission proposal to amend Regulation (EU) 2019/1020 on the market surveillance and compliance of products and repealing Regulation (EU) 305/2011 laying down harmonised conditions for the marketing of construction products. It is part of a package of European Green Deal proposals to make almost all physical goods on the EU market more friendly to the environment, consistent with circular business models, and energy efficient throughout their whole lifecycle from the design phase through to daily use, repurposing and end-of-life.
2. The existing Regulation 305/2011 is a directly applicable EU regulation setting out requirements manufacturers must meet to place their products on the EU market, where they are within the scope of EU harmonised standards. The regulation also sets out market surveillance requirements and requirements for notified bodies carrying out the product testing and certification required under the regulation.
3. The Government notes that the primary purpose of this proposal is to improve the functioning of the EU single market for construction products. It also aims to

improve the environmental sustainability of construction products, which is to be welcomed.

4. This regulation will apply to the UK in respect of Northern Ireland, by virtue of the provisions of the Northern Ireland Protocol. The Government's approach to this issue is set out below.

## **SCRUTINY HISTORY**

5. 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, now being replaced, was subject to scrutiny as EU proposal 10037/08, COM(08)311 on which the then Department for Communities and Local Government submitted two EMs dated 12 June 2008 and 4 February 2009. The Commons European Scrutiny Committee reported on several occasions reporting that the proposal raised issues of political importance before completing scrutiny on 8 September 2010 (Report 1, 10-12). The then Lords European Union Committee examined the proposal in sub-committee B and completed scrutiny on 6 July 2010.

## **MINISTERIAL RESPONSIBILITY**

6. The Minister for Building Safety and Fire

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. This policy area is reserved to the UK. It is not subject to a common framework. The proposal, if adopted, will not apply in Great Britain. It will apply to NI due to the provisions of the NI Protocol. Northern Ireland has an interest in this proposal as it falls within the scope of the Protocol on Ireland/Northern Ireland. As the proposal does not fall under devolved competence, responsibility rests with the UK Government. No comments were received from Northern Ireland Executive officials.

## **LEGAL AND PROCEDURAL ISSUES**

### **i. Legal Base**

8. Article 114, the Treaty on the Functioning of the European Union

### **ii. Voting Procedure**

9. Ordinary Legislative Procedure, Qualified Majority Vote

### **iii. Timetable for adoption and implementation**

10. Implementation with a start-up period from 2024 onwards (adoption and publication of the proposal unlikely before 2025, but one year lead time for the most important implementing and delegated acts is a minimum) followed by full-scale operation in 2025 or later, subject to time of adoption.

## **POLICY IMPLICATIONS**

11. This is a proposal to revise a directly applicable EU regulation that governs the marketing of a subset of construction products which are subject to mandatory CE marking. These requirements will be applicable in NI, but not in the rest of the UK. The main objective of the proposed regulation is to improve the functioning of the EU's internal market for construction products.

12. Manufacturers wishing to place relevant construction products on the NI market will need to meet these revised requirements, including providing environmental information about the life-cycle of their products, They will also be required to:

- Design and manufacture a product and their packaging in such a way that their overall environmental sustainability reaches the state of the art level;
- Give preference to recyclable materials and materials gained from recycling;
- Respect the minimum recycled content obligations and other limit values regarding aspects of environmental sustainability;
- Make available, in product databases, instructions for use and repair of the products;
- Design products in such a way that re-use, remanufacturing and recycling are facilitated.

13. The existing EU Construction Products Regulation has been retained in UK law, as applicable in Great Britain, following EU Exit. Following the Grenfell Tower Fire, the Building Safety Bill has created powers to amend the regulation, to extend the regulatory framework to cover more products and to ensure that construction products are required to be safe. The Government has also announced that construction products that require a CE marking under the regulation must affix the UKCA mark instead in GB from 1 January 2023, with the exception of NI Qualifying Goods.

14. The Net Zero Strategy sets out Government's ambitions to help the construction sector improve their reporting on embodied carbon in buildings, and confirms we are exploring the potential of a maximum embodied carbon level for new buildings in the future. This will help ensure that carbon is properly accounted for, encouraging the industry to use low carbon materials and to produce efficient, low carbon designs.

15. There are important building blocks that must be in place to support this effort by industry, which includes a common approach to assessing whole life carbon supported by high-quality embodied carbon data for construction products.

16. As set out in the Industrial Decarbonisation Strategy, a system that can deliver consistent, verified emissions reporting across industry can ensure that everyone has access to trusted data. Emissions reporting at the product level is well established in some sectors, and in some cases international standards already exist. However, there is no consistent methodology or definition of low emissions and this requires standardisation to be effective and to minimise additional burden on industry.
17. The Government has recently published a Call for Evidence: *Towards a market for low emissions industrial products*<sup>1</sup> which asked for industry stakeholder views on how we can define and report on low carbon industrial products. A summary of responses will be published in the summer. The Government plans to consult on new measures in autumn 2022.
18. It should also be noted that the Government is seeking to find a new balance in the operation of the NI Protocol. UK proposals, as first set out in the Command Paper of July 2021, include providing for a dual regulatory regime which would allow products made to either EU or UK rules to be placed on the market in NI.

## **CONSULTATION**

19. There has been no formal public consultation by the Government of key external stakeholders on the impact of this proposal because this relates to a directly applicable EU regulation that will not apply in GB as a result of the UK's exit from the EU but will apply automatically in Northern Ireland by virtue of the UK/EU Withdrawal Agreement and NI Protocol.
20. The European Commission carried out dialogues with the main stakeholders through technical platforms during 2016 and 2017. They also ran a public consultation between January and April 2018. 8 per cent of the 641 respondents were from the UK. The majority of respondents agreed that the issues the proposal aims to address, such as the extent of cross border trade between EU member states and the environmental impact of construction products, were significant and should be addressed by EU legislation.

## **FINANCIAL IMPLICATIONS**

21. The European Commission's impact assessment estimates that the proposal would increase annual costs for manufacturers by approximately 8% of their baseline costs. This includes GB manufacturers who wish to place their products

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1038546/towards-market-for-low-emissions-industrial-products-cfe.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038546/towards-market-for-low-emissions-industrial-products-cfe.pdf)

on the NI and/or EU markets, making trade more difficult for them. It will also increase the costs of market surveillance for governments.

A handwritten signature in black ink, appearing to read 'SGH', followed by a second, more stylized handwritten signature.

**Lord Greenhalgh**

**Minister for Building Safety and Fire**

**Department for Levelling Up, Housing and Communities**