



Mapping Post-EU Exit Regulatory Divergence in Northern Ireland

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Abbreviations

| | |
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| BIC | British Irish Council |
| BIIC | British Irish Intergovernmental Conference |
| CJEU | Court of Justice of the European Union |
| CPTPP | Comprehensive and Progressive Agreement for Trans-Pacific Partnership |
| CTA | Common Travel Area |
| EC | European Communities |
| ECHR | European Convention on Human Rights |
| EU | European Union |
| EUWA | European Union (Withdrawal Agreement) [Act] |
| FTA | Free Trade Agreement |
| GB | Great Britain |
| IRE | Ireland |
| MLA | Member of the Northern Ireland [Legislative] Assembly |
| NI | Northern Ireland |
| OJ | Official Journal of the European Union |
| QNIG | Qualifying Northern Ireland Goods |
| REUL | Retained EU Law |
| SI | Statutory Instrument |
| SPS | Sanitary and phytosanitary |
| TCA | Trade and Cooperation Agreement |
| UKIM | UK Internal Market [Act] |
| VAT | Value added tax |
| VCLT | Vienna Convention on the Law of Treaties |
| WA | Withdrawal Agreement |
| WQ | Water Quality |

1. Unpacking Complexity

A Report Summarising the Post-EU Exit Legislative and Regulatory Landscape in Northern Ireland

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1. Introduction

Northern Ireland (NI) is unique when it comes to regulation in the United Kingdom (UK). This uniqueness has been reinforced following the UK's withdrawal of the European Union (EU) – 'EU Exit' – and can be explained with reference to three factors specific to Northern Ireland:

- the nature and history of devolution;
- the relationship between the two jurisdictions on the island of Ireland, namely Northern Ireland and Ireland; and
- the arrangements agreed between the UK and EU during the EU Exit process and set out in the *Protocol on Ireland/Northern Ireland* (the 'Protocol'), now widely referred to as the 'Windsor Framework'.

When it comes to regulation in the post-EU Exit era, these NI-specific factors operate alongside and interact with relevant provisions of domestic UK legislation and the legal obligations arising from the post-EU Exit UK-EU relationship. These include the continued application in Northern Ireland of certain of EU laws. The post EU Exit regulatory environment of Northern Ireland, therefore, is uniquely complex. It is also fluid.

This report provides an overview of the complex regulatory environment of Northern Ireland in the post-EU Exit era and explains the different dimensions that collectively contribute to the overall picture. With the aim of fully contextualising the significance of changes associated with EU Exit, the report begins by setting out the regulatory landscape of Northern Ireland that existed prior to the decision of the UK to withdraw from the EU. It then explores and explains the regulatory consequences of EU Exit in and for Northern Ireland. The purpose of the information presented and analysis offered is to distil complexity.

1.1. Overview

The legislative and regulatory environment of contemporary Northern Ireland is complex. Since, in particular, the 1998 Belfast (Good Friday) Agreement (the '1998 Agreement'), regulation in/for Northern Ireland has operated in ways that set it apart from the rest of the UK. Following EU Exit on 31 January 2020 and the subsequent entry into force of the Protocol on 1 January 2021 following the end of the UK's post-EU Exit 'transition period', Northern Ireland's already unique regulatory environment become even more distinct. As Figure 1 indicates, following and as a consequence of EU Exit, Northern Ireland is subject to and/or influenced by laws and policies emanating from a range of different sources. Each of these 'legislative spheres' has distinct origins, and they span different jurisdictions, and generally operate according to different legal orders and/or enforcement mechanisms. The result is a high degree of legislative and regulatory complexity.

To unpack the complexity, this report provides a concise but comprehensive description of each legislative sphere noting its legal basis and context, its likely significance as regards policy formation in Northern Ireland (and therefore the potential for regulatory divergence), and its interaction with other legislative spheres. The sequence of the sections broadly reflects the chronology of the emergence of the different 'legislative spheres' on the regulatory scene in Northern Ireland. To ensure that the regulatory significance of more recent changes – covered in later sections – is fully understood and given the increased complexity they entail the report discusses these in greater detail. The report begins, however, with a brief overview of the regulatory history of Northern Ireland. This approach provides necessary context and makes clear the cumulative impact of regulatory complexity in and on contemporary Northern Ireland.

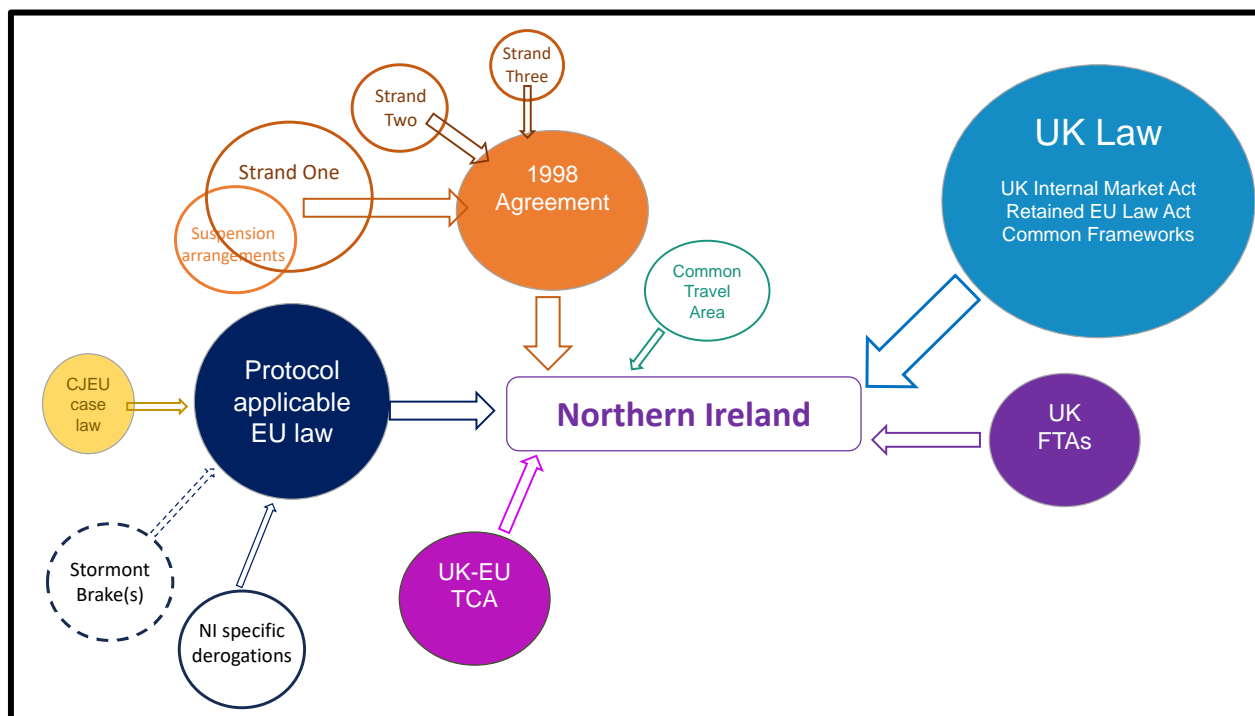


Figure 1: Post-EU Exit Regulatory Complexity of Northern Ireland – Overview

2. UK Law: General Provisions and Northern Ireland History

Northern Ireland is a constituent territory of the UK. The constitution of the UK is uncodified, it is political (as opposed to legal) in nature and has as its ‘fundamental principle’ the doctrine of parliamentary sovereignty whereby, according to constitutional orthodoxy, the UK Parliament in Westminster can ‘make or unmake’ any law it so chooses and therefore no Parliament can bind its successor.¹ The constitutional rules and norms – including parliamentary sovereignty – that apply elsewhere in the UK have always applied and continue to apply in Northern Ireland.

It is the case, however, that NI-specific constitutional arrangements of various kinds have also applied throughout its history. Some of these are relevant for our purposes because they shape, or have shaped, the regulatory environment of contemporary Northern Ireland.

2.1. Northern Ireland Devolution and Regulatory Architecture

Northern Ireland has a longer history of devolved government than any other constituent UK territory. Devolution began in 1920 under the *Government of Ireland Act 1920* (the 1920 Act) which granted a newly established Northern Ireland Parliament and Government the ‘power to make laws for the peace, order and good government’ of the place (Section 4). The UK Government retained supremacy and excepted powers in a stated list of areas that included matters of the Crown, the military and foreign relations. The competencies of these first devolved institutions covered: education, planning, housing, local government, transport, law and order, civil and criminal law, minor taxation, appointment of local magistrates and judges, as well as health and social services. The devolved government in Northern Ireland operated according to the 1920 Act for fifty years until the institutions were suspended in 1972 and abolished in 1973

¹ Dicey, A.V. *An Introduction to the Study of the Law of the Constitution* (first published 1885), 10th ed. 1959, London: Macmillan, pp. 39-40.

amid the outbreak of violence and the start of what became the 30-year conflict known as ‘The Troubles’.

Notwithstanding interim (failed) attempts, devolved government did not return to Northern Ireland until 1998, this time under the terms of the *Northern Ireland Act 1998* (the 1998 Act) which gave domestic legal effect to many of the provisions of the 1998 Agreement (see Section 4).

The dual legacy of a longer history of devolution and a contested past is still evident in the regulatory architecture of Northern Ireland. Several regulatory bodies currently in operation in Northern Ireland were set up in the post-1920, pre-1998 era. They include the Health and Safety Executive for Northern Ireland, which was created out of the Health and Safety Agency – one of the legacy regulators established before 1998. In some sectors, regulation also works differently in Northern Ireland due to its history of conflict and due to the provisions of the 1998 Agreement on which its contemporary governance architecture is based. Examples include the Northern Ireland Human Rights Commission and the Equality Commission as well as the Housing Executive.

As Table 1 indicates, in certain sectors, specific NI-regulators operate separately from those in the rest of the UK. In some cases one regulator acts for the whole of the UK and in others there are different regulators in either the four parts of the UK (England, Scotland, Wales, and Northern Ireland) or in the three legal jurisdictions (Northern Ireland, Scotland, and England/Wales). Northern Ireland, however, has the most distinctive regulatory architecture due to its unique constitutional history.

| Sector | UK in respect of Northern Ireland | UK in respect of Great Britain |
|--------------------------------|--|--|
| Gas and Electricity | The Utility Regulator | Ofgem |
| Rights and Equality | The Equality Commission and The Northern Ireland Human Rights Commission | The Equality and Human Rights Commission |
| Health and Safety | Health and Safety Executive for Northern Ireland | Health and Safety Executive |
| Elections | Electoral Office of Northern Ireland | The Electoral Commission |
| Driving Licensing and Vehicles | Driver and Vehicle Agency | Driver and Vehicle Standards Agency |

Table 1: Examples of Regulators in Northern Ireland and Great Britain

3. Common Travel Area

Another marker of the unique constitutional history of Northern Ireland and, in this case, also Ireland, is the Common Travel Area (CTA). The CTA is a special zone in which unique legal arrangements apply for the citizens of the territories it includes. The CTA covers the (Republic of) Ireland, the United Kingdom, the Isle of Man, and the Channel Islands.

The CTA arrangements are significant for understanding Northern Ireland's post-EU Exit regulatory environment primarily because of their implications for the movement of persons on the island of Ireland and their potential effects on the labour market and delivery of services on either side of and across the land border.

3.1. Overview: CTA arrangements between Ireland and the UK

CTA arrangements between the UK and Ireland have existed in some form since the establishment of the Irish Free State (later Ireland) in 1922. Key among the CTA arrangements is an agreement in principle to facilitate free travel for British and Irish citizens without any legal requirement to carry a passport. Also, under the CTA, Irish citizens can take up long-term residence in the UK and access public services without immigration restrictions, and British citizens can do the same in Ireland. These 'reciprocal residence' rights are considered to be part of the CTA alongside its arrangements relating to free travel. Although the CTA arrangements are underpinned by domestic laws that apply in each of the jurisdictions they cover, they are not set out in a single dedicated legal document such as an international treaty. This makes it hard to define the substance of the CTA in legal terms. The most comprehensive articulation of what the CTA actually amounts to is contained in a Memorandum of Understanding on the subject signed by the UK and Ireland in May 2019.²

Given the CTA is a political rather than a legal agreement it is likely to be less significant for the regulatory environment of Northern Ireland after EU Exit than other elements. Nonetheless, in view of its long history and the interaction between its scope and areas of EU competence, provision was made for its continuation, subject to Ireland meeting its legal obligations as an EU member state. Article 3 Protocol states:

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the 'Common Travel Area'), while fully respecting the rights of natural persons conferred by Union law.
2. The United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality.

In the event that regulatory implications do arise from the existence of the CTA in the post-EU Exit era, these are more likely to be indirect than direct. For example, changes to the way in which the UK decides to regulate the entry and exit of non-British and non-Irish citizens may have particular implications for Northern Ireland due to the operation of the CTA. Similarly, changes to the way in which the EU chooses to regulate the entry and access of non-EU citizens to EU countries may have particular implications on the island of Ireland due to the CTA.

² *Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges*, 2019

| Common Travel Area | |
|--------------------------------|---|
| Category | International Agreement |
| Relevant Text(s) | Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges 2019 |
| Regulatory Significance | Limited; Indirect. |
| Scope/Sectors | Immigration; Individual Rights; Access to Work; Social Welfare. |

4. EU Membership

The UK and Ireland joined the European Communities (EC) – the predecessors to today’s EU – at the same time in 1973. This is important for understanding the post-EU Exit regulatory complexity in Northern Ireland because of the implications of EU membership for two aspects of the governance arrangements for Northern Ireland:

- the creation and subsequent development of devolved institutions in 1998; and
- the establishment and evolution of North-South cooperation on the island of Ireland under Strand Two of the 1998 Agreement.

4.1. EU Membership and Devolution

Reforms to the territorial constitution of the UK introduced in 1998 with the creation of devolved institutions in Scotland, Wales, and Northern Ireland, took place against the backdrop of the UK’s EU membership. Under the (now repealed) European Communities Act 1972, the laws of the then EC had direct effect in all parts of the UK. This constrained the potential for regulatory divergence between the constituent territories of the UK following the introduction (and reintroduction) of devolution in 1998. The shared obligation on executive authorities in England, Scotland, Wales, and Northern Ireland to comply with EU law and policy frameworks acted, in effect, as scaffolding for the legal order and policy regimes of the UK state. Moreover, the degree of overlap between EU competence and devolved competence increased after 1998 as both the EU and devolved governments gained more powers from, respectively, member state governments and the UK Government.

As later sections discuss in detail, among the consequences of UK withdrawal from the EU is an increase in the potential for intra-UK policy divergence as the governments of its constituent territories are no longer obliged to give effect to all EU laws in the territory and policy areas for which they are responsible. The ways in which this aspect of EU Exit have been managed domestically and their implications for regulation in Northern Ireland are set out in later sections.

4.2. EU Membership and North-South Cooperation

The 1998 Agreement was concluded in the context of joint EU membership of its two guarantor governments: the UK and Ireland. The text is explicit here. It notes their wish ‘to develop further the unique relationship between their peoples and the close cooperation between their countries

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as friendly neighbours and as partners in the European Union'³ In a similar manner to the constraining effect of EU membership on the potential for divergence between the different parts of the UK, the shared law and policy frameworks north and south on the island of Ireland arising from the application of EU laws in Ireland as a member state and the application of EU laws in Northern Ireland as a sub-state territory of another member state, created the conditions for the establishment and evolution of cooperation between the two jurisdictions on the island of Ireland.

As Section 5.2 details, the facilitative effect on North-South cooperation of shared EU law and policy frameworks on the island of Ireland became apparent during the EU Exit process. The decoupling of the legal orders and regulatory regimes of the UK in respect of Northern Ireland and the EU in respect of Ireland that follows from EU Exit means that future North-South cooperation is likely to be more difficult to achieve and, when it develops, is likely to be underpinned by more complex legal provisions than was the case pre-EU Exit.

5. The 1998 Belfast (Good Friday) Agreement

The structure and operation of government in Northern Ireland derives from the 1998 Agreement. A majority of the provisions laid down in what is an international treaty between the UK and Ireland plus a multi-part, political agreement between NI political parties are given legal force in the UK via the *Northern Ireland Act 1998*. In view of the well-established nature of the 1998 Agreement and the institutions and provisions arising from it, a detailed overview is not necessary here. Instead, what follows is a high-level, indicative summary of relevant aspects.

5.1. Strand One: Devolved Government

Strand One of the 1998 Agreement provided for the creation of devolved institutions in Northern Ireland: the NI Assembly and the NI Executive. They operate according to a power-sharing system of government between those representatives who identify as 'unionist' and those that identify as 'nationalist', as well as, potentially, those that identify as 'neither'. The responsibilities of the NI institutions operate on a 'reserved' or 'excepted' model of devolution, meaning any powers that are not explicitly retained by the UK Government are devolved in Northern Ireland. There are three categories of competence: policy areas withheld by the UK Government indefinitely are 'excepted' powers; policy areas withheld by the UK Government, but which could be transferred to Northern Ireland on a limited/temporary or unlimited/permanent basis in the future, subject to UK Government consent, are 'reserved' powers; and all other policy areas are where powers are 'devolved' and the NI institutions can freely make provision (see Figure 2).

5.2. Strand Two: North-South Cooperation

Since 1998, the scope of North-South cooperation has expanded significantly. During the negotiations on the terms of the UK's withdrawal from the EU, the two sides jointly conducted a 'Mapping Exercise' in 2017 to determine the extent of North-South cooperation and the degree to which relied on EU law and policy frameworks. The Mapping Exercise found 142 areas of North-South cooperation, 54 of which were classified as 'directly underpinned by or linked to' EU law or policy, 42 as 'partially underpinned by or linked to' and 46 as 'not underpinned by or linked to'.⁴ By implication, after EU Exit if new regulations or regulatory practices are adopted by the UK

³ See the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland* section of the 1998 Agreement.

⁴ See Whitten, L.C. *North-South Cooperation and the Protocol on Ireland/Northern Ireland*, Queen's University Belfast, 2024

or by the EU in any of the 142 areas of policy with a North-South dimension, this will have implications for cooperation on the island of Ireland.

| EXCEPTED POWERS | RESERVED POWERS | DEVOLVED POWERS |
|--|--|--|
| <p>No competence</p> <ul style="list-style-type: none"> Parliament and the Crown Defence International Relations (excl. N/S coop) Immigration National Security and Terrorism National Insurance Inheritance Tax Capital Gains Tax Tobacco, Alcohol, Fuel duties Supreme Court Election Franchise State Aid Nuclear Energy UK waters outside NI zone Space Antarctica | <p>Competence subject to UK Government approval</p> <ul style="list-style-type: none"> Civil Aviation (not aerodromes) Property of Government or Crown Navigation (not inland waters/harbors) Foreshore, seabed, submarine cables Civil Defence Explosives Postal Services Size of NI Assembly Investigatory Powers Import/Export controls Financial Services Intellectual Property Competition Law Human Genetics Consumer Safety re Goods Research Councils Telecommunications Units of Measurement | <p>Full legislative competence</p> <ul style="list-style-type: none"> Education Housing, Communities, Local Government Environment, Food and Rural Affairs Health and Social Care Culture and Sport Justice and Policing Social Security and Employment Transport* Business* Energy* Land Property Tax Air Passenger Duty* Corporation Tax |

Figure 2: Excepted, Reserved and Devolved Competencies in Northern Ireland
 (*areas where the policy is partially devolved)

| Areas of North-South Cooperation | North-South Implementation Bodies | |
|--|---|---|
| <ul style="list-style-type: none"> Agriculture Education Transport Environment Waterways Social Security and Welfare | <ul style="list-style-type: none"> Tourism EU Programmes Inland Fisheries Aquaculture and Marine Health Urban and Rural Development | <ul style="list-style-type: none"> Waterways Ireland Food Safety Promotion Board InterTrade Ireland Special EU Programmes Body The Language Body Loughs Agency Lights Agency |

Table 2: North-South Cooperation and North-South Implementation Bodies in 1998 Agreement

As Figure 3 indicates, under the 1998 Agreement, North-South cooperation takes place across multiple sectors. As other sections detail, the degree of established cooperation on the island of Ireland had important implications in the context of EU Exit in general and in the conclusion of the Protocol in particular. One of the stated objectives of the Protocol is to ‘maintain the necessary conditions for north-south cooperation’ on the island of Ireland (Article 1(3)). Of the 96 areas for which EU law or policy frameworks had served to facilitate cooperation pre-Brexit, there is an approximate three-way split between those for which the Protocol fully provides, those for which

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it partially provides, and those for which it does not provide (see Annex 2). The gaps as regards the Protocol's sufficiency in maintaining necessary conditions for North-South cooperation after EU Exit are important for understanding the new regulatory environment of Northern Ireland. Where changes are made domestically (either at NI-level or UK-wide level) to those instruments of law that previously followed from the UK's EU membership and underpinned North-South cooperation, this can be expected to make continuation of the cooperation more difficult. Equally, where the EU amends or replaces applicable law or Ireland does similarly with legislation that previously underpinned North-South cooperation, this can also be expected to make continuation of such cooperation more difficult.

| | | | | | |
|--|--|--|--|---|--|
| <p>Trade</p> <ul style="list-style-type: none"> Customs Market Surveillance of Goods Import Licensing Controls Excise Fraud Monitoring Mutual Recognition of AEOs Transit of Goods. | | <p>Judicial and Legal</p> <ul style="list-style-type: none"> Family Law and Child Protection Cases Organised Crime Taskforce Benefit Fraud Avoidance Export Licensing Controls (on dual-use and military goods) Movement of Firearms, Civil Explosives, Offensive Weapons Avoidance of Fuel Fraud | | <p>Transport</p> <ul style="list-style-type: none"> Commercial Vehicle Roadworthiness Cabotage Road Haulage Vehicle and Driver Licensing Motor Insurance Vehicle and Driver Safety Checks Bus and Coach Services Ferries Cross-Border Taxi Services Cross-Border Enterprise Rail Service Road Network | |
| <p>Economic</p> <ul style="list-style-type: none"> InterTrade Ireland Invest NI and Enterprise Ireland Cooperation All-Island Public Procurement | | | | | |
| <p>Telecommunications</p> <ul style="list-style-type: none"> Irish Language Broadcasting Mobile Roaming | <p>Education</p> <ul style="list-style-type: none"> Cross-Border Academic Partnerships Mutual Recognition of Teacher Qualifications | <p>Energy</p> <ul style="list-style-type: none"> Single Electricity Market Natural Gas Network | <p>Culture</p> <ul style="list-style-type: none"> Sport Movement of Cultural Goods National Museums North-South Cooperation | | |
| <p>Healthcare</p> <ul style="list-style-type: none"> Movement of Medicines, Medical Devices and Healthcare Goods Transport of Organs and Tissues; All-Island Congenital Heart Disease Network North-West Cancer Centre Middletown Centre for Autism Mutual Recognition of Medical Professionals Qualifications Major Emergencies and A&E Planning | | <p>Environment</p> <ul style="list-style-type: none"> Water Quality and Regulation Air Quality Flood Risk Management Habitats and Wildlife Landscape Monitoring River Basin Management Biodiversity Strategies Plant Health Regulatory Checks Animal Health and Welfare Waste Management Chemicals Regulation Control of Invasive Alien Species Fish and Aquaculture | | | |

Figure 3: Areas of North-South Cooperation as identified in the EU-UK Mapping Exercise (2017)

5.3. Strand Three: East-West Cooperation

Strand Three of the 1998 Agreement focuses on the ‘totality of relations’ between ‘these islands’ by making provision for cooperation between:

- the UK and Irish governments via the *British Irish Intergovernmental Conference* (BIIC), and
- the two governments, the devolved governments in the UK, and the UK Crown Dependencies via the *British Irish Council* (BIC).

The BIC has eleven work sectors: social inclusion, environment, transport, energy, drugs and alcohol, creative industries, indigenous, minority, and lesser-used languages, digital inclusion, collaborative spatial planning, housing, and early years.

Although as a matter of law, Northern Ireland could conclude an agreement with other administrations participating in the BIC for the purposes of advancing cooperation in relevant areas of policy, this has never happened. For this reason the operation of the institutions of Strand Three of the 1998 Agreement are mostly of contextual relevance rather than being directly significant for understanding the post-EU Exit complexity of the NI regulatory environment.

| 1998 Agreement Institutions | |
|------------------------------------|---|
| Category | International and Domestic Law |
| Legal Text | The Belfast Agreement: An Agreement Reached at Multi-Party Talks on Northern Ireland 1998 |
| Implemented (primarily) by | Northern Ireland Act 1998 c. 47 |
| Strand One | |
| Regulatory Significance | High; Direct. |
| Scope/Sectors | Education; Housing, Communities, Local Government; Environment, Food and Rural Affairs; Health and Social Care; Culture and Sport; Justice and Policing; Social Security and Employment; Transport; Business; Energy; Land Property Tax; Air Passenger Duty; Corporation Tax. |
| Strand Two | |
| Regulatory Significance | High; Indirect. |
| Scope/Sectors | See Figure 3 |
| Strand Three | |
| Regulatory Significance | Low; Indirect. |
| Scope/Sectors | social inclusion, environment, transport, energy, drugs and alcohol, creative industries, indigenous, minority, and lesser-used languages, digital inclusion, collaborative spatial planning, housing, and early years |

6. EU-UK Withdrawal Agreement and the Protocol/Windsor Framework

EU exit has had a profound impact on the complexity of Northern Ireland's regulatory environment. This is a consequence of the terms of the EU-UK Withdrawal Agreement (WA) in 2020 and the differentiated treatment of Northern Ireland that results from its Protocol on Ireland/Northern Ireland (the 'Protocol') when compared to the wider UK-EU relationship which is provided for in the Trade and Cooperation Agreement that entered into force on 1 January 2021 (see Section 7).

The Protocol is a semi-permanent arrangement in that (a) it can be replaced by agreement of the UK and the EU and (b) the continued operation of its core provisions on the movement of goods and the related location of border formalities, checks and controls is subject to the consent, potentially every four years, of members of the NI Assembly. It has also proved to be the subject of much political contestation and opposition. In response, the UK and the EU agreed in 2023 the 'Windsor Framework', a package of measures for the Protocol's revised operation. The Protocol is now often referred to as the 'Windsor Framework'.

6.1. Protocol as Originally Agreed

The Protocol forms part of the EU-UK Withdrawal Agreement. It requires that post-EU Exit certain aspects of EU law continue to apply in Northern Ireland. While Northern Ireland remains part of the UK customs territory (Article 4), the EU customs code continues to apply there (Article 5) as do specific EU acts that regulate certain individual rights (Article 2), the free movement of goods (Article 5), VAT and excise (Article 8), state aid (Article 10) and electricity markets (Article 9).

Those EU acts made applicable under the Protocol are listed in its Annexes which form an 'integral' part of the text (Article 19). Over 330 EU acts were originally included in these Annexes. Most concern the regulation of goods and are listed in Annex 2. Under the Protocol, new EU acts deemed to fall within its scope may be added to those which already apply in Northern Ireland, albeit subject to agreement between the UK and EU (Article 13(4)). As for any EU amendments or replacements to those EU acts that already apply under the Protocol, they automatically have effect in Northern Ireland (Article 13(3)). This puts Northern Ireland in a relationship of automatic dynamic regulatory alignment with certain aspects of the EU single market *acquis*.⁵

The effect of such an arrangement is the avoidance of any physical hardening of the 499km land border on the island of Ireland. Free movement of goods continues across the border notwithstanding EU Exit, and, unlike their GB counterparts, NI traders can continue to enjoy unhindered access to the EU single market in respect to goods.

The corollary, however, is that new checks and controls are required on goods entering Northern Ireland – and so the EU internal market – from Great Britain. The fact that, under the EU-UK Trade and Cooperation Agreement, the broader arrangements for trade between the EU and the UK as a whole do not entail any regulatory alignment between the two signatories in respect of goods, in effect, make NI-specific arrangements under the Protocol more consequential.

Regarding implementation and enforcement, the UK Government is responsible for ensuring the Protocol, and those EU acts it makes applicable have effect in Northern Ireland (Article 12(1)). Additionally, however, where provision is made for the continued application of EU acts under the Protocol (i.e. under Article 12(2), Article 5, and Articles 7-10), the institutions, bodies, offices, and agencies of the EU retain the powers conferred on them by EU law in relation to natural and legal

⁵ See Whitten, L.C. 'Post Brexit dynamism: the dynamic regulatory alignment of Northern Ireland under the Protocol on Ireland/Northern Ireland', *Northern Ireland Legal Quarterly*, 73 (S2) 2023, 37-64.

persons residing or established in the UK. This includes the Court of Justice of the European Union (CJEU) whose jurisdiction continues to extend to the UK in respect of Northern Ireland according to the terms of the Protocol.

Also, the Withdrawal Agreement – and so the Protocol – was given domestic legal effect by the European Union (Withdrawal) Act 2018 (EUWA 2018). Section 7A of the EUWA 2018 provides for ‘all such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the withdrawal agreement’ and ‘all such remedies and procedures from time to time provided for by or under’ it to be given legal effect ‘without further enactment’. The EUWA 2018 therefore gives direct effect in Northern Ireland to EU laws that are in the scope of the Protocol, including those that will in future apply as a consequence of the process of dynamic regulatory alignment.

6.2. Protocol and the Windsor Framework

On 27 February 2023 the UK and EU jointly announced the Windsor Framework, a package of measures, including a small number of amendments to the Protocol and a series of agreed easements regarding its implementation. Changes introduced by the Windsor Framework fall into two categories: those for the movement of goods from GB (primarily) to Northern Ireland; and those concerning governance arrangements.

6.2.1. Windsor Framework Changes: Movement of Goods

The easements for the GB–NI movement of certain goods are based on differentiation according to destination. Certain goods moved by trusted traders for end use or consumption in Northern Ireland are able to avail of what was initially termed a ‘green lane’ process and is now referred to as the UK Internal Market System. This involves fewer customs checks and regulatory controls. By contrast, goods moving into Northern Ireland that are at risk of onward movement into the EU enter through a ‘red lane’ process in which full EU customs checks and EU regulatory controls apply.

These revised terms for GB–NI goods movements are reflected in an amendment to Article 6(2) Protocol. The amendment was introduced by Decision 1/2023 of the EU-UK Joint Committee,⁶ which also repealed the existing definition of goods ‘not at risk’ of onward movement through Northern Ireland into the EU internal market and replaced it with one that is wider in scope.⁷

The Windsor Framework also changed the scope of application of EU laws to goods moving from GB to Northern Ireland. Hence, less onerous sanitary and phytosanitary (SPS) rules and checks apply on ‘retail goods’ – defined as pre-packaged products of animal origin or plant origin (e.g. fresh meat, fresh vegetables), food and food contact goods (e.g. food packaging, cutlery, kitchen equipment), plants (other than for planting) and pet food as well as composite food products (e.g. ready-made meals or sandwiches) – being moved into Northern Ireland from GB by authorised

⁶ *Decision No 1/2023 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework*, OJ L 102, 17 April 2023. The following sentence was added to Article 6(2) of the Protocol: ‘This includes specific arrangements for the movement of goods within the United Kingdom’s internal market, consistent with Northern Ireland’s position as part of the customs territory of the United Kingdom in accordance with this Protocol, where goods are destined for final consumption or final use in Northern Ireland and where the necessary safeguards are in place to protect the integrity of the Union’s internal market and customs union’.

⁷ For the previous definition, see *Decision No 4/2020 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 December 2020 on the determination of goods not at risk*, OJ L 443, 30 December 2020.

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traders. However, data-sharing and labelling requirements need to be fulfilled. The effect is that for ‘retail goods’ some 65 of the approximately 300 EU acts that otherwise apply under the Protocol/Windsor Framework do not apply to goods being moved into Northern Ireland and remaining there.

In many cases, however, EU acts that continue to apply cover the same policy areas as acts that will not apply under the UK Internal Market System. As Figure 4 indicates, of the eight EU acts under the Annex 2 sub-heading ‘goods – general provisions’, six will continue to apply to GB goods moving into Northern Ireland via the UK Internal Market System but two will not apply. Similarly of the 23 EU acts listed under ‘food – ingredients, traces, residues, marketing’, three will continue to apply to goods using the UK Internal Market System but 20 will not. Importantly, all of the 300+ EU acts listed in Annex 2 continue to apply to goods production in Northern Ireland.

| EU Acts <u>NOT</u> applying in UK Internal Market System (ex ‘Green Lane’) | |
|--|---|
| 8 Goods – general provisions (2)* | 32 Food: contact material (2) |
| 13 Measuring instruments (1)* | 33 Food: other (6)* |
| 20 Medicinal products (2)* | 34 Feed: products and hygiene (4)* |
| 21 Medical devices (1)* | 35 GMOs (4) |
| 24 Pesticides, biocides (3) | 37 Animal disease/zoonosis control (5)* |
| 29 Food: general (2)* | 43 Official controls, veterinary checks (1)* |
| 30 Food: hygiene (3) | 44 Sanitary and phytosanitary – Other (1) |
| 31 Food: ingredients/traces/ marketing (20)* | 45 Intellectual property (4)* |
| EU Acts <u>STILL</u> applying in UK Internal Market System (ex ‘Green Lane’) | |
| 1 General customs aspects (3) | 22 Substances of human origin (3) |
| 2 Protection of EU financial interests (3) | 23 Chemicals and related (13) |
| 3 Trade statistics (1) | 25 Waste (5) |
| 4 General trade related aspects (6) | 26 Environment, energy efficiency (20) |
| 5 Trade defence instruments (7) | 27 Marine equipment (1) |
| 6 Regulations on bilateral safeguards (18) | 28 Rail transport (1) |
| 7 Others (1) | 29 Food: general (2) * |
| 8 Goods: general provisions (6)* | 31 Food: ingredients/traces/marketing (3) * |
| 9 Motor vehicles (11) | 33 Food: other (1) * |
| 10 Lifting & mechanical handling apps (2) | 34 Feed: products and hygiene (1) * |
| 11 Gas appliances (2) | 36 Live animals, germinal/animal products (5) |
| 12 Pressure vessels (4) | 45 Intellectual property (1)* |
| 13 Measuring instruments (7)* | 46 Fisheries and aquaculture* (3) |
| 14 Construction products, machinery, PPE (6) | 47 Other (17) |
| 15 Electrical and radio equipment (4) | 37 Animal disease/zoonosis control (5)* |
| 16 Textiles, footwear (2) | 38 Animal identification (1) |
| 17 Cosmetics, toys (2) | 39 Animal breeding (1) |
| 18 Recreational craft (1) | 40 Animal welfare (2) |
| 19 Explosives and pyrotechnic articles (3) | 41 Plant health (1) |
| 20 Medicinal products* (9) | 42 Plant reproductive material (12)* |
| 21 Medical devices (2)* | 43 Official controls, veterinary checks (2)* |

Figure 4: Overview of EU Acts Not Applying/Applying in UK Internal Market System (ex ‘Green Lane’)

The Windsor Framework also contained specific provisions regarding VAT and excise. These amended the terms of application in Northern Ireland of four EU acts and introduced derogations exempting Northern Ireland from certain EU requirements so as to enable the UK to apply reduced VAT rates on goods installed in immovable properties in Northern Ireland while also allowing for Northern Ireland’s participation in UK excise provisions related to sales of alcohol, so long as these do not contravene EU minimum duty rates (Decision 1/2023, Article 3). The

derogations also exempt Northern Ireland from the EU's new VAT scheme for small enterprises on condition that the UK scheme respects EU rules on annual turnover thresholds.

Provisions in the Windsor Framework also dealt with specific issues that had arisen since the Protocol entered into force. These included the supply of medicines and the movement of pets. Under the new arrangements, any new or innovative medicines developed in the UK are eligible for circulation in Northern Ireland on the basis of approval by UK authorities (i.e. the Medicines and Healthcare products Regulatory Agency (MHRA)) and according to UK regulations. This would not have been possible under the previous arrangements and, in effect, establishes a dual regulatory regime for human medicines supplies in Northern Ireland. The requirement for packages of medicinal products to have an EU stamp when placed on the NI market has also been disapplied. Regarding pets, owners wishing to travel GB-NI with a pet are (only) required to acquire one travel document that will remain valid for the lifetime of the animal, and which confirms that it is microchipped and will not move into the EU. These requirements are less burdensome than those of the original Protocol.

6.2.2. Windsor Framework Changes: Governance

The other significant area of change introduced by the Windsor Framework relates to its governance and more specifically to NI representation at or involvement with bodies and mechanisms established to oversee the implementation of the Protocol. For the purposes of tracking divergence and alignment in Northern Ireland, the most important of these new measures are those provisions that relate to the so-called 'Stormont Brake' for amendments and replacements to EU acts applicable under the Protocol/Windsor Framework and the 'applicability motion' process for new EU acts being added to it.

Through a new paragraph 13(3a) Protocol, the Stormont Brake procedure enables the UK to deviate from the otherwise automatic dynamic regulatory alignment of Northern Ireland with EU rules on goods following an application by 30 members of the NI Assembly (MLAs). Strict criteria need to be met for the Stormont Brake to be applied. Notwithstanding its conditionality, the possibility of such a brake being applied adds further complexity to the regulatory landscape of Northern Ireland. This is because, if applied, the brake would, in effect, put Northern Ireland in a position of dual divergence with both the EU (where the amended or replaced act would apply) and with the UK in respect of GB (where the relevant EU instrument no longer applies even in its non-updated form).

In legislating for the implementation of the Stormont Brake, the UK Government introduced an additional process whereby UK agreement to the addition of new EU acts to the Protocol/Windsor Framework via Article 13(4) now normally requires the adoption by MLAs of an 'applicability motion' which must pass with cross-community consent. The associated procedures for the Stormont Brake and the applicability motion procedures are complex (see Annex 3).

Similar to with a deployment of the Stormont Brake, if the absence of an 'applicability motion' prevents the addition of a new EU act to the Protocol/Windsor Framework, Northern Ireland will end up in a position of regulatory divergence from the EU. This could lead to the EU taking 'appropriate remedial measures' (Article 13(4)).

6.3. Protocol/Windsor Framework and Safeguarding the Union

On 30 January 2024 the Democratic Unionist Party endorsed a deal proposed by the UK Government as a foundation for the ending of its protest boycott of the devolved institutions in Northern Ireland and, thereby, as a basis for the restoration of the NI Assembly and the establishment of a new NI Executive in Stormont. Associated details were published in a

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Command Paper entitled '*Safeguarding the Union*'.⁸ This was accompanied by two draft statutory instruments and one draft statutory instrument for consultation implementing aspects of the deal.

Most changes proposed or introduced through *Safeguarding the Union* deal concern the movement of goods and Northern Ireland's place in the UK internal market. Of particular significance are the revision of the definition of 'Qualifying Northern Ireland Goods' (QNIG) such that goods will not be considered QNIG if they have been re-routed to Northern Ireland for that purpose⁹ and amendments to the *United Kingdom Internal Market Act 2020* (see Section 9) reinforcing the policy of unfettered access for QNIGs to the GB market, including by prohibiting the application of export procedures on NI-GB movements except in certain circumstances.¹⁰

Also among the measures introduced was a new legal duty for UK Ministers to consider the potential divergence impact of any new primary UK law on trade between Northern Ireland and the rest of the UK. This is notable inasmuch as it can be expected to assist in the monitoring and management of any GB divergence from EU standards on Northern Ireland, particularly where the latter is still obliged to follow relevant EU regulations under the Protocol/Windsor Framework.¹¹

A further measure was a legal restriction preventing UK Governments from entering new agreements with the EU which would create new regulatory barriers between GB and Northern Ireland.¹² This does not affect the existing obligations to dynamic regulatory alignment under the Protocol/Windsor Framework, nor, given the constitutional principle of parliamentary sovereignty, is there anything to prevent a future UK Government from removing this restriction.

Also, under the *Safeguarding the Union* deal, the UK Government has committed to extend to the UK the 'not for EU' labelling system for certain goods sold in Northern Ireland,¹³ and widen the scope of the UK Internal Market System such that paperwork and checks will be reduced and traders moving 'rest of world' agri-food goods could also avail use the system.

A further legal change arising from *Safeguarding the Union* is an amendment to section 7A EUWA 2018 that acts as the 'conduit pipe' for the general implementation of the Protocol/Windsor Framework in UK law and, thereby, for the direct application of relevant EU laws in Northern Ireland. In substance the amendment reiterates that provisions in Articles 13 and Article 18 Protocol/Windsor Framework relate to the 'application in Northern Ireland of EU law relating to the trade in goods necessary for the functioning of the Windsor Framework'.¹⁴ The new provisions do not alter the legal effect of the Protocol/Windsor Framework.

⁸ See UK Government, *Safeguarding the Union*, CP 1021, January 2024.

⁹ Amendment to Regulation 3 of *The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020* (SI 2020/1454) by *The Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024* (SI 2024/163).

¹⁰ *United Kingdom Internal Market Act 2020* c.27: s45B.

¹¹ EUWA 2018 c. 16 section 13C as amended by *The Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024* (SI 2024/164).

¹² *European Union (Withdrawal Agreement) Act 2020* c. 1 section 38A as amended by *The Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024* SI 2024/XX.

¹³ UK Government, *Marking of Retail Goods Consultation*, February 2024

¹⁴ EUWA 2018 as amended by *The Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024* (SI 2024/164).

| Protocol on Ireland / Northern Ireland | |
|---|--|
| Category | International Law |
| Legal Text | <i>Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 30 January 2020.</i> |
| Implemented (primarily) by | <i>European Union (Withdrawal) Act 2018 c 16 section 7A and 8C.</i> |
| Regulatory Significance | High; Direct. |
| Scope/Sectors | Individual Rights; Trade in Goods; VAT and Excise; Energy and Electricity Markets; State Aid. |
| ... as amended by Windsor Framework | |
| Legal Text | <i>Decision No 1/2023 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework, OJ L102 17 April 2024.</i> |
| Regulatory Significance | Moderate; Direct. |
| Scope/Sectors | GB – NI Trade in Goods; NI Production of Goods. |
| ... in the light of Safeguarding the Union | |
| Regulatory Significance | Moderate; Direct. |
| Scope/Sectors | GB – NI Trade in Goods; Unfettered Access of NI Goods to GB. |

7. UK–EU Trade and Cooperation Agreement

The second consequence of EU Exit for Northern Ireland’s regulatory complexity is the Trade and Cooperation Agreement (TCA) setting out the terms for UK-EU relationship since the 1 January 2021.¹⁵ To understand their significance for Northern Ireland the provisions of the TCA must be read alongside the provisions of the Withdrawal Agreement particularly those containing in the Protocol/Windsor Framework. What follows is an overview of core provisions of the TCA. A summary of how they interact with the Protocol/Windsor Framework is the provided in Table 3 on pp. 23-24).

¹⁵ Alongside the TCA the EU and UK concluded the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy* and the *Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information*. These are of less relevance to the regulatory environment of Northern Ireland.

7.1. The Trade and Cooperation Agreement and Regulation

Concluded during the process of EU Exit – and so during a period of pro-active UK disengagement from the EU – the TCA is light on UK obligations towards the EU. It nevertheless includes provisions across a range of policy areas that have implications for Northern Ireland.

Goods Trade: The TCA involves free trade between the UK and the EU. There are therefore no tariffs and no quotas on trade in goods. However, except where Northern Ireland is concerned (see Section 6), non-tariff barriers do apply. Restrictions apply on the movement of goods and so there are customs formalities and regulatory compliance checks.

Unlike under the Protocol/Windsor Framework, the TCA makes no provision for regulatory alignment between the rest of the UK (i.e. UK(GB)) and the EU. Separate EU and UK(GB) regimes exist for regulating, for example, human, animal, and plant health. This means that SPS border controls apply on UK(GB)-EU goods movements. However, these must be ‘proportionate to the risks identified’ and are subject to review by Specialised Committees established by the TCA. Provision also exists for the mutual recognition of trusted trader schemes thus enabling customs procedures for eligible traders to be streamlined.

Although there is no commitment to regulatory alignment under the TCAs, the UK and the EU are both required to carry out, as regards trade with the other party, impact assessments of any changes to their technical regulations. If either deviates from international standards, an explanation and justification can be requested by the other party. Easements on non-tariff and technical barriers to trade are agreed for certain low-risk products where ‘self-certification’ practices already existed; specific facilitations for trade in medicinal products, motor vehicles, wine, chemicals, and organics are also agreed such that conformity assessments in relevant sectors are streamlined.

Services Trade: The TCA contains mutual commitments to: market access for services; national treatment (i.e. prohibiting discrimination between EU and UK citizens); and local presences (i.e. banning either party from requiring a local subsidiary to be set up before services can be provided). Additionally, the agreement contains a ‘most-favoured nation’ clause which means that if either the UK or the EU grants more favourable terms to another country in a future agreement, those terms will automatically extend to the other party.

While, *prima facie*, the TCA provisions for continued trade in services appear to be generous in scope, they are also subject to a large number of exceptions, listed in the TCA annexes. These exclusions are in keeping with those made by the EU in other FTAs. Special provisions also apply for services related to telecommunications, delivery, maritime and transport. On financial services, the agreed market access is subject to a carve-out for prudential measures and the UK and EU agreed in a non-binding declaration to establish a future framework for regulatory cooperation.

Regarding mutual recognition of professional qualifications, the TCA sets up a framework for agreeing this through the Partnership Council, but no new qualifications are to be recognised.

Level Playing Field: A commitment not to lower the overall level of labour and social protection in such a way that impacts trade or investment underpins the TCA. Included in this commitment are obligations regarding fundamental rights at work, occupations health and safety standards and fair working conditions. Additionally, both the EU and UK have committed not to lower the overall level of environmental and climate protection in such a way that impacts trade or investment; certain specific aspects are mentioned including, for example, maintenance of greenhouse gas reduction measures alongside carbon pricing. And both parties can take ‘rebalancing’ or countermeasures, including the imposition of tariffs (subject to arbitration), if they believe significant divergences in any TCA ‘level playing field’ provisions are distorting trade.

Notably for UK(NI) there is some overlap between these level-playing field provisions and those set out in Article 2 of the Protocol/Windsor Framework regarding individual rights, and also in respect to areas of established (pre-EU Exit) North-South cooperation.

Law and Justice: The TCA establishes a EU-UK security partnership. It includes the continued sharing of DNA and fingerprint data and the transferring of Passenger Name Record (PNR) data. Information relevant to operations (e.g. on wanted or missing persons) can be shared. The TCA does not include UK access to EU databases, and a dedicated surrender agreement replaces UK involvement in the European Arrest Warrant. More broadly, the TCA assumes adherence to the European Convention on Human Rights (ECHR). Cooperation on law and justice can be suspended in the event that the UK or an EU member state no longer adheres to the ECHR.

Cooperation on law and justice matters is not specifically provided for in the Protocol/Windsor Framework but police and judicial cooperation is listed (Article 11) as one of those areas of North-South cooperation for which 'necessary conditions' are to be maintained (see Section 5.2).

Energy: Under the TCA, the UK and EU maintain independent energy and climate change policies but can cooperate when it is deemed mutually beneficial to do so. They agree certain principles according to which their respective energy markets will be regulated. These include fair competition and non-discrimination. Until 30 June 2026 the UK retains access to the EU internal energy market and UK and EU regulators are to liaise as appropriate; thereafter there will be annual negotiations on access. The TCA provides that the UK and EU carbon pricing systems could be linked.

Under the Protocol/Windsor Framework, the Northern Ireland continues to participate in the EU energy and electricity market and remains subject to several related EU law instruments to the extent of their relevance to the operation of the Single Electricity Market on the island of Ireland (Article 9).

State Aid: The TCA requires the UK and EU to have effective systems of subsidy control and provides definitions of a subsidy (essentially financial assistance that benefits some businesses over another) and a list of shared principles to inform each party's system. Separate independent oversight of both the UK and EU systems is required and, in the event of a dispute, either can impose remedial measures if consultation fails to resolve the issue. Under the Protocol/Windsor Framework, the EU rules on state aid continue to apply in Northern Ireland in full (Article 10).

Fisheries: Under the TCA, the UK and EU have agreed terms governing fishing rights and market access. These will be reviewed annually from 2026. If either party reduces or withdraws access to its waters without agreement, the other party may adopt compensatory measures.

EU Programmes: The UK can participate – and indeed does participate – in some EU programmes. These include Horizon Europe (Research), Euratom Research and Training, ITER Fusion and Copernicus. The EU and UK reiterated in the TCA their commitment to the PEACE+ Programme in Northern Ireland which is subject of a separate joint Financing Agreement.

Governance: A UK-EU Partnership Council and a range of supporting committees were established to oversee implementation of the TCA. Binding enforcement and dispute settlement mechanisms cover most of the agreement. These include an independent arbitration tribunal. In contrast to the Protocol/Windsor Framework, there is no role for the CJEU in the governance of the TCA. In the event of non-compliance with arbitration rulings, both parties can engage in proportionate cross-sector retaliation.

Review and Termination: The TCA is to be reviewed every five years (starting in 2025) and can be terminated by either side with 12 months' notice, or more swiftly on the grounds of non-compliance with human rights and/or rule of law obligations.

7.2. Implementing the Trade and Cooperation Agreement

The TCA is binding in international law. Under its terms, the EU and UK are obliged to ‘take all appropriate measures...to ensure the fulfilment of the obligations arising from’ its provisions and to ‘refrain from any measures which could jeopardise the attainment of’ its objectives. Disputes are to be resolved in accordance with the rules of customary international law, including those codified in the Vienna Convention on the Law of Treaties 1969 (VCLT) which, in particular, provides that parties cannot invoke a provision of domestic law to justify a breach of an international treaty (Article 27).

What this means is that the UK must ensure that its domestic law provisions align with its obligations under the TCA. The effect is a considerably weaker form of UK–EU alignment than that created under the Withdrawal Agreement in general and, as regards Northern Ireland, under the Protocol/Windsor Framework in particular. Article 4 WA requires the UK to incorporate the Withdrawal Agreement into domestic law and to ensure that individuals can rely on rights created by it when appearing in UK courts. And, as noted, Article 12(4) Protocol/Windsor Framework provides that the CJEU retains jurisdiction in Northern Ireland for the purposes of the implementation of applicable EU law instruments.

| Issue | Trade and Cooperation Agreement | Protocol/Windsor Framework |
|------------------|---|--|
| GOODS | Tariff-free and quota-free trade but with non-tariff regulatory barriers and subject to rules of origin. | Wholly free EU-NI trade subject to NI dynamic alignment with relevant EU rules. |
| SPS | UK(GB) and EU maintain separate SPS regimes with a reciprocal duty to ensure border controls are ‘proportionate’ to risk. | UK(NI) remains dynamically aligned to EU SPS rules with a partial, conditional carve out for GB-NI goods moving via the UK Internal Market System. |
| CUSTOMS | Mutual recognition of trusted traders allowing streamlining of customs procedures for eligible traders; exchange of VAT information to prevent fraud | UK(NI) remains dynamically aligned to EU customs rules but with easements agreed for trusted traders moving goods GB-NI – subject to certain conditions including data sharing. |
| ENERGY | Independent energy and climate policies but cooperation when of mutual benefit to both parties including re carbon pricing systems and interconnector capacities. | UK(NI) remains dynamically aligned with EU energy and electricity markets to the extent necessary to maintain the Single Electricity Market on the island of Ireland. Any future EU carbon border pricing mechanism <i>may</i> be added to Protocol/Windsor Framework applicable EU law. |
| SUBSIDIES | UK and EU commit to having an effective system for subsidy control and independent body to oversee it. | UK(NI) remains aligned to EU state aid rules to the extent that they impact on trade between Northern Ireland and Ireland/the rest of the EU. |

| | | |
|--|---|---|
| LEVEL PLAYING FIELD | Non-regression obligations on both parties regarding labour and social protection and environment and climate policies if this would impact on trade or investment. Any breach could result in redress measures (including e.g. tariffs, suspension). | UK(NI) obliged to follow aspects of EU level playing field provisions including regarding certain social and labour rights under Article 2 Protocol/Windsor Framework – broad and non-specific commitments to continued North-South cooperation in environmental policy including in Article 11 Protocol/Windsor Framework. |
| POLICE AND JUDICIAL COOPERATION | Provisions for continued cooperation but short of previous arrangements e.g. exchange of PNR, sharing of DNA via PRÜM but no direct, real-time access for UK, no access to SIS or EAW database. | Outside scope of Protocol/Windsor Framework applicable law but an aspect of North-South cooperation. |
| GOVERNANCE | No role for CJEU. | Continued CJEU jurisdiction for purposes of Articles 12(2), 5, 7-10 Protocol/Windsor Framework. |

Table 3: Summary of Trade and Cooperation Agreement vis-à-vis Protocol/Windsor Framework

| Trade and Cooperation Agreement | |
|---|--|
| Category | International Law |
| Relevant Text(s) | <i>Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part</i> , OJ L149, 30 April 2021. |
| Implemented By | <i>European Union (Future Relationship) Act 2020 c.29</i> |
| Regulatory Significance | High; Indirect. |
| Scope/Sectors [Most NI-relevant] | Trade in Services; Energy; Police and Judicial Cooperation; Labour and Social Protection; Environment and Climate Change Policy. |

8. UK Law: Retained/Assimilated EU Law

With the aim of ensuring legal continuity and certainty, the *EU (Withdrawal) Act 2018* provided that all EU law that had effect in the UK at the end of the transition period on 31 December 2020 would continue to have effect domestically and would do so as ‘retained EU law’. Retained EU law (REUL) thus became a new category of UK law, one to which a retained UK version of the EU general principles of law still applied and which would continue to be interpreted by UK courts in line with CJEU case law at the end of transition, unless and until alternative provisions were

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made. While the EUWA 2018 also empowered UK Ministers to revise or revoke REUL, the UK Government sought to further enable this process, and to reform the status of REUL in the UK via the *Retained EU Law (Revocation and Reform) Act 2023* (REUL Act).

Key provisions of the REUL Act include:

- Revocation (in whole or in part) of 587 legislative instruments listed in Schedule 1 at the end of 2023;
- Revocation of all directly effective EU law (e.g. rights and obligations conferred by EU Treaties / Directives);
- Revocation of the modified principle of supremacy of EU law and the modified general principles of EU law;
- Renaming of 'retained EU law' as 'assimilated law';
- Permission for lower UK Courts to depart from legacy CJEU case law;
- Broad powers to UK Ministers to restate, replicate, revoke and replace REUL/assimilated law (powers expire after 23 June 2026) but introduction of a restriction on the exercise of these such that any replacement instrument cannot create new delegate powers, criminal offences or monetary penalties nor can taxes be levied, new public bodies established, or the overall regulatory burden created by a relevant instrument be increased;
- Powers to UK Ministers to update REUL/assimilated law in light of technological and scientific developments (no expiry on these powers);
- Relaxation of the scrutiny rules for modifying or revoking REUL making it easier to do so using, for example, pre-existing delegated powers.

These reforms to REUL – now 'assimilated law' – are important for the regulatory environment in Northern Ireland for several reasons. First, it is important to stress that these changes do not impact directly on the application of the Protocol/Windsor Framework in general and those EU laws in its scope in particular. For these purposes, the EU general principles of law (including supremacy and direct effect), and relevant CJEU case law continue to apply in the UK in respect of Northern Ireland in accordance with and limited to the scope of the Withdrawal Agreement and the Protocol/Windsor Framework. By implication, the changes enacted under the REUL Act serve to further differentiate Northern Ireland and the category of law that has effect there as a consequence of the Protocol/Windsor Framework.

Second, the deregulatory spirit of the REUL Act – inasmuch as it grants wide discretionary powers to UK Ministers to revise, revoke or restate 'assimilated EU law' and in doing so must not increase the overall regulatory burden of those effected by the relevant legislation – is to be noted. It is significant in the Northern Ireland context due to the continued application of EU laws in scope of the Protocol/Windsor Framework and the consequential likelihood that reforms made under the REUL Act by UK Ministers can be expected to lower the regulatory burden in GB in areas where Northern Ireland continues to follow (potentially higher) EU regulatory standards. Furthermore, for areas outside the Protocol/Windsor Framework but in which there is established North-South cooperation and/or the implementation of the given policy would have cross-border implications (e.g. immigration restrictions or social welfare access), any changes in assimilated law can be expected to have particular implications for Northern Ireland as regards divergence with either Ireland or the rest of the UK.

| Retained/Assimilated EU Law | |
|---|--|
| Category | Domestic Law |
| Legal Text(s) | <i>European Union (Withdrawal) Act 2018 c 16 and Retained EU Law (Revocation and Reform) Act 2023 c 28.</i> |
| Regulatory Significance | Moderate; Direct. |
| Scope/Sectors [Most NI-relevant] | Areas that (pre-EU Exit) were EU competence, but which are not in scope of the Protocol/Windsor Framework applicable laws. |

9. UK Law: United Kingdom Internal Market Act

With EU Exit and the ending of the obligation for all of its constituent territories to comply with the rules of the EU single market, the UK Government introduced new legislation – the *United Kingdom Internal Market Act 2020* (UKIM Act) – to regulate trade within the UK.

The regulatory implications of the UKIM Act are important to consider because they reflect the terms under which Northern Ireland now trades with other parts of the UK.

9.1. UKIM Act Overview

Current arrangements for devolution were established when the UK was an EU member state. Against the backdrop of EU membership, the potential for intra-UK regulatory divergence between central government and the devolved governments of Scotland, Wales, and Northern Ireland was more limited than it otherwise would have been at the inauguration of the post-1998 era of UK devolution. The requirement for the whole of the UK to follow EU rules provided, in effect, a legal and policy scaffolding that restricted the degree of divergence possible between the UK's constituent parts. By 2016, substantial areas of devolved competence in Scotland, Wales, and Northern Ireland, intersected (fully or partially) with areas of EU competence.¹⁶ The legal obligation for the Westminster parliament and the devolved parliaments to comply with EU laws in these areas had thus had a uniformising effect on policy development across the UK during its period of membership.

The UK's decision to withdraw from the EU raised the prospect of much greater internal policy divergence between its different administrations. The UK Government opted to mitigate the risk of unmanaged intra-UK divergence by introducing legislation 'in connection with the internal market for goods and services in the United Kingdom'.¹⁷ An overarching objective of the UKIM Act is, in the language of the UK Government, to 'preserve the ability to trade unhindered in every part of the UK'.¹⁸ Its provisions are thereby designed to serve a similar function to that of the EU law and policy frameworks which ceased to have effect in the UK at the end 2020.

The UKIM Act introduced two 'market access principles' to govern trade within and between the different parts of the UK. First, there is the principle of mutual recognition, according to which any

¹⁶ It has been claimed that a total of 152 areas of devolved policy intersected with EU law or policy (in whole or in part). Of these, reflecting the scope of each devolution settlement, 149 were in Northern Ireland, 101 in Scotland, and 65 in Wales. See UK Government, *Frameworks Analysis 2021: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland*, November 2021

¹⁷ *United Kingdom Internal Market Act 2020*

¹⁸ UK Government, *Collection: UK Internal Market*, September 2021

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goods or services that are regulated in one of the constituent territories can be traded in any other part without having to satisfy regulations set in those local markets. Second, there is the principle of non-discrimination, according to which goods or services being moved into one of the UK's constituent territories from any other part of the UK cannot be treated differently from locally produced goods and/or local service providers.

Although the market access principles apply to the whole of the UK – albeit with some NI exceptions which are discussed below – the asymmetric nature of the UK's territorial arrangements make it very likely that rules set by the Westminster government for the English market will have a pervasive effect across the state. While devolved governments may still choose to set distinctive and/or higher standards which reflect their own policy priorities or commitments – for example in the case of Scotland, remaining aligned with EU standards¹⁹ – doing so risks putting producers or service providers in the relevant jurisdiction at a competitive disadvantage, assuming the distinctive or higher standards come with associated higher costs. The incentive against opting for higher regulatory standards in any given UK territory due to the possibility of undercutting may therefore undermine the principles and/or values which would underpin any such standards. In this context, it is also worth noting that the market access principles – setting aside the Northern Ireland case – come with a very limited list of permissible exceptions which primarily relate to biosecurity matters (i.e., combating the spread of pests, diseases, or unsafe food products) and/or responses to a 'public health emergency' posing an 'extraordinary threat' to human health.²⁰

Overall the UKIM Act 2020 can be said to prioritise unfettered internal trade – the Protocol/Windsor Framework notwithstanding – and deregulation over the law-making autonomy of the constituent territories of the UK. These overarching implications of the legislation are contextually important when it comes to understanding the UKIM Acts' NI-specific exceptions.

9.2. UKIM Act and the Protocol/Windsor Framework

The regulatory implications of the Protocol/Windsor Framework are evident in the UKIM Act. To allow for the domestic implementation of the novel arrangements for Northern Ireland post-EU Exit, set out in the Protocol/Windsor Framework, the UKIM Act includes a series of specific provisions that serve to except goods entering and leaving Northern Ireland, in certain circumstances, from the 'market access principles' that the UKMI Act establishes.

9.2.1. UKIM Act section 11 and Qualifying Northern Ireland Goods

A first set of NI-specific provisions relate primarily to the movement of goods from Great Britain to Northern Ireland (GB–NI). Section 11 of the UKIM Act introduces 'modifications' (i.e., limitations) to the market access principles such that, in relation to goods, they apply to any part of the UK *other than* Northern Ireland. Regarding rules on the sale of goods in Northern Ireland, generally, the Act defers to the Protocol/Windsor Framework and the provisions of UK law for its domestic implementation (EUWA 2018 c.18: s7A, s7C and s8C). What this means is that GB goods cannot be automatically accepted for sale in Northern Ireland and, therefore, the principles of mutual recognition and non-discrimination cannot be upheld. The acceptability or otherwise of goods placed on the market in Northern Ireland is instead governed by the Protocol/Windsor

¹⁹ Whitten, L. C. *European Union Law Tracker: A Report for the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee* – Report No. 1, September 2023.

²⁰ This contrasts with the EU single market which has inbuilt mechanisms and procedures which allow member states or regions therein to seek derogations and/or exceptions to its 'four freedoms' on the basis of justified circumstances, these can include local environmental concerns, health objectives, consumer protection needs or employment standards.

Framework generally and its Article 5 and Annex 2 in particular, which (see Section 6.1) make approximately 300 EU acts related to the regulation of goods applicable to Northern Ireland.

Complicating matters further, in addition to the overarching non-application of the market access principles to NI goods, under sections 11(2) and 11(5) the mutual recognition and non-discrimination principles *do* apply to ‘qualifying Northern Ireland goods’ (QNIGs). This is the UK Government delivering on its promise to ensure ‘unfettered access’ for goods moving from Northern Ireland into GB. To determine what the provision for QNIGs means in substance, section 11 must be read in conjunction with the Protocol/Windsor Framework, aspects of the EUWA 2018, and several statutory instruments.

The Protocol/Windsor Framework states that nothing in its provisions ‘shall prevent the United Kingdom from ensuring unfettered market access for moving from Northern Ireland to other parts of the United Kingdom’s internal market’ (Article 6(1)); and (paradoxically) to that end provides that any applicable EU laws that ‘prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by any international obligations of the [European] Union’ (*ibid*). What this means in practice is that, according to the Protocol/Windsor Framework, the movement of goods NI-GB can be relatively unrestricted, essentially subject only to controls for a small number of dangerous or illicit products. Enacting this commitment domestically requires dedicated legislation.

Among the regulation-making powers granted by the EUWA 2018, UK Ministers were empowered to make regulations to ‘facilitate the access to the market of Great Britain of qualifying Northern Ireland goods’ (s8C (3)) and also to define, by regulation, QNIGs (s8C (6)). Before the end of the Transition Period, in December 2020, a definition of QNIGs was adopted in legislation. Under *The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations, 2020* (SI 2020/1454), goods that either have undergone processing in Northern Ireland²¹ or which were present in Northern Ireland and not subject to, or have successfully completed, any customs supervisions, restriction, or control²² meet the definitive threshold of ‘qualification’. While this is a relatively broad definition, read in the context of the obligation under the Protocol/Windsor Framework for EU laws on customs to apply in Northern Ireland and to goods entering the territory, this domestic law definition of QNIGs is without prejudice to the full implementation of the Protocol/Windsor Framework. Following the *Safeguarding the Union* deal, the legal definition of QNIGs was tightened such that goods that meet the previous threshold for qualification, but which have been rerouted to Northern Ireland for the purposes of doing so do not qualify.²³ Returning to the provisions of section 11 of the UKIM Act, the application of the market access principles to ‘qualifying NI goods’ in substance only includes goods that move NI-GB, and not those moving GB-NI. This is because, under the Protocol/Windsor Framework (as originally agreed), the latter are subject to customs controls and therefore do not ‘qualify’. Additionally, any goods moving NI-GB and which, under Article 6(1) Protocol/Windsor Framework, are subject to prohibitions or restrictions due to the international obligations of the EU, also do not meet the threshold for ‘qualification’.

²¹ NI processed products are goods which: have undergone processing operations carried out in NI only and incorporate only goods which (i) were not at the time of processing under any form of customs supervision, restriction, or control or (ii) have been ‘domestic goods’ meaning they are wholly obtained in the UK or have been subject to a chargeable customs procedure; see Definition of QNIGs Regulation SI 2020/1454 section 3 and Taxation (Cross-border Trade) Act 2018 c. 22 section 33.

²² Except that which arises from the goods being taken out of the territory of NI or the EU (i.e., including into GB).

²³ Amendment to Regulation 3 of *The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020* (SI 2020/1454) by *The Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024* (SI 2024/163).

9.2.2. UKIM Act part 5 and ‘Special Regard’

Part 5 of the UKIM Act is specifically dedicated to Northern Ireland.²⁴ Provisions here require that public bodies (of all kinds including ministers and/or departments across all UK administrations, central and devolved) have ‘special regard’ for the need to: ‘maintain’ Northern Ireland’s ‘integral place’ in the UK internal market; ‘respect’ Northern Ireland’s place as part of the UK customs territory; and ‘facilitate free flow of goods’ between GB and Northern Ireland when either implementing the Protocol/Windsor Framework or taking ‘any action related to the movement of goods’ in the UK (s46).

Part 5 goes on to set out a guarantee for ‘unfettered access’ for NI goods to the rest of the UK. A prohibition is introduced regarding new checks or controls on goods moving NI-GB unless required to: (i) facilitate access; (ii) comply with international obligations (including the Protocol/Windsor Framework); (iii) carry out voluntary customs procedures; (iv) carry out procedures required re VAT or excise under the Protocol/Windsor Framework; or (v) safeguard biosecurity or food safety of GB (s47). Thus, while these guarantees of ‘unfettered’ access are important, they are also conditional; nothing in Part 5 conflicts with the direct effect of the Protocol/Windsor Framework in UK law or the ‘modifications’ (limitations) of UKIM Act market access principles in relation to Northern Ireland provided for elsewhere in the Act (s11). Again, in the wake of the *Safeguarding the Union* deal, further amendments were introduced to this part of the UKIM Act – they provide clarifications and further guarantees regarding qualifying NI goods access to the rest of the UK internal market, they do not substantively alter the regulatory implications of the legislation.²⁵

Further provisions are also made in the UKIM Act (s48-9) relating to Article 10 Protocol/Windsor Framework and state aid. These grant the Secretary of State for Northern Ireland significant powers in relation to operationalizing UK commitments made in the Protocol/Windsor Framework to ensure compliance with relevant EU state aid laws in respect to NI-EU trade. This is broadly in keeping with an effect of the UKIM Act on devolved powers more generally, whereby it made state aid an excepted or reserved area across the UK (s46).

To summarise, under the UKIM Act, trade in goods from Northern Ireland to GB is guaranteed ‘unfettered access’ subject to international obligations (including the Protocol/Windsor Framework) and biosecurity monitoring (under the general provisions of the Act) – in practice this is unlikely to lead to much ‘fettering’ of NI-GB trade. When it comes to trade in goods moving from GB-NI, the UKIM Act market access principles are ‘modified’ to allow for the implementation of the Protocol/Windsor Framework – in practice this means that placing goods on the NI market is essentially governed by EU rules and not the UKIM principles, thus leading to ‘Irish Sea Border’ checks and controls. The UKIM Act also, however, introduces a ‘best endeavours’ obligation on UK Ministers and authorities to have ‘special regard’ for the place of Northern Ireland in the UK market and customs territory when making any provision for the movement of goods. If taken seriously, this latter provision for ‘regard’ be consequential for UK-wide regulation.

Under the UKIM Act, read together with the (pre-Windsor Framework) Protocol, Northern Ireland could hypothetically have served as a legislative anchor or guideline for policymakers if the UKIM

²⁴ This is where, as introduced, the UKIM Bill contained controversial ‘specific and limited’ law-breaking clauses; these were removed following UK-EU agreement in December 2020 when the two parties acting together in the Joint Committee took several decisions and made respective unilateral declarations regarding implementation of the Protocol. The 2020 Joint Committee decisions included an agreed definition of ‘at risk’ goods in the context of the Protocol (with implications for the scope of checks required on GB-NI movements), and established so-called ‘grace periods’ for some checks, most of which continued to apply until the Windsor Framework changes came into effect on 1 October 2023.

²⁵ Various amendments were made to Part 5 by *The Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024* (SI 2024/163); see Section 6.3.

Act obligation for ‘special regard’ for Northern Ireland had been taken seriously in Cardiff, Edinburgh, and London. In this scenario, choices regarding the regulation of goods across the UK could have opted to mirror the ‘UK(NI)’ market and, by proxy, the EU market; notably, this would have been in keeping with commitments already made by the Scottish Government for its devolved law to stay aligned with EU law. Aspects of the Windsor Framework amendments to the Protocol, however, make it less likely that a ‘Brussels via Belfast effect’ will ever be realised.

By introducing the possibility for GB-standard goods to enter the NI market via the UK Internal Market System, the Windsor Framework revisions (together with the *Safeguarding the Union* deal), expose Northern Ireland once again to the potential negative under-cutting impact of the UKIM Act ‘market access principles’ experienced in Scotland and Wales. However, under the revised system, Northern Ireland will likely have to weather this market dynamic to a greater degree. The Protocol/Windsor Framework-derived obligation for NI producers to follow EU laws in respect to ‘retail goods’ (as defined by the Windsor Framework) combined with the (UKIMA-derived) obligations to ensure non-discrimination and mutual recognition of GB imports of ‘retail goods’ to Northern Ireland via the UK Internal Market System which are not obliged to follow those same EU laws means that while NI producers can be expected to experience some of the potential UKIM Act undercutting effects that may also arise in Scotland and Wales, the authorities in Stormont will not have the same freedom that counterparts in Holyrood and Cardiff may have to act to address the matter (including in the case of the latter, via the UKIM Act exclusions procedure) (s10). Because the requirements on NI producers derive from EU laws that apply under the Protocol/Windsor Framework – an international treaty negotiated and signed by the UK Government – the application of these EU laws is, by default, beyond the competence of devolved authorities. By contrast, in Wales and Scotland any undercutting effects that arise will be the result of decisions made by their respective institutions to adopt certain standards in the knowledge any potential competitive disadvantages might accrue as a result. While there may be a frustration among Scottish and Welsh representatives at the possibility of UKIM Act leading to undercutting, at least in any given instance there will be a measure of control and accountability for choices made; the same cannot be said for their counterparts in Northern Ireland.

| United Kingdom Internal Market Act | |
|---|--|
| Category | Domestic Law |
| Legal Text(s) | <i>United Kingdom Internal Market Act 2020 c 27</i> |
| Regulatory Significance | Moderate; Direct. |
| Scope/Sectors | Internal UK Trade; Mutual Recognition of Professional Qualifications |

10. UK Trade Agreements

The unique provisions laid down in the Protocol/Windsor Framework – particularly regarding the continued application of EU laws and continued access for NI traders to the EU single market for goods – have implications for the participation of Northern Ireland in trading agreements signed between the UK and non-EU countries. This is significant for post-EU Exit regulation because the NI-specific terms in any given UK trade agreement will dictate the extent to which NI traders and NI consumers can avail of the terms of those agreements.

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To understand the regulatory significance for Northern Ireland of UK trade agreements it is necessary to consider the specific provisions of any given treaty in the context of the provisions and requirements of the Withdrawal Agreement and, in particular, the Protocol/Windsor Framework. As Table 4 details, trade agreements that have been concluded by the UK in view of or since its withdrawal from the EU have included provisions that address the Protocol/Windsor Framework specifically. In effect, they provide for the terms of the Protocol/Windsor Framework to supersede those of the new UK trade agreement in the event of conflict.

| Trade Agreement | Relevant Chapter/Article | Summary of Provision |
|-----------------------------|---|---|
| UK-Japan | Chapter 1: General Provisions: Article 1.9 'Relation to other agreements' para. 5 | In the event of inconsistency between the UK-Japan Trade Agreement and the Protocol/Windsor Framework, the provisions of the latter will prevail, provided the related action does not constitute arbitrary or unjustified discrimination or a disguised trade restriction. Notification of the non-initiating party of any such action is an obligation on the initiating party. |
| UK-Australia | Chapter 1: Initial Provisions and General Definitions Article 1.2: Relation to Other Agreements | In the event of inconsistency between the UK-Australia Trade Agreement and the Protocol/Windsor Framework, the provisions of the latter will prevail, provided the related action does not constitute arbitrary or unjustified discrimination or a disguised trade restriction. Consultations may be requested on any issue related to this provision. |
| UK-New Zealand | Chapter 1: Initial Provisions and General Definitions Article 1.2: Relation to Other Agreements | In the event of inconsistency between the UK-New Zealand Trade Agreement and the Protocol/Windsor Framework, the provisions of the latter may prevail, provided the related action does not constitute arbitrary or unjustified discrimination or a disguised trade restriction. Consultations may be requested on any issue related to this provision. |
| UK CPTPP Accession Protocol | Section I: General Provisions Article 15: Provisions Relevant to Chapter 29 (Exceptions and General Provisions) | In the event of inconsistency between the CPTPP and the Protocol/Windsor Framework, the provisions of the latter may prevail, provided the related action does not constitute arbitrary or unjustified discrimination or a disguised trade restriction. Any party may request representation related to this provision. In the event of changes to the Protocol/Windsor Framework that affect the operation of the CPTPP the UK must notify other parties |

Table 4: Protocol/Windsor Framework Provisions in recent UK Trade Agreements

Consequently, in practice, any provisions of new UK trade agreements regarding trade in or standards of goods only have effect in Northern Ireland to the extent that they do not conflict with Protocol/Windsor Framework obligations (notably the application of EU standards for trade in

goods). Changes brought in under the Windsor Framework and subsequent changes made or anticipated under the *Safeguarding the Union* deal have, however, altered the situation.

With the introduction of the UK Internal Market System (formerly ‘green lane’), certain goods (primarily pre-packaged agri-food goods) entering Northern Ireland from GB for use or consumption in Northern Ireland are not required to comply with all EU laws applicable under the Protocol/Windsor Framework (see Section 6.2.1). Importantly, goods produced in Northern Ireland are still obliged to comply with all applicable EU laws; the UK Internal Market System has therefore introduced a risk of NI producers and traders being undercut, albeit for a limited range goods.

For the purpose of understanding the interaction with UK trade agreements it is worth noting that, regarding ‘rest-of-world’ goods moving from GB to Northern Ireland, the condition for eligibility to access the UK Internal Market System was originally either: the duty payable according to the EU Customs Code was equal to or less than the duty payable according to the UK customs code; or that the good was brought in by a trusted trader and the difference between the duty payable according to the EU customs code and the duty payable according to the UK customs code was lower than 3% of the customs value of the good.

At the time the *Safeguarding the Union* deal was announced a proposed Decision of the EU-UK Joint Committee was also published. This envisages certain ‘rest of the world’ goods – namely lamb, beef, and poultry products – being able under UK trade agreements to enter Northern Ireland via the UK Internal Market System (albeit subject to the established conditions regarding authorisation, data-sharing, labelling etc). Assuming adoption these new arrangements will enable greater NI participation in UK trade agreements; at the same time, they also arguably increase the risk of NI producers being undercut by the imports.

Excluding the carve-out provisions contained in UK trade agreements to allow for the application of the Protocol/Windsor Framework, the arrangements for UK trade with countries outside the EU apply in Northern Ireland in the same way as they do in the rest of the UK.

| United Kingdom Trade Agreements | |
|--|--|
| Category | International Law |
| Legal Text(s) | <p><i>UK/Japan: Agreement for a Comprehensive Economic Partnership, 2020</i></p> <p><i>Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, 2021</i></p> <p><i>Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, 2022</i></p> <p><i>Accession protocol of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), 2023</i></p> |
| Implemented By | <p>UK-Japan FTA implemented via amendments and updates to existing UK legislation rather than via one dedicated act of primary law.</p> <p>The UK-Australia and UK-New Zealand FTAs were given domestic legal effect via one act of primary law, the <i>Trade (Australia and New Zealand) Act 2023</i></p> |

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| | |
|--------------------------------|---|
| | The UK CPTPP Accession Protocol was given domestic legal effect via <i>Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024</i> |
| Regulatory Significance | Moderate; Indirect. |
| Scope/Sectors | Digital Services; Trade in Agricultural Goods; Free Movement of Labour. |

2. Mapping Divergence

An Explainer and a Technical Register of Divergence and Alignment in/for Northern Ireland

A Technical Register of Divergence and Alignment (the Register) is provided as part of this report. It is contained in Annex 4 and sets out a detailed record of areas of actual or potential regulatory divergence that are relevant to Northern Ireland after EU Exit. Information is provided on three different categories of divergence/alignment. The approach taken and sources used to track examples in each area necessarily differ according to the specific circumstances and parameters of the three categories.

To track divergence between **UK(GB) and EU+NI in areas covered by the Protocol/Windsor Framework** relevant entries on the register first list those EU acts (regulations, directives, and decisions) that are made applicable under the Protocol/Windsor Framework. In view of Article 13(3) requirements for these EU acts to apply ‘as amended or replaced’, the Register notes any changes (e.g. repeal, replacement, or expiry) made at EU level to the given act since the text of the original Protocol was agreed in October 2019, and particularly since the end of the UK transition period on 31 December 2020. The next section of the Register for these entries provides a record of any domestic legislation that applies in respect of Northern Ireland for the purpose of implementing the relevant – Protocol/Windsor Framework-applicable – EU law, including as amended or updated. To provide an account of any divergence, the Register then notes domestic legislation that applies (or applied) in respect of Great Britain, and which previously implemented the relevant EU law. Where changes have been made to UK(GB) implementing legislation these are recorded. The final section of the Register provides an assessment of the presence or absence of divergence for the specific case and, where relevant, includes an indicative statement on impact.

To track divergence between **constituent parts of the UK in areas not covered by the Protocol/Windsor Framework** relevant entries on the Register first list those EU acts (regulations, directives, and decisions) which pre-EU Exit applied in the UK but are not within the scope of the Protocol/Windsor Framework, and which therefore do not apply anywhere in the UK. Because changes at EU level are less directly relevant in this category, the focus of these entries is more on relevant developments in domestic law, either at UK-wide level, at UK(GB)-level, or at devolved level across each of the constituent parts of the state. Entries on the Register therefore provide a record of: relevant UK(NI) implementing law; any amendments to that law since the end of the UK transition period; and relevant implementing law that applies elsewhere in the UK including either at UK(GB) level, or separately in England, Scotland, and Wales. A link is also provided to the relevant Common Frameworks where relevant. For entries across all three categories, the final section of the Register provides an assessment of the presence or absence

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of divergence for the specific case and, where relevant, includes an indicative statement on impact.

To track divergence between **UK (incl. NI) and EU (incl. IRE)** particularly in areas that are relevant to Northern Ireland due to its geographic proximity to Ireland and of established **North-South cooperation** the Register first provides a record of relevant EU acts (regulations, directives, and decisions) which were identified, pre-EU Exit, as underpinning cross-border cooperation (either fully or partially), but excluding any EU laws made applicable in the UK in respect of Northern Ireland under the Protocol/Windsor Framework. The Register then notes where amendments have been made at the EU level to those acts, before providing a note of implementing legislation in Ireland (where relevant) and indicating any changes in relevant Irish law since EU Exit. It then does the same for legislation in Northern Ireland noting any domestic law that implemented North-South cooperation-relevant EU law during UK membership and detailing any changes that have since been made. For entries across all three categories, the final section of the Register provides an assessment of the presence or absence of divergence for the specific case and, where relevant, includes an indicative statement on impact.

Instances of alignment and divergence have been tracked across three different categories – Protocol/Windsor Framework GB-NI or intra-UK divergence/alignment; non-Protocol/Windsor Framework GB-NI or Intra-UK divergence/alignment; and North-South divergence arising from UK (including NI) and EU (including IRE) divergence/alignment. The data provided for each of these categories in the Register is structured as in Figure 5.

Defining Divergence

The approach taken to defining where divergence occurs or does not occur for each entry on the Register differs across the three categories.

For areas covered by the Protocol/Windsor Framework, GB-NI divergence is deemed to occur where one or more of the following circumstances apply: either the EU law that continues to apply in Northern Ireland has been updated since the end of the UK transition period or where the 'assimilated law' version of the EU act, or the directly related domestic law, applying in GB has been changed.

For areas not covered by the Protocol/Windsor Framework but within devolved competence, divergence occurs where one or more constituent part of the UK has changed – revised or revoked – the relevant 'assimilated law' version of the EU act or directly related domestic law; the Register indicates which parts of the UK have or have not made changes.

For areas relevant to established North-South cooperation, divergence occurs either where changes have been made to relevant law or policy in the EU context since the end of the UK transition period and these changes have taken or are due to take effect in Ireland, or where changes have been made in relevant assimilated law or directly related domestic UK law and these changes have taken or are due to take effect in Northern Ireland with implications for North-South cooperation on the island of Ireland.

| ALIGNMENT/DIVERGENCE CATEGORY: Protocol/Windsor Framework: GB–NI or intra-UK | | | | | | | | | | | | |
|--|--------|------------------|-------------------|---------------------------------|------------------|-------------------------|-----------------------------------|--------------------------------|---|--------------------------|------|--------|
| WF Provision | EU Law | | | | | UK in respect of NI | | UK-wide or UK in respect of GB | | Assessment of Divergence | | |
| EU Regulation, Directive, Decision | Year | Official Journal | Consolidated Text | Amendments to Applicable EU Act | Official Journal | UK(NI) Implementing Law | Relevant Amendments to UK(NI) Law | UK or UK(GB) Implementing Law | Relevant Amendments to UK or UK(GB) Law | Y/N | Type | Impact |
| | | | | | | | | | | | | |

| ALIGNMENT/DIVERGENCE CATEGORY: Non-Protocol/Windsor Framework: GB–NI or intra-UK | | | | | | | | | | | | |
|--|--------|------------------|-------------------|-------------------------|-----------------------------------|---|--|------------------|--------------------------|------|--------|--|
| Provision | EU Law | | | UK in respect of NI | | UK-wide or UK in respect of GB or UK-devolved | | | Assessment of Divergence | | | |
| EU Regulation, Directive, Decision | Year | Official Journal | Consolidated Text | UK(NI) Implementing Law | Relevant Amendments to UK(NI) Law | UK or UK(GB) or UK-(devo) Implementing Law | Relevant Amendments to UK or UK(GB) or UK-(devo) Law | Common Framework | Y/N | Type | Impact | |
| | | | | | | | | | | | | |

| ALIGNMENT/DIVERGENCE CATEGORY: North–South: UK (including NI) and EU (including IRE) | | | | | | | | | | | | |
|--|--------|------------------|-------------------|---------------------------------|------------------|--------------------------------|---|----------------------|--------------------------------|--------------------------|------|--------|
| N/S Relevant Provision | EU Law | | | | | UK-wide or UK in respect of NI | | IRE law | | Assessment of Divergence | | |
| EU Regulation, Directive, Decision | Year | Official Journal | Consolidated Text | Amendments to Applicable EU Act | Official Journal | UK or UK(NI) Implementing Law | Relevant Amendments to UK or UK(NI) Law | IRE Implementing Law | Relevant Amendments to IRE Law | Y/N | Type | Impact |
| | | | | | | | | | | | | |

Figure 5: Register of Divergence and/or Alignment in Northern Ireland*

*Layout is not an exact representation of the Register as it contains a small number of additional columns. For detail see Annex 4.

3. Case Studies

Examples of (Actual or Anticipated) Divergence and Alignment in Specific Policy Areas in/for Northern Ireland

This section presents a series of cases studies of actual or anticipated divergence or alignment in/for Northern Ireland in specific policy areas. To demonstrate the different categories of divergence and alignment that are possible, examples are provided regarding divergence and alignment between the UK in respect of Great Britain and the UK in respect of Northern Ireland in areas covered by the Protocol/Windsor Framework; between the UK (including Northern Ireland) and the EU (including Ireland); and between the constituent parts of the UK.

Although the case studies are organised according to the category of divergence and alignment to which they most clearly pertain, it should be noted that changes in any one of these three contexts – either UK(GB)-UK(NI), or UK (incl. NI) and EU (incl. Ireland), or intra-UK – are likely to impact the other two.

Rather than providing an exhaustive overview of policy areas impacted by or relevant to divergence and alignment, the examples are intended to demonstrate the elements and processes involved in any given instance of divergence and alignment. For a more comprehensive record of divergence and alignment in/for Northern Ireland see the Technical Register of Divergence and Alignment in Annex 4.

| DIVERGENCE TYPE: Protocol/Windsor Framework: GB–NI | | | | | | | |
|--|---|---|--|--|---|---|--|
| POLICY AREA: Chemicals Regulation: REACH | | | | | | | |
| EU CONTEXT | <table border="1"> <thead> <tr> <th>Relevant EU Act</th> <th>Evolution of EU Reach</th> <th>Future of EU REACH</th> </tr> </thead> <tbody> <tr> <td> <p>The REACH Regulation ((EC) 1907/2006)</p> <p>The purpose of the REACH regulation is to provide a comprehensive legislative framework for chemicals that are manufactured and used in the EU and to ensure the industry is responsible for the safety of chemicals produced, imported, sold, and used in the EU</p> </td> <td> <p>Since the end of the UK Transition Period, the REACH Regulation has been amended including via the adoption of five EU acts in 2023 – Commission Regulations (EU) 2023/2482, (EU) 2023/2055, (EU) 2023/1464, (EU) 2023/1132, and (EU) 2023/923.</p> <p>Amendments introduced by these five acts respectively concern: the use of bis(2-ethylhexyl) phthalate (DEHP) in medical devices; the use of synthetic polymer microparticles; use of formaldehyde and formaldehyde releasers; substances classified as carcinogenic, mutagenic, or reproductive toxicants; and the use of lead and its compounds in PVC substances.</p> <p>Amendments introduced by the five Commission Regulations are technical in nature and often reflect updates deemed necessary in view of scientific developments and/or to comply with the EU’s chemicals strategy for sustainability.</p> </td> <td> <p>A European Commission review of the EU REACH regulation in 2018 concluded that certain aspects would need to be revised.</p> <p>As part of its European Green Deal, the European Commission published a Chemicals Strategy for Sustainability in October 2020; a proposed revision of the EU REACH regulation was among the 80+ actions set out in the strategy.</p> <p>The European Commission has not yet published a draft proposal for the revised REACH regulation but has carried out a public/stakeholder consultation exercise.</p> </td> </tr> </tbody> </table> | Relevant EU Act | Evolution of EU Reach | Future of EU REACH | <p>The REACH Regulation ((EC) 1907/2006)</p> <p>The purpose of the REACH regulation is to provide a comprehensive legislative framework for chemicals that are manufactured and used in the EU and to ensure the industry is responsible for the safety of chemicals produced, imported, sold, and used in the EU</p> | <p>Since the end of the UK Transition Period, the REACH Regulation has been amended including via the adoption of five EU acts in 2023 – Commission Regulations (EU) 2023/2482, (EU) 2023/2055, (EU) 2023/1464, (EU) 2023/1132, and (EU) 2023/923.</p> <p>Amendments introduced by these five acts respectively concern: the use of bis(2-ethylhexyl) phthalate (DEHP) in medical devices; the use of synthetic polymer microparticles; use of formaldehyde and formaldehyde releasers; substances classified as carcinogenic, mutagenic, or reproductive toxicants; and the use of lead and its compounds in PVC substances.</p> <p>Amendments introduced by the five Commission Regulations are technical in nature and often reflect updates deemed necessary in view of scientific developments and/or to comply with the EU’s chemicals strategy for sustainability.</p> | <p>A European Commission review of the EU REACH regulation in 2018 concluded that certain aspects would need to be revised.</p> <p>As part of its European Green Deal, the European Commission published a Chemicals Strategy for Sustainability in October 2020; a proposed revision of the EU REACH regulation was among the 80+ actions set out in the strategy.</p> <p>The European Commission has not yet published a draft proposal for the revised REACH regulation but has carried out a public/stakeholder consultation exercise.</p> |
| | Relevant EU Act | Evolution of EU Reach | Future of EU REACH | | | | |
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| CLP Regulation applicable in Northern Ireland under the Protocol/Windsor Framework; amendments and replacements automatically apply | | | | | | | |
| Act within scope of: | Article 13(3a) (Stormont Brake) Yes UK Internal Market System ‘disapplication’ No | | | | | | |
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| | Relevant Law in the UK in respect of Great Britain | Implications for Northern Ireland | | | | | |
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Mapping Post-EU Exit Regulatory Divergence in Northern Ireland

| DIVERGENCE TYPE: | | Protocol/Windsor Framework: GB–NI | | | |
|------------------|---|--|--|--|---|
| POLICY AREA: | | Chemicals Regulation: <i>Classification, Labelling and Packaging</i> | | | |
| EU CONTEXT | Relevant EU Act | Evolution of CLP Regulation | | Future of CLP Regulation | |
| | | <p>The Classification, Labelling and Packaging (CLP) Regulation ((EC) 1272/2008)</p> <p>The purpose of the CLP Regulation is to set out uniform requirements for the classification, labelling and packaging of chemical substances and mixtures and to ensure compliance with the United Nations globally harmonised system</p> | <p>Since the end of the UK Transition Period, six Commission Delegated Regulations have been adopted under the CLP Regulation:</p> <ul style="list-style-type: none"> • Three made amendments adapting CLP provisions to reflect scientific and technical progress (Commission Delegated Regulations (EU) 2022/692, (EU) 2021/849, and (EU) 2021/643) • Two made textual corrections (Commission Delegated Regulation (EU) 2021/797 and (EU) 2021/1962) • One made more significant amendments by introducing six new classes of hazardous substances (endocrine disrupting; persistent, bioaccumulative and toxic; very persistent and very bioaccumulative; persistent, mobile, and toxic; and very persistent and very mobile) (Commission Delegated Regulation (EU) 2023/707) <p>The delegated act included definitions and scientific criteria for identifying substances and mixtures in each of the new classes.</p> | | <p>As part of its European Green Deal, the European Commission published a Chemicals Strategy for Sustainability in October 2020; a proposed revision of the CLP regulation was among the 80+ actions set out in the strategy.</p> <p>In December 2022, the European Commission published a proposal for a revision of the CLP regulation alongside a draft delegated act which would establish new hazard classes.</p> |
| UK CONTEXT | CLP Regulation applicable in Northern Ireland under the Protocol/Windsor Framework; amendments and replacements automatically apply | | | | |
| | Act within scope of: | Article 13(3a) (Stormont Brake) | Yes | UK Internal Market System ‘disapplication’ | No |
| | Relevant Law in the UK in respect of Great Britain | | | Implications for Northern Ireland | |
| | <p>An assimilated law version of the EU CLP Regulation applies in GB: the ‘GB CLP Regulation’. It has not been updated to reflect the technical amendments and the six new hazard classes introduced to the EU CLP Regulation.</p> <p>Under the Retained EU Law (Revocation and Reform) Act 2023, the GB CLP Regulation was amended to remove Annex VIII. Additional technical amendments consequential to the removal of the Annex were subsequently (via SI 2023/1344).</p> <p>According to the UK Government, the removal of Annex VIII was decided on the basis that ‘the costs to industry of implementing the mandatory reporting requirement as set out in Annex VIII outweighed the public health benefits when compared to the existing voluntary reporting approach’ (para. 7.3). This change does not apply in Northern Ireland.</p> | | | <p>Limited Current Divergence + Anticipated Future Divergence</p> <p>The UK Government explanatory memorandum (February 2023) on the proposed EU revision of the CLP Regulation and the ‘hazard classes’ delegated act stated that ‘the Commission proposal and the delegated act will not apply in GB but will be implemented directly in Northern Ireland under the Northern Ireland Protocol [<i>sic</i>]’ and further noted that NI officials had been consulted and made aware of the proposed changes (para. 16).</p> | |

| DIVERGENCE TYPE: | | Protocol/Windsor Framework: GB–NI | | | |
|---|--|---|---|--|----|
| POLICY AREA: | | Ecodesign of Products | | | |
| EU CONTEXT | Relevant EU Act | Evolution of EU Ecodesign | | Future of EU Ecodesign | |
| | <p>Directive 2009/125/EC on ecodesign requirements for energy-related products</p> <p>The Ecodesign Directive establishes minimum ecodesign requirements for goods (excluding transport goods) that consume energy, and which are used or sold in the EU. Its requirements cover all stages of production/use and oblige manufacturers to construct an ecological profile for goods. Compliant products are to be CE marked.</p> <p>Amendments in 2012 (via Directive 2012/27/EU) also require national authorities to establish a national energy efficiency target and introduce energy efficient obligation schemes and other related measures.</p> | <p>Since the end of the UK Transition Period, five Commission Regulations have been adopted under the Ecodesign Directive:</p> <ul style="list-style-type: none"> • One made textual corrections ((EU) 2023/3). • Four introduced new ecodesign requirements for: <ul style="list-style-type: none"> – tumble dryers ((EU) 2023/2533); – smartphones, other mobile phones, cordless phones, and slate tablets ((EU) 2023/1670); – energy consumption of electrical household and office equipment ((EU) 2023/826); – servers, data storage products, electric motors, refrigerating appliances, light sources, separate control gears, electronic displays, and household dishwashers, washing machines, washer-dryers and refrigerators with a direct sales function ((EU) 2021/341). | | <p>In March 2022, the European Commission proposed replacing the Ecodesign Directive with a new and expanded Ecodesign for Sustainable Products (ESP) Regulation. This would set ecodesign requirements for a wider range of goods including textiles, furniture, iron and steel, aluminium, tyres, paints, lubricants and chemicals, as well as energy-related and ICT products and other electronics. The new ESP Regulation would also allow the European Commission to establish new requirements for selected products via delegated acts.</p> <p>The proposed ESP Regulation is currently being considered for adoption through the EU's Ordinary Legislative Procedure.</p> | |
| UK CONTEXT | Ecodesign Regulation applicable in Northern Ireland under the Protocol/Windsor Framework; amendments and replacements automatically apply | | | | |
| | Act within scope of: | Article 13(3a) (Stormont Brake) | Yes | UK Internal Market System 'disapplication' | No |
| | Relevant Law in the UK in respect of Great Britain | | | Implications for Northern Ireland | |
| <p>Implementation of the Ecodesign Directive in the UK before EU Exit was provided for in the Ecodesign for Energy-Related Products Regulations (SI 2010/2617). They still apply as assimilated law but with amendments reflecting EU Exit (via SI 2019/539) and the Protocol (via SI 2020/1528) to ensure the Directive only applies in Northern Ireland. EU updates to the Directive have been implemented in Northern Ireland (via changes to the 2010 Regulations) but not in GB. As the UK Government has acknowledged this introduces GB-NI regulatory divergence between and goods manufactured in GB for the NI market have to meet the tighter EU regulations (see also explanatory memoranda for Commission Delegated Regulations (EU) 2023/2533 and (EU) 2023/1670).</p> | | | <p>Limited Current Divergence + Anticipated Future Divergence</p> <p>Initial analysis by the UK Government in 2022 questioned whether that the proposed ESP Regulation would apply in Northern Ireland under Article 13(3) or, owing to its 'broader... scope' need to be adopted as a new EU act under Article 13(4). Further analysis would be required.</p> | | |

Mapping Post-EU Exit Regulatory Divergence in Northern Ireland

| DIVERGENCE TYPE: North-South: NI-IRE | | | |
|--|---|---|--|
| POLICY AREA: Environment: <i>Water Quality Directive</i> | | | |
| EU CONTEXT | Relevant EU Act | Evolution of EU Water Quality Directive | Relevant Law in Ireland |
| | <p>Directive (EU) 2020/2184 on the quality of water intended for human consumption (recast)</p> <p>The Water Quality Directive replaced Council Directive 98/83/EC – the core objective of both is to ensure EU citizens have access to ‘wholesome and clean’ water.</p> <p>Key features of the recast WQ Directive are: reinforced water quality standards; new measures to tackle emerging pollutants including endocrine disruptors and PFAS as well as microplastics; measures to promote use of tap water in public spaces; harmonisation of quality standards for materials and products in contact with water (e.g., pipes, tanks, and taps); prioritising preventative approaches to reduce pollution at source.</p> <p>The recast Directive was adopted in December 2020 and has applied since January 2021 – under its terms Member States had until January 2023 to transpose most of its provisions into national law (others by January 2026).</p> | <p>Since the end of the UK Transition Period, one Commission Implementing Decision has been adopted under the recast WQ Directive.</p> <p>Commission Implementing Decision (EU) 2022/679 was adopted on 19 January 2022 and establishes a watch list of substances and compounds of concern to the public or scientific community on health grounds for water intended for human consumption. This watch list includes a guidance value for each substance or compound and methods for analysing levels in water if/as necessary.</p> | <p>To implement the recast WQ Directive, Ireland has adopted two statutory instruments:</p> <ul style="list-style-type: none"> European Union (Natural Mineral Waters, Spring Waters and Other Waters in Bottles or Containers) (Amendment) Regulations 2022 (SI 2022/691); European Union (Drinking Water) Regulations 2023 (SI 2023/99). |
| UK CONTEXT | EU Water Quality Directive no longer applies in Northern Ireland; North-South cooperation on water quality was directly underpinned by EU law pre-EU Exit | | |
| | Relevant Law in the UK | Implications for Northern Ireland | |
| | <p>The recast WQ Directive was adopted before the end of the Transition Period but changes it introduced were not given effect domestically. UK laws that implemented the previous WQ Directive still apply; different regulations apply in different parts of the UK because this policy area is devolved. For Northern Ireland the provisions of the previous WQ Directive are implemented primarily via The Water Supply (Water Quality) Regulations (Northern Ireland) 2002 (SR 2002/331); The Water Supply (Water Quality) (Amendment) Regulations (Northern Ireland) 2003 (SR 2003/369) and The Water Supply (Water Quality) Regulations (Northern Ireland) 2017 (SR 2017/212); ‘minor and technical’ changes were made to these – alongside other NISRs implementing EU laws concerning water regulation – to reflect EU Exit by The Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (SI 2019/112).</p> | <p>North-South Divergence</p> <p>With the implementation of the recast WQ Directive in IRE and not in NI laws concerning the regulation of the quality of water for human consumption that apply on either side of the land border have diverged. Assuming NI does not adopt measures that mirror changes introduced by the recast WQ Directive, this divergence can be expected to make North-South cooperation in the field of water quality more difficult.</p> | |

| | | | |
|---|---|---|--|
| DIVERGENCE TYPE: North-South: NI-IRE | | | |
| POLICY AREA: Environment: <i>Nature Directives</i> | | | |
| EU CONTEXT | Relevant EU Acts | Evolution and Future of EU Nature Directives | Relevant Law in Ireland |
| | <p>Council Directive 92/43/EEC on the conservation of natural habitats and Directive 2009/147/EC on the conservation of wild birds are known collectively as the EU Nature Directives.</p> <p>Their respective aims are to contribute to ensuring biodiversity by conserving natural habitats and wild fauna and flora species; and to conserve all wild birds by setting out rules for their protection, conservation, management, and control. The EU Nature Directives set out rules regarding the designation of Special Areas of Conservation (SACs – in Habitats Directive) and Special Protection Areas (SPAs – in Birds Directive).</p> | <p>No direct changes have been made to either the Habitats Directive or the Birds Directive since the end of the UK Transition Period.</p> <p>A proposal for a new EU regulation on Nature Restoration, published June 2022, and (in April 2024) still undergoing scrutiny in the EU institutions would, if adopted, supplement and make some amendments to the existing Nature Directives.</p> | <p>Most provisions of the Nature Directives are implemented in Ireland via:</p> <ul style="list-style-type: none"> European Communities (Birds and Natural Habitats) Regulations 2011 (SI 2011/477) |
| EU Nature Directives no longer apply in Northern Ireland; North-South environmental cooperation was directly underpinned by these EU laws pre-EU Exit | | | |
| UK CONTEXT | Relevant Law in the UK | | Implications for Northern Ireland |
| | <p>The Nature Directives are implemented (now as domestic law) in the UK through a series of legal instruments. For Northern Ireland the principal provisions are made in: The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (SR 1995/380) as amended by SRs of similar title made in 2004 (SR 2004/435), 2007 (SR 2007/345), 2009 (SR 2009/8), 2011 (SR 2011/216), 2012 (SR 2012/368), and 2015 (SR 2015/182). In 2019, minor technical changes were made to these regulations to reflect EU Exit via The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (SI 2019/582) without changing the substance and objectives of the policy. Examples included replacing any previous references in the legislation to ‘the territory of the EU’ with new references to ‘the territory of the United Kingdom’ while a technical and minor change, in the context of the island of Ireland this is nonetheless notable given that several SACs intersect the NI-IRE border.</p> | | <p>Limited Current North-South Divergence + Anticipated Future North-South Divergence</p> <p>No significant changes have been made by the EU to the Nature Directives since the end of the UK Transition Period; nor have any significant changes have been made to relevant UK(NI) regulations. Current divergence in this area is therefore limited. If proposals for a new EU Nature Restoration law are adopted, this could lead to divergence in the area of environmental protection and conservation between the two jurisdictions on the island of Ireland.</p> |

Mapping Post-EU Exit Regulatory Divergence in Northern Ireland

| | | |
|-------------------|---|--|
| | DIVERGENCE TYPE: Intra-UK: England, Scotland, Wales, and Northern Ireland | |
| | POLICY AREA: Air Quality: <i>Ambient Air Quality Framework Directive</i> | |
| EU CONTEXT | Relevant EU Acts | Future of EU Air Quality Directive |
| | <p>Directive 2008/50/EC on ambient air quality and cleaner air for Europe.</p> <p>The Air Quality Directive establishes objectives regarding air quality for EU member states. Key provisions include: setting thresholds, limits, and target values for certain air pollutants; requiring air quality plans for areas with higher levels of pollution; obligations for national authorities to inform citizens and organisations about air quality and to publish related annual reports.</p> | <p>In October 2022 the European Commission published a proposal for a new recast version of the AQ Directive.</p> <p>As of April 2024 the new AQ Directive is still under scrutiny as part of EU legislative processes.</p> |
| UK CONTEXT | The EU Air Quality Directive no longer applies anywhere in the UK. A provisional Air Quality Common Framework (Feb 2022) has been developed. | |
| | Relevant Law in the UK | Implications for Northern Ireland |
| | <p>Regulation of air quality is mostly a devolved competence in the UK. The AQ Directive was therefore implemented via separate regulations for each constituent part of the UK: The Air Quality Standards Regulations 2010 (SI 2010/1001); The Air Quality Standards (Scotland) Regulations 2010 (SSI 2010/204); The Air Quality Standards (Wales) Regulations 2010 (WSI 2010/1433) and The Air Quality Standards Regulations (Northern Ireland) 2010 (SR 2010/188). Amendments were made to AQ Directive implementing regulations in view of EU Exit; for England but with some UK-wide provisions see SI 2019/74, for Scotland see SSI 2022/138, for Wales see WSI 2019/390, and for Northern Ireland see SI 2019/289; all of these changes were minor, technical, and to address deficiencies in assimilated law.</p> <p>Air Quality is the focus of a provisional Common Framework. Its purpose is to “maintain common standards and to work together to improve air quality and develop our understanding of the sources and impacts in line with our current and future obligations” (p.11). Although the AQ Directive does not apply under the Windsor Framework, some other EU acts concerning air quality standards still apply under its terms (e.g., the VOCs and Paints Directive 2004/42/EC and the Industrial Emissions Directive 2010/75/EU); changes reflecting this were therefore made to air quality regulations as they apply to (see SI 2020/1352). The AQ Common Framework also recognises the potential relevance of NI alignment under the Protocol/Windsor Framework in the field of air quality and states: “Where one or more of UK Government, the Scottish Government or the Welsh Governments propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the EU, the Framework is intended to provide governance structures and consensus-based processes for considering and managing the impact of these changes” (p.9). Since EU Exit changes have been made to UK air quality regulations, for example, as they apply in England via SI 2020/1095, and as they apply in Wales via the Environment (Air Quality and Soundscapes) (Wales) Act 2024.</p> | <p>Intra-UK Divergence + Potential North-South Divergence</p> <p>Regulation of air quality is largely a devolved competence in the UK. A dedicated Common Framework is designed to allow for intra-UK divergence based on consensus.</p> <p>Although NI is not subject to EU air quality laws in general, some relevant acts do still apply under the Protocol/Windsor Framework. Air quality is an area of North-South cooperation. Any future changes in EU laws may therefore have North-South implications.</p> |

4. Tracking Divergence

A Guide for Monitoring Divergence and Alignment in/for Northern Ireland

Tracking instances of regulatory divergence and/or regulatory alignment affecting Northern Ireland requires engaging simultaneously with developments in law and policy across multiple contexts. Any comprehensive attempt to track the nature and scope of divergence/alignment is likely to be complex and time-consuming. Moreover, because changes to law and policy frequently occur, to stay up to date, such monitoring needs to be carried out on a regular basis.

While the overarching task of monitoring divergence/alignment that is relevant to post-EU Exit Northern Ireland may seem daunting, it is also the case that the processes involved in tracking are relatively straightforward and the required records of relevant legislative or proposed policy change are all freely available. Monitoring divergence/alignment in post-EU Exit Northern Ireland is possible.

Based on the methods used to complete the Technical Register of Divergence and Alignment (the Register) that accompanies this report (see Annex 4), as well as the approach taken to developing the detailed Case Studies, this explainer sets out a step-by-step guide to monitoring divergence and alignment affecting Northern Ireland. Reflecting the organisation of data contained in the Register, it provides guidance on monitoring for developments across the three different categories of divergence and alignment featured in the Register and Case Studies, namely:

- UK(GB) and EU+NI alignment/divergence in areas covered by the Protocol/Windsor Framework;
- intra-UK alignment/divergence in areas *not* covered by the Protocol/Windsor Framework; and
- UK (incl. NI) and EU (incl. Ireland) alignment/divergence in areas of established North/South cooperation.

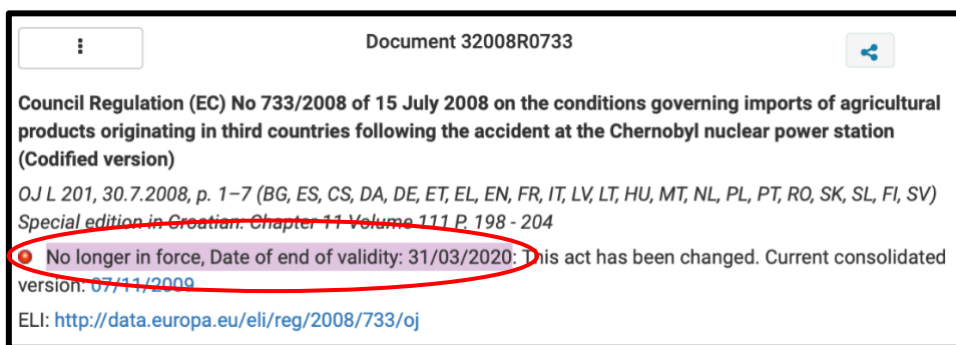
Protocol/Windsor Framework: UK(GB) and EU(+NI) divergence/alignment

Starting Point: A comprehensive list of those EU acts made applicable in the UK in respect of Northern Ireland under the terms of the Protocol/Windsor Framework can be found in the official text of the [EU-UK Withdrawal Agreement](#). As these EU acts apply to UK(NI) 'as amended or replaced' the original list needs to be treated as the starting point rather than the conclusive record of what laws apply.

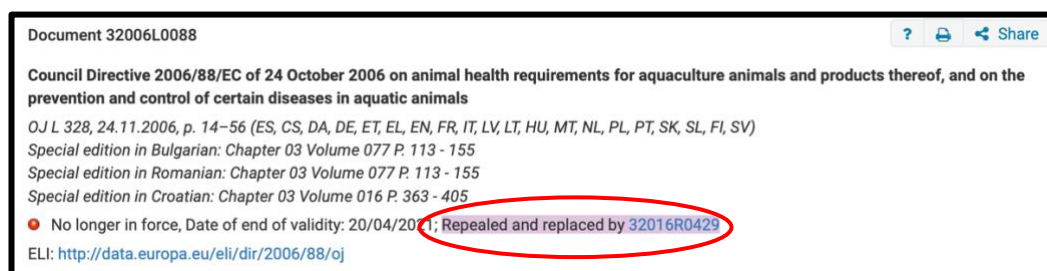
Tracking Step One: determine if/how Protocol/Windsor Framework-applicable EU law have changed since the original Protocol text was finalised.

How? Search each applicable EU law on [EUR-Lex](#) (the authoritative record of EU legislation) to determine if it has changed due to:

Expiry: if an act has expired since the Protocol text was concluded this will be indicated at the top of the relevant EUR-Lex record.



Repeal and Replacement: if an act has been repealed and replaced since the Protocol text was concluded this will be indicated at the top of the relevant EUR-Lex record.



Updates via Implementing/Delegated EU acts: if changes have been made to the applicable act this will be indicated in the 'Document Information' tab of the EUR-Lex record for the relevant act and hyperlinks provided to any 'implementing' or 'delegated' acts passed under the act. To track changes that are relevant to UK(NI) these hyperlinks can be followed to check for any EU acts adopted after the end of the UK transition period when the Protocol entered into force.

Tracking Divergence

The screenshot shows the EUR-Lex website interface. At the top, there is a search bar and navigation menu. The main content area displays the document title: "Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (Text with EEA relevance)". Below the title, there is a list of languages and a "Text" section. A red circle highlights the "Document information" tab in the left-hand navigation menu.

The screenshot shows the "Relationship between documents" section of the EUR-Lex website. It lists the following information:

- Treaty:** Treaty on the Functioning of the European Union
- Legal basis:**
 - 12012E043 - P2
 - 12012E114
 - 12012E168 - P4PTB)
- Proposal:**
 - 52012PC0260 Adopted on: 09/03/2016

Below this information, there are four options to select related documents, with a red circle highlighting the first two:

- Select all documents based on this document
- Select all implementing acts based on this document
- Select all delegated acts based on this document
- Select all documents mentioning this document

Tip: A useful source for determining how relevant EU laws have changed since the end of the UK transition period is the [EUR-Lex Protocol/Windsor Framework website](#) – this provides a comprehensive account of the EU acts that apply in the UK in respect of Northern Ireland as well as any additions, replacements or amendments made to them via other EU acts. Importantly, the information presented on this site is based on the EU position regarding what laws apply; it does not necessarily represent the agreed view of both the EU and the UK Government.

Tracking Step Two: determine if/how changes have been made in the UK in respect of Great Britain to assimilated law versions of those EU acts that continue to apply to the UK in respect of Northern Ireland under the Protocol/Windsor Framework since the original Protocol text was finalised.

How? Search each relevant assimilated EU act on [legislation.gov.uk](#) (the authoritative record of UK legislation) to determine if changes have been made. The process differs if changes the being tracked concern an EU Directive or and EU Regulation.

For EU Directives: first find the relevant [EUR-Lex](#) record, then select the 'National transposition' tab.

Mapping Post-EU Exit Regulatory Divergence in Northern Ireland

Document 31999L0003

Directive 1999/3/EC of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation

OJ L 66, 13.3.1999, p. 24–25 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Special edition in Czech: Chapter 13 Volume 023 P. 244 - 246

Special edition in Estonian: Chapter 13 Volume 023 P. 244 - 246

Special edition in Latvian: Chapter 13 Volume 023 P. 244 - 246

Special edition in Lithuanian: Chapter 13 Volume 023 P. 244 - 246

Special edition in Hungarian Chapter 13 Volume 023 P. 244 - 246

Special edition in Maltese: Chapter 13 Volume 023 P. 244 - 246

Special edition in Polish: Chapter 13 Volume 023 P. 244 - 246

Special edition in Slovak: Chapter 13 Volume 023 P. 244 - 246

Special edition in Slovene: Chapter 13 Volume 023 P. 244 - 246

Special edition in Bulgarian: Chapter 13 Volume 026 P. 63 - 65

Special edition in Romanian: Chapter 13 Volume 026 P. 63 - 65

Special edition in Croatian: Chapter 13 Volume 026 P. 179 - 181

Second, scroll to the 'United Kingdom' expander to find the title of the relevant domestic implementing regulations.

01/01/1001

MACHINE TRANSLATION

Transposition deadline: 01/01/1001

- The Food Irradiation Provisions (Wales) Regulation 2000 S.I. n° 1232 of 2000 (published 27/6/2001)
Official publication: Her Majesty's Stationery Office (HMSO)
- The Food Irradiation Provisions (Scotland) Regulation 2000 S.I. n° 309 of 2000 (published 15/09/2000)
Official publication: Her Majesty's Stationery Office (HMSO) ; Publication date: 2000-09-15
- The Food Irradiation Provisions (England) Regulation 2000 S.I. n° 2254 of 2000 (published 21/09/2000)
Official publication: Her Majesty's Stationery Office (HMSO) ; Publication date: 2000-09-21
- The Food Irradiation Provisions (N. Ireland) Regulation 2000 S.I. Northern Ireland n° 303 of 2000 (published 30/10/2000)
Official publication: Her Majesty's Stationery Office (HMSO) ; Publication date: 2000-10-30

Third, launch a search on legislation.gov.uk for the relevant domestic UK regulation(s).

| Legislation by Type | Title ↑ | Years and Numbers ↓ | Legislation type ↑ |
|--------------------------------------|---|-----------------------|----------------------------------|
| ← Any type | The Food Irradiation Provisions (Wales) Regulations 2001 | 2001 No. 1232 (W. 66) | Wales Statutory Instruments |
| Northern Ireland Statutory Rules (1) | Rheoliadau Darpariaethau Arbelydru Bwyd (Cymru) 2001 | | |
| Scottish Statutory Instruments (1) | The Food Irradiation Provisions (England) Regulations 2000 | 2000 No. 2254 | UK Statutory Instruments |
| UK Statutory Instruments (1) | The Food Irradiation Provisions (Scotland) Regulations 2000 | 2000 No. 309 | Scottish Statutory Instruments |
| Wales Statutory Instruments (1) | Food Irradiation Provisions Regulations (Northern Ireland) 2000 | 2000 No. 303 | Northern Ireland Statutory Rules |
| Legislation by Year | | | |
| 2001 (1) | 2000 (3) | | |

Then, click through to each relevant piece of domestic legislation and look for any changes that have been made via the 'more resources' tab.

Tracking Divergence

The Food Irradiation Provisions (England) Regulations 2000
UK Statutory Instruments > 2000 No. 2254 > [More Resources](#)

Table of Contents | [Content](#) | [More Resources](#) ?

Original Print PDF of King's Printer Version
This is the original PDF of the as made version that was used to publish the official printed copy. It therefore does not include any changes made by correction slips if issued will be listed separately under 'Associated Documents' and will have been applied to the HTML version viewable on legislation.gov.uk.
[Download Original Print PDF](#)

Associated Documents
There are no associated documents for this legislation.

Impact Assessments
There are no associated impact assessment for this legislation.

List of all changes (made to the revised version after 2002) :
Link(s) to the Changes to Legislation facility which provides access to lists detailing changes made by all legislation enacted from 2002 - present to the revised legislation.gov.uk, along with details about those changes which have and have not been applied by the legislation.gov.uk editorial team to this legislation. ~~Changes made before 2002 are already incorporated into the text of the revised legislation on legislation.gov.uk~~
[Affecting The Food Irradiation Provisions \(England\) Regulations 2000](#)

If any changes made include amendments made after or in view of EU Exit this indicates divergence. Assessing the nature and significance of divergence in any given case requires detailed analysis of the relevant amending legislation.

For EU Regulations: first search the number/year of the regulation on legislation.gov.uk making sure to set the search terms to include legislation originating from the EU.

legislation.gov.uk
delivered by THE NATIONAL ARCHIVES

Home | Browse Legislation | New Legislation | Coronavirus Legislation | Changes To Legislation | English | Cymraeg

Title: 797/2009 | Year: | Number: | Type: All Legislation (including originating from the EU) | Search

Scroll to find the original 'parent' EU regulation – this is often the earliest act so appears last on the list of search returns.

Mapping Post-EU Exit Regulatory Divergence in Northern Ireland

| Legislation by Type | Title † | Years and Numbers † | Legislation type † |
|--|---|---------------------|-------------------------------------|
| Regulations originating from the EU (6) Legislation by Year 2018 (1) 2017 (1) 2010 (3) 2009 (1) | Commission Regulation (EU) 2018/1903 of 5 December 2018 correcting Annexes IV, VI and VII to Regulation (EC) No 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed, and correcting certain language versions of Annexes II, IV, V and VI to that Regulation (Text with EEA relevance) | 2018 No. 1903 | Regulations originating from the EU |
| | Commission Regulation (EU) 2017/2279 of 11 December 2017 amending Annexes II, IV, VI, VII and VIII to Regulation (EC) No 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed (Text with EEA relevance) | 2017 No. 2279 | Regulations originating from the EU |
| | Commission Regulation (EU) No 939/2010 of 20 October 2010 amending Annex IV to Regulation (EC) No 767/2009 on permitted tolerances for the compositional labelling of feed materials or compound feed as referred to in Article 11(5) (Text with EEA relevance) | 2010 No. 939 | Regulations originating from the EU |
| | Commission Regulation (EU) No 568/2010 of 29 June 2010 amending Annex III to Regulation (EC) No 767/2009 of the European Parliament and of the Council as regards the prohibition to place on the market or use for animal nutritional purposes protein products obtained from yeasts of the Candida variety cultivated on n-alkanes (Text with EEA relevance) | 2010 No. 568 | Regulations originating from the EU |
| | Commission Regulation (EU) No 454/2010 of 26 May 2010 on transitional measures under Regulation (EC) No 767/2009 of the European Parliament and of the Council as regards the labelling provisions for feed (Text with EEA relevance) | 2010 No. 454 | Regulations originating from the EU |
| | Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (Text with EEA relevance) | 2009 No. 767 | Regulations originating from the EU |

On the legislation.gov.uk record of the (now assimilated law version of the EU) regulation, click through to the 'more resources' tab and then to the record of changes 'affecting' the UK version of the regulation.

Regulation (EC) No 767/2009 of the European Parliament and of the Council

Show full title

Regulations originating from the EU > 2009 No. 767 > Table of contents

Table of Contents
Content
More Resources ?

Plain View
Print Options

What Version ?

Latest available (Revised)

Original (As adopted by EU)

Changes to legislation:

There are outstanding changes not yet made to Regulation (EC) No 767/2009 of the European Parliament and of the Council. Those changes will be listed when you open the content using the Table of Contents below. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. ?

Tracking Divergence

| | | | | | | | |
|---|------------------------------|-----------------|---|---|-------------------------------|-----------------------------|----------------------------|
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Annex 8 heading | Words substituted | The Animal Feed (Amendment) (EU Exit) Regulations 2019 | 2019 No. 654 | reg. 121 | ✓ Yes |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 1 | Word omitted | The Animal Feed (Amendment) (EU Exit) Regulations 2019 | 2019 No. 654 | reg. 93 | ✓ Yes |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 2(1) | Words substituted | The Animal Feed (Amendment) (EU Exit) Regulations 2019 | 2019 No. 654 | reg. 94(a) | See note ? |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 2(1) | Words substituted by S.I. 2019/654, reg. 95(a) (as substituted) | The Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 | 2020 No. 1504 | reg. 12(17) | ✓ Yes |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 2(2) | Word omitted | The Animal Feed (Amendment) (EU Exit) Regulations 2019 | 2019 No. 654 | reg. 94(b) | ✓ Yes |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 3(2)(c) | Words substituted | The Animal Feed (Amendment) (EU Exit) Regulations 2019 | 2019 No. 654 | reg. 95(a) | See note ? |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 3(2)(c) | Words added by S.I. 2019/654, reg. 95(a) (as substituted) | The Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 | 2020 No. 1504 | reg. 12(18) | ✓ Yes |
| Regulation (EC) No 767/2009 of the European Parliament and of the Council | 2009 No. 767 | Art. 3(2)(f) | Words substituted | The Animal Feed (Amendment) (EU Exit) Regulations 2019 | 2019 No. 654 | reg. 95(a) | See note ? |

If this record shows that changes have been made to the relevant legislation since or in view of EU Exit, this indicates divergence of some kind between the law as it applies to UK(GB) and the law as it applies to UK(NI). To determine the substance and significance of any such divergence, detailed analysis of the changes made via post-EU Exit domestic legislation is necessary.

Non-Protocol/Windsor Framework: intra-UK divergence/alignment

To monitor legislative change that is or may be significant for intra-UK divergence or alignment which is not covered by the Protocol/Windsor Framework, the recommended starting points is the [2021 UK Government Common Frameworks Analysis](#). As this analysis was used to develop the intra-UK section of the Technical Register of Divergence and Alignment accompanying this report, the list of relevant ‘assimilated’ or domestic law acts that it contains (listed in Column A) also offer a valid starting point for monitoring.

Tracking: determine if changes have been made to domestic law that is in the competence of (one or more) devolved governments and which was pre-EU Exit in the competence of the EU (and which is not covered by the Protocol/Windsor Framework).

How? First, search each relevant EU-originating domestic instrument on [legislation.gov.uk](#). Second, following the same methods outlined above in relation to Protocol/Windsor Framework-applicable law, click through records concerning relevant acts of assimilated law and/or domestic implementing regulations to see if any changes have been made since the end of the UK transition period on 31 January 2020. Determining the significance of any such changes will require analysis of each change with the specifics of each case.

North-South: UK (incl. NI) and EU (incl. IRE) divergence/alignment

To monitor legislative change that is or may be significant for North-South (N/S) cooperation on the island of Ireland, the findings of the [2017 UK-EU Mapping Exercise](#) are a good starting point. As these findings were used to develop the North-South section of the Technical Register of Divergence and Alignment accompanying this report, the data it contains also offers a valid basis for monitoring.

Tracking Step One: Determine if/how N/S-relevant EU acts have changed since the end of the UK transition period.

How? Search each relevant EU act on [EUR-Lex](#) to determine if it has changed either due to:

Expiry: if an act has expired since the end of the transition period this will be indicated at the top of the relevant [EUR-Lex](#) record.

Repeal and Replacement: if an act has been repealed and replaced since the end of the transition period this will be indicated at the top of the relevant [EUR-Lex](#) record.

Updates via Implementing/Delegated EU acts: if changes have been made to the applicable act via tertiary EU law this will be indicated in the 'Document Information' tab of the [EUR-Lex](#) site for the relevant act which will include hyperlinks to any 'implementing' or 'delegated' acts passed under the act.

Tracking Step Two: Determine the significance and nature of any divergence arising from EU changes in N/S-relevant EU acts.

How? Where changes have been made to N/S-relevant EU acts by the EU since the end of the UK transition period, this suggests N/S divergence has taken place due to the continued obligation for Ireland to apply EU law and the lack of obligation for EU law (outside those in scope of the Protocol/Windsor Framework) to apply in Northern Ireland. To determine the significance of such divergence, however, it is necessary to look at the nature of the changes introduced to Ireland by changes at EU level. This will require engagement with the specifics of any given example and may require consultation of the [irishstatutebook.ie](#) site which provides a comprehensive database of Acts of the Oireachtas and Irish Statutory Instruments.

For Directives: first find the relevant EUR-Lex record, then use the 'National Transposition' tab. Scroll to the 'Ireland' expander to find the title of the relevant domestic implementing regulations. Then locate the relevant regulations on [irishstatutebook.ie](#) either via the [Chronological List](#) of regulations made under European Communities Act 1972 section 3. Or simply by using the title of the given regulation as recorded on EUR-Lex.

The screenshot shows the Irish Statute Book website interface. At the top, there is a navigation bar with links for Home, Legislation, Constitution, External Resources, and FAQ. A search bar is present with the text 'Title of Act or SI contains', 'Year(s) or range' (i.e. 2015, 1990-1999), and 'Type' (All Legislation). Below the search bar, the breadcrumb trail reads 'Home > Acts > ECA 1972'. The main heading is 'Updated to 5 April 2024 (Act No. 9 of 2024 and S.I. No. 141 of 2024)'. The search results display a 'Chronological list of regulations made under section 3 of the European Communities Act, 1972.' This title is circled in red. Below the title is a grid of years from 1972 to 2024, with each year being a clickable link.

| | | | | | | | | |
|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
| 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 |
| 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 |
| 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
| 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| 2020 | 2021 | 2022 | 2023 | 2024 | | | | |

For Regulations: this can be more difficult because the irishstatutebook.ie does not include a record of those EU regulations that apply in Ireland however, based on the year and subject area of the relevant EU regulation to direct a browse of the given year on the [Chronological List](#) is generally an effective means of identifying relevant domestic regulations where these exist.

Amendments to Irish Legislation: the irishstatutebook.ie can also be used to track any changes to relevant domestic implementing legislation. From the record of the Irish statutory instrument, click on the 'Amendments' [or *Leasuithe*] tab at the top left.

The screenshot shows the details page for S.I. No. 49/2015. The title is 'S.I. No. 49/2015 - European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) (Amendment) Regulations 2015.' Below the title, there are two tabs: 'View SI Amhárc ar an IR' and 'AmendmentsLeasuithe'. The 'AmendmentsLeasuithe' tab is circled in red. To the right of the tabs is a link 'Open PDF Oscail PDF'. Below the tabs, there is a notice: 'Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 13th February, 2015.' The main text of the notice reads: 'I, PASCHAL DONOHOE, Minister for Transport, Tourism and Sport in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes of giving further effect to Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002¹, hereby make the following regulations:'. A footnote at the bottom states: '1. These Regulations may be cited as the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) (Amendment) Regulations 2015.'

This brings up a chronological table of statutory instruments made in relevant year.

Updated to 5 April 2024 (Act No. 9 of 2024 and S.I. No. 141 of 2024)

Chronological Table of the Statutory Instruments - 2015

| |
|-------------------------|
| 1-50 |
| 51-100 |
| 101-150 |
| 151-200 |
| 201-250 |
| 251-300 |
| 301-350 |
| 351-400 |
| 401-450 |

Using the number of the SI of interest (e.g., in this example, no.49) click on the relevant expander to reveal a record of any changes made to that instrument.

| | | | |
|----|--|-------------------------|--|
| 49 | European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) (Amendment) Regulations 2015 | Not affected | |
| 50 | Public Health (Sunbeds) (Health Information) Regulations 2015 | Reg. 5(2) substituted | S.I. No. 353 of 2022 , reg. 3(a) |
| | | Reg. 5(3), (4) inserted | S.I. No. 168 of 2015 , reg. 3 |
| | | Reg. 5(4) substituted | S.I. No. 353 of 2022 , reg. 3(b) |
| | | Sch. 2 substituted | S.I. No. 168 of 2015 , reg. 4 |
| | | Sch. 3 inserted | S.I. No. 168 of 2015 , reg. 5 |

Tracking Step Three: Determine the significance and nature of any divergence arising from UK(NI) changes in N/S-relevant acts.

How? Search for N/S-relevant acts in legislation.gov.uk following the same methods outlined above in relation to Protocol-Windsor Framework-applicable EU law.

For Directives: first find the relevant EUR-Lex record, then use the 'National Transposition' tab. Scroll to the 'United Kingdom' expander to find the title of the relevant domestic implementing regulations. Then launch a search on legislation.gov.uk for the domestic regulations. If these changes include amended made after or in view of EU Exit this indicates divergence. Assessing the nature and significance of divergence in any given case requires detailed study of the relevant amending legislation.

For Regulations: Search the number/year of the regulation on legislation.gov.uk directly making sure to set the search terms to include legislation originating from the EU and find the original 'parent' EU regulation. On the legislation.gov.uk record of the (now

Tracking Divergence

assimilated law version of the EU) regulation, click through to the 'more resources' tab and then to the record of changes 'affecting' the UK version of the regulation. If this record shows that changes have been made since or in view of EU Exit to the relevant legislation, this indicates divergence of some kind between the law as it applies in UK(NI) and the law as it applies in Ireland as an EU Member State. To determine the substance and significance of any such divergence, detailed engagement with changes made via post-EU Exit domestic legislation is necessary.

Annex 1: References

Legislation

[Accession protocol of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\) 2023 Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information](#), OJ L 150, 30 April 2021

[Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy](#), OJ L 150, 30 April 2021

[Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), OJ L 29, 30 January 2020

[Decision No 4/2020 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 December 2020 on the determination](#) OJ L443, 30 December 2020

[Decision No 1/2023 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements](#) OJ L102, 17 April 2023

[Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products \(recast\)](#), OJ L285, 31 October 2009

European Commission, [REACH Regulation](#),
[European Union \(Future Relationship\) Act 2020](#)
[European Union \(Withdrawal Agreement\) Act 2018](#)
[European Union \(Withdrawal Agreement\) Act 2020](#)

[Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia 2021](#)

[Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand 2022](#)

[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 Directives 67/548/EEC and 1999/45/EC, and amending Regulation \(EC\)](#), OJ L353, 31 December 2008

[Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\), establishing a European Chemicals Agency, amending Directive 1999/4](#), OJ L396, 30 December 2006

[Retained EU Law \(Revocation and Reform\) Act 2023](#)

[The Definition of Qualifying Northern Ireland Goods \(EU Exit\) Regulations 2020](#) (SI 2020/1454)

[The Windsor Framework \(Constitutional Status of Northern Ireland\) Regulations 2024](#) (SI 2024/164)

Annexes

[The Windsor Framework \(UK Internal Market and Unfettered Access\) Regulations 2024](#) (SI 2024/163)

[Trade \(Australia and New Zealand\) Act 2023](#)

[Trade \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) Act 2024](#)

[UK/Japan: Agreement for a Comprehensive Economic Partnership 2020](#)

[Unilateral Declaration by the United Kingdom in the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023](#) OJ L102, 17 April 2023

[United Kingdom Internal Market Act 2020](#)

Legislative Proposals

European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC](#), COM(2022) 142 final, 30 March 2023

Memoranda

[Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges](#), 2019.

Policy Documents

- European Commission [*The REACH REFIT evaluation \(REACH review\)*](#)
European Commission, [*Chemicals Strategy for Sustainability Towards a Toxic-Free Environment*](#), COM (2020) 667 final, 14 October 2020
UK Government, [*The Windsor Framework: A New Way Forward*](#). CP 806, February 2023
UK Government [*Frameworks Analysis 2021: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland*](#), November 2021
UK Government, [*Collection: UK Internal Market*](#), September 2021
UK Government, [*Marking of Retail Goods Consultation*](#), February 2024
UK Government, [*Safeguarding the Union*](#), CP 1021, January 2024
United Nations, [*Globally Harmonized System of Classification and Labelling of Chemicals \(GHS\)*](#), 6th ed, 2015.

Secondary Sources

- Dicey, A.V. *An Introduction to the Study of the Law of the Constitution* (first published 1885), 10th ed. 1959, London: Macmillan
Phinnemore, D. and Whitten, L.C. [*Using The Stormont Brake*](#), Queen's University Belfast, 2024
Whitten, L.C. [*North-South Cooperation and the Protocol on Ireland/Northern Ireland*](#), Queen's University Belfast, 2024
Whitten, L.C. 'Post Brexit dynamism: the dynamic regulatory alignment of Northern Ireland under the Protocol on Ireland/Northern Ireland', *Northern Ireland Legal Quarterly*, 73 (S2) 2023, 37-64
Whitten, L. C. [*European Union Law Tracker: A Report for the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee*](#) – Report No. 1, September 2023

Annex 2: Areas of North-South Cooperation in the 2017 Mapping Exercise

| COVERED | PARTIALLY COVERED | NOT COVERED |
|---|---|--|
| <p>Food Safety Promotion Board Cooperation and Working Together Tuberculosis (TB) and Brucellosis (BR) Working Group Organs and Tissues Movement of medicines, devices, and healthcare goods North-South Dairy International Trade Working Group Convention on International Trade in Endangered Species Fish health and aquaculture Management of eel stocks on the Erne Single Electricity Market Chemicals Regulation Invasive Alien Species Control of Epizootic Diseases DAERA/DAFM Equine Liaison Group Equine Industry Strategy Veterinary public health and trade meetings North-South Working Group on Veterinary Medicines Regulation and enforcement of animal health and welfare and public health legislation Fuel Fraud Firearms, Offensive Weapons Checks on Civil Explosives National Museums North-South Cooperation Cultural Goods Non-commercial movement of Pets Customs (including data-sharing) Market surveillance of goods Excise Fraud Checks on Intellectual Property Rights Import Licensing Controls Relief from safety and security declarations Waste Management [i] Mutual Recognition of AEOs Transit of Goods Road Network VAT – Information Sharing</p> | <p>SEUPB PEACE IV programme INTERREG funding Biodiversity Border People Project Loughs Agency Waterways Ireland Cross-border Enterprise Rail Service Operation of cross-border taxis Major emergencies and A&E planning cooperation North-West Cancer Centre All-Island Congenital Heart Disease Network Middletown Centre for Autism Ltd Mutual Recognition of professional qualifications for doctors and clinicians Export Licensing Controls (dual use goods, military goods) Teacher qualifications and professional development Plant health and regulatory checks for quarantine pests Transmissible Spongiform Encephalopathies & Animal By-Products Animal health and welfare working groups Checks on third country products of animal origin Checks on products of animal origin Checks on Live animals Checks on food not of animal origin Waste Management [ii] Natural Gas Road network Intertrade Ireland Engagement & Information Exchange DAERA & DAFM Invest NI & Enterprise Ireland cooperation Environmental protection reporting and research Sport Statistics Cross-border academic partnerships (in agriculture)</p> | <p>Child protection Commercial vehicle roadworthiness enforcement and concerted checkpoints Vehicle and driver safety checks Cabotage Motor Insurance Driver and Vehicle Licensing International Authorisations for bus & coach services Ferries Road Haulage Water pollution and water catchment work Water quality Water regulation Common Agricultural Policy All-Island Pollinator Plan Air quality issues Strategic Environmental Assessment River Basin Management Plans Flood Risk Management Habitats and Wild Birds Directive All-Ireland Marsh Fritillary Group EU LEADER cooperation EURES Cross Border Partnership Benefit fraud cross-border cooperation Irish Language Broadcasting Mobile Roaming Cross-border cooperation on criminal justice matters (including work of Organised Crime Task Force) All-Island Public Procurement Steering Group Landscape Monitoring</p> |

Annex 3: The Role of the Northern Ireland Assembly regarding changes to EU law applicable under the Protocol/Windsor Framework

Article 13(3): EU acts amending or replacing EU Acts applicable under the Protocol/Windsor Framework – the ‘Stormont Brake’ (Article 13(3a))

Under Article 13(3) of the Protocol/Windsor Framework, EU acts applicable in the UK in respect of Northern Ireland apply ‘as amended or replaced’. Drawing on thresholds for the adoption of a ‘Petition of Concern’ in the NI Assembly, Article 13(3)(a) – as inserted under the Windsor Framework (2023) – allows for 30 MLAs from two or more political affiliations to ‘notify’ the UK Government of their desire for the Stormont Brake to be applied to a specific amendment or replacement to an EU act which would otherwise apply in Northern Ireland. Notification on the part of MLAs is subject to several scope and impact criteria being met and procedural requirements being fulfilled.

The Stormont Brake is limited to those EU acts made applicable by Article 5(2) of the Protocol/Windsor Framework and which are listed in Annex 2 (excluding those 32 EU instruments listed under subheadings 2 to 6 which relate, primarily, to trade defence measures and bilateral safeguards). Based on the original agreed text, this leaves 256 instruments listed under subheadings 1 and 7 to 47 of Annex 2 in scope of the Stormont Brake procedure.

Article 13(4): New EU acts to be added to the Protocol/Windsor Framework – ‘Applicability Motion’

Under Article 13(4) of the Protocol/Windsor Framework, any new acts adopted by the EU considered to be in the scope of the Protocol/Windsor Framework can be brought to the Joint Committee and, by agreement of the EU and the UK, added to the relevant annex EU laws that already apply to the UK in respect of Northern Ireland.

While the Windsor Framework (2023) made no amendment to the text of Article 13(4), the UK Government introduced a new internal process for determining its position in the Joint Committee. Under the *Windsor Framework (Democratic Scrutiny) Regulations 2024* a UK Minister will normally be unable to agree to the addition of a new EU act to Northern Ireland in the Joint Committee unless the NI Assembly has passed a motion in favour of doing so. Importantly, any ‘applicability motion’ can only pass if there is a ‘cross-community’ majority of MLAs in support.

Exceptions apply. The UK Government can agree to the addition of a new EU act in the absence of an applicability motion where ‘exceptional circumstances’ (e.g. the NI Assembly is not functional) or where the act ‘would not create a new regulatory border between Great Britain and Northern Ireland’. The applicable definition of ‘a new regulatory border’ is ‘regulatory requirements relating to the movement of goods that would – (a) materially divert trade, or (b) materially impact the free flow of goods’.

See also: Phinnemore, D. and Whitten, L.C. *Using The Stormont Brake*, Queen’s University Belfast, 2024 (<https://www.qub.ac.uk/sites/post-brexite-governance-ni/ProjectPublications/Explainers/UsingtheStormontBrake/>)

Annex 4: A Technical Register of Divergence and Alignment

This is contained in separate MS Excel file.

