

Open:UK Outline

‘Belfast, Brexit and AI’



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Northern Ireland is facing the possibility of the application of EU digital and AI regulation post-Brexit. As part of the UK, Northern Ireland left the EU but maintains alignment with the EU single market for goods due to the Windsor Framework. This means that some EU regulations, but not all, apply to Northern Ireland. The UK and EU have contrasting approaches to AI regulation with the EU adopting a prescriptive approach while the UK favours a principles-based one. With the implementation of the EU AI Act, there are concerns about the possibility of its applicability in Northern Ireland and potential conflicts with UK AI regulations. This could lead to a fragmented AI regulatory regime within the UK. Additionally, changes in EU law categorising software as a 'good' or 'product' rather than a service could have broader implications for Northern Ireland's digital sector.

There is ongoing discussion and uncertainty about which specific aspects of the EU AI Act will apply to Northern Ireland and how this will impact businesses and developers operating there.

Here's why:

Northern Ireland post Brexit

Northern Ireland (NI) like the rest of the United Kingdom of Great Britain and Northern Ireland (UK) left the European Union (EU) on 31 January 2020 (Brexit). European Union (Withdrawal) Act 2018 ('Repeal Bill') repealed the European Communities Act of 1972 on Brexit, ending the primacy of EU law in the UK. EU law was converted into domestic law to ensure some continuity and certainty in areas previously covered by EU law.

The EU-UK agreement on Brexit encompasses special arrangements for NI due to its physical geographic proximity with Ireland, the '**Protocol on Northern Ireland (Protocol)**' as amended by '**The Windsor Framework**'. The European Union single market rests on 'four freedoms'. These are free movement of: goods; capital; services; and people. Post-Brexit the UK is no longer a part of this single market.

The Windsor Framework which amended the Protocol addressed concerns about the EU trading with NI after Brexit and was agreed in principle on February 27, 2023. It amends the Protocol to align NI with the EU single market to enable free movement of goods across the geographical Irish border thereby enabling access to the EU market whilst allowing NI to remain in the UK's customs territory and part of the UK's Free Trade Agreements, entered into with circa 60 third countries post Brexit, 'provided that those agreements do not prejudice the application' of the Windsor Framework.

Whilst Northern Ireland maintains alignment with and access to the EU single market for goods it is not a part of the EU's single market for services, capital or people. The Framework applies some EU single market regulations on trade in **goods but not services** from Great Britain to NI as a consequence of the application of EU rules, procedures, and checks to NI. The goal of this amendment was to make the trading arrangements smoother and more flexible.

The Windsor Framework also includes the '**Stormont Brake**'. Under the Stormont Brake, 30 Members of the NI Assembly being from at least two parties can notify the UK government that they want the "emergency brake" to be pulled on an EU law thereby stopping the application of amended or replacement EU law in Northern Ireland. The UK Government is to make legislation to implement this and the Statutory framework for the Brake is not yet in force but available only in draft. For the Brake to be applied the Northern Ireland Executive must be operational and the NI Assembly in regular session.

As for new law, new EU Acts will not be added to the Windsor Framework or apply in Northern Ireland, unless the Assembly passes an '**applicability motion**' with cross-community support.

UK and EU Contrasting Approaches to AI

The EU has taken a prescriptive horizontal approach to AI. Its AI Act was passed in March 2024 and came into force in August that year and will be fully implemented in the spring of 2025.

The AI Act will impact UK companies that want to operate in the EU or whose AI systems' outputs have a neffect in the EU even when used outside of the Union trading bloc, known as the "Brussels Effect" which externalises EU laws to other jurisdictions. In 2024 both Meta and Apple chose not to distribute new AI products in the EU due to perceived legislative uncertainty in the EU.

The UK approach has been very different to the EU's. The UK takes a principles-based one as a framework for UK regulators to interpret and apply within their sector-specific roles. The UK approach aims to balance safety whilst not stifling innovation. The government continues to gather evidence to understand the risks and challenges better. A consultation from the Department of Science Innovation and Technology on the UK's approach to copyright (text and data mining) and use of publicly available content is underway and will run until April 2025. In February 2024, following the UK's reinstatement in the Horizon Europe program the then UK Alminister Lord Camrose offered to work with the EU on regulation, stating that London's approach to copyright in AI was likely to be 'reasonably close' to that of Brussels. However, the UK approach under the new Labour government includes a live consultation on copyright. Whether this will align with the EU is unclear.

A draft AI Regulation is likely to focus on safety of the largest LLMs and is expected in January 2025.

NI facing the EU AI Act

Artificial intelligence regulation in the United Kingdom: a path to good governance and global leadership?

'Given that, in many cases, the EU draft AI Act regulates AI as a product (Veale & Borgesius, 2021), provisions relating to physical goods integrating AI could apply in Northern Ireland when the Act comes into force. Precisely whether this is the case depends on if the AI Act is deemed to revise the product regulations listed within the Northern Ireland Protocol Agreement or if it is interpreted as introducing a new standalone product regulation (European Scrutiny Committee, 2021). If interpreted as the former, then the AI Act will theoretically apply to Northern Ireland, unless the "Stormont Brake" is used to veto the application of EU law in this area.¹¹ However, if this veto is applied – which is only meant to be used in exceptional circumstances that have a "significant impact specific to everyday life" (*The Windsor Framework, 2023*) – then there is a risk of political tension between the EU and UK worsening, undermining efforts at cooperation. If the AI Act is interpreted as introducing a new standalone product regulation that falls within the scope of the Protocol but which neither amends nor replaces a Union act listed in the Annexes to the Protocol, then, under Article 13(4), the Withdrawal Agreement Joint Committee will need to discuss whether the AI Act applies to Northern Ireland, if requested by either the EU or UK (Revised Protocol to the Withdrawal Agreement, 2020). Hypothetically, applying the AI Act to Northern Ireland could lead to AI systems that are legal within England, Scotland, and Wales, but contravene aspects of the AI Act, making them non-permissible in Northern Ireland (European Scrutiny Committee, 2021).'

EU law, Software and Product

The impact of EU law may be much broader on a digital basis than simply the AI Act.

Is Software a good or a service

Software has traditionally been deemed to be a service and governed by laws that apply to services not goods.

Changes to status of Software under EU Law in 2024

The impact is more far reaching as certain EU regulation that is categorising software as a good not a service may also apply to Northern Ireland as it comes into force.

CRA - software is treated as a Product
Product Liability Directive

EU AI Act and Northern Ireland - Conclusion

The UK may very soon be back the EU negotiation table, unless drastic action is taken in short order.

Northern Ireland has a thriving digital and open source software community who may be significantly impacted should this EU legislation apply.

OpenUK Outlines:

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Sources:

[Lords Sub Committee on Protocol for Ireland/Northern Ireland report July 2023](#)

What does the Windsor Agreement mean re EU Digital AI regulation in NI?

The applicability of the AI Act to NI has been considered by the **House of Commons European Scrutiny Committee** which operated until 2024. The committee assessed the legal and/or political importance of EU documents deposited by the Government in Parliament.

The [House of Commons EU Scrutiny Committee Report, July 2023](#) 'Aside from wider potential implications for UK industry, especially exporters, certain elements of the EU AI Act may also apply directly in Northern Ireland under the Windsor Framework but their impact on the UK's regulatory approach to AI is unclear.' 'certain elements of the EU AI Act may also apply directly in Northern Ireland under the Windsor Framework but their impact on the UK's regulatory approach to AI is unclear'. And takes the action to 'Draw to the attention of the Business and Trade Committee, the Northern Ireland Affairs Committee and the Science, Innovation and Technology Committee.'

Scrutiny Committee [Letter to then AI Minister Lord Camrose](#)

'the Framework requires Northern Ireland to remain aligned with EU rules on goods, and the AIA would, amongst other things, regulate the use of AI as a "safety component" in physical products like cars, toys and machinery. While most of the Act creates a stand-alone regulatory framework for AI in goods that would not appear to apply directly in Northern Ireland under the Framework unless the UK agreed to this, it also explicitly amends certain EU product laws (covering cars, buses and trucks; agricultural vehicles like tractors; motorbikes and quad bikes; marine equipment; and rail infrastructure) that do apply in Northern Ireland. Those changes could therefore apply there automatically. More specifically, those consequential amendments would empower the European Commission to regulate the use of AI in the products covered by those laws through further legal acts in the future, based on the AIA. For the same reason, the AI-related provisions of the new EU Machinery Regulation and General Product Safety Regulation could also apply automatically in Northern Ireland.'

'2.7 In his initial [Explanatory Memorandum](#) in spring 2021, and subsequent letter dated 17 August 2021, the then-Minister for Digital Infrastructure (Matt Warman MP) did not make clear whether the amendments to be made by the AIA to EU product safety laws applicable in Northern Ireland would mean that future EU legislation setting AI-related requirements for the relevant product groups, introduced on the basis of those amendments, could apply in Northern Ireland under Article 13 of the Windsor Framework'

'2.8 In the original Memorandum, the Government argued that the AIA as a whole was "not already within scope of the Protocol" (and therefore would not apply in NI) but added that it was nevertheless "considering how the proposals interact with the existing EU product safety legislation that is included in [...] the Northern Ireland Protocol". The follow-up letter, in response to our questions, stated that "the proposed Regulation neither amends nor replaces provisions in [the Framework]". However, the proposed AIA, as noted, does contain a number of explicit amendments to several pieces of EU product legislation listed in the Windsor Framework. We are not aware of the Government having provided any further information to Parliament on the interaction between the AIA and the Framework since the letter of 17 August 2021.'

'Analysis

2.9 The EU's proposed AIA is an important piece of legislation. Aside from its broader implications for the UK's approach to AI governance, of particular relevance to us at this stage is that it makes a number of explicit amendments to EU product legislation on road vehicles (including cars, tractors and trucks, marine equipment and rail infrastructure) that continue to apply in Northern Ireland under the Windsor Framework. These amendments will give the European Commission a power to set AI-related regulatory requirements for those product groups based on the AIA. It seems to follow that these will also have legal effect there automatically under Article 13(3) of the Framework.

2.10 In themselves, the amendments will not have any practical effect in Northern Ireland: they are consequential in nature. The more important question is whether the empowerment they create for the EU to introduce AI-related regulation for goods covered by those laws—in particular road vehicles—would also apply automatically in Northern Ireland. That would mean that such goods when sold in Northern Ireland, would have to comply with EU law regulating the use of AI, as and when the EU adopts such regulatory measures in the future. The same is likely to apply to goods covered by the EU's new Machinery Regulation and General Product Safety Regulation, which also have specific provisions relating to the use of AI.

2.11 The application of EU rules on AI in Northern Ireland under the Windsor Framework risks creating a fragmented regime in Northern Ireland itself (where use of AI in some, but not all goods, could be subject to EU rules) as well as broader divergence between the way the technology is regulated in Northern Ireland and Great Britain. Products that use AI, and which are legal for sale and use in Great Britain, may not be permitted on the market in Northern Ireland if they do not meet the requirements under applicable EU legislation. Conversely, under the Government's principle of 'unfettered access', goods that incorporate AI technology that are legal for sale in Northern Ireland under EU rules but would normally be prohibited in Great Britain may still be legal for sale in the latter if they are brought in from Northern Ireland. Aside from the general legal complexity of the situation, the practical ramifications of such GB-NI divergence could become more pronounced as the EU and UK continue to develop their separate AI governance regimes. However, it is unclear to what extent the Government's Product Safety Review, which was due to lead to detailed proposals for consultation by the end of 2022 but has been repeatedly delayed, will cover AI-related product safety issues.'

European Parliament Comment: In November 2023 the resolution on the implementation of the EU-UK Trade and Cooperation Agreement (TCA), saw the European Parliament welcome the 'regulatory co-operation on ... emerging technologies, including artificial intelligence'.

UK Government explanatory Memo of 17 July 2024 (DSIT) signed by Peter Kyle:

'4. Articles 103-107 and 109 of the Regulation amend legislation listed in Annex 2 of the Windsor Framework. Any application of this legislation in Northern Ireland, as amended by these articles, would therefore be subject to the democratic scrutiny process set out in Article 13(3a) of the Windsor Framework'.

'5. The remaining provisions of the regulation are set out as new provisions rather than those amending or replacing provisions of the Windsor Framework. As such, they would be subject to the process under Article 13(4) of the Framework, should they be notified formally in that regard by the European Commission. No notifications under Article 13(4) have been made at this stage. However, in the event of such a notification, they would apply only with the agreement of the UK and the EU at the Withdrawal Agreement Joint Committee, subject to the democratic safeguards engaged under Schedule 6B of the Northern Ireland Act 1998.'

'Potential Impact Articles 103-107 and 109 of the AIA in Northern Ireland under Article 13(3) of the Windsor Framework

13. As set out above, only legislation amended by Articles 103-107 and 109 of the AIA will apply under Article 13(3) of the Windsor Framework. These articles of the AIA require that, when adopting certain delegated and/or implementing acts with respect to 'artificial intelligence systems which are safety components', the AIA's requirements on high-risk AI systems 'shall be taken into account' by the Commission. This relates in particular to areas such as vehicle approvals, marine equipment, rail interoperability and forestry equipment.

14. Requirements on high-risk AI systems themselves are set out elsewhere in the Act, so would not apply in the absence of any subsequent process as may be proposed under 13(4). However, in any event, these provisions do not grant or increase the scope of any delegated powers. Accordingly, we consider that these provisions would have limited (if any) impact in practice. Potential Impact of further articles under Article 13(4) of the Windsor Framework

15. Were substantive further measures to be added to the Windsor Framework via the Article 13(4) process, it could mean that businesses and developers in Northern Ireland would have to comply with further requirements of the AIA. We would undertake further analysis to inform any consideration of next steps in the event any further measures were to be notified under the 13(4) process. In that event, the Government would engage with the Democratic Scrutiny Committee to provide further information.'

'MINISTERIAL RESPONSIBILITY

7. The Secretary of State for Science, Innovation and Technology has responsibility for Artificial intelligence Policy.

8. The Secretary of State for Business and Trade has responsibility for product safety as well as the UK internal market.

9. The Secretary of State for Transport has responsibility for transport policy, in this context including rail, road and maritime.'

Northern Ireland Assembly, Research and Information Service Briefing Paper 2 May 2024 requested by the Committee for the Economy NIAR 45-24 Artificial Intelligence Regulation, Use and Innovation in the United Kingdom: a broad overview of the AI regulatory approach in the United Kingdom, with a with a comparative look at the European Union and the United States of America's regulatory approaches

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