

Linking the Irish Environment

Final Report

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Executive Summary

Aims of the Project

The aim of the 'Linking the Irish Environment' project is to examine how to enhance the ability of the environment sector across the island of Ireland to cooperate and engage on an all-island and cross-border basis to deal with shared environmental challenges, risks, and opportunities. This report has been commissioned by the Northern Ireland Environment Link (NIEL) and the Irish Environment Network (IEN) – the two membership organisations for the environmental non-governmental organisations (NGOs) in Northern Ireland (NI) and the Republic of Ireland (ROI). NIEL has more than 65 organisational members and IEN has 34. The report has been funded through Community Foundation Ireland (CFI) and Community Foundation Northern Ireland's (CFNI) joint 'All-island fund' and has been commissioned as part of the first stage in the development of a long-term programme for the delivery of greater north/south environmental NGO cooperation and includes recommendations to help shape the way forward.

This is an independent report setting out the views of the authors. The report should be read in light of the fluid and ongoing political context surrounding the NI Protocol and other post-Brexit arrangements.

Finally – while the report captures a snapshot of many existing all-island and cross-border collaborations, it has not been possible within the research timeframe to identify all ongoing efforts by individuals and groups across the island. The commissioning organisations and the authors would welcome communication from any projects not captured in this report in the hope that future research will reflect increasing efforts in this essential body of work. Please contact the corresponding author, Dr Ciara Brennan (admin@ejni.net) with any relevant updates.

Research Approach

The research undertaken in preparation of this report builds on previous joint work between NIEL and IEN, including the seminal report authored by Alison Hough, 'Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions' (Hough, 2019). This new research project also includes consideration of best practice on cross-border and EU/Non-EU linkages in light of recent political developments.

The project combined desk-based analysis (involving literature reviews and analysis of secondary data) as well as engagement with stakeholders. Direct engagement and fieldwork was undertaken via 3 avenues: initial and continuous in-depth discussions with the funding environmental NGO umbrella bodies; two online stakeholder workshops (each attended by 30-40 individuals representing 25 different organisations and drawn from NGO, civil society, and

policy communities both north and south of the border); and a short online survey (completed by 28 individuals). In addition, preliminary recommendations were subject to a consultation exercise in early 2023 involving participants from the stakeholder workshops. Participation in both processes was undertaken on the basis of anonymity given the (at times) sensitive subject matter of the research.

The report addresses 3 key areas:

1. Current environmental regulatory and governance arrangements on the island, considering the Trade and Cooperation Agreement (TCA), Protocol, Governance committees of agreement, international agreements, oversight, complaints, environmental standards, enforcement and risk of divergence, and how these will impact or shape future cooperation.
2. The experience of practical environmental cooperation across the island of Ireland between environmental NGOs, including NGO resourcing and support mechanisms.
3. Mechanisms which can be used or developed by NIEL/IEN to advance citizens' and NGO engagement in all-island environmental issues.

A challenging context

Despite the shared nature of almost all environmental challenges, the logic of a collaborative approach to these challenges and the acceptance on a policy level that the island of Ireland is one single bio-geographic unit, cooperation on shared environmental challenges between governments north and south of the border (with exceptions which will be discussed in this report) remains under-developed. **The two jurisdictions which exist on the island of Ireland have developed (with some exceptions) almost completely segregated environmental governance structures, legal and policy frameworks, and implementation processes. This has the potential to diverge further post-Brexit with the removal of the underpinning set of common EU legal requirements and environmental standards on both sides of the border.**

Brexit has also removed the important scrutiny and enforcement role of EU institutions in respect to environmental outcomes from one part of the island, as well as shared EU governance mechanisms in policy development, implementation, monitoring and design. Significantly, it has also removed the unifying and over-arching 'direction of travel' on environmental and social concerns brought by membership of the EU. The extent to which these factors will be mitigated by the contentious NI Protocol and other post-Brexit governance arrangements remains uncertain.

In addition to the governance implications of having two discrete sets of arrangements for protecting the environment on the island, **meaningful cooperation in an advocacy context between environmental NGOs and civil society on the island has also been inhibited.** Processes for input both at policy level and in the context of public participation in environmental decision making are generally separate and vary between the jurisdictions, making it harder for

engagement on a cross-border basis. Funding streams and opportunities also differ, with relatively low incentives and only limited and relatively recent investment in work which transcends the political boundary. **Navigating the differences between the two jurisdictions is therefore very complex for third sector organisations seeking to operate or collaborate across the island.**

Recognition of these challenges is beginning at a governance level. However, **for NGOs and civil society, there is a need for deeper consideration of the enabling conditions which are required to translate existing piecemeal cross border initiatives into impactful, long-lasting all-island cooperation on environmental matters.**

This scoping report seeks to explore these complex considerations, with the goal of highlighting existing environmental cooperation on the island of Ireland, and with reference to international examples, provides a list of recommendations for NGOs and broader civil society which could help **deliver more effective and impactful environmental cooperation on an all-island basis.**

Summary of research findings

1. Cross-border and all-island environmental cooperation and engagement by all environmental actors are essential to achieve much-needed positive environmental outcomes on the island of Ireland. However, the legal and political landscape is highly complex and evolving at a rapid pace. This poses its own challenges for cooperative activities but also casts a spotlight on these issues which may lead to consideration of a range of other possible tools and positive innovations.
2. Despite almost completely separate systems of environmental governance, there are similarities that facilitate (to some extent) dialogue, cooperation and engagement across the border. These similarities derive from a combination of international law, EU law, the historical political and legal influence of the UK over the island as a whole, and simply the proximity and close relations between the two jurisdictions.
3. However, significant divergence which existed even before Brexit has created a challenging context for cross-border and all-island cooperation and engagement, and this has been compounded by problematic experiences of environmental governance within each jurisdiction.
4. Brexit raises valid concerns over declining environmental standards, policy/governance uncertainty and regulatory divergence. These changes have the potential to make engaging in cross-border/all-island cooperation more difficult. Brexit has therefore increased the need for cross-border/all-island cooperation, to share resources, insights, and expertise in order to respond to shared environmental challenges. The Good Friday/Belfast Peace Agreement binds

the UK/NI and Ireland and is an under-utilised tool, with multiple pathways to help promote cross-border and all-island engagement.

5. Some external international commitments will continue to bind both NI/the UK and Ireland/the EU, providing for continued shared frameworks and understanding – and potential exists to build upon these further. Other external international commitments no longer simultaneously bind both Ireland and the UK/NI (or potentially never did, even as EU Member States) – there is scope to identify and commit to these.
6. Numerous examples exist of effective cross-border and all-island engagement and cooperation on the island of Ireland, but these initiatives face wide-ranging and varied challenges.
7. Diverse international examples of cross-border engagement and inter-regional cooperation exist, with deeper investigation required on how initiatives (particularly in post-conflict scenarios) might be adapted/replicated in the context of the island of Ireland.
8. Overall, these issues highlight some key needs for environmental actors:
 - Guidance and coordination on cross-border and all-island matters;
 - Access to information, policy-making and justice in both jurisdictions;
 - Maintenance of alignment where possible (although not if this maintains poor environmental structures or practices);
 - Clear information about existing divergence and especially divergence that is newly introduced;
 - Clear information about international environmental commitments by both Ireland and NI and how these have changed;
 - Examples of positive engagements, on this island and elsewhere to inspire new initiatives/innovation;
 - Information about key actors (and avenues of engagement) in both jurisdictions or beyond;
 - Resources dedicated to cross-border and all-island matters (which do not deplete existing resources).
9. Resourcing and funding – there are clearly a large number of issues, threats and opportunities for the environment sectors north and south. Given the lack of capacity within NGOs there is an urgent need to source funding/resourcing to build the necessary capacity to develop the cross-border/all-island linkages suggested in the recommendations set out in this report. NGOs and other actors must be prepared to move quickly to avail of these in response to emerging threats/challenges.

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10. Based on the research undertaken to produce this report, detailed recommendations designed to achieve the goal of linking the Irish environment are set out in Chapter 7. These have been designed to: reaffirm political commitment to cooperation; enhance civil society structures and strategies; monitor the impact of Brexit; enhance government accountability; support enduring and productive civil society relationships; ensure citizens are aware of and can operationalise their environmental rights; and enhance knowledge about environmental actors, activities and opportunities for collaboration.

Project Team

The report has been jointly produced by the [Environmental Justice Network Ireland](#) (EJNI) and the Environmental Governance Island of Ireland (EGII) research network. EJNI was launched in 2019 with the goal of creating a collaborative platform for partnership working between academics, lawyers, representatives of civil society and environmental NGOs. We are an all-island network, and our core goal is to address the root causes of social and environmental justice deficits on the island of Ireland and across Europe. EJNI is delivering this goal through an innovative, transdisciplinary model of collaboration which draws together diverse stakeholders and decision-makers who usually operate in almost completely separate spheres to enhance knowledge exchange and facilitate more effective and strategic research, advocacy and action. We now have an extensive network of members drawn from across the island of Ireland who work together to deliver unique, cutting-edge collaborative environmental justice projects at domestic and international levels. EJNI's core funding is provided by the Joseph Rowntree Charitable Trust. EGII is an ESRC-IRC funded network established in 2021, bringing together academics at Queen's University Belfast (QUB) and UCD, together with NI Environment Link and the Irish Environmental Network, to map existing cooperation, challenges and opportunities for all-island environmental governance after Brexit. It sits within the broader Brexit & Environment academic network (set up in 2015), which investigates the impact of Brexit on the UK and EU environment, working collaboratively with Greener UK, and combining the delivery of academic research projects, public engagement across all parts of the UK and the production of commissioned work. The Linking the Irish Environment Project team is:

- **Dr Ciara Brennan** (admin@ejni.net) is the Director of EJNI and a Visiting Fellow in environmental law and regulation at Newcastle Law School, Newcastle University. She has a particular interest in environmental justice and environmental governance in post-conflict societies, climate governance, access to justice and rights of nature and has published widely on environmental governance challenges in Northern Ireland. In her capacity as Director and co-founder of EJNI, Dr Brennan has undertaken extensive project management and co-authored multiple policy notes, briefings and technical reports which deal with wide-ranging environmental governance issues on the island of Ireland and across Europe.

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- **Dr Finbarr Brereton** is Assistant Professor of environmental policy in University College Dublin. He is an environmental economist whose research interests focus on exploring the determinants of subjective well-being, specifically the spatial environmental determinants. He has experience in public and stakeholder engagement having convened or co-convened major events, including workshops, seminars and conferences. With Dr Viviane Gravey of QUB, he is co-lead of the EGII network.
 - **Dr Mary Dobbs** is a Senior Lecturer in the Department of Law in Maynooth University. She is a Visiting Fellow in the School of Law, QUB; a member of the Brexit and Environment network; a member of EJNI; a member of the Future Earth Ireland committee based in the Royal Irish Academy; Irish representative to the Global Earth Assembly; and Expert Advisory Group member on the Citizens' Assembly on Biodiversity Loss. She previously worked in QUB for eight years as a Lecturer and then Senior Lecturer. She has published extensively and undertaken considerable public engagement.
 - **Hannah Gould** is a PhD student at BiOrbic and the UCD School of Architecture, Planning and Environmental Policy, researching public policy and the development of the bioeconomy. She has an MSc in Environmental Policy, UCD where she was awarded the Convery Medal (2019) for outstanding academic achievement for her thesis exploring the implications of Brexit for environmental cooperation on the island of Ireland.
 - **Dr Viviane Gravey** is a Senior Lecturer in European Politics at QUB. She co-chairs Brexit & Environment, leading the network's activities on Northern Ireland, as well as agri-environment. She has extensive experience in public engagement with a wide range of stakeholders and working on commissioned reports (for Friends of the Earth EWNI and the Soil Association). She is also co-lead of EGII, a member of Nature Matters NI Nature & Environmental Protection Group.
 - **Alison Hough BL** is a Senior Lecturer at the Technological University of the Shannon (TUS) and a highly collaborative, experienced researcher with an extensive background carrying out impactful research with and for Irish and EU NGOs. She has worked previously on similar research with IEN and NIEL, works with Friends of the Irish Environment on an IRC funded project on Aarhus Centres, with An Taisce on access to justice issues and leads EJNI's Access to Justice Observatory.
 - **Dr Lisa Claire Whitten** is a Research Fellow on the ESRC-funded project 'Governance for 'a place between': the Multi-Levelled Dynamics of Implementing the Protocol on

Ireland / Northern Ireland' based at Queen's University Belfast. Lisa Claire recently completed her doctorate on the constitutional implications of Brexit for Northern Ireland; she is a member of the UACES graduate forum and the EGII research team. Prior to PhD, Lisa Claire held a variety of posts in the political and public sector including working for the Office of the Northern Ireland Executive in Brussels and for a Member of the UK Parliament in Westminster.

1. Introduction

1.1 Rationale

“Despite political arrangements, there are no borders in nature, and what happens in the environment of one jurisdiction unavoidably impacts the other. The only way to preserve the environmental integrity of both Northern Ireland and Ireland is through a coherent system of environmental management.”¹

Governance of the environment in both Northern Ireland and the Republic of Ireland has been the subject of significant controversy and criticism and neither jurisdiction has managed to deliver an effective approach to environmental protection capable of preventing serious ecological degradation (Brennan, 2017; Fogarty, 2017). The two jurisdictions which exist on the island of Ireland have developed almost completely segregated environmental governance structures, legal and policy frameworks, and implementation processes. Despite the shared nature of almost all environmental challenges, the logic of a collaborative approach to these challenges and the acceptance on a policy level that the island of Ireland is one single bio-geographic unit (Ellis et al, 2004, Macrory, 2004, Burke et al 2007, Brennan et al, 2017, NESCC, 2021), cooperation on shared environmental challenges between governments north and south of the border (with exceptions which will be discussed in this report) remains under-developed (Gould, 2019; Hough, 2019).

On a very basic level, the absence of legal and structural alignment north and south makes cooperation on specific issues complicated in governance terms. Prior to Brexit, shared EU membership created a set of common legal requirements and environmental standards on both sides of the border. As a result, while the roads to specific environmental outcomes may have varied across the island, until recently the ultimate destinations have (in theory) remained largely harmonised (Holzinger et al, 2006), or at least subject to a common ‘bottom-line’ in terms of minimum environmental standards and goals established by the EU. Aside from concerns about divergent environmental standards, Brexit has now removed (to at least some extent) the important scrutiny and enforcement role of EU institutions in respect to environmental outcomes from one part of the island (Brennan et al, 2019), as well as shared EU governance mechanisms in policy development, implementation, monitoring and design. Significantly, it has also removed the unifying and over-arching ‘direction of travel’ on environmental and social concerns brought by membership of the EU. The extent to which these factors will be mitigated by the contentious NI Protocol (as amended by the 2023 ‘Windsor Framework’) and other post-Brexit governance arrangements remains uncertain (Dobbs and Gravey, 2022).

¹ Alison Hough BL, speaking to an Oireachtas committee on the Implementation of the Good Friday Agreement in 2019 upon the publication of *Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions*. Available [here](#).

In addition to the governance implications of having two discrete sets of arrangements for protecting the environment, meaningful cooperation in an advocacy context between environmental NGOs and civil society on the island is significantly inhibited. Processes for input both at policy level and in the context of public participation in environmental decision making are generally separate and vary between the jurisdictions, making it harder for engagement on a cross-border basis. Funding streams and opportunities also differ, with relatively low incentives and only limited and relatively recent investment (mainly from the EU) in work which transcends the political boundary. Again – the impact of Brexit on future funding remains unclear. Furthermore, organisations which attempt to work on a truly all-island basis have to contend with two sets of legal and regulatory requirements for charities, in addition to the complexity of dealing with two currencies, two sets of employment laws and two sets of financial rules. In addition, a less tangible, but arguably more significant challenge relates to advocacy targets which NGOs and communities work towards. Because governance arrangements vary so significantly between the two jurisdictions on the island, responsibility for facets of environmental work is organised in very different ways. Not only is navigating the differences between the two jurisdictions therefore very complex, but it also means that NGOs themselves organise their work in ways which reflect their relative jurisdictions governance arrangements, complicating any process of cooperation.

Recognition of these challenges is beginning at a governance level, with a series of recent dialogues or initiatives designed to try and establish new, or at least promote existing processes of cooperation – notably a recent report from Ireland’s National Economic and Social Council (NESC) which is part of a wider body of work undertaken on a Shared Island for the Department of the Taoiseach (the findings of which are discussed in Chapter 5). However, for NGOs and civil society, there is a need for deeper consideration of the enabling conditions which are required to translate existing piecemeal cross border initiatives into impactful, long-lasting and resilient all-island cooperation on environmental matters. Looking to international examples of cooperation across borders in other jurisdictions may provide some potential ideas which could be replicated on the island of Ireland. There is also a need to understand how emerging movements and dynamics (e.g. those around rights of nature, the link between environmental and social justice and the wellbeing economy movement) could help shape debates around how best to deliver environmental protection and truly sustainable development on the island of Ireland and the role that NGOs and civil society can play in helping to deliver this. This scoping report seeks to explore these complex considerations, with the goal of highlighting existing environmental cooperation on the island of Ireland, and with reference to international examples, make recommendations which could help create the enabling conditions for effective all-island environmental cooperation for NGOs and broader civil society.

1.2 Aims of the Project

The aim of this report is to examine how to enable the environment sector across the island of Ireland to cooperate and engage on an all-island and cross-border basis to deal with shared environmental challenges, risks and opportunities. The report has been commissioned by the

Northern Ireland Environment Link (NIEL) and the Irish Environment Network (IEN) – which are the two membership organisations for the environmental charity sectors in Northern Ireland and the Republic of Ireland. NIEL has more than 65 organisational members and IEN has 34. The report has been commissioned as part of the first stage in the development of a long-term programme for the delivery of greater north/south environmental NGO cooperation and includes recommendations to help shape the way forward. The research undertaken in preparation of this report builds on previous joint work between NIEL and IEN, including the seminal report authored by Alison Hough, ‘Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions’ (Hough, 2019). This new research project also includes consideration of best practice on cross-border and EU/Non-EU linkages in light of recent political developments. The report will address 3 key areas:

1. Current environmental regulatory and governance arrangements on the island, considering the Trade and Cooperation Agreement (TCA), Protocol, Governance committees of agreement, international agreements, oversight, complaints, environmental standards, enforcement and risk of divergence, and how these will impact or shape future cooperation.
2. The experience of practical environmental cooperation across the island of Ireland of between environmental NGOs, including NGO resourcing and support mechanisms.
3. Mechanisms and advocacy priorities which can be used or developed by NIEL/IEN to advance citizens’ and NGO engagement in all-island environmental issues.

1.3 Our approach

Our overarching approach is transdisciplinary in nature. Transdisciplinary research (TD) is concerned with looking at complex or ‘wicked’ problems through multiple perspectives and has societal and academic outcomes. The approach is often inherently linked with sustainability research (M. Brennan et al, 2021; Mulally et al, 2016), and is also well-established in an Irish context, with a recent mapping exercise and symposium ‘[Better together: knowledge co-production for a sustainable society](#)’, undertaken in 2020 by the Royal Irish Academy. In line with our TD approach, the report has been compiled by researchers working across disciplines and in close collaboration with stakeholders. The analysis is therefore informed by a number of key concepts premised on well-developed academic theories. These concepts and theories have been explored in depth elsewhere (see key references below), but by way of summary include:

(a) Resilience

The concept of resilience is becoming increasingly prevalent in policy-making and governance decisions given recent political, societal and environmental turbulence. Social-ecological resilience entails ‘[t]he capacity of a system to experience shocks while retaining essentially the

same function, structure, feedbacks, and therefore identity' (Walker et al, 2006). Consequently, resilience is especially relevant in the current context of environmental cooperation on the island of Ireland, where shocks and turbulence seem to be of increasing prevalence through Brexit, COVID-19, migration, and climate change. Resilience looks 'to adaptability, enabling systems and actors to respond to changes, uncertainties, and shocks as they arise – not merely learning to survive but also to thrive in such contexts. In other words, adaptive capacity.' (Petetin and Dobbs, 2022, p.115). As noted by Petetin and Dobbs (2022, p.116): 'To establish adaptive capacity, social-ecological resilience must also be multifaceted in nature – recognising the interconnectedness of different regimes or functions, society, the environment governance, law and indeed any aspect that might be relevant. For there to be overall resilience of a regime, policy area and ecosystem, then each component or aspect must be resilient – if one element fails, this may undermine the resilience of other elements. From a governance or legal perspective, this means that the policy instruments, legal system and political, administrative or other relationships helping to deliver a resilient regime must also be resilient.'

Two points bear highlighting here for the purposes of this report. First, the scope of resilience is expansive. It stretches beyond the 3 pillars of sustainability (social, economic and environmental), to include any other relevant issue (e.g., the health of the public), and also 'the policy, legal system, relationships and tools supporting the social-ecological system' Petetin and Dobbs, 2022, p.117). Second, the role of stakeholders and polycentric governance and the need for widespread engagement, co-production, cooperation and coherency are central to developing resilient structures, process and policies (Bohman, 2021, p.63; Arnold and Gunderson, 2014, p.319; Pieraccini, 2019). Broad stakeholder engagement provides numerous benefits generally and in ensuring resilience (Petetin and Dobbs, 2022, p.117-120).

(b) Multilevel Governance (MLG)

Multilevel governance and regulation recognise the 'reallocation of authority upwards, downwards and sideways from central states' (Hooghe and Marks, 2003, p.233), across a myriad of regulatory spaces (Chowdhury and Wessel, 2012). While it exists and brings many benefits, such an approach also necessarily leads to a complex web of powers and norms, with numerous challenges and risks (Charbit, 2011, p.14-6; and Estella, pp.98-9 and 112-114). A system of multilevel governance may involve a relatively simple matter of delegation of roles or ancillary powers downwards or outwards within the overarching system – one where there is a clear hierarchy of powers and agreement as to each individual actor's role and remit. Here, one has a relatively centralised, uniform approach, with enforcement mechanisms to ensure compliance. Nonetheless, even in a system that appears to be carefully ordered, there is still potential for gaps or conflicts to arise. Where there is a complex or fragmented system and power loci are diffuse, this significantly increases the potential for gaps, overlaps and conflicts to arise is considerable.

Consequently, multilevel governance raises a considerable challenge of maintaining cohesion or coherency (Dobbs, 2020). Increased fragmentation therefore requires greater coordination, communication, and cooperation between the different loci – whether horizontally or vertically -

to facilitate and preferably ensure coherency. This is both from a procedural perspective and from a substantive one, as for instance it is possible to have exemplary cooperation procedurally, but the policies and laws remain at odds and lead to negative externalities. This applies within and across states where transboundary issues arise, as exemplified by the pandemic recently (Dobbs, 2020), including across the island of Ireland (Dobbs and Keenan, 2022), but also in the case of environmental governance. Thus, the two legal jurisdictions in Ireland share a single biogeographical, epidemiological unit with, for instance, 3 transboundary river basins, interlocking protected sites and common migratory routes for wild birds. The resulting essential need for transboundary environmental governance and cooperation between different actors and loci within the ecosystem is reflected in the Good Friday/Belfast Agreement (GF/BA) and various policies such as the All-Island Pollinator Plan.

(c) Common Pool Resource Management (CPR)

Common Pool Resource (CPR) management describes the necessary conditions for successful CPR management, where 'success' in this context is defined as cases that 'reported successful long-term environmental management' (Cox et al, 2010). Ostrom has developed eight design principles as determining factors for the success or failure of CPRs: 1) clearly defined boundaries, 2) congruence between appropriation and provision rules and local conditions, 3) collective-choice arrangements, 4) monitoring, 5) graduated sanctions, 6) conflict-resolution mechanisms, 7) recognition of rights to organize, and 8) nested enterprises (Ostrom, 1990). Scholars also argue that linkages across scales are associated with more successful CPR governance in complex systems (Heikkila et al, 2011; Ostrom, 2009; Berkes, 2002; and Young, 2002). Young argues for example that 'the establishment of such kind of linkages is based on institutions that include shared rules and strategies, or regularized patterns of interaction, creating functional interdependencies between different actors, or collective bodies' (Young, 2002). It is interesting to note that the EU provided shared rules and strategies on the Island of Ireland and in a post-Brexit context, the management of CPR will become more difficult. Hence, the problem is to find an institutional model for 'successful' management of CPR in an all-Island context for Ireland.

(d) Environmental Policy Integration (EPI)

Integration of environmental concerns across policy areas is widely perceived as central to achieving effective environmental governance and sustainable development (Runhaar et al, 2014; Mulally and Dunphy, 2015). Environmental policy integration (EPI) can thus be considered as one of 'the guiding axioms of green thinking and practice' and the extent to which EPI has occurred can provide insights into wider environmental governance considerations (Jordan and Lenschow, 2010). On one level, the concept is an important policy-making principle, but it has been argued by Jordan and Lenschow that the enhanced legal grounding bestowed upon EPI in some contexts (e.g., within the EU) has elevated its status to a quasi-constitutional 'standard to be observed'. As a result, academics and policy-makers have sought to develop systematic analytical frameworks that can shed light on the extent to which EPI has occurred in a given context (Lafferty and Hovden, 2003; Nilsson and Persson, 2003). One of the

most comprehensive of these has been created by the European Environment Agency (EEA). The features identified within the EEA framework include political commitment and strategic vision; administrative culture and practices enabling environmental co-operation, coordination and transparency; environmental integration into policies and programmes; availability of environmental information; mechanisms for engagement in consultation and participation; effective use of policy instruments; monitoring and learning from experience; mechanisms for environmental policy evaluation; state of the environment reporting; and appropriate and coherent use of environmental indicators and feed-back mechanisms (EEA, 2005). By considering how these features operate in a specific context, such as environmental governance undertaken on an all-island basis, insights into the overall level of EPI can thus demonstrate strengths and weaknesses in that given system – in turn identifying potential advocacy priorities for citizens and NGOs (Brennan et al, 2017).

1.4 Scope of the Report

This report should be considered alongside other notable and ongoing efforts to map existing cooperation (e.g., the recent NESC report), and it is hoped that further examples will emerge in subsequent research. While the report has informed recommendations, it was not within the scope of the project to undertake an economic appraisal of the cost of any of the initiatives suggested and it is recommended that this is undertaken by the commissioning organisations. Finally, because the focus of the research has been on frameworks, processes/experiences and outcomes and is informed by a number of concepts or perspectives as discussed above, the research team has not attempted to design a single analytical framework to measure ‘success’, therefore the examples drawn from international experience should not necessarily be considered ‘best practice’ but rather examples identified as being particularly relevant or interesting from the perspective of the island of Ireland.

1.5 Research Design

The project combined desk-based analysis (involving literature reviews and analysis of secondary data) as well as engagement with stakeholders. Direct engagement and fieldwork was undertaken via 3 avenues: initial and continuous in-depth discussions with the funding environmental NGO umbrella bodies; two online stakeholder workshops (each attended by 30-40 individuals representing 25 different organisations and drawn from NGO, civil society, and policy communities both north and south of the border); and a short online survey (completed by 28 individuals). In addition, preliminary recommendations were subject to a consultation exercise in early 2023 involving participants from the stakeholder workshops. Participation in both processes was undertaken on the basis of anonymity given the (at times) sensitive subject matter of the research.

The aim of these engagements was both to assist the design of the project and to enhance the knowledge production process. The short online survey released in advance of the workshops

generated additional insights and data for the project and identified potential points for discussion. The workshop discussions built on the survey results and our desk-based research. Together, they have created new knowledge, generated, and fostered significant discourse and enhanced the project's impact by enhancing awareness of the project and ensuring the findings have widespread buy-in. The empirical research process was subject to a successful ethics review procedure undertaken at UCD. It is worth re-iterating the nature of this project as a 'scoping' exercise, with the majority of the fieldwork undertaken over a 4-month period in 2022 and the fact that significant benefit would be derived from undertaking a more extensive study, with larger sample sizes and semi-structured interviews with research users (in particular communities) to generate a more nuanced understanding of the complex dynamics which this report has identified.

The research is reflected in this report, which is structured as follows. Chapter 1 has introduced the rationale for the project, its aims, our approach, the scope of the work and research design. Chapter 2 will discuss the general governance background on the island of Ireland, the implications of Brexit and of the NI Protocol; this includes analysis of the 'Windsor Framework' revisions to it, agreed in February 2023. Chapter 3 considers international legal frameworks and their relevance to environmental cooperation. Chapter 4 considers the experience of environmental cooperation on the island of Ireland, while Chapter 5 highlights some lessons from international examples. Chapter 6 summarises our key conclusions and Chapter 7 sets out our recommendations.

2. Implications of Brexit and the Protocol for all-island environmental cooperation

2.1 Introduction

EU membership has profoundly shaped environmental policies in the UK and in Ireland. When the two countries joined in 1973, the European Economic Community had just begun to develop environmental policies on, for example, measures to address air pollution, ensure water quality, tackle forest dieback from acid rain and protect bird populations. In the fifty years that followed, the EU developed the largest and most ambitious body of environmental law in the world, with rules ranging from environmental impact assessment, waste, the circular economy, air quality and marine protection. In 1998, environmental policy became a devolved competence within the UK, and this meant that NI, along with Scotland and Wales, became responsible for the implementation of EU environmental rules and has been able to develop its own approaches through supplementary and complementary laws. Uniquely in NI, provisions in the 1998 Good Friday/Belfast Agreement (implemented via the 1998 NI Act) (GF/BA) have allowed cross-border cooperation and all-island initiatives in the field of the environment through the work of the North South Ministerial Council (NSMC) and North-South implementation bodies. This is discussed in more detail in Chapter 3.

Given the history of the parallel development of environmental policy, the decoupling of the legal and policy frameworks between the two jurisdictions which occurred because of Brexit raises fundamental questions. However, EU membership was never the only forum for environmental cooperation between the two parts of the island. While EU Membership was a central plank of the relationships, it was not the sole one and nor did it always guarantee effective environmental regulation and governance – whether on a cross-border basis or otherwise. Instead, environmental regulation and governance existed on this island in a complex and multileveled system. This system, challenged by Brexit and more recently by the Covid19 pandemic, was far from perfect: both Ireland and Northern Ireland have repeatedly struggled to meet their environmental commitments, be it under EU law, international law or indeed, simply meeting domestic targets (Brennan, 2017).

This chapter considers the current conditions for cross-border and all-island cooperation on the island – by both public and private actors, and in different functions (e.g. governance, oversight, enforcement etc). It considers pre-existing governance relations on the island, the potential consequences of Brexit, including the Protocol (or Windsor Framework)² and the eventual Trade

² Changes introduced by the ‘Windsor Framework’ to arrangements for implementation of the Protocol on Ireland/Northern Ireland are addressed directly in section 2.7.

and Cooperation Agreement (TCA), and responses to Brexit and the implications of these choices.

2.2 Pre-Brexit environmental governance

2.2.1 Divergent powers and structures

While Ireland is a nation state, holding the full complement of powers normally vested in a state (subject to limitations due to international commitments), Northern Ireland is a devolved jurisdiction within the UK – which creates a complex legal, political and financial web for NI (Petetin and Dobbs, 2022, p.61-70). Under devolution, some powers are decentralised to Northern Ireland (and other devolved jurisdictions), whilst others remain centralised. This means, for instance, that the powers to conclude binding international agreements rests with the UK Government and not the NI Government, even though the latter may still act on the international stage. Although some powers regarding environmental action are reserved to the UK Parliament or Government, in general, environmental matters and related areas such as fishing and agriculture are devolved to Northern Ireland – enabling them to create policy and law. This remains subject to parliamentary sovereignty and also, in practice, depends on funding from Westminster. Despite having these powers, the volatility and febrile nature of the power-sharing arrangements established under the GF/BA has created a ‘limbo’ type scenario during periods of the Assembly’s collapse (the government in Stormont has existed in a state of forced hiatus for over a third of its lifespan (Flanagan, 2021)) where Westminster can in principle legislate and dictate policy, but has tended to be hesitant to do so, and where the civil servants (in most instances) have had no such mandate or powers (Brennan et al, 2019). Ireland, as a member of the EU is subject to its obligations to comply with developing EU policy and law – including to transpose, implement and enforce environmental measures, including potentially measures that conflict with desired Irish environmental policy.

Within each jurisdiction, relevant policy-making powers themselves are hosted in different siloed ministerial departments/portfolios – with aspects divided between different departments and ministers. These also change on a reasonably regular basis – in particular in Ireland when there is a new Government in situ. Because coalition type governments (whether through political coalition in Ireland or enforced through mandatory coalition via power-sharing in NI) exist in both jurisdictions, the political priorities, or prerogatives, of successive ministers with responsibility for different policy areas change frequently – inhibiting consistency in approach and the ability to deliver long term strategies/policy decisions (Turner and Brennan, 2012). While domestic structures on either side of the border in Ireland have some similarities, fundamental differences also exist. For instance, Ireland has an independent Environmental Protection Agency (EPA), whereas Northern Ireland has the Northern Ireland Environmental Agency (NIEA) that falls within a governmental department (currently the Department of Agriculture, Environment and Rural Affairs) despite longstanding criticisms of this lack of independence (Brennan, 2017). Both jurisdictions have county councils, but their powers and internal structures vary, with Northern

Ireland also shifting to a reduced number (26 to 11) of [‘super councils’](#) in 2015. Various other bodies operate in one jurisdiction but not the other, e.g. An Bord Pleanála and the Heritage Councils in Ireland and very recently the Office of Environmental Protection in Northern Ireland. Even the physical infrastructure can prove challenging, as reflected in the struggles to link the energy systems. This is added to by the differences between Ireland and Northern Ireland in measurement (metric versus imperial) and currency (euro versus sterling). The EU is not the sole reason for these differences, as for instance Ireland had the ‘punt’ or Irish pound prior to converting to the euro. These differences may not appear relevant at first, but mapping and weighing are crucial to environmental governance and currency conversion carries risks and costs.

When it comes to the sources of law and legal traditions, both are common law jurisdictions with similar approaches (to an extent) to legislation and judicial decisions. Northern Ireland has its own courts, but judgments can also be appealed to the UK Supreme Court. However, the crucial difference lies in Ireland having a written constitution (with specific procedures for constitutional challenges) whereas the UK has an unwritten constitution based on parliamentary sovereignty. In basic terms, this allows the Westminster Parliament (and therefore UK Government) extensive flexibility in the laws they wish to develop. In practical terms this means Northern Ireland’s constitution is established by a variety of constitutional sources, e.g. the Human Rights Act and the GF/BA (implemented via the 1998 Northern Ireland Act) as opposed to a single written document. It is important to note that these ‘governance level’ variations might appear to be most relevant to public actors, but other stakeholders must be familiar and engage with them also – so complexity for one leads to complexity for all. Furthermore, other aspects affect groups such as non-governmental organisations (NGOs) and similar groups, e.g. rules regarding tax residency, registering as a charity or a business, etc that make residency/addresses a central issue or vary in their criteria (e.g. as in the case of charitable status in NI versus Ireland). The implications of this issue as it plays out in practice will be explored in more detail in Chapter 4.

2.2.2 Parallel, but differentiated, laws and policies

Unsurprisingly, the environmental (and related) laws in Ireland and Northern Ireland vary – but they do maintain some considerable similarities, in part due to the historical influence of England over both and in part simply due to being neighbours. A number of areas exemplify this. Firstly, nature protection in both Northern Ireland and Ireland for example is in the form of dual regimes – EU-derived and domestic. On the domestic front, Ireland’s key legislation is the Wildlife Act 1976 and the Wildlife (Amendment) Act 2000, replacing earlier legislation (Game Preservation Act 1930 and Wild Birds (Protection) Act, 1930) that pre-existed Ireland’s independence from the UK. Various protected areas include nature reserves, refuges and natural heritage areas. Of note, the legislation encompasses consideration of general protection and conservation of wild fauna and flora, conservation of a representative sample of important ecosystems and the development and protection of game resources and regulation of their exploitation –demonstrating a predominantly human-centred approach. Northern Ireland has

‘Areas of Special Scientific Interest’ that are protected under the Nature Conservation and Amenity Lands (NI) Order 1985 (as amended 1989) and the Environment (NI) Order 2002. For both jurisdictions, these (and other) laws, run in parallel to EU conservation designations and related environmental law.

Secondly, land law (and ownership) is essential to environmental protection and governance, e.g. impacting on who the relevant actors are and their relationship with the land/environment/projects. However, it is a highly complex area and made more complex by the variations across these two islands. Of note here, land law in Northern Ireland is somewhat of a hybrid creature – it is a combination of a primarily pre-1925 English land law,³ specific Irish concepts (e.g. including ideas of conacre and agistment (McNeill, 2021)) and some homegrown Northern Irish components (e.g. under the Property (NI) Order 1997), where law students must learn all 3 in university as a result. This reflects the historical links on the island, as well as the common nature of land use and farming and the particular relationships individuals hold with the land, but also a simple recognition of Northern Ireland being part of the UK and that Ireland and the UK have diverged in this field over the decades.

A relatively recent and impactful example of domestic environmental policies which are similar in nature but vary in detail on either side of the border in Ireland relates to taxes or charges on plastic bags. Ireland introduced a [levy](#) in 2002 of 15 cent (now 22 cent) on any plastic bags supplied by retailers, which had considerable impacts in both raising finances for other environmental activities and in reducing the consumption of plastic (Anastasio and Nix, 2016). This was subsequently adopted in Northern Ireland, with a 5p charge under the Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013. Northern Ireland now [charges](#) 25p for any new carrier bag, irrespective of material and whether single use or reusable.

2.2.3 Converging approaches?

In both Ireland and Northern Ireland, alongside legislation, there are numerous environmental policies, projects and incentives, e.g. through grants for home retro-fits or purchasing electrical vehicles (even if these are of questionable merit). One key example is in the area of biodiversity, where there has been significant cross-border and indeed all-island cooperation regarding both invasive species and pollinators. Thus, the National Biodiversity Data Centre in Ireland firstly coordinates the All-island Pollinator Plan [steering group](#), which oversees the AIPP and whose members draw from bodies and organisations across the island (in April 2023 the AIPP [announced](#) that all councils and local authorities on the island of Ireland have formally signed up to the all-island pollinator plan). The AIPP has specific focus points for instance on [monitoring bumblebees](#), but also encompasses overarching plans (including most recently for 2021-2025). Secondly, it facilitates individuals in [reporting](#) sightings of both biodiversity and invasive

³ This is because the Law of Property Act 1925 (intended to modernise land law in England) does not apply in Northern Ireland. Instead, legislation such as the Conveyancing and Law of Property Act 1881 (as amended) and the Settled Lands Acts continue to apply in Northern Ireland. See [here](#) for an accessible introduction to Northern Irish land law.

species anywhere on the island. It is however worth highlighting that there previously was an all-island '[Invasive Species Ireland](#)' project that drew to a close in March 2013 and has not been replaced – reflecting the potential for extensive cooperation, but also the need for continued funding and support.

A second prime example is the '[Tidy Towns](#)' competition in Ireland and the related 'Best Kept' competition in Northern Ireland – mechanisms to incentivise positive behaviour in localities and encourage buy-in. The Tidy Towns competition was established in 1958 by Bord Fáilte (now Fáilte Ireland) and is now run by a relevant governmental department (currently the Department of Rural and Community Development). The '[Best Kept Awards](#)' (run by the Northern Ireland Amenity Council) were set up in the early 1950's. While traditionally these were not technically focussed on environmental objectives, they have the clear capacity to further environmental improvement and the Tidy Towns recently changed their charter to expressly include environmental aims as one of their core objectives. Whilst these two competitions run in parallel to each other, there is also a crossover of the '[Best Kept Town](#)' where the top towns from both competitions compete with each other on an all-island basis. This could clearly be developed further, but demonstrates the viability of all-island or cross-border approaches, especially where the foundations mirror each other in the two jurisdictions and also perhaps where the foundations are in the community rather than in the legislation.

2.2.4 Shared, but varied, EU frameworks

The EU has objectives of a high level of environmental protection, in conjunction with ideas of sustainability and integration – leading to the situation where environmental protection should imbue all EU policy. Although much may be critiqued when it comes to EU environmental law and governance, the UK and Ireland's membership of the EU has led to the development of considerable shared frameworks, governance mechanisms and obligations to cooperate (e.g. Brennan et al, 2019) – with many of these still having their effects felt post-Brexit, as discussed below. A few key aspects are highlighted here. Firstly, the EU created vast swathes of environmental law across a wide range of [regimes](#), including the [Water](#) and [Waste](#) Framework Directives, their 'daughter' Directives, the [Wild Birds](#) and [Habitats Directives](#) and all of the complementary legislation and soft law instruments. These are underpinned by environmental objectives and principles, along with the interpretative judgments of the CJEU and EU doctrines such as supremacy, direct effect, and the duty of sincere cooperation. Together, these provided for a considerable block of common environmental law that applied across all Member States, including Ireland and the UK (e.g. Kingston, Heyvaert and Čavoški, 2017).

Secondly, as an area of shared competence, and in conjunction with EU principles of subsidiarity and proportionality, EU environmental regimes were only partially harmonised. The EU only acted where deemed necessary and only to the extent that was proportionate, thereby leaving considerable flexibility for the Member States to raise standards, implement according to their own contexts and develop parallel regimes. Limits clearly applied, but even within the shared frameworks, considerable divergence was permitted – notwithstanding the reality that

laws are not always transposed, implemented correctly or complied with in practice. Divergence in implementation is apparent in differing national approaches in areas such as pollution permits, hunting licences, controls on nature conservation sites and fees for waste disposal. A key point to note however is that flexibility was left to Member States where it would not undermine the goals of a high level of environmental protection across the EU, and in principle this should include consideration of transboundary impacts and harms. Problems have however emerged in relation to, for example, disparities in fees relating to waste disposal which led to significant levels of illegal trans-frontier movement of waste in the early 2000s (Brennan, 2017). While the balance has not always been struck correctly, this aim is reflected in, for instance, the goal of a network of [Natura 2000](#) sites, of obligations to cooperate with other Member States on transboundary river basins (e.g. Keessen, van Kempen and van Rijswijk, 2008), of obligations under Article 7 of EIA Directive to consult with other Member States where transboundary harm might [arise](#) and simply in common EU criteria for determining good status or monitoring for pollutants.

Thirdly, alongside the substantive law, key governance mechanisms are common across the EU (Kingston et al, 2017) – including most obviously the legislative roles (European Commission, Parliament and Council, supported by various committees and bodies), advisory and information sharing (via the European Commission and the European Environment Agency in particular), and oversight and enforcement (the European Commission and Court of Justice of the EU). Besides being quite effective, if slow, the main issue of relevance here is their commonality to all Member States – e.g. not only does the law apply across all Member States, but the same advice is available to all Member States, judgments against one Member State have horizontal applicability in other Member States, cases can be taken by or against one or more Member States before the CJEU etc. Again, this helps ensure consistency, coherency and effectiveness of EU environmental law across the Member States.

Fourthly, from an individual's perspective, EU law enables a number of key avenues of engagement – besides the ability to rely on the EU Directives and Regulations [implementing](#) the Aarhus Convention, as discussed in Chapter 3 below. They can rely on (common) EU law before any Member State's national courts, as well as seeking preliminary rulings (for the CJEU's interpretation of EU law) or taking direct actions to the CJEU (they do not need to be citizens to do so) where criteria are met. Article 227 TFEU also provides for EU citizens or natural or legal persons 'residing or having its registered office in a Member State' to petition the European Parliament regarding matters 'within the Union's fields of activity' that affect the petitioner directly. There is also the potential to make [individual complaints](#) to the European Commission about breaches of EU law by Member State public bodies, as well as complaints to the European Ombudsman (without charge). Finally, the [European Citizens' Initiative](#) allows citizens to call on the European Commission to propose new laws. Once an initiative has reached 1 million signatures, the Commission decides on what action to take. Based on the criteria involved, these options are still applicable to varying degrees on the island of Ireland post-Brexit. Any individual may make a complaint to the European Commission (including for breaches of EU law binding on NI under the NI Protocol); EU citizens, including those with joint citizenship (e.g. those born in NI who have a UK and an Irish passport), may participate in the

European Citizens' Initiative; and EU citizens or individuals residing in the EU (including e.g. UK citizens living in Ireland) may make a complaint to the European Ombudsman. The right of petition is more complicated as the individual must not only be an EU citizen or residing in the EU, but also directly affected by the matters that are within the EU's remit. The role of the CJEU is noted below in the discussion on the Protocol.

Fifthly, the EU provides valuable resources and tools available to a wide range of environmental actors. This encompasses not only the avenues of engagement noted above that complement domestic mechanisms, but also information and guidance (e.g. from the EEA or via BATREF documents), as well as funding. The last includes funding that might be available for instance to public bodies or NGOs for specific projects/activities (e.g. within INTERREG or PEACE funding), or including research where there may be numerous partners in higher education institutions, industry, NGOs etc across multiple Member States and possibly beyond (e.g. Horizon Europe funding). One key advantage of EU research/project funding is that it is not limited to issues or actors within one territory and, in particular, can address transboundary issues.

As noted above, there is considerable commonality and variations beyond the scope of EU policy and law, but the EU nonetheless was a key actor in facilitating cooperative environmental governance on this island. Some pre-Brexit features remain applicable to/in Northern Ireland, however Brexit has certainly eroded others and the impact of this erosion on both environmental governance and cooperation on the island remains unclear (Brennan et al, 2019). While Brexit is not and will not be the only influencing factor which shapes cooperation on the island, it is the dramatic rupture and need for wholesale overhauls brought by Brexit that make its impact essential to consider.

2.2.5 International frameworks as a basis for cooperation

Chapter 3 will discuss in more detail how international agreements promote and facilitate environmental cooperation on the island of Ireland. Principal among these is the Good Friday/Belfast Agreement (GF/BA), and the impact of this on environmental cooperation on the island has been explored in depth in a detailed report (Hough, 2019). Other international instruments which play a role include: the Aarhus Convention, the Espoo Convention, the Basel Convention, and the European Convention on Human Rights.

2.3 Brexit and the Protocol on Ireland / Northern Ireland

2.3.1 Unique vulnerabilities

Geographically, with Northern Ireland being the only UK region to share a land border with another EU member state and the island of Ireland being a single biogeographical and epidemiological unit, the process of decoupling the UK from EU law and policy frameworks, necessitated by Brexit, was always going to present particular challenges to the unique circumstances of Northern Ireland (Brennan et al, 2019). Economically, Northern Ireland had been a net recipient of EU funds and enjoyed a series of dedicated PEACE funding programmes designed to support its post-conflict development, meaning the overall economic impact of Brexit, including new barriers to trade between the UK and EU that result, could be expected to have a disproportionate negative impact in and for Northern Ireland.

2.3.2 *The Protocol on Ireland/Northern Ireland*

In view of the unique vulnerability of Northern Ireland to the outworking of Brexit and, in particular, the logistic impossibility of implementing a new border regime of the kind required at external EU borders along the winding 300km Ireland-Northern Ireland land border, the UK and EU agreed a *Protocol on Ireland / Northern Ireland*. This entails a set of arrangements to address the “unique circumstances” (Article 1(3)) on the island of Ireland arising in the context of UK withdrawal and has wide-sweeping effects (McCrudden, 2022).⁴ As part of the Withdrawal Agreement governing the departure of the UK from the EU, the stated objective of the Protocol is to set out “arrangements necessary” to address these unique circumstances on the island of Ireland, and more specifically:

“...to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border, and to protect the 1998 [Belfast / Good Friday] Agreement in all its dimensions” (Article 1(3))

Under its terms, Northern Ireland remains part of the UK customs territory (Article 4) however the EU customs code continues to apply in Northern Ireland (Article 5) as do EU laws that regulate the free movement of goods (Annex 2), VAT and Excise (Article 8), state aid (Article 10) and electricity markets (Article 9). The Protocol also provides for the continuation of the Common Travel Area (Article 3), ensures ‘no diminution’ in the rights of individuals as set out in the 1998 Agreement (Article 2) and requires that its provisions are implemented in such a way as to ‘maintain the necessary conditions for North-South cooperation’ on the island of Ireland (Article 11) including in respect to the environment and agriculture (Dobbs and Gravey, 2022).

Earlier versions of the UK-EU Withdrawal Agreement and Protocol would have resulted in continued Northern Ireland alignment to a greater amount of the EU’s environmental acquis,

⁴ For an overview of the Protocol text and links to relevant EU instruments listed in its Annexes see: ‘Post Brexit Governance NI’ *qub.ac.uk* (<https://www.qub.ac.uk/sites/post-brex-it-governance-ni/ProtocolMonitor/TheProtocolEUanddomesticlaw/TheProtocolonIrelandNorthernIreland/>) Accessed: 10 November 2021

however, throughout the course of UK-EU negotiations, many significant EU law instruments concerning the environment were removed from draft texts (Moore, 2019). The Protocol that is in operation, therefore, provides for only a narrow section of the EU's environmental acquis to continue to apply in Northern Ireland post-Brexit. At the same time, however, the Protocol as it stands does contain a commitment *in principle* to continued North-South cooperation in respect to the environment, broadly understood, despite many EU rules that previously facilitated cross-border cooperation ceasing to apply (Whitten, 2021).

2.3.3 The Protocol and North-South Cooperation

One of the best ways to consider the substantive policy implications of Brexit and the Protocol for cross-border environmental cooperation is to look in detail at the situation pre-Brexit and post-Brexit. To do this, the findings from the 'North-South Mapping Exercise' carried out jointly by the UK Government and European Commission (with inputs from the Irish Government) during UK-EU withdrawal negotiations in 2017 are very useful.⁵ Through the Mapping Exercise 142 areas of N/S cooperation were identified; of which 54 were found to be 'directly underpinned by or linked' to EU membership, 42 'partially underpinned or linked' and 46 'not underpinned or linked'. Of the 142 identified, 55 related to environmental policy and governance and of these, 21 were identified as directly underpinned, 19 as partially underpinned, and 15 as not underpinned by EU law and policy. This mapping therefore revealed the extent to which N/S cooperation on the environment had developed since the 1998 Agreement as well as its degree of exposure to the out-workings of Brexit. Additionally, however, the findings of the Mapping Exercise showed that N-S environmental cooperation also existed outside the EU frameworks; for example, through the work of the North South Fisheries Liaison Group regarding management of inland fisheries; cooperation between DAFM and DAERA on the management and development of forests; knowledge sharing between NI Water and Irish Water on issues relating to the management of water resources; and the development of the original All-Ireland Pollinator Plan (2015-2020). While Brexit has fundamentally changed the legislative context for cooperation, and created significant challenges, it is also true that some pre-existing cross-border environmental cooperation has not been directly affected.

⁵ Information on areas of North-South Cooperation has been taken from the findings of the North-South Mapping Exercise carried out by UK and EU negotiators during withdrawal negotiations in 2017; 3 documents were published following the mapping – a UK government 'Technical Explanatory Note' in 2018, a European Commission 'Report on Negotiations on Ireland/Northern Ireland and North-South Cooperation' in 2019, and a UK Government 'Scoping Document' also in 2019 (following an FOI) – all 3 texts have been used to inform this section of the paper. Most of the content cited is based on the UK Scoping Document simply because it contained more information about EU law/policy identified as underpinning N-S cooperation. UK Government 2018 'Technical Explanatory Note' [gov.uk \(technical-explanatory-note-north-south-cooperation-mapping-exercise\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684247/technical-explanatory-note-north-south-cooperation-mapping-exercise.pdf) Accessed March 2022; UK Government 2019 'Scoping Document' [parliament.uk \(UK-Government-scoping-document-1.pdf\)](https://www.parliament.uk/document/uk-government-scoping-document-1) Accessed March 2022; European Commission 2019 'Report on Negotiations on Ireland/Northern Ireland and Mapping of North-South Cooperation' [ec.europa.eu \(https://commission.europa.eu/publications/mapping-north-south-cooperation-implementation-bodies-report-and-key-findings-exercise_en\)](https://commission.europa.eu/publications/mapping-north-south-cooperation-implementation-bodies-report-and-key-findings-exercise_en).

This mapping exercise, by delineating which areas of N/S cooperation were linked to EU Membership (and the extent or nature of that linkage), was essential in the development of the eventual Protocol Preamble. Recital 13 of the Preamble recalls that the findings of the Mapping Exercise showed “that North-South cooperation relies to a significant extent on a common [European] Union legal and policy frameworks” meaning that the UK’s withdrawal would give rise to “substantial challenges” to its maintenance and development. Following this, one of the stated objectives of the Protocol is to “maintain the necessary conditions for continued North-South cooperation” (Article 1(3)), including in respect to the environment (Article 11(1)).

Following the Protocol’s overarching objective in respect of N/S cooperation, cross-border environmental cooperation is referred to explicitly in Article 11(1) of the Protocol as one of those areas of existing N-S cooperation for which “necessary conditions” are to be maintained in the process of ‘implementing and applying’ the provisions of the Protocol. The relevant impact of the Protocol, and Brexit more generally, can therefore be said to fall into 3 categories: first, the continued implementation of EU environmental rules explicitly covered by the Protocol (listed in Annex II and IV) in Northern Ireland; second, the requirement *in-principle* for the Protocol to be ‘implemented and applied’ in such a way as to enable the wider set of (pre-existing) N/S environmental cooperation to continue, despite (previously relevant) EU rules no longer binding Northern Ireland; and, third, the indirect effects on the environment of the new post-Brexit governing arrangements, including the Protocol, on the island of Ireland. It is worth looking at these 3 categories in more detail.

Most in the first category, areas of pre-existing N/S environmental cooperation that are explicitly provided for in the Protocol, fall under its Article 5 and Annex II provisions concerning customs and the free movement of goods on the island of Ireland; a smaller number fall under its Article 9 and Annex IV provisions related to the Single Electricity Market. As **Table 1** details, 19 areas of N-S environmental cooperation fall into this category in that all those EU rules that (pre-Brexit) directly or indirectly underpinned the cooperation are listed in the Annexes of the Protocol and therefore continue apply in Northern Ireland. As set out below (see section 2.7) the changes brought in under the Windsor Framework agreement do introduce the *possibility* of *some* divergence between NI and the EU/ROI in these areas in future but overall, the prospect for significant N/S divergence here is limited.

Table 1: Areas of Pre-Existing North-South Environmental Cooperation *fully* covered by the Protocol on Ireland/Northern Ireland⁶

Area of Cooperation		Underpinning EU Legal Instruments Included in the Protocol
Food Safety Promotion Board	Article 5 & Annex 2	EU Regulation 178/2002
Single Electricity Market	Article 9 & Annex 4	Electricity Directive (2009/72/EC) the Electricity Regulation (EC) No 714/2009 , the Agency Regulation (EC) No 713/2009
North-South Dairy International Trade Working Group	Article 5 & Annex 2	Regulations 852/2004 , 853/2004 and 854/2004
Waste Management [i]	Article 5 & Annex 2	Regulation (EC) 1013/2006
North South Working Group on veterinary medicines North-South Working Group on Tuberculosis (TB) and Brucellosis (BR) North South Dairy International Trade Working Group	Article 5 & Annex 2	Regulation (EC) 882/2004 ; Council Directives 64/432/EEC , 77/391/EEC and 78/52/EEC and Council Regulations (EC) No. 1/2005 , 853/2004 and 854/2004 ; and Regulation 852/2004 .
Convention on International Trade in Endangered Species Management of eel stocks on the Erne	Article 5 & Annex 2	Council Regulation (EC) 338/97 EU Eel Regulations No 1100/2007
Fish health and aquaculture	Article 5 & Annex 2	Directive 2006/88/EC
Chemicals Regulation	Article 5 & Annex 2	EU Regulation 649/2012 REACH Regulation (EC) No 1907/2006 .
Invasive Alien Species	Article 5 & Annex 2	EU Regulation 1143/2014
Common Chapters agreed for the control of Epizootic diseases	Article 5 & Annex 2	Council Directive 2003/85/EC Council Directive 2005/94/EC Council Directive 2001/89/EC Council Directive 92/35/EEC Council Directive 2002/60/EC
DAERA/DAFM Equine Liaison Group and cross-border horse movements Equine Industry Strategy	Article 5 & Annex 2	Council Directive 2009/156/EC

⁶ For broader analysis of the relationship between the Protocol and North-South cooperation, including in areas outside environmental cooperation, see *North-South Cooperation and the Protocol on Ireland/Northern Ireland* (Whitten 2022) – an explainer that also includes extended versions of Tables 1-3.

Veterinary public health and trade meetings	Article 5 & Annex 2	Regulation EC 882/2004
Regulation and enforcement of animal health and welfare, and public health legislation	Article 5 & Annex 2	EU Regulation 1/2005
Fuel Fraud	Article 5 & Annex 2	European Council Regulation (EC) No 515/97
Non-Commercial Movement of Pets	Article 5 & Annex 2	Regulation (EU) No 576/2013

Note: The terminology used here to cite EU law instruments reflects the language used in the UK government 2017 Scoping Document; it does not always reflect citation conventions.

The picture in the second category is less clear cut; included here are a wider set of areas of N/S environmental cooperation that previously relied on EU rules and are referred to in some manner in the Protocol, but for which relevant EU rules are either not included or not entirely included within its scope. As **Table 2** and **Table 3** detail, respectively, there are 15 areas for which only some of the previously underpinning EU rules still apply and 13 areas for which none of the previously underpinning EU rules still apply. Although this means that the legal and policy frameworks that supported N/S cooperation in these areas is now less robust, it is also the case that the Article 11(1) provision for the Protocol to be ‘implemented and applied’ in such a way as to enable the continuation of N/S cooperation, including in respect to the environment, covers these areas in-principle and, therefore, *could* become more significant in future.

On this latter point, it is important to note that Article 11(1) of the Protocol lays down provisions for the continued development of N/S cooperation by enabling the UK and Ireland to ‘continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation on the island of Ireland’. Furthermore, Article 11(2) places a duty on the UK-EU Joint Committee tasked with oversight of the implementation of the Protocol to ‘keep under constant review’ the extent to which necessary conditions for N/S cooperation are maintained. What this means is that there is the possibility that areas of N/S environmental cooperation that are not, or are not wholly, provided for in the Protocol (or Windsor Framework) are reconsidered and addressed in future – either bilaterally between the UK and Ireland or at UK-EU level. Given ongoing political contestation over the Protocol in Northern Ireland, it does not look likely that this scenario will arise in the short to medium term.

Table 2: Areas of Pre-Existing North-South Environmental Cooperation *partially* covered by the Protocol on Ireland/Northern Ireland

Area of North-South Cooperation	Listed in North-South Cooperation Mapping Exercise	
	<i>Coverage in Protocol</i>	<i>Not Covered in Protocol</i>
Loughs Agency Waterways Ireland	North-South cooperation on environmental issues is provided for in Article 11 of the Protocol and Implementation Bodies can make proposals to the Specialized Committee under Article 14 of the Protocol.	The Water Framework Directive 2000/60/EC cited in North-South Scoping Document as the legal basis for cooperation on environmental issues relating to the work of the Loughs Agency and Waterways Ireland is not included in the Protocol.
Natural Gas	Most of those EU instrumented cited in the North-South Scoping Document as the legal basis for cooperation related to the use and supply of natural gas are not included in the Protocol. Only the Agency Regulation (EC) No 713/2009 is listed in Annex 4.	Instruments of EU Internal Energy Market gas legislation cited in the North-South Scoping Document and not listed in the Protocol: Gas Directive (2009/73/EC) , the Gas Regulation (EC) No 715/2009 , Gas Transmission Systems Regulation (EU) 2017/459 and Gas Security of Supply Regulation (EU) No 994/2010 .
Waste Management [ii]	Work of the North South Market Development Steering Group – established to assist the move to an all-island resource efficient / low carbon economy – is underpinned by Packaging & Packing Waste Directive 1994/62/EC , Batteries & Accumulators Directive 2006/66/EC which apply under Article 5 and Annex 2 of the Protocol.	Work of the North South Market Development Steering Group is also underpinned by Waste Framework Directive 2008/98/EC and Waste & Electrical Equipment Directive 2012/19/EU which are not included in the Protocol.
Plant Health & Regulatory Checks for Quarantine Pests	The Plant Health Directive 2000/29 is cited as one of the EU instruments underpinning North-South cooperation in matters concerning plant health and	Directive 2004/103 regarding conditions for checks to be carried out at a place other than at point of entry and Directive 98/22/EC regarding minimum conditions for carrying out plant health checks

	pesticides and included in Article 5 and Annex 2 of the Protocol.	were both cited as EU instruments that underpin North-South cooperation in matters concerning plant health and pesticides and are not included in the Protocol.
Cooperation on checks on third country products of animal origin	Regulation 882/2004/EC and Council Directive 97/78/EC underpin North-South cooperation on checks on third country products of animal origin and are included in Article 5 and Annex 2 of the Protocol.	Commission Decision 94/360/EC underpinned North-South cooperation on checks on third country products of animal origin and is not included in the Protocol.
Transmissible Spongiform Encephalopathies (TSE) & Animal By-products (ABP)	EU Regulation 2001/999 lays down rules for the prevention, control, and eradication of certain transmissible spongiform encephalopathies and EU Regulation 1069/2009 are cited as EU legal basis for North-South cooperation relating to the control of TSE and ABP.	Commission Regulation 142/2011 that sets down controls on the safe use and disposal of animal-by products was cited in Scoping Document as part of the legal basis for North-South cooperation relating to control of TSE and ABP but is not included in the Protocol.
Animal Health and Welfare working groups	NSMC working groups have been set up between DAERA and DAFM to cover the implementation of specific EU instruments related to animal welfare, transport, identification, registration, and movement, some of these are included in the Protocol; included instruments are: EU Regulations and Directives (EC) 1/2005, (EU) 2016/429, (EC) 1790/2000, (EC) 21/2004, and 2008/71/EC.	Some EU instruments identified as part of the legal basis for North-South working groups established to cover implementation of policies relating to animal welfare, transport, identification, registration, and movement are not included in the Protocol; excluded instruments are: (EC) 494/98 , (EC) 1082/2003 , (EC) 911/2004 , (EC) 1505/2006 , (EU) 2017/949 .
Checks on food not of animal origin	Three of the instruments cited in the North-South Scoping Document as providing a legal basis for checks to enforce strategic export controls on military goods are included in the Protocol; included instruments	Most of the EU instruments cited as the legal basis for North-South cooperation in respect to checks on food not of animal origin – thus avoiding need for a hard border – are included in the scope of the Protocol; included instruments are

	<p>are Council Regulation (EU) 1236/2005, Directive 2009/43/EC and Council Regulation (EC) 428/2009.</p>	<p>EU Regulation 669/2009 and several other EU regulations/decisions set out specific safeguard measure for high risk FNAO: Regulation 884/2014, Regulation 885/2014, Regulation 2016/166, Regulation 2015/175, Decision 2010/381/EU, and Decision 2013/287/EU; Commission Decision 2004/407/EC; and Council Regulations (EC) Nos 787/2004, 2073/2005 and 2075/2005.</p>
<p>Checks on products of animal origin for human consumption</p>	<p>Most of the EU instruments cited as the legal basis for North-South cooperation in respect to checks on food not of animal origin – thus avoiding need for a hard border – are included in the scope of the Protocol; included instruments are EU Regulation 882/2004 on official controls for feed and food law; Council Directives 88/407/EEC, 89/556/EEC, 90/429/EEC, 2009/158/EC, 92/65/EEC, 92/118/EEC, 97/78/EC, 2006/88/EC; and Council Regulations (EC) Nos 2406/96, 999/2001, 2065/2001, 1069/2009, 2160/2003, 852/2004, 853/2004, 854/2004, 882/2004.</p>	<p>Some of the EU instruments cited as the legal basis for North-South cooperation in respect to checks on products of animal origin for human consumption – avoiding need for a hard border – are not included in the scope of the Protocol; excluded instruments are Commission decision 94/360/EC, Commission Decision 2004/407/EC and Council Regulations 878/2004, 2073/2005 and 2075/2005.</p>
<p>Checks on live animals</p>	<p>Most of the EU instruments cited as the legal basis for North-South cooperation in respect to checks on live animals are included in the scope of the Protocol; included instruments are laying down the principles governing the organization of veterinary checks on animals entering the EU from third countries; Council Directives, 89/556/EEC,</p>	<p>Some of the EU instruments cited as the legal basis for North-South cooperation in respect to checks on live animals – avoiding the need for a hard border – are not included in the scope of the Protocol; excluded instruments are Commission decision 2004/407/EC and Council (Regulations (EC) 2065/2001, 878/2004, 2073/2005 and 2075/2005.</p>

	<p>90/429/EEC, 2009/158/EC, 92/65/EEC, 92/118/EEC, 97/78/EC, 2006/88/EC and Council Regulations (EC) Nos 2406/96, 999/2001, 1069/2009, 2160/2003, 852/2004, 853/2004, 854/2004, 882/2004.</p>	
Engagement and Information Exchange between DAERA and DAFM	<p>Regular, informal North-South cooperation and information exchange on a range of agri-food policy issues and sanitary and phytosanitary issues between DAERA and DAFM is identified as being underpinned by shared EU law frameworks.</p> <p>The Protocol provides for the continued application of many EU laws relevant to agri-food and SPS issues to continue to apply in Northern Ireland.</p>	The Protocol does not provide for the continued application of all EU laws indirectly relevant to cooperation between DAERA and DAFM.
Cross-border Academic Partnerships in Agriculture	Some cross-border academic partnerships in the field of agriculture were set up using INTERREG funding, the continuation of existing INTERREG programmes is provided for in the Preamble of the Protocol.	EU legal instruments cited in North-South Scoping Document as the legal basis for the administration of INTERREG funds in Northern Ireland, via the SEUPB, are not included in the Protocol; the excluded EU acts are: Common Provisions Regulation 2013/1303 and European Territorial Cooperation Regulation (EU) 2013/1299
Biodiversity	EU INTERREG is noted as one of the main sources of funding for cross-border environmental initiatives. The Preamble to the Protocol committed to continuing existing INTERREG funding to Northern Ireland.	EU legal instruments cited in North-South Scoping Document as the legal basis for the administration of INTERREG funds in Northern Ireland, via the SEUPB, are not included in the Protocol; the excluded EU acts are: Common Provisions Regulation 2013/1303 and European Territorial

		Cooperation Regulation (EU) 2013/1299 .
Environmental Protection Reporting and Research	North-South cooperation related to environmental protection reporting and research is covered, in principle, by Article 11 of the Protocol.	Environmental reporting obligations relevant to cross-border collaboration in this area arose from EU laws that do not apply under the Protocol.

Note: The terminology used here to cite EU law instruments reflects the language used in the UK government 2017 Scoping Document; it does not always reflect citation conventions.

The third category – indirect or broader Brexit impacts – is the most difficult to quantify given its contingency on what happens in the other two and on policy decisions made across the island of Ireland and in Great Britain. There are, however, already clear examples of indirect environmental impacts, for example, the pressure placed on certain waterways and protected sites in County Monaghan due to an increase in [intensive poultry farming](#) as a knock-on effect of the re-organisation of the agri-food sector on the island, because of Brexit. Workshop participants also reported Brexit impacts on N/S cooperation. While greater difficulties for NI groups to engage with general INTERREG funding will make some types of formal cooperation more complex, participants argued that the outcome of the 2016 Referendum, not only did not derail, but in many cases spurred new cross-border cooperative efforts between environmental NGOs, citizen groups and public authorities (see e.g. Hough, 2020 on using the Good Friday/Belfast Agreement as a vehicle for cooperation, as well as further example of existing recent cooperation highlighted in Chapter 4). Beyond the nature of these new cooperative efforts, 3 questions that arise are to what extent (i) the focus of such activities might have been previously unnecessary; (ii) these new activities place pressures on resources (time, money, political capital etc.); and (iii) they might provide a foundation for continued, improved environmental cooperation and engagement. Monitoring developments in this category will be an ongoing challenge and requirement of cross-border environmental cooperation post-Brexit.

While the Protocol may come to matter for environmental regulation on the island – most notably in limiting scope for divergence in NI from the EU environmental acquis for specific directives or regulations listed in its Annexes – it is also noteworthy that major areas of environmental regulation where cooperation is most frequent (such as water and nature protection) are not covered by the Protocol (see **Table 3**). As such, the Protocol is at best yet another tool for cooperation, but its usefulness depends on what environmental issue is concerned. The closer the issue to the functioning of the EU Single Market (for example waste or chemicals), the more important the Protocol will be in limiting divergence. Whether the Protocol can do more – not simply limiting the two jurisdictions from moving apart but fostering tangible cooperation – remains to be seen. Furthermore, with the highly charged political context and contestation over the Protocol in Northern Ireland, while it is important to avail of its provisions where possible, it is also important to look beyond it to other available options.

Table 3: Areas of Pre-Existing North-South Environmental Cooperation *not* covered by the Protocol on Ireland/Northern Ireland

Area of North-South Cooperation	Comment
Water pollution and water catchment Water quality Water regulation River Basin Management	EU Water Framework Directive 2000/06/EC is cited as the legal basis for North-South cooperation related to management of water pollution, catchment, quality, regulation, and river basin management, but is not included in the Protocol.
Common Agricultural Policy	NSMC previously included the cross-border implementation of CAP as part of its priority work on agriculture – provision for Northern Ireland’s participation in CAP is not included in the Protocol. ⁷
EURES Cross Border Partnership	North-South cooperation to address the obstacles faced by cross-border workers, employers and jobseekers was underpinned by EU Regulation 492/2011 and EU Regulation 2016/589 which are not included in the Protocol. EURES funding was secured through the EU Employment and Social Innovation Fund of which the–UK/Northern Ireland are no longer part.
Habitats and Birds Directive All-Island Pollinator Plan All-Ireland Marsh Fritillary Group	North-South cooperation to coordinate surveillance, monitoring and reporting on protected species and wild birds, including to develop and implement a 2015-2020 All-Island Pollinator Plan and the activities of the All-Ireland Marsh Fritillary Group, was underpinned by the Habitats Directive (2009/147/EC) and the Wild Birds Directive (92/43/EEC) neither of which are included in the Protocol.
Flood Risk Management	North-South cooperation on flood risk management and arrangements for the maintenance of watercourses along the Northern Ireland-Ireland border was underpinned by Directive 2007/60/EC (the Floods Directive) and Directive 2011/92 (the Environmental Impact Assessment); neither are included in the Protocol.
Air Quality Issues	North-South cooperation to tackle air quality underpinned by EU frameworks (e.g. National Emissions Ceilings Directive (EU) 2016/2284 and Ambient Air Quality Directive 2008/50/EC) which are not included in the Protocol.

⁷ NI has since developed its own agricultural policy, available [here](#).

Strategic Environmental Assessment	North-South cooperation relating to Strategic Environmental Assessments (SEA)'s was underpinned by Directive 2001/42/EC which is not included in the Protocol.
Landscape Monitoring	The work of the UK/Ireland Interagency Landscape Monitoring Group was identified in the Scoping document as relevant to North-South cooperation; the group was not directly founded on EU law frameworks but on an international agreement – the European Landscape Convention (ELC), which has been ratified by both the UK and Ireland. The implementation of the ELC in the UK and Ireland had previously been facilitated by EU laws which do not apply under the Protocol.

Note: The terminology used here to cite EU law instruments reflects the language used in the UK government 2017 Scoping Document; it does not always reflect citation conventions.

2.3.4 Protocol Governance & Role of NSMC/GF/BA

As agreed, the governing architecture established to oversee the Protocol allowed for the North-South Ministerial Council and North-South Implementation Bodies to input into the work of oversight. Article 14 of the Protocol makes provision for the operation of a 'Specialised Committee' set up to deal with issues related to its implementation. Under the scope of Article 14, the Specialised Committee can “examine proposals concerning the implementation and application” from the NSMC and/or N/S Bodies (14(b)). This provision for input from Strand Two institutions ought to be understood in light of the Article 11(2) requirement for the UK-EU Joint Committee – the highest-level governance body with responsibility for oversight – to “keep under constant review” the extent to which conditions for N/S cooperation, including on matters related to the environment, are maintained in the post-Brexit context. Two years after the Protocol entered into force at the beginning of 2021 no such instances of input from Strand Two institutions had taken place due to ongoing political instability in Northern Ireland and the consequential absence of activity on the part of the NSMC or N/S Bodies.

Following the 'Windsor Framework' in which (as discussed further below, see 2.7) the UK and EU agreed some amendments and made additional arrangements for the implementation of the Protocol, there are more mechanisms for input from Northern Ireland representatives including (at least potentially) in relation to environmental policy. Although the new mechanisms are still to be established, amendments to the Protocol and its supporting governing architecture made by the Windsor Framework are set to enable stakeholders in Northern Ireland to contribute to its implementation in a variety of ways. These include: a [commitment](#) on the part of the European Commission to engage with NI stakeholders on the Commission Work Programme for the following year; to publish new and upcoming EU initiatives of relevance to Northern Ireland on the dedicated *EUR-Lex* Protocol [webpage](#); to provide specific information sessions and/or workshops for Northern Ireland stakeholders on new EU initiatives if requested; as well as to provide dedicated NI impact assessments and/or details of NI public consultations on new EU policies that are in scope of the Protocol.

Alongside commitments to greater direct NI-EU engagement, the UK and EU have [agreed](#), via the Windsor Framework, to bolster the existing oversight architecture such that there will be ‘regular engagement’ with Northern Ireland stakeholders ‘including citizens and businesses’ at each level of the Withdrawal Agreement structures (i.e., at the Joint Committee, the Specialised Committee, and the Joint Consultative Working Group (JCWG)). New structured sub-groups are also to be established to support the work of the JCWG; these are likely to be orientated around different sectors/policy areas impacted by the Protocol.

Importantly, all these new ‘in principle’ commitments to facilitate greater engagement with Northern Ireland stakeholders regarding the Protocol/Framework are yet to be operationalised. Their utility from the perspective of environmental policy development and/or managing the environmental impacts of Northern Ireland’s unique post-Brexit arrangement depends a lot on the manner in which the new systems and structures are set up. Nonetheless, it is the case that some of the new mechanisms – for example the JCWG structured sub-groups or the regular/ad hoc briefings on relevant areas of EU policy – could provide a means for NI environmental stakeholders to input to the implementation of the Protocol/Framework going forward.

2.3.5 Protocol and the Application of EU Law in the UK post-Brexit

EU laws that continue to apply to NI under the Protocol bind NI as if it were still part of the EU. This arises from Article 4 of the UK-EU Withdrawal Agreement which requires that those EU laws that it makes applicable have “the same legal effects” in the UK “as those which they produce within the [European] Union”. The UK law provision that gives the Withdrawal Agreement domestic legal force is set out in section 7A of the EU (Withdrawal) Act 2018 which provides that “all such rights, powers, liabilities, obligations and restrictions” arising under the Withdrawal Agreement have legal effect in the UK without further enactment. Taken together, the UK law provision for the implementation of the Withdrawal Agreement (including the Protocol) must be read in light of the Article 4 requirement for applicable EU laws to have direct effect. Because of the unique provisions of the Protocol, the continued direct effect of EU laws in the scope of the Withdrawal Agreement is more significant for Northern Ireland than it is for any other part of the UK.

Through the Protocol, two types of mechanism for enforcement and the settlement of disputes apply to and in post-Brexit Northern Ireland. Firstly, the jurisdiction of the Court of Justice of the European Union (CJEU) continues for matters relating to the implementation of Articles 5 and Articles 7 to 10 of the Protocol; additionally, any CJEU case law that is relevant to those EU law acts made applicable by the Protocol continues to apply to the UK in respect of Northern Ireland. Secondly, the dispute resolution mechanism agreed between the UK and EU and established for the purpose of implementing the Withdrawal Agreement in its entirety also applies. As with many of the post-Brexit provisions for governance in Northern Ireland, this dual system for enforcement is unique and, as yet, largely untested. It relies on a bespoke combination of: on the one hand, the existing EU supranational court structure for enforcement

of the EU legal order, in conjunction with national UK courts (albeit now in the changed circumstances of ‘third country’ UK), and enabling some measure of access to individuals; and on the other, the much more traditional international public law method of arbitration that is novel and specific to the relevant UK-EU treaty and available only to the parties of that treaty, namely the UK Government and the EU institutions.

Regarding the maintenance and development of cross-border cooperation, an important set of specific provisions exist under the EU (Withdrawal) Act 2018 for the “protection” (s10) of North-South cooperation going forward. Section 10 requires, first, that any powers granted under the 2018 Act (including for the implementation of the Protocol) are exercised in such a way “that is compatible with the terms of the Northern Ireland Act 1998” (s10(1)(a)); the NIA 1998 gives the provisions of the 1998 Agreement domestic legal effect. Additionally, section 10 requires that the exercise of powers granted to UK Ministers under the 2018 Act (s8) to make changes to retained EU law (EU law that no longer binds the UK as it is no longer a Member State, but which was transposed into domestic law on exit day) must not “diminish any form of North-South cooperation provided for by the [1998] Belfast Agreement” (s10(2)(a)). Finally, section 10 also restricts the UK government and UK Ministers from agreeing to any measure at a meeting of the UK-EU Joint Committee, set up to oversee the implementation of the Withdrawal Agreement and Protocol (under WA Article 164), which would “alter the arrangements for North-South cooperation” provided for in the 1998 Agreement, alter the functions of an existing N-S implementation body, or establish a new N-S implementation body (s10(3)). Collectively, these section 10 provisions reflect the concern on the part of UK Parliament about the possible impact of UK withdrawal from the EU on the maintenance and development of N-S cooperation, however, the legal weight of the ‘protection’ provided is limited.

With the inauguration of the ‘Windsor Framework’ amendments to the Protocol, the domestic law commitment under the EU (Withdrawal) Act 2018 to ensure established N-S cooperation is ‘not diminished’ has, in effect, been weakened, or potentially weakened, due to the introduction of a new mechanism by which the Northern Ireland Assembly could opt not to align with EU law in certain areas. This process and its significance are set out in detail in 2.7 below.

2.4 Trade and Cooperation Agreement

The EU-UK Trade and Cooperation Agreement operates alongside the NI Protocol and does include some content on environmental protection but does not require either the UK as a whole or Northern Ireland to comply with or maintain any specific individual laws. It includes valuable, but limited provisions (Dobbs and Gravey, 2022; and Petetin and Dobbs, 2022, p.199-205). For instance, Part 2, Title I and Title XI include provisions on cooperation on animal welfare, antimicrobial resistance and sustainable food systems, and targets of net-zero by 2050. Further, the level playing field provisions in Title XI include elements regarding environmental protection, through non-regression and a form of dynamic alignment. As per Dobbs and Gravey (2022), Article 7.2 on non-regression provides that ‘neither the EU nor the UK may lower standards overall in a manner that impacts on trade and investment and must generally ‘strive to increase’ their respective levels of protection’, while Article 9.4 on dynamic alignment ‘provides that where

substantial divergence exists (including due to increases in protection) and impacts on trade, the party impacted may take ‘rebalancing measures’ including unilaterally imposing tariffs’. However, the provisions are focussed on trade and investment (there must be an impact on trade or investment, rather than being applicable more generally), are focussed on the UK and the EU as a whole, rather than NI or Ireland, and are also very challenging to enforce (Gravey, 2021). Thus, the Agreement overall acts as a partial limiter on divergence and a decline of standards, and may indeed drive-up standards in principle, but whether it can be used regarding individual laws is questionable.

2.5 Domestic responses to Brexit Challenges

2.5.1 EU Withdrawal Act 2018

This Act provided for a ‘patch job’, helping to avoid substantial gaps, conflicts, or incoherencies in law across the UK – including environmental and other devolved matters, despite no legislative consent from Scotland. It provided for a continued legal basis for EU-derived law (leading to the concept of ‘retained’ EU law), Henry VIII clauses to facilitate revisions to resolve inconsistencies or address inefficiencies, and the creation of legislation providing for nine environmental principles (including Aarhus principles/rights and ‘core’ environmental principles found in the TFEU).⁸ The last was repealed in 2020, as deemed unnecessary,⁹ but it nonetheless influenced the creation of the 2021 Environment Act.

Of note, while the EU Withdrawal Act was largely about ensuring the coherency of the legal regime and providing time to reflect on what law might merit being amended, it did also lead to substantive amendments to adjust for being outside of the EU – with minimal parliamentary scrutiny or role for devolved nations. For example, references to other EU Member States or institutions had to be removed or amended. One such example of this arose in the context of nature conservation, where NI nature regulations were amended to allow the NIEA to determine whether there was an imperative reason of overriding public interest that might justify activities that would have significant effects on nature conservation sites – entailing potential conflicts of interests and leading to serious concerns about the implication of introducing rafts of legislation subject to little or no scrutiny.¹⁰

2.5.2 The Environment Act 2021

⁸ This was via Section 16 of the EU Withdrawal Act 2018.

⁹ The Withdrawal Agreement Act 2020 repealed Section 16 of the EU Withdrawal Act 2018. The draft EU/UK Withdrawal Agreement had originally required that the UK provide for these principles, but the eventual Withdrawal Agreement included no such obligation, making Section 16 unnecessary from the perspective of international law.

¹⁰ <https://www.brexitenvironment.co.uk/2019/03/12/scrutiny-free-environmental-law-northern-ireland/>.

Following considerable debates and delays, the [Environment Act](#) was promulgated in 2021.¹¹ It covered some elements for the whole of the UK but was mainly directed at England. Part 2 and Schedules 2 and 3 are the main provisions that are directly relevant to Northern Ireland – and all of which were extended by consent to Northern Ireland. Section 48 in conjunction with Schedule 2 provides for environmental improvement plans and policy statements on environmental principles. Section 49 in conjunction with Schedule 3 provides for the OEP to apply in and to Northern Ireland, as well as outlining its functions.

(i) The Office of Environmental Protection (OEP)

The OEP is intended to replace in part the role of the European Commission – with scrutiny, advice, and enforcement functions. It is primarily a watchdog, monitoring the role of public bodies. It is important to note that the NIEA and OEP co-exist and are complementary – the former is the day-to-day regulator and enforcer vis-à-vis ordinary individuals and companies, whereas the latter plays those roles vis-à-vis public authorities. The Act provides for the OEP to report on environmental improvement plans, and monitoring and reporting of environmental law. It also provides for complaints by individuals to the OEP but includes an unnecessary restriction through excluding individuals who exercise ‘functions of a public nature’. The Act provides for a range of enforcement mechanisms, but these are quite limited. Investigations are permitted (but, significantly, not required) where the OEP considers that there may be a ‘serious failure’ of compliance. Information and decision notices are possible, as softer tools. At the supposed harder end for Northern Ireland, the OEP has the option of review applications and judicial review. Judicial review is only an option where there is a serious failure to comply with environmental law and judicial review is necessary to prevent or mitigate ‘serious damage’ to the environment and/or human health. However, while judicial review is important, it has major weaknesses including the limited nature of substantive judicial review (Brennan et al, 2019).

(ii) Policy statement on environmental principles

This is responding to the loss of applicability of the EU environmental objectives and principles found in the Treaty on the Functioning of the EU. Schedule 2, Part 2 imposes an obligation on DAERA to create a policy statement on environmental principles. The Act outlines 5 principles (integration, prevention, precaution, rectification at source and polluter pays) that are expanded upon in the policy statement. Further the statement (and therefore the principles) must ‘contribute to’ the objectives of ‘improvement of environmental protection and sustainable development.’ Whilst useful to have an over-arching objective, it would be valuable to have included a high level of environmental protection as the goal in conjunction with improvement (as improvement by itself could still be from and at a low level). Of note also, the principles are narrower than the EU versions of the same principles (e.g., without reference to human health) and fail to address new (or NI specific) challenges, such as the need for an environmental improvement principle or crucially in the NI context the need for cross-border principles. They

¹¹ See C. Burns, V. Gravey and M. Dobbs (2020) *Written evidence to Northern Ireland Assembly’s Agriculture, Environmental and Rural Affairs Committee on the Environment Bill*. February 2020

also did not include the Aarhus Convention environmental democracy principles originally included in s.16 of the Withdrawal Act 2018.

Ministers of the Crown and NI Departments must then have 'due regard to' this statement 'when making policy'. Although an improvement on earlier drafts, the wording may allow the principles to be effectively bypassed and represents a backward step from EU law in which the principles are binding. It is worth noting that the UK Government specifically decided not to include a binding obligation for instance that all 'public authorities act in accordance with the policy statement...'. Further, the policy statement does not comprise legislation, it can be amended by the Minister at any time, and it is only targeted at Ministers rather than public authorities in general. This compares poorly with the environmental principles in EU law located in the Treaty and applicable wherever relevant - including in the interpretation of all EU and EU-derived legislation. The legislation and proposed policy statement have drawn considerable criticism. Consideration should be given to the criticisms of the English policy statement, including by the OEP.

However, one key advantage is that this policy statement applies generally and not just to EU-derived law. Furthermore, the option is there for DAERA and the Minister to strengthen the role of the principles in developing the statement. For instance, they could interpret the objective of environmental policy integration so that there became an obligation to incorporate reference to the environmental objectives and principles in all relevant legislation, leading to knock-on effects on other public and private actors.

(iii) Environmental improvement plans

Schedule 2, Part 1 imposes an obligation on DAERA to create an environmental improvement plan. However, the wording is regrettably ambiguous. Northern Ireland needs to improve, but it needs to be ambitious in its environmental aims and not restrict itself to slight and vague improvements. Unlike for England, no specific targets are provided in the provisions on NI, and nor are any timelines specified. The Department must review and report on EIPs. In doing so, it is left to the Department to decide what data is appropriate for monitoring; coordination or communication with other parts of the UK, the Republic of Ireland and/or the European Environment Agency (EEA) would be helpful, as facilitating sharing of information and cooperation, but is not required.

(iv) Powers to amend retained EU law

Section 91 must be mentioned briefly also. This provision grants DAERA powers to amend retained EU law on water quality. It should be noted in considering this that 3 river basins on the island of Ireland are transboundary river basins. The powers relate to fundamental matters that could impact on the standard of protection in NI (positively or negatively), but also lead to considerable regulatory divergence and uncertainty. They include amending: objectives; classification of waterbodies; the substances monitored/measured; and mechanisms for monitoring/how substances are monitored. While these are not surprising powers, such changes to water quality legislation where there is currently commonality could make transboundary cooperation far more challenging. It is worth highlighting here that this is also simultaneously an area where N-S cooperation pre-exists under both EU law and the GF/BA, but is not covered by

the Protocol (i.e., not within category 1 where the law continues to apply). It is consequently an area of pressing concern when contemplating impacts of Brexit, regulatory divergence, and increased challenges for cooperation.

2.5.3 Common frameworks

The Joint Ministerial Committee (all devolved governments in the UK) met in 2017 and [considered](#) just over 150 powers returning from the EU under Brexit, where these related to devolved matters, and the creation of UK-wide common frameworks. Since then, there have been several [revisions](#) and increasing progress in their development (Petetin and Dobbs, 2022, pp.66-70 and 241-244).

Overall, despite being a means of centralising subject matter and concerns over power grabs, the common frameworks process is largely collaborative and respectful of devolution – indeed, now it may form a key mechanism to support devolved powers and policy, due to subsequent changes introduced by the Internal Market Act 2020 (below). The JMC set out principles for determining when common frameworks might be required and their nature (e.g. legislative or policy only), before applying these to the powers that they had identified. The result was a surprisingly¹² low number of proposed common frameworks that reflected a prioritisation of areas related to the internal market and trade over areas such as the environment, and a seeming disinclination to form common frameworks – something further emphasised in the later revisions, with increasing reductions in the areas deemed to require legislative frameworks.

Common frameworks have the potential to limit regulatory divergence within the UK, avoid regulatory races to the bottom and facilitate shared improved standards and approaches – if done well. While some progress has been made in the (too few) identified frameworks, in 2021 the House of Lords scrutiny committee noted a lack of transparency and limited engagement with stakeholders and parliamentary scrutiny (House of Lords, Common Frameworks Scrutiny Committee, 2021). This is of relevance for NI clearly, but also for Ireland, as common frameworks are likely to affect alignment/divergence across the island also. By way of demonstration, 19 of the 29 policy areas identified as requiring common frameworks without primary legislation ('category two' areas) overlap with an area of North-South cooperation identified in the 2017 Mapping Exercise (see section 2.3.3). These overlaps are important because the relevant common frameworks do cover some areas of cross-border environmental cooperation; for example: air quality, waste management, chemicals and pesticides, plant health, food and feed safety etc.

It is worth underlining that, although these common frameworks are focussed on the UK internally, there is the possibility that by enabling managed divergence within the UK, their implementation enables cross-border cooperation to continue either on an island or two-island basis. However, to that end, in developing common frameworks careful consideration needs to be given to the

¹² In light of the JMC's principles, of the starting point being that there are shared frameworks via the EU and that such frameworks were deemed necessary on the basis of subsidiarity. Some in particular are notably absent, e.g. on water quality, when they relate to common resources and transboundary effects.

implications for environmental governance on the island as a whole – not to mind that compliance with the Protocol and the GF/BA must be assured.

2.5.4 Northern Irish strategies and policies

Northern Ireland was slower than much of the UK to respond to Brexit challenges, largely due to the lack of a functioning Assembly or Executive from 2017-2020 – something which once again appears to be the case. It was relying on civil servants, who were overworked and who lacked political or legal capacity to develop national policy or negotiate on behalf of Northern Ireland (Brennan et al, 2019). The civil servants worked with stakeholders to develop a public discussion document, which eventually was consulted on.

During Stormont’s reconstitution (restored in Jan 2020 and collapsed again in Feb 2022, see 2.7), a raft of policies and strategies were developed and underwent numerous consultations; these include ones on ‘Green Growth’, Rural Policy, the Environment, Energy, Agriculture and Peatland,¹³ some of which would have been developed anyway, but some of which are filling key needs due to gaps caused by Brexit. Once again, these documents may impact positively or negatively on NI environmental governance and also lead to increased regulatory divergence on the island.

2.5.5 Internal Market Act 2020

As per Dobbs, Gravey and Petetin (2022):

‘[t]he UK Internal Market 2020 contains ‘market access’ principles of mutual recognition (Section 2) and non-discrimination (Section 5) that apply across Great Britain (and to some extent to Northern Ireland). Looking just at mutual recognition for the moment, the Act provides that any product produced or *imported* into one part of Great Britain and permitted to be used or sold there would be permitted to be used or sold anywhere across Great Britain – without being bound by new ‘relevant requirements’ (introduced since the Act came into force), such as production methods, environmental standards, identification or tracing procedures and food characteristics (Section 3). New requirements likely also include substantial amendments to existing requirements.

Consequently, in seeking to maintain an open internal UK market, this principle impacts significantly on the effectiveness of any devolved nation’s policies, including environmental – new requirements can be introduced, but would be undermined if mutual recognition restricts their application to only goods produced in that nation. To use a

¹³ E.g. see the Figure from the 2021/2022 consultation on the Environment Strategy, available [here](#).

recurring example, if England were to permit the sale of chlorine-washed chicken, then other parts of GB could not introduce rules to prevent the import and sale of this chicken.

There are very few limitations to this principle of mutual recognition (much narrower than under EU law). There are some exclusions under Section 10 & Schedule 1, e.g., to prevent the spread of pests' diseases that pose threats to human, animal or plant health. This is a narrow list and can only be amended by the Secretary of State...'

'Crucially, Section 10(2) provides for the Secretary of State to regulate to amend Schedule 1 (exclusions from application of the market access principles), including now under Section 10(3) 'to give effect to an agreement that (a) forms part of a common framework agreement, and (b) provides that certain cases, matters, requirements or provision should be expressly excluded from the application of market access principles'. This provides some limited opportunity to help bolster devolved policy and legitimate objectives....'

'Common Frameworks at the inception of the programme in 2017 may have been perceived as potentially curtailing devolved policy-making. The adoption of the Internal Market Act changes this - they are now a potential instrument to protect devolution. They offer the possibility to (a) either formally limit the scope of the Market Access Principles if the Secretary of State agrees to do so (this needs to be tested to see if it likely to occur and in which circumstances) or (b) informally help shape policy development in England/the UK in a desired direction (and thus hopefully enhance standards and reduce the risk of a deregulatory race to the bottom).'

This is clearly more important for Scotland and Wales, but NI will be affected by developments in GB – even if simply due to NI producers competing in GB markets or competing against GB standard goods available for sale on the NI market (via the 'green lane' process, see 2.7), as there would be incentives for instance to reduce standards and save costs if key competitors are doing similarly.

Alongside these responses, there are simply ordinary developments that are occurring in Ireland, NI, and the rest of the UK. For instance, the Climate Change legislation created in both Ireland and Northern Ireland. As highlighted above, not all environmental law or governance mechanisms are due to EU membership and therefore, as well as responses to Brexit, there will continue to be changes to purely domestic environmental law and to environmental law derived from international commitments. Substantively, there are both positive developments (e.g. carrying over EU law for the time-being, the creation of the OEP and provision for the policy statements on principles) and negative developments (e.g. the introduction of the 'market access' principles, with limited exemptions, and the introduction of conflicts of interest in nature conservation), as well as gaps within the common frameworks. Furthermore, they simply highlight the potential for regulatory divergence within the UK and between the UK (including NI) and the EU (including Ireland), as well as slips in standards or governance – all of which can raise challenges for environmental governance and environmental outcomes. Specific areas of concern include nature conservation, water quality and transboundary waste – where EU law facilitated and even

required coordinated approaches and cooperation, but where regulatory divergence, changed relationships and varying governance structures now increase challenges for cooperation and coherency. Neither the Protocol nor the domestic responses adequately address these concerns.

Finally, the combination of approaches to the EU Withdrawal Act (centralisation despite lack of legislative consent), the Internal Market Act (likewise), the Environment Act (only extended to devolved nations that wished it extended) and the common frameworks (issues over which frameworks were deemed necessary or not) also highlight that environmental matters will largely be left to the devolved, unless they impact on reserved matters such as trade. This does raise questions as to whether the UK Government would intervene if there were a substantial decline in environmental governance in one nation or if they would intervene to ensure compliance with international environmental commitments.

2.6 Conclusion

Brexit has been a catalyst for discussing environmental cooperation on the island of Ireland. By 2016, and despite the ambition and scope of EU environmental law and governance, both jurisdictions were seen as lacklustre environmental players. Brexit raised questions about how to limit further degradation, maintain some alignment and even deepen cooperation, pushing for a reassessment of opportunities within and beyond the EU, the GF/BA, other international agreements, as well as more informal contacts from civil society and local government.

This chapter set out the interplay between international agreements – especially the UK-EU Withdrawal Agreement and its NI Protocol – and domestic responses (especially throughout the UK) in creating a new political and legal framework for environmental cooperation. None of these instruments capture the full scope of existing cooperation. This creates challenges for environmental NGOs and civil society as keeping pace and engaging with all these different instruments and institutions is highly labour intensive. On the one hand, there are considerable similarities between the two jurisdictions, with many of the out-workings appearing familiar when looking from one to the other. These similarities are based in a combination of international law (discussed in chapter 3), EU law, the historical political and legal influence of the UK over the island as a whole, and simply the proximity and close relations between the two jurisdictions. Dialogue at the least is facilitated in principle and, on the face of it, this creates the potential for deeper cooperation and engagement. On the other hand, there are divergent structures, power divisions, procedures, and terminology. Every slight variation creates an extra challenge and burden for cross-border or all-island activities, whether by public bodies, NGOs, or broader civil society – even while incentivising cooperating with those who are grounded in the alternative jurisdiction and can share their knowledge and experience. This is not to say that variations are not understandable or justifiable – and they may indeed lead to positive outcomes in both jurisdictions due to contrasting contexts – but they simply make engaging more difficult. However, Brexit, the Protocol (and TCA) and the UK's responses to Brexit pose considerable further challenges for actors, creating:

-
- political tensions (e.g. perspectives on all-island work, receiving funding from the EU or particular Governments),
 - economic pressures (e.g. reduced funding options; impacts on trade), shift the surrounding legal context (e.g. trade deals, Internal Market Act, Westminster bypassing legislative consent),
 - weakened environmental governance mechanisms for large swathes of environmental law (e.g. without the role of the Commission or CJEU),
 - uncertainties and confusion (e.g. regarding the Protocol)
 - some regulatory divergence (e.g. loss of binding EU environmental principles, amendments to adapt for not being an EU Member State and powers for future development) and the potential for substantial regulatory divergence in the future between ROI and NI.

These developments are highly challenging to monitor, understand and evaluate – something that is essential if actors are to engage with environmental governance on a local, cross-border or all-island basis. Furthermore, challenges with engaging in environmental governance may also create new problems cooperating with others if the divergence increases too significantly, e.g., if objectives or language are in outright conflict. It is worth noting here that these challenges will be felt differently by different actors – e.g. an NGO focussed on invasive species (covered by the Protocol still, but impacted nonetheless) or on water quality (not included in the Protocol, but powers provided in the Environment Act; and actors who engage on a local or even local, cross-border issue (who may not see the impacts immediately) or who are seeking to advocate for national or all-island policies (who are all too aware of the increased complexities). For some groups, in particular NGOs seeking to engage on a cross-border/all-island basis (in policy advocacy, design, implementation, monitoring...), the changes simultaneously create new demands on their resources (as protections are threatened), undermine resources (loss of funding opportunities), and increase costs and barriers (through the increasing divergence and uncertainties).

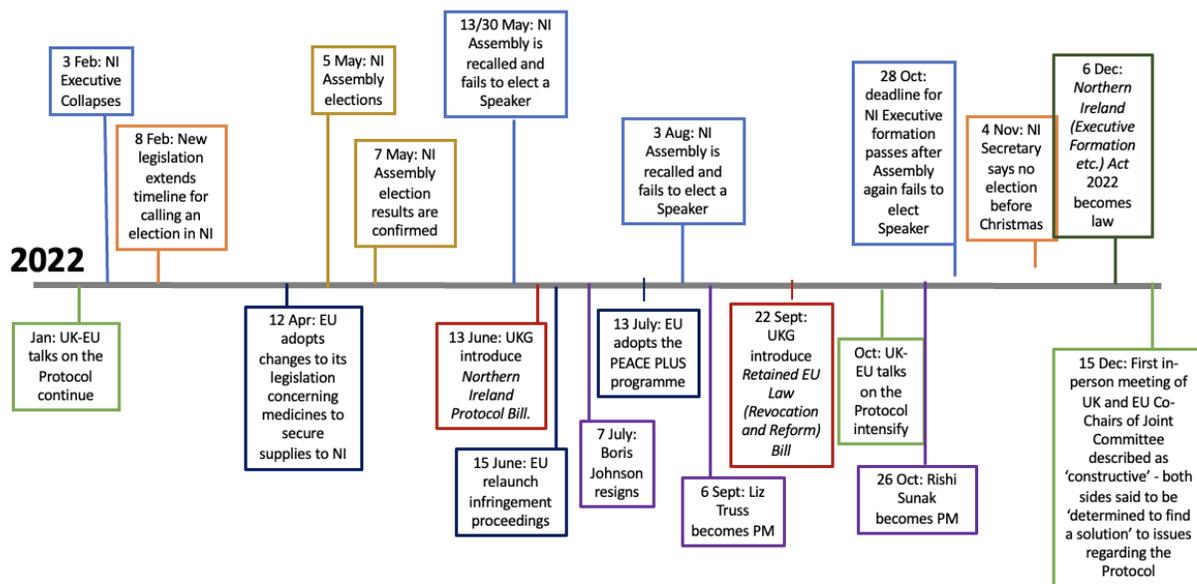
There are however some positive developments. For example, EU funding via PEACE Plus has been retained (see Chapter 3); EU law still applies on a domestic basis (with limited substantive divergence to-date as a result); NI must also still comply with a range of EU environmental law via the Protocol and with scope to extend this further; EU governance mechanisms still apply to that swathe of law and also for Ireland; the Protocol and TCA emphasise upholding the GF/BA and also note the potential to develop cooperation within that forum; the policy statement on principles is to apply to environmental law as a whole (with caveats), not just EU-derived law; and the OEP provides for a welcome domestic body likewise with broader remit (it is too early to assess whether it can replace previous accountability functions or will have powers to make substantive improvements to existing problems). Further, as mentioned, Brexit has placed a spotlight on this island and the need for continued (and improved) cross-border and all-island cooperation on all fronts – reflected in the Protocol and in the Shared Island Initiative in Ireland. Various opportunities are emerging, and lessons can be learned from the developments that have occurred to date. The role of NGOs and broader civil society is even more important here, as their non-state actor status provides an advantage in being to engage with each other and

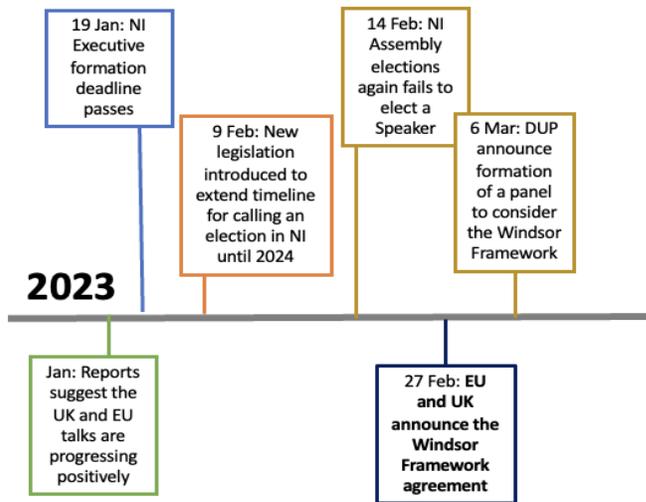
with public authorities without the same political or legal restrictions applying – they may be able to act, where a public body finds itself unable to do so. The same is largely true of academics/academia and they too may find new opportunities and incentives to engage.

2.7 A ‘Windsor Framework’ Addendum and Update from March 2023

2.7.1 Context setting

Since the primary desk-based research for the *Linking the Irish Environment* (LIE) report was concluded in May 2022, several significant developments have occurred of relevance to the Protocol on Ireland / Northern Ireland which relate to the overall impact of Brexit on environmental governance on the island of Ireland and in the two jurisdictions it comprises. To watchers of the Brexit process, and Northern Ireland’s part in it, this fact will be unsurprising. From the outset the implications of Brexit for the island of Ireland – North and South – has been a dynamic and contingent area of research. In view of this fact, and regardless of it, keeping abreast of developments is an essential endeavour for interested parties. To that end, this short update is to be read as an addendum to the more comprehensive material above. Some of the processes mentioned below are still ongoing and/or developments are yet to be legally ratified or practically operationalised; the content that follows ought to therefore be understood as providing an update at a particular point in time – March 2023 – rather than offering static conclusions on the dynamics discussed.





Developments relevant to the Protocol in 2022 and the first quarter of 2023, noted in the timeline, took place across 3 different contexts: in the politics and institutions of Northern Ireland, in UK law and politics more broadly, and in the diplomatic relationship between the EU and UK. What follows is a high-level overview of events in all 3 settings and a description of why they are important for the future of environmental governance on the island of Ireland; the latter sections in particular should be read in light of the analysis in the whole LIE report.

Reflecting its position as the most important and **most** potentially impactful development that took place in the **period covered here**, a final section below looks in more detail at the provisions, and potential consequences of the ‘Windsor Framework’ agreement reached between the UK and the EU in February 2023, on which basis a series of amendments have been made to the Protocol text and arrangements for its implementation.

2.7.2 Northern Ireland: Institutional collapse and stagnation

In protest against the implementation of the Protocol, then Democratic Unionist Party First Minister, Paul Givan, announced his resignation from office on 3 February 2022. Under the power-sharing arrangement in Stormont, this forced then Sinn Féin deputy First Minister Michelle O’Neill to also resign thereby collapsing devolved government in Northern Ireland. Days later, on 8 February, new legislation passed at Westminster which extended the deadline by which an Executive must be formed – from 2 weeks to (up to) 4x 6 week periods – before the Secretary of State for Northern Ireland is obliged to call an election. The legislation also made provision for non-Executive Ministers to remain in post for 24 weeks following an election or 48 weeks following resignation if/when no new Executive is formed.

On 5 May Assembly elections took place. Sinn Féin were returned as the largest party with 27 seats, followed by the DUP with 25 seats and the Alliance Party with 17 seats; the UUP came next with 9 seats, then the SDLP with 8 seats alongside 2 independents, 1 TUV and 1 PBP representative. Continuing their protest against the Protocol, the DUP opted not to form an Executive in the aftermath of the election and, additionally, did not support the election of a new Assembly Speaker. Due to a requirement for cross-community support in electing a Speaker, this meant that the new Assembly could not sit. Numerous attempts to elect an Assembly Speaker and a series of talks between NI political parties seeking the restoration of an Executive came to no avail. On 28 October the legislative deadline for forming a new devolved

government in NI passed with no sign of resolution in sight. Despite previously committing to calling an election, the NI Secretary initially prevaricated then confirmed that there would not be an election before the end of 2022. Instead, the UK government passed new legislation – the [Northern Ireland \(Executive Formation etc\) Act 2022](#) – to further extend the deadline for Executive formation and to grant exceptional powers to officials in NI to carry out ‘the exercise of functions’ of government in the absence of Ministers.

Following another [extension](#), the deadline for Executive formation moved to 19 January 2023. This date also came and passed without restoration of the institutions. With the DUP maintaining its opposition over the implementation of the Protocol, and as UK-EU talks on the issue continued, the NI Secretary introduced yet more legislation to again extend the deadline for calling an election. The [Northern Ireland \(Executive Formation and Organ and Tissue Donation\) Act 2023](#) became law on 28 February and introduced a revised deadline of 18 January 2024 for Executive formation. Additionally, addressing an issue about which there was considerable public pressure to take action, the 2023 NI (EFOTD) Act also made provision for the introduction of ‘deemed consent’ as regards organ donation in Northern Ireland.

Why does it matter?

- **Future of NI Institutions in Doubt:** this latest collapse of devolved government and inability (so far) to restore the institutions in Northern Ireland has cast doubt over their sustainability in the -medium and long-term. Additionally, increasing support for the ‘Non-Aligned’ Alliance Party alongside raises questions about the legitimacy of power-sharing premised on a binary system of designation of (only) ‘Nationalist’ and ‘Unionist’. In this context, the UK government’s apparent preference to pass legislation to delay decisions and give exceptional powers to civil servants diminishes the opportunity for policy development and/or scrutiny of it.
- **Pressing Environmental Policy Issues Unaddressed:** as a consequence of prolonged institutional collapse and political stagnation, urgent issues concerning environmental degradation and/or decline are going unaddressed in Northern Ireland and opportunities for innovation and recovery are being missed – this unfortunate circumstance has implications for Ireland too given the geographic realities of a shared island consistently underlined in the LIE report.

2.7.3 United Kingdom: Legislative initiatives and controversies

Alongside new legislation concerning the operation of the Northern Ireland devolved institutions, the UK government recently introduced two important (and controversial) Bills that relate, respectively, to the Protocol and to the continuation, or otherwise, of retained EU law.

(1) [Northern Ireland Protocol Bill](#) (NIP Bill) – under this Bill sections of the Protocol concerning, primarily, trade in goods and the EU enforcement mechanisms, would be disapplied or ‘excluded’ from domestic law and Ministers of the Crown would be granted sweeping powers to

make regulations in those areas of policy currently covered by the Protocol and the EU laws it makes applicable to and in Northern Ireland.

(2) [Retained EU Law \(Revocation and Reform\) Bill](#) (REUL Bill) – this Bill proposes to introduce a ‘sunset clause’ whereby the majority of what is, at present, retained EU law would, by default, cease to have legal effect in the UK at the end of 2023. Under the Bill, Ministers of the Crown, Devolved Ministers, and/or NI Departments would also be granted powers to revoke, restate, replace or update retained (or assimilated) EU law via statutory instrument if desired – this could, in effect, be used to exempt specific retained EU laws from the default sunset clause.

As part of the Windsor Framework agreement one these – the NIP Bill – was withdrawn by the UK government. For those seeking legal certainty and policy coherence, the withdrawal of the NIP Bill is to be greatly welcomed. That said, set out below (see 2.7.5), measures to be introduced under the Framework also raise complexities for Northern Ireland and potential difficulties as regards environmental standards.

The possible ratification of the REUL Bill still raises important questions and likely challenges.

Why does it matter?

Should the REUL Bill (as introduced) become part of the UK statute book, its impact on the post-Brexit policy and legislative landscape in Northern Ireland as well as that which underpins N/S cooperation – including in respect to the environment – could be very significant.

- **Complexity and Contingency:** the REUL Bill proposes to give sweeping powers to UK (central government) Ministers to make law via secondary legislation which, typically, allows for only very limited scrutiny and does not involve stakeholder consultation. From the perspective of environmental governance of the island of Ireland this fact holds particular weight because the (actual or potential) implications for North-South environmental cooperation tend not to be given much consideration when decisions are made in Westminster. Reading the REUL Bill in light of the Protocol/Framework, it is clear that the unique arrangements on the island of Ireland have not been considered in detail during drafting; this raises the prospect of additional legislative complexity, confusion, and, very likely, unforeseen consequences in the NI context if/when the Bill becomes an Act.
- **Loss of Lingering Equivalence:** at present the continuation of North-South environmental cooperation on the island of Ireland relies to a notable extent on the lingering legislative equivalence achieved by Protocol-applicable EU law alongside retained EU law in Northern Ireland and the continued application of EU law in Ireland. If/when the REUL Bill, as currently drafted, becomes law in the UK, this scenario would be very likely to change, albeit with the *possibility* of widescale ‘restatement’ of relevant REUL in NI on the part of Ministers. Regardless, the prospect of the REUL Bill ratification puts existing and future North-South environmental cooperation in jeopardy.

2.7.4 EU-UK Relationships: Talks, Tensions, Optimism and a Framework

Talks between the UK and the EU over the implementation of the Protocol continued, intermittently, throughout most of 2022. Although the two sides differed somewhat on priorities, broadly, discussions concerned the potential for easements of certain customs/SPS checks otherwise required under the Protocol, to ensure the continuation of medicines supplies into Northern Ireland, a series of specific issues or areas (e.g. on movement of parcels, pets, potatoes, TRQs), as well as arrangements for oversight and governance of the Protocol, including in respect to the involvement of NI stakeholders and representatives.

Progress, where evident, was slow and, more often than not, UK and EU positions on the issues appeared to be irrevocably far apart. After the new(est) UK Prime Minister Rishi Sunak took office in October 2022, however, the ‘mood music’ surrounding UK-EU Protocol talks started to improve.

Although it remained unlikely that a deal addressing *all* the concerns of both parties could be reached, it was generally anticipated coming into 2023 that some sort of compromise between the UK and the EU positions on matters related to the implementation of the Protocol was forthcoming. The announcement on 10 January that an agreement on access to data had been reached added to the (novel) sense of optimism surrounding Protocol talks. A few weeks later, on 27 February, the UK Prime Minister and European Commission President at a joint press conference presented the ‘Windsor Framework’ agreement – a repackaged version of the Protocol incorporating some new provisions and several important amendments to the terms and context for its implementation. Spread across a series of legal and political documents, the provisions of the Framework are detailed, complex and, largely, are yet to take effect.

For Northern Ireland one of the most immediate and arguably important impacts of this most recent UK-EU deal is the very fact that it was agreed. While its post-Brexit position as the touching point between the internal markets and regulatory orders of the UK and EU is not, necessarily, a comfortable one – the potential for Northern Ireland to benefit from it increases substantially when relations between the two parties are cordial and the specifics of the NI arrangements are agreed.

Broadly, changes introduced by the Framework fall into two categories: those that relate to goods and those that relate to governance.

In respect to goods, the Framework introduces ‘green lane’ easements to enable GB-NI movement of goods destined for sale or use in Northern Ireland to do so much more freely than was the case under the previous Protocol. Subject to conditions, authorised traders moving agri-food products, retail goods, animal food/feed, and certain construction products, across the Irish Sea for consumption *in Northern Ireland*, can do so under much more lenient conditions. Additionally, these products being moved by authorised traders will *not* need to comply with EU rules (in the case of agri-food products, certain plants/seeds, and construction products) or with as many EU rules (in the case of retail goods more generally) as was previously the case. By contrast, any traders moving goods GB-NI which are not for use and sale in NI or may not be for use and sale in NI, must comply with a ‘red lane’ process at NI ports and airports whereby full

EU checks and controls will apply. Operation of this new ‘green lane – red lane’ system relies on comprehensive data sharing for participating traders alongside labelling of goods as being ‘not for EU’ where they enter through the green lane process.

Other provisions in the Framework address specific issues and/or sectors that were due to be negatively impacted by the full implementation of the Protocol in its previous form. Notable areas covered include: parcels, which will now be able to move freely GB-NI subject again to data sharing and monitoring; and medicines for human use which will now be able to be placed on the NI market on the basis of UK authorisation.

In respect to governance, the Framework introduces a series of new mechanisms and processes designed to enable greater Northern Ireland representation on bodies set up to oversee the implementation of the Protocol/Framework. Aspects of these new provisions which provide for direct EU-NI engagement and in the context of UK-EU bodies have already been set out (see 2.3.4). In addition to these the Framework includes a so-called ‘Stormont Brake’ procedure which is designed to address the apparent ‘democratic deficit’ created by the continued application of EU law in NI after Brexit.

The Stormont Brake comes in two forms. The first dimension of the Stormont Brake relates to ‘amendments and updates’ to EU laws regarding the regulation of goods that apply in Northern Ireland in accordance with Article 5 and Annex 2 of the Protocol/Framework. Under the new arrangements, 30 MLAs from at least 2 parties in the NI Assembly can, subject to conditions, ‘notify’ the UK government of their concern regarding an update or amendment to most of those EU laws that are in scope of Article 5 and Annex 2, and which would apply in Northern Ireland. *If* the UK government accept that this ‘notification’ by MLAs complies with requirements set out in the Framework, and a related UK unilateral declaration, whereby notifying MLAs demonstrate that the given change would have a ‘significant effect’ on ‘all communities in NI’ that is ‘liable to persist’, and that the ‘notification’ is being used as a ‘last resort’ after ‘substantive engagement’ with stakeholders and ‘reasonable use’ has been made of EU-NI engagement processes, then (and only then) can the UK government initiate a ‘Brake’ on the specific change coming into effect via notification of the EU in the Joint Committee. Any notification on the part of MLAs must be made within two months of the relevant change or update being published in the EU *Official Journal* – this does not leave much time for deliberation. In the event that this aspect of the Brake is successfully ‘pulled’ NI would likely be in a position of dual divergence with both GB (due to the application of the previous non-updated version of EU law continuing to apply in NI where it does not in GB) and IRE (due to the relevant update or revision of the EU law not applying in NI where it does in IRE) in the specific affected area.

The second dimension of the Stormont Brake relates to new EU acts being added to the Protocol/Framework that are in scope of its objectives (regarding the avoidance of a hard border, maintenance of conditions for N/S cooperation and protection of the 1998 Agreement). Under Article 13(4) of the Protocol/Framework, new EU acts can only be added if the UK and EU agree to doing so in the Joint Committee; in the language of the UK government this provides the UK with a ‘veto’ on any expansion of the scope of the NI alignment with EU law. While no change has been made to the legal Protocol text, as a result of the Framework, a new

restriction now exists in domestic law on the UK government's ability to agree any EU law additions. According to the (still draft) [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#) if the NI institutions are up and running, before any new EU acts are added, an 'applicability motion' vote could be held in the NI Assembly regarding the proposed addition; to pass, the applicability motion would need to achieve cross-community consent. *If* an 'applicability motion' did not pass (with cross-community consent) then the UK government could not agree to adding the relevant new EU act *unless* 'exceptional circumstances' applied. Said circumstances could include the absence of functioning NI institutions or the determination that the given addition would not introduce additional regulatory barriers on the GB-NI axis; no such equivalent consideration is necessary as regards N/S regulatory barriers under these provisions.

Why does it matter?

- **Practical and Legislative Implications:** the new Framework arrangements, in effect, introduce dual regulation in Northern Ireland in those areas and products that are in the scope of the new 'green lane' processes. Goods entering via the 'green lane' easements (including agri-food, retail, medicines) need not conform to EU (and UKNI) standards but can instead conform to UKGB standards, subject to their staying in Northern Ireland. This introduces the risk of undercutting NI traders who will still need to comply with (presumably higher) EU standards. Introduction of the possibility of NI politicians opting not to follow future updates or new EU rules – via the Stormont Brake procedures – sets up the prospect of NI being in a position of dual divergence with its two largest external markets – Great Britain and Ireland. While this is only a hypothetical scenario and the thresholds for initiating the 'Brake' procedures are high, nonetheless the new Framework does still create such a risk.
- **Political and Institutional Implications:** more than the direct legal/practical impacts of the Protocol political reactions to those impacts have, to date, had more immediate implications in Northern Ireland in terms of its governing institutions and development of policy. This being so, the reception of the Windsor Framework by political parties in Northern Ireland in general and the DUP in particular will be a crucial determinant of the overall impact of its unique post-Brexit arrangements, at least in the short- to medium-term. While the DUP have yet to take a conclusive position on the Framework, their Westminster representatives voted against legislation to implement a specific aspect of it, viewed as symbolic of the agreement as a whole. Whatever conclusion arises from the ongoing deliberations of the DUP on the Framework will correlate directly with the possibility of a return to devolved government before the now January 2024 deadline, and perhaps even regarding the future of the NI institutions.

2.7.5 Conclusion

Post-Brexit Northern Ireland faces the dual challenge of legal complexity and political stagnation. This (unfortunate) reality is likely to be the backdrop for the essential and important

actions taken to combat climate change and to improve environmental governance on the island of Ireland, including in accordance with recommendations arising from the *Linking the Irish Environment* report. Events and decisions in any of the 3 settings (briefly) outlined in this addendum have the potential to shape what is, or is not, possible in respect to the environment we all share and how it is governed.

3. International agreements & shared environmental governance arrangements

3.1 Introduction

Cross border environmental co-operation on the island has primarily flowed from membership of the EU, and as discussed in Chapter 2, this context has now been (to at least some extent) removed. While the Protocol and the TCA have created some minimum commitments to retain EU law, there are many aspects of EU environmental law not retained, such as the Habitats Directive. However, there was also heavy reliance on the EU for implementation of international law obligations in Irish and UK law, such as the Aarhus and Espoo Conventions. With the EU law framework peeled back, to ascertain the legal context of co-operation it is necessary to have regard to the international law frameworks which still unite the two jurisdictions on the Island. This chapter will highlight the main elements of significant international law agreements that scaffold cross border co-operation on the island of Ireland. It is not possible to comprehensively address all aspects of international law that potentially impact cross-border co-operation on the island, and therefore the following analysis consists of the highlights of the most significant agreements, namely the Good Friday/Belfast Agreement, the Aarhus Convention, the Espoo Convention, the Long-Range Transboundary Air Pollution Convention 1979 and the European Convention on Human Rights. While these frameworks focus on cross-border issues, they thereby clearly facilitate and/or address all-island cooperation and engagement as a result.

3.2 The Good Friday/Belfast Agreement

3.2.1 *The Agreement in context*

The agreement known as the Good Friday/Belfast Agreement¹⁴ (hereinafter the GF/BA or “the Agreement”), signed in Belfast in 1998, has no official name (O’Leary, 1999). It was an extraordinarily successful peace agreement (Hancock, Weiss, & Duerr, 2010; Dixon, 2005; Harris, 2001) that primarily functioned to maintain a delicate political equilibrium through an intricate power-sharing arrangement within NI known as “consociationalism” (O’Leary, 1999), set out in Strand 1, which guaranteed almost equal influence to the two main sides in the conflict. This is the aspect for which it is best known. However, it also created a framework for cross-border co-operation across all sectors N/S and E/W. In doing so, the NS Strand attempted to capture the main areas of life on the island, such as agriculture, tourism, environment, and social security. The joint membership of UK and Ireland of the EEC/EU created the conditions that allowed the peace process to flourish and the Agreement to come into being (Harris, 2001).

¹⁴ The term Good Friday/Belfast Agreement refers to both the Multi-Party agreement signed in Belfast on the 10th April 1998 and the Political Declaration known as the British-Irish Agreement, which taken together and annexed to each other are variously referred to by that name or by the name “The Belfast Agreement”, available [here](#).

The co-operation aspect of the Agreement was to some extent also obviated by EU membership for both jurisdictions (Hough, 2019a), emphasising as it did transnational co-operation (Hayward, 2018). EU membership thus both created the conditions necessary for co-operation (Phinnemore & Hayward, 2017) (e.g. shared regulatory framework and enforcement of same) and generated/encouraged such co-operation (e.g. through regulatory arrangements and funding designed to generate cross-border co-operation). This eliminated many pre-existing barriers to North-South co-operation and opened up the way for shared island approaches in the areas covered by the GF/BA without need for actions to be taken in all the areas nominated by the agreement. EU membership also reoriented UK-Irish relations within a larger sphere, removing some of the political tension from them (Harris, 2001) (Phinnemore & Hayward, 2017).

Because the cross-border co-operation mandated by the GF/BA was already in part occurring due to EU membership, full exploration of the potential of the Agreement was rendered unnecessary (Hough, 2019). Brexit to a certain extent, exposed the underlying lack of development of the GF/BA. Brexit has appeared to threaten the GF/BA (Amanpour & Martin, 2019), but it also turns a focus on the untapped potential the Agreement still contains (Hough, 2019). It is also important to note that the Withdrawal Agreement Protocol on Ireland/Northern Ireland¹⁵ explicitly operates without prejudice to the provisions of the Agreement (Art 1), and commits to preserve its human rights machinery, and all bodies established under it (Art 2). Further, the EU Withdrawal Act 2018 as noted above is similarly not intended to negatively impact upon the GF/BA.

The GF/BA Agreement consists of 3 main Strands. Strand 1 covers the devolved governance structure often described as consociational (O'Leary, 1999). This means that power is divided between different groupings and decisions are made not by majority but by the culmination of parallel majority within each social grouping. Strands 2 & 3 are about external cross-border co-operation between the UK, Ireland and Northern Ireland. Strand 2 describes the North-South co-operative mechanism (the North-South Ministerial Council) and areas and bodies for co-operation. Strand 3 creates an East-West axis of co-operation, establishing a body for UK-Ireland co-operation (British-Irish Intergovernmental Conference) and a body for co-operation between England, Ireland, Northern Ireland, Scotland, Wales, the Channel Islands and the Isle of Man (British-Irish Council).

Although discussions of the Agreement tend to focus on Strands 1, 2 and 3, there are six sections after this that are equally important. These include the human rights arrangements, which are hugely important for the preservation of fundamental rights in post-Brexit Northern Ireland, and possibly incidentally for the UK as a whole. Human rights and environmental rights

¹⁵ The Withdrawal Agreement Official Journal version is available [here](#).

are increasingly merging, meaning this could have far reaching consequences into the future for environmental rights in the UK and Ireland, particularly in the era of climate litigation.¹⁶

3.2.2 Cross-border cooperation arrangements

The twelve areas identified in the GF/BA for cross-border cooperation were: 1. Agriculture - animal and plant health; 2. Education - teacher qualifications and exchanges; 3. Transport - strategic transport planning; 4. Environment - environmental protection, pollution, water quality, and waste management; 5. Waterways - inland waterways; 6. Social Security/Social Welfare - entitlements of cross-border workers and fraud control; 7. Tourism - promotion, marketing, research, and product development; 8. Relevant EU Programmes such as SPPR, INTERREG, Leader II and their successors; 9. Inland Fisheries; 10. Aquaculture and marine matters; 11. Health: accident and emergency services and other related cross-border issues; and 12. Urban and rural development. These are Annexed to Strand 2 which discusses the NSMC but are not exclusive to that body. Also, these areas do not consist of an exhaustive list, but rather as suggested areas of co-operation/joint action. Within these areas, six specific areas were nominated for all-island coordination through the all-island co-ordination bodies established under the agreement: 1. Waterways Ireland; 2. Special European Union Programmes Body (SEUPB); 3. Foyle, Carlingford and Irish Lights Commission; 4. Intertrade Ireland; 5. Language Body; and 6. Food Safety Promotion Board. The remaining areas were to be the subject of co-ordination at policy level through the North South Ministerial Council but separate management in the respective jurisdictions.

It is evident that significant cooperation on the environmental was envisaged, both in the direct nomination of “Environment” as an area of cooperation but also in the obvious environmental remit of Waterways Ireland, the Loughs Agency (an agency within the Foyle, Carlingford and Irish Lights Commission), and SEUPB. Further it is clear that many of the other areas of shared responsibility like transport, tourism, health, urban and rural development, and agriculture are of relevance to the environment or encompass environmental consideration. There is also a cross-over with the work of the British Irish Council (see below).

3.2.3 The North South Ministerial Council (NSMC), Strand 2

The NSMC is tasked with managing the 12 nominated areas of co-operation/joint action and overseeing the six all-island bodies mentioned above. It is not restricted to these areas and these are suggested areas for co-operation, the only stipulation being that it have 12 areas. Importantly it is also given express responsibility for EU matters, and dispute resolution, which could become significant in a post-Brexit world. The NSMC has its own brief in terms of the environment, but the full potential of this body for cross-border co-operation has yet to be

¹⁶ E.g. <http://climatecasechart.com/climate-change-litigation/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>. Note that ‘Climate Case Ireland did not succeed on this front, see this [analysis](#) by Professor Owen McIntyre.

exploited. It is designed as a meeting point of the Ministers in the relevant portfolios from Ireland and Northern Ireland, to co-ordinate action in the twelve areas of cooperation. The [objective](#) of these meetings in the area of environment is to establish common approaches/policies on cross cutting environmental issues such as environmental information, waste and water management, agricultural issues, and maximising drawdown of EU funds.

The requirement for Ministerial attendees at the meetings of the NSMC meant that it suffered from falling into a lacuna during the extended crisis of executive formation in Northern Ireland and ceased to function in a meaningful way from 2017 - 2020. This is visible in the gap in reports on the NSMC website between 2016 and 2020. At the time of writing the latest political crisis in Northern Ireland threatens to recreate this scenario. The last meeting of the Environment Sectoral Group of the NSMC was October 2020, with another planned at that time for early 2021. It is not clear why no further meetings took place of the Environment Sector North South Ministerial Council, considering that the October 2020 meeting took place through hybrid online medium (thereby removing Covid-19 as a consideration) – although the Democratic Unionist Party’s opposition to the NI Protocol led to its boycotting of a number of NSMC meetings during this period and at the time held the Environment and Agriculture Ministerial portfolio. In contrast, health sector meetings (understandably) continued during the pandemic (Dobbs and Keenan, 2022).

A further related issue is that of transparency and lack of information. Very little detail of these meetings is recorded publicly. In the October 2020 meeting, discussion took place of Brexit issues, EU funding maximisation, the review of their work program, waste management, cross-border waste and illegal dumping, water quality, environmental reporting and research in the form of the development of a clean air strategy in both jurisdictions, and efforts by officials to identify cross-border research opportunities. Climate change is mentioned once under reference to collaboration between officials on joint position papers, and the concept of a ‘just transition’ does not get a mention (NSMC, 2020). Discussions also included successful utilisation of Interreg VA funding and of the achievements under grants through the LIFE and Horizon 2020 programmes, including successful delivery of Northern Ireland and Ireland partnership projects, and ongoing collaboration through joint meetings, training and information events (NSMC, 2020). This therefore included numerous meaty, important topics – yet the eventual report was only 3-4 pages long in total and largely in bullet point form. Published information tends to be sparse and retrospective (e.g. reports on previous meetings), despite the relevance of the Aarhus Convention and principles and rights therein (see below). Further, considerably more information could be provided on the proposed development and implementation of the [work programme](#).

NGOs have raised concerns regarding access for civil society to input into the NSMC policy making structure, which at present does not exist – something that is essential for advocacy regarding cross-border or all-island environmental governance, cooperation and engagement. Consultation is part of the express brief of the NSMC but it is not clear with whom the consultation is supposed to take place. The GF/BA provided for this *in part* through the creation of an all-island Civic Forum, established to feed into the NSMC in Strand 2, Article

19. ‘Consideration to be given to the establishment of an independent consultative forum appointed by the two Administrations, representative of civil society, comprising the social partners and other members with expertise in social, cultural, economic and other issues’. The NSMC would benefit from provision of such a vertical structure allowing input from grass roots civil society organisations and other stakeholders with expertise to feed into the different sectoral areas. The Joint Oireachtas Committee on Implementation of the Good Friday Agreement (Joint Committee on the Implementation of the Good Friday Agreement, 2017) has called for this provision to be given effect to in the form of a ‘North South Consultative Forum’, as it would seem to offer an alternative route of North-South co-operation, in circumstances where the NSMC itself is rendered non-functional by the lack of an Executive.

However, whilst very important, the forum should not be considered as the sole mechanism to enable stakeholder engagement or access to policy-making in the NSMC – flexibility exists for the NSMC to use other means if it so wishes, for instance, simply through inviting NGO representatives to participate in working group meetings. On this front, lessons could be learned from the European Commission’s [proposals](#) for engaging stakeholders in dialogues on the NI Protocol. Finally on this issue of access, it is easy to say that NGOs can also use more indirect methods or routes to engage, which of course is an option that should be considered where appropriate, but the onus here is not on the NGOs to provide suitable structures and access, but on the NSMC itself.

The NSMC would also benefit from a thorough review of its work programme, functions and existing bodies in light of its full mandate, exploiting the flexibility granted to it to choose its work areas, and to focus more on EU issues besides funding drawdown. If necessary, it should be provided with greater resourcing and more regular meetings in the various sectors. However, this goes hand in hand with issues of transparency and access by civil society – without these, there are difficulties in accountability, engagement and the development of useful, effective and appropriate work programmes.

3.2.4 Special European Union Programmes Body ([SEUPB](#))

This body manages EU funding streams, the bulk of which are cross-border in nature, such as the European Union Structural Funds. The importance of this body cannot be overstated, both for the economy of Northern Ireland and for fostering cross-border co-operation on the island. EU funds represented around 8% of GDP in Northern Ireland (Gallagher & O’Byrne, 2017), and are a huge driver of cross-border co-operation (Phinnemore & Hayward, 2017; Harris, 2001). These include the Common Agricultural Policy, the European Regional Development Fund, the European Social Fund and the European Maritime and Fisheries Fund. However, the most significant funds in terms of environmental cross-border collaboration are Interreg and PEACE funding, which are aimed at economic, social and territorial cohesion. The latest iteration of Peace funding, Peace Plus, is set to be the most significant yet, doubling the amount of funding for cross-border collaboration flowing into the region (the previous Interreg VA and Peace IV programs combined were circa €550 million (Donohoe, 2018) (SEUPB, 2020), and the new Peace Plus is over €1 billion (SEUPB, 2022) (see also figures at pg. 46 (House of Lords

European Union Committee, 2016)), and introducing more flexibility around the location of partners. Reflecting the post-Brexit context, it is however important to note that the majority of Peace Plus funding is coming from the UK, with the UK Government providing £730 million of the total.

3.2.5 Interreg

Interreg is an EU funding program covering all of the EU members states as well as neighbouring States, and is aimed at encouraging regional cooperation, generally on a cross-border basis. Interreg VA runs from 2017-2022 and covers the border counties in Ireland, Northern Ireland and part of Scotland. The projects (Health & Life Science, Renewable Energy) involve academic-business tie-ins for SME innovation (Department of Enterprise, 2022). Crucially, although it focuses on the border regions, it can extend in practice as demonstrated by the CABB project in the case-study box. Although Interreg VA is shortly drawing to a close, it nonetheless provides insights into previous and existing cooperation and also into the potential future functioning of Peace Plus.

The CABB project demonstrates another point regarding the influential role of funding. Here, EU funding is facilitating the furthering of EU nature conservation policy/law and objectives in NI, despite NI no longer being bound by this law – as noted in Chapter 2, whilst NI has the relevant retained EU law (via the EU Withdrawal Act 2018), the Habitats Directives were not adopted by the Protocol. It highlights the potential of soft power and cooperation, even where relevant EU law is no longer common across both jurisdictions. This may affect long-term behaviour – regarding this policy area and also in developing relationships – but a word of caution is required in light of the experience with the previous Invasive Species project: some positive gains or elements may fall by the wayside without long-term external, dedicated funding. The initial level of funding may be able to be reduced, but maps and plans need updating, sites need monitoring, and the human population needs continuous education (especially with population shifts).

Examples of Interreg VA projects 2019 – 2023

‘The **Conservation Across Borders for Biodiversity (CABB)** project has been awarded €4,770,731.31 under the INTERREG VA Programme to bring about the recovery of protected habitats (active raised and blanket bog) and priority species (breeding waders and marsh fritillary at key sites) on a cross-border and cross-country basis. Indicative actions to be delivered include– mapping of protected sites, development and implementation of Conservation Action Plans (CAPs), conservation action for habitats and species, development and sharing of best practice and education and outreach.

CABB will contribute to delivering the EC Birds and Habitats Directives and Biodiversity Strategies in the eligible region of Northern Ireland, the Border Region of Ireland and Western Scotland and will also link with strategies for climate change mitigation and adaptation and sustainable development in the 3 countries, as well as Programme for Government targets.’

Project Partners: RSPB Scotland, BirdWatch Ireland, NI Water, Butterfly Conservation and Moors for Future.

Swell 1 & Swell 2 Carlingford Lough Wastewater projects

The **Shared Waters Enhancement and Loughs Legacy (SWELL)** Project will be implemented over two phases. The successful completion of Phase 1 resulted in a further application for Phase 2.

Phase 1: The cross-border project involved a detailed investigation into the causes of water pollution and the most effective ways to prevent it. It brought together key state-owned water companies from Northern Ireland and Ireland as it will be delivered by both NI Water and Irish Water.

Project Partners: Northern Ireland Water and Irish Water.

‘Phase 2 of the SWELL project aims to improve water quality in the shared transitional waters of Carlingford Lough & Lough Foyle through the improvement of wastewater assets.

The project will implement two sewerage network and wastewater treatment schemes which will deliver improved wastewater treatment for an additional 10,000 people in the eligible region.

The mechanism for delivering improved water quality therefore will consider each shared water body as a single ecosystem. A holistic modelling strategy will amalgamate the various catchment and marine models to form an Ecosystem model that intends to be both unique and innovative in its detail and scale.

It is anticipated that the project will leave an ecosystem model for use by the water companies, environmental regulators and other stakeholders in the eligible area to identify future improvements to enhance water quality.

Project Partners: Northern Ireland Water, Irish Water, Agri-Food & Biosciences Institute, Loughs Agency and East Border Region.’

(SEUPB, 2022)

3.2.6 Peace Plus

This new cross-border EU and UK funding program represents a welcome continuation of funding to Northern Ireland, which had been in question due to Brexit (Donohoe, 2018). It

emphasises peace building through prosperity. This current program was put together after an extensive consultation process in 2020 and 2021. It represents a continuation of the Interreg VA and Peace IV programmes, which were hugely important to the region and vital for environmental cross-border protection (NIEL & Environmental Pillar, 2018), particularly Interreg VA which offered large amounts of funding for cross-border conservation projects.

Theme 5 of the new Peace Plus program is expected to be an environmental strand “Supporting a Sustainable and Better Connected Future”, which consists of €302 million (out of a total of €1.069 billion for all six themes of the program) across several sustainability strands such as Biodiversity (€40 mil), the Marine & Coastal Management (€24.7 mil), Cross-border Water Catchments (€21 mil) and Water Bodies (€32 mil), Geothermal energy development (€20 mil), Sustainable Cross-border mobility and transport (€165 mil) (SEUPB, 2022). These themes and breakdowns are still awaiting approval by the EU Commission at the time of writing so may be subject to change. The new programme will introduce the concept of a flexible “functional area”. The core area covered by the program includes Northern Ireland and the border Counties, Cavan, Donegal, Leitrim, Louth, Monaghan and Sligo, but cross border collaboration is not limited to these areas. Partners from outside the core areas can participate, as long as the project’s main benefits are felt in the core areas (SEUPB, 2022, p. 25). The purpose of this is to avoid creating artificial borders in the projects functional areas and enhance the impact of the project. As with Interreg VA therefore, in principle this could facilitate all-island projects, especially where a national approach may also be relevant and underpin local policy or practices, e.g. in waste management.

Examples of Peace IV Projects 2019-2023

Future Innovators (€1mil): Co-Operation Ireland

The Future Innovators Initiative has been developed by a partnership which marries expertise, knowledge and skills particularly in peacebuilding, community delivery, academic understanding and technical expertise. Based upon their own experience of innovative delivery, and a desire to ensure the voice of the community is heard, the partnership have agreed a sweep of activities which provide practical benefits to communities in the UV and Border Counties, and an impetus for innovation and change. The proposal further develops an innovative community cohesion and planning toolkit to create a Future Innovators training program and develop a regional network of communities, skilled in the use of social innovation technology. This technology will bring together people of different backgrounds to concretely tackle local problems through common development strategies and collectively envision a shared future based on these cooperative values. This contemporary model of co-operative delivery will incorporate new technology with on the ground (and virtual) local engagement to ensure everyone in the community has the opportunity to add their voice to influence the decisions that affect their lives and the communities where they live. Project activities are underpinned by 3 interrelated principles: Deliberative Democracy (Bringing all members of the community together to discuss, propose, adapt and implement innovative policy solution for addressing shared issues); Future Planning (Providing community members the opportunity, knowledge and resources to innovatively reimagine their futures together); and Social Enterprise (Economic growth for social good). **Project Partners:** Belfast Interface Project, University of Essex, Donegal Youth Service & Animorphe.

Riverine (€8mil): Donegal County Council & Strabane District Council.

The 'Riverine Community Park' project aims to address the impact of the conflict in the Lifford and Strabane area, and its hinterlands, by regenerating the border riverside area to create iconic cross border community park straddling the River Foyle as a Shared space to bring communities together from both sides of the border to re-connect and form new, long lasting connections and relationships. The Riverine Community Park project proposes to create thirty acres of new community park space and infrastructure at Lifford and Strabane. It proposes to create a neutral, shared space by utilising agricultural land lying along either side of the border. It will span both sides of the River Foyle and be connected by a new pedestrian and cycle bridge. The Councils propose that this diversity of the offering will make for a more inclusive and sharing experience. **Partners:** Donegal County Council and Derry and Strabane District Council

(SEUPB, 2022)

3.2.7 The British Irish Council (BIC), Strand 3

The British-Irish Council is a body with a regional focus, referencing “these islands”. It comprised of representatives of the Irish Government; UK Government; Scottish Government; Northern Ireland Executive; Welsh Government; Isle of Man Government; Government of Jersey and Government of Guernsey (BIC, 2018; Morgan 2000). The BIC has a broad work program which includes a specific environmental brief on issues such as food waste, recycling, invasive species, the SDGs, as well as Ministerial subgroups on areas relevant to the environment such as energy, spatial planning, transport and housing.

Generally, the BIC has kept to its schedule of two summit meetings per year plus sectoral meetings. The last summit level meeting took place in June 2021, and the most recent meeting of the Environment sector subgroup took place in November 2021 and discussed cross-European efforts to control an invasive species, climate adaptation and marine protected areas. This body has potential for even greater impact, for example it could have used its climate adaptation subgroup to co-ordinate action for a joint approach to Climate Laws in the respective jurisdictions. Instead, there were two separate climate laws developed on the island in either jurisdiction with no consideration of coherence. A stronger emphasis on shared approaches in areas which require it such as biodiversity, conservation, and climate mitigation would be feasible and desirable.¹⁷

3.2.8 British-Irish Intergovernmental Conference (BIIC), Strand 3

This East-West body was to subsume the body known as the Anglo-Irish Intergovernmental Council and the Intergovernmental Conference established under the previous 1985 Anglo-Irish Agreement. It establishes a platform for discussions between Dublin and London, bring together the British and Irish Governments to promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments. In order to ensure inclusion of an NI viewpoint, the Secretary for State for Northern Ireland was to chair the meetings. Provision was made for both “Summit” level meetings of country leaders, and sectoral meetings headed by Ministers for the relevant areas. The focus is on non-devolved Northern Ireland matters but there is no implication that devolved matters are not to be raised,¹⁸ which could potentially be useful during the political vacuums such as those seen in Northern Ireland from 2017 – 2020. The focus is on security and justice but again no explicit exclusion is made of environmental or any other issues from its purview. One important role was to keep the functioning of the GF/BA and its machinery under review. Therefore, it could have served an important role as a quasi-implementation body of the GF/BA. However, the body was underutilised, and it does not even appear to have its own website and it is not clear if it is provided with a standing secretariat as mandated by the Agreement. It was on unexplained hiatus for 11 years but resumed meetings in 2018.

3.2.9 Human Rights and the GF/BA

The European Convention on Human Rights is integral to the GF/BA. The Executive’s legislative capacity is expressly limited by reference to it and the Bill of Rights in Strand 1. After the 3 strands of the agreement there is a further section, part of which is titled “Rights, Safeguards and Equality of Opportunity”, and contains extensive provisions on human rights

¹⁷ The final text of the Climate Change Act (NI) 2022 did however include a number of references to the need to consider advice and developments from the Republic of Ireland, notably in s 23(3) regarding advice from the ROI Climate Change Advisory Council relating to carbon budgets or ‘other environmental issues’, s 42(c) on reporting and in particular 52(2) to ‘align plans, policies and strategies to those in the Republic of Ireland’ to ensure targets are met, full text of the bill is available [here](#) .

¹⁸ It is also worth noting that the UK Government retains competence regarding international law, including environmental commitments, leading to overlapping powers with devolved remits.

and parity of treatment between citizens in Northern Ireland and Ireland. It guarantees that the people of Northern Ireland will have an equivalent level of protection of human rights to those in Ireland, and that the European Convention on Human Rights (ECHR) and a Bill of Rights for Northern Ireland would be effected by the UK (Gallagher, Patrick & O’Byrne, 2018). This only flows one direction, with citizens in Northern Ireland being able to claim parity of treatment in human rights terms with citizens of Ireland, but not vice versa.

This section also establishes the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, to uphold human rights and equality standards. The section is specifically mentioned in Article 2 of the NI Protocol as being protected and that no diminution in the rights under it should occur as a result of Brexit. Under the Protocol, Irish citizens from Northern Ireland will continue to enjoy rights as EU citizens, including where they reside in Northern Ireland. The Human Rights guarantees in the GF/BA remain bulwarked by the commitments in the Protocol to protect the GF/BA, its human rights elements, and the bodies and institutions created under it. It is clear from the entire agreement and in particular this section, that the GF/BA is also a human rights instrument.

The Bill of Rights promised by the Agreement has not yet been enacted and has proved contentious. However, the European Convention on Human Rights (ECHR) was made part of UK domestic law through the Human Rights Act 1998, as mandated by the GF/BA. The ECHR operates synergistically with the Human Rights protections in the GF/BA, and for now applies to the whole of the UK including Northern Ireland. The ECHR also binds Ireland, independently and as an EU Member State. The relationship with the ECHR is crucial from an environmental perspective. The European Court of Human Rights (ECtHR) has found that an aspect of Article 8 right to private and family life encompasses certain environmental rights (discussed in more detail below). Therefore, removal of any procedural environmental rights, or lowering of standards that results in failure to offer adequate protection from environmental harm could result in a contravention of the ECHR, for those whose homes or private lives are affected by the environmental harm that results. Consequently, the UK’s current review of the Human Rights Act is concerning generally, but also specifically regarding environmental matters – as it might reduce the relevant protections contained therein and, locally, by the ECHR.

Finally, the UK and Ireland are both members of both the Aarhus and Espoo Conventions (discussed below), which guarantee certain procedural rights in environmental disputes and the right to participate in environmental decision making and to access environmental information. Both these Conventions have a human rights element to them and complement the GF/BA provisions on human rights. Many of the provisions have been implemented domestically under EU law. For now there is a degree of consistency between them in the retained EU law implementation, however this could change. Two issues arise from this perspective, that a change in standard in either jurisdiction could result in a claim against the State in the domestic courts, where the provisions of those conventions have been given effect to under domestic law (i.e. where they have already been given effect to through EU law, and that EU law will be part of the retained “Acquis”). Both Conventions also have Compliance Mechanisms that can

adjudicate on non-compliance by State Parties with the Convention’s provisions, which may provide some avenue to tackle non-compliance in a de-regulation scenario. However, the greater danger is divergence in the Northern Ireland in the manner in which the rights and obligations are implemented, resulting in greater difficulty in ascertaining and exercising rights cross-border. There are already some important differences in how the rights operate in either jurisdiction, and this is likely to increase over time if preventive measures are not taken. It is vital that coherence is maintained and improved in the manner of implementation of these Conventions in either jurisdiction. This is dealt with in more detail below in the detailed sections covering these instruments.

3.3 The Aarhus Convention in the all-island context

3.3.1 *The Aarhus Convention in context*

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted at the Fourth “Environment for Europe” Ministerial Conference in 1998 (UNECE, 2017). It entered into force on the 30th October 2001 (UNECE, 2021), and has since been signed and ratified by 47 State Parties worldwide – including by the UK, Ireland and the EU. It embodies a key principle of international environmental law, that environmental decisions are best handled with the participation of those concerned.¹⁹ The Convention marked a departure from previous international environmental law approaches (UN, 2014) in several respects, creating rights for NGOs and individuals, creating a complaints mechanism open to individuals and NGOs as well as State Parties, and importing ambitious concepts of environmental democracy and stewardship (Barritt, 2020) into the legal systems of the contracting Parties. Many of the State Parties have struggled with the far-reaching nature of the changes required by the Aarhus Convention to their systems of environmental governance and justice,²⁰ and their cultures of State transparency (or lack thereof) (Grashof, 2018) (Garanta, Gerbrandy, & Mueller, 2018). Ryall states that the Aarhus Convention heralded a new and dynamic era of EU environmental law enforcement in the jurisprudence of CJEU (Ryall Á., 2016b), but also that perhaps the changes imported by the Convention, and the impact of the Aarhus Convention Compliance Committee (ACCC) were unanticipated (Ryall Á., 2013).

The potential for Brexit to create divergence in environmental rules on either side of the border presents a huge challenge to environmental protection on the island (Hough, 2019; Brennan, Dobbs, Gravey, & Ui Bhroin, 2018; Burns, et al., 2018). Treaties like the Aarhus Convention hold potential to shield against these threats to environmental integrity, by enforcing some

¹⁹ Principle 10 of the Rio Declaration 1992 [A/CONF.151/26/Vol.I: Rio Declaration on Environment and Development \(un.org\)](#) which also expressed what would become Aarhus Convention’s 3 pillars of access to information, access to public participation and access to justice in environmental matters.

²⁰ For some examples see the findings of the ACCC on foot of complaints from the public available [here](#).

similar regulatory requirements in both jurisdictions. However, the Aarhus Convention's implementation is widely considered to be unsatisfactory (e.g. (Ryall Á. , 2018) in both jurisdictions and has been the subject of multiple EU infringements (e.g. in the area of EIA) as well as complaints to the Aarhus Convention Compliance Committee (e.g. in the area of access to information and costs). If the Aarhus Convention is to fulfil this potential, law makers in both jurisdictions will have to commit to engaging in good faith with the Convention's principles and rights.

3.3.2 Status and Ratification of the Aarhus Convention in Ireland and the UK

Ireland was one of the last countries to ratify the Aarhus Convention in 2012 (Nagy, 2018). Ireland has implemented the EU law implementing measures, which carry into Irish law the Aarhus obligations through a complex piecemeal set of amendments to various pieces of legislation, which has been the subject of infringement actions brought by the Commission against Ireland. Ireland has not fully implemented the provisions of the Convention, and the EU implementing measures such as those contained in the EIA directive have arguably never been fully applied as required in order to bring all environmental decision making into compliance with the Convention. Ongoing issues remain with access to environmental information, costs in all areas from access to information, public participation and access to justice, and the timeliness of access to justice is open to question, as is the fairness and equitability of the current cost shifting measures in place.

The UK, including Northern Ireland, also ratified the Aarhus Convention in 2005. The UK implemented EU law implementing measures, carrying into UK law the Aarhus obligations through a range of both UK-wide and devolved legislation and legislative amendments. Since Brexit, the situation has been complicated with some legislation being repealed, amended, or replaced. While a member of the EU, the UK was the subject of multiple infringement actions relating to Aarhus obligations brought by the Commission (in particular, around the issue of costs) – in a number of instances this related directly to breaches relating to Northern Ireland. In addition, the UK as a whole has been [found](#) to have been in “longstanding” non-compliance with the Convention by failing to give citizens fair and equitable access to environmental justice. There are some ongoing reviews of administrative law in the UK which have the potential to create additional problems with access to justice in the UK (Ministry of Justice, 2020).

Post-Brexit, the Convention remains binding on the UK (and Ireland), but the EU implementing measures no longer bind the UK as a whole. Nor are these measures binding on NI via the Protocol. While these measures are part of retained EU law via the EU Withdrawal Act, and the Trade and Cooperation Agreement environmental provisions arguably apply, there is considerable potential for erosion and backtrack of already flawed implementation. It is essential that the 3 strands of the Convention be fully implemented in both NI and Ireland to help facilitate cross-border and all-island cooperation and engagement – flawed and differentiated implementation substantially undermines the potential for individuals and NGOs to engage in environmental governance.

3.3.3 What does the Aarhus Convention do?

The Aarhus Convention ostensibly creates an interlocking set of procedural environmental rights, the right to access environmental information, the right to participate in environmental decision making, and the right to access justice to defend either of those rights and the environment itself, by challenging breaches of environmental law (UN, 2014). It has been described as a powerful force for change (Ryall Á, 2013) and recognized as signalling a new era in environmental rights (Jendroska & Stec, 2001), even to have established a new legal culture (Caranta, Gerbrandy, & Mueller, 2018). However, the densely drafted legal text of the Convention is complex, subtle and at times ambiguous in meaning (Barritt, 2020) (Ryall Á, 2016). There are multiple layers to the Convention's meaning and rights. For example, in its requirements of public participation in environmental decision making articulated in Article 6 it appears to imply a requirement that such decision making will be subject to environmental impact assessment (Art 6, para 6). It does this by requiring that information about the significant effects on the environment be made available to the public for the purpose of facilitating participation in decision making.

Another area of ambiguity is the expression of a right to a clean and healthy environment which is set out in Article 1 and the Preamble to the Convention, articulated as “the right to live in an environment adequate to his or her health and well-being,”. This right is set out but in a non-mandatory way, particularly when compared to the procedural rights set out in the Convention which are phrased in a much more definitive way. Barritt suggests this reflects the inability of the negotiating parties to reach agreement on whether such a right should be recognized or not (Barritt, 2020). By contrast the more recent Escazú Agreement between Latin American countries and the Caribbean, expressly recognizes the right to a clean and healthy environment (Art 4, para 1²¹). Barritt argues for a purposive interpretation of the Aarhus Convention based on Art 31 of the Vienna Convention, and the status of the Convention as a human rights treaty (Barritt, 2020). This is in line with the CJEU's approach to interpretation of the Convention's provisions, in particular Art 9 which has been expressly purposive (Lee, 2014). This is consistent with the approach to interpreting fundamental rights, according to them the highest level of protection. It also reflects the CJEU's purposive approach to environmental matters more generally, e.g. in waste and nature conservation.

The Aarhus Convention describes itself as a human rights instrument, but the rights it creates are primarily procedural in nature (Boyle, 2012; UN, 2014). The creation of participation rights in environmental decision making is possibly its most significant contribution to the everyday life of the person (promoting environmental participatory democracy (Barritt, 2020)). “Environmental decision making” covers a multitude from spatial planning development consents (“planning permission” in the Irish and UK systems), pollution licensing and environmental impact assessment. Lee states the most significant contributions in EU law were in the Environmental

²¹ “The Escazú Agreement”, The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean Adopted at Escazú, Costa Rica, on 4 March 2018, entering into force on the 21st April 2021, available [here](#).

Impact Assessment and Industrial Emissions Directives’ public participation provisions (Lee, 2014).

3.3.4 The role of the Aarhus Convention in post-Brexit regulatory alignment

The Aarhus Convention influences the environmental law/governance framework in two ways, both pre- and post-Brexit. Firstly, through the existing EU law implementation it created analogous frameworks in significant areas of environmental governance such as spatial planning and pollution licensing. This regulatory alignment has been recognized as significant in the context of Brexit, and the loss of such alignment is recognized as a threat to post-Brexit all-island environmental governance, impacting the coherence of environmental regulation on the island (Hough, 2019; Gravey, et al., 2018). Secondly the Convention itself creates rights for individuals against States, which are directly enforceable through the Compliance mechanism. These rights are created without regard to residency or citizenship and are exercisable by anyone who makes up the public concerned.

The Convention prohibits restriction of the “public concerned” (those entitled to exercise participatory rights) to those resident in a particular State. Therefore, the Convention’s rights are expressly exercisable across borders, allowing it trans-boundary application. This means that it allows people on the Ireland side of the border the right to participate in environmental decision making on the Northern Ireland side of the border and vice versa. The continued cross-jurisdictional applicability post-Brexit, together with similar implementation methods through EU law make it potentially an important source of regulatory alignment across a range of areas of environmental law.

However, there exist significant issues with implementation of the Convention in both Ireland and Northern Ireland.²² Implementation of the Aarhus Convention in Ireland is widely regarded as unsatisfactory, as highlighted by the National Implementation Report 2021 (DECC, 2022; Ryall Á. , 2013; Ryall Á. , 2018) and many others.²³ The first academic study of Aarhus implementation is currently being carried out of Aarhus Implementation on the island of Ireland post-ratification and the preliminary results of this study indicate serious shortcomings in both Ireland and Northern Ireland’s implementation of the Convention.²⁴ Problematic areas of implementation common to both Ireland and Northern Ireland include:

²² For recent implementation issues highlighted in relation to Ireland at the last Meeting of the Parties to the Aarhus Convention see ACCC Report on Ireland, endorsed by the MoP as [Decision VII/8i](#) and the findings of the ACCC in the following communications: [ACCC/C/2013/107](#), [ACCC/C/2014/112](#) (which concerned a variety of breaches relating primarily to access to environmental information) and [ACCC/C/2016/141](#) which also concerned the legal framework and practices for access to information.

²³ For detailed information on the issue of implementation see (DECC, 2022; Ryall Á. , 2019a; Ryall Á. , 2017; Ryall Á. , 2016; Hardiman, 2016; Ryall Á. , 2016a; Kingston, 2016; Browne, 2015; Ryall Á. , 2014; Barrett, 2014; Ryall Á. , 2014a. Regarding NI, see the recent decision of the Meeting of the Parties against the UK including some complaints regarding Northern Ireland in Decision VII/8s available [here](#).

²⁴ “Synthesis Report on all-island Aarhus Implementation” (2022) - Forthcoming report on Aarhus implementation in Ireland by Alison Hough, available at www.findingcommonground.ie.

- Environmental Impact Assessment (EIA) as it pertains to forestry, aquaculture, peat, water abstraction and quarrying.
- Access to Environmental information
- Low public awareness of Aarhus rights, including in active stakeholders
- Public participation – although there are issues on both sides of the border these vary in nature. In Ireland serious concerns exist regarding legislation which has sought to restrict public participation rights of NGOs and individuals as well as access to justice in environmental matters and in the NI context, more significant issues relate to what is widely considered to be systemic failure in planning system²⁵
- Protection of environmental defenders. In both jurisdictions environmental NGOs exercising their right of access to justice are frequently the subject of public attacks by those in public life and the media, including the [Government, from TDs](#), as well as [farming bodies](#) and [others](#), a practice that has been highlighted by the High Court as a breach of Art 3(8).²⁶
- Access to justice has always been a difficult area of implementation in both jurisdictions, with issues arising around cost barriers, standing rights restrictions and a complex and fragmentary legal regime and arcane courts processes, which prevent the public from being able to effectively exercise their rights of access to justice.

3.3.5 Aarhus rights and cooperation on the island of Ireland

There are considerable issues with implementation of Aarhus rights in both jurisdictions and many parallels as the systems have historic links. In Northern Ireland however significant issues arise with Access to Information and Public Participation in ways that do not arise in Ireland. The situation with respect of third-party rights of appeal in planning decisions is the most notable of these. It is also significant that the issues in Northern Ireland with implementation of the Convention also take place against the backdrop of serious environmental governance problems generally and low levels of enforcement, resulting in a picture of poor environmental protection (Brennan, Purdy and Hjerp, 2017; Brennan, Dobbs and Gravey, 2019).

²⁵ For example see the amendments to the Forestry licencing system that were proposed in 2020 [here](#). Also, the General Heads of the Housing Planning and Development Act 2019 which attracted almost 300 submissions from experts and NGOs, the majority of which were highly critical, which is discussed extensively in Ryall, A. (2019) See also, <https://www.thestory.ie/2021/07/28/overwhelming-majority-of-submissions-on-governments-controversial-planning-law-proposals-object-to-restrictions-on-access-to-justice-for-citizens-ngos-and-others/>. However, despite this, the Government has indicated an [intention](#) to revive the proposals to restrict judicial review contained in the bill. - Finally, the proposal to create a water abstraction licensing system gave rise to serious concerns because there was a provision that did not appear to allow for refusal of licenses for existing water abstraction operations, with no requirement to carry out Environmental Impact Assessment of these, and threshold for licensing was so high (25 m3 per day) it would exclude a large proportion of abstractions from licensing, and breached WFD obligations. See, [here](#). For discussion see <https://www.antisce.org/Handlers/Download.ashx?IDMF=33828808-3707-42d4-a7bb-67df5b5e94f1> . For recent reports in NI of failure of local development planning system, see (McKay & Murray, 2017) (NIAO, 2022).

²⁶ An Taisce v An Bord Pleanala, [2021] IEHC 422, Humphreys J., 2nd July 2021, available [here](#).

The Aarhus Convention effectively creates a right of cross-border public participation, access to information and justice, as its rights cannot be limited by reference to domicile, residence or nationality. However, different systems either side of the border for implementation of Aarhus rights create obstacles for the public and environmental NGOs in exercising these rights because they have to develop capacity (i.e. learn the system/bureaucracy) in both jurisdictions, which takes time, energy and know how that the public or environmental organisations may lack. Deficiencies in implementing Aarhus rights either side of the border also diminish the capacity of the public/environmental NGOs, who may only be afforded their full Aarhus rights after lengthy complaints procedures or litigations to rectify incorrect/lacking implementation. Environmental participation related to spatial planning and licensing decisions are time sensitive, and delays in being granted these rights often render the purpose of the participation moot, as the damage is already done by the time the public/environmental NGO are afforded the right to participate in the decision making process, or they are granted access to environmental information needed to fully participate in an environmental decision making process long after that decision making process has finished.

For example, in the case of the River Faughan Anglers²⁷ attempts to challenge and unauthorised development in an SAC of a Concrete Factory and contaminated settlement lagoons, described in 2010 as posing a high risk of environmental damage by the NIEA, was allowed to persist, and indeed expand, from the 1980s right up until present, due to inadequate implementation of Convention rights. The community group had to undertake many years of Court procedures and ultimately a complaint to the ACCC in order to highlight deficiencies in the existing legal framework. Had those deficiencies not been present it seems likely it would have been possible to prevent many years of environmental damage with cross-border consequences.

Therefore, improving implementation in either jurisdiction is essential in order to ensure Aarhus rights are vindicated, but it is also essential that there is some co-ordination of legislative and administrative systems related to the environment, between the jurisdictions, in order to minimize obstacles to cross-border/transboundary exercise of Aarhus rights. It is recommended that a body be established for the purpose of co-ordinating the development of environmental law on the island of Ireland.

3.4 Other significant international agreements binding the UK and Ireland

There are a range of other international agreements that are very significant either in terms of creating specific transboundary rights or are significant because they create the same rights either side of the border by virtue of IE/UK membership of those agreements, which creates potential for maintaining a “level playing field” in relation to those rights. It is not possible within

²⁷ For more details of the efforts by the River Faughan Anglers to address this issue see the ACCC determination ACCC/C/2013/90, available [here](#).

the scope of this report to fully explore the ramifications of all of them, but the main ones are flagged in this section.

- One of the explicitly transboundary agreements is the “[Espoo Convention](#)” 1991 on Transboundary Environmental Impact Assessment (EIA). This hugely significant treaty (Koyano, 2008) was a precursor to the procedural environmental democracy rights contained in the Aarhus Convention. It mandates environmental impact assessment for projects that would have a significant effect on the environment of another State Party, and cross-border public participation in the decision making where there are transboundary effects. It also established extensive guidance in its annexes on when EIA was required and how it should be done. The requirement to utilise Espoo was to a large extent obviated by the EU implementation of EIA rules and [guidance on transboundary EIA](#). However, the Convention is of renewed importance in a post-Brexit landscape. The Espoo Convention has an implementation committee that can take complaints about compliance from parties or the public. The Espoo Convention is viewed as an extremely significant agreement in terms of transboundary environmental protection and the power of procedural rights to have substantial effects. One important contribution of the agreement is its creation of a bi-lateral mechanism for dealing with transboundary impacts. It could be argued that there are weaknesses in the process, which on one hand relies on the State Parties willingness to notify the other State Party. Citizens in the adjoining affected State must rely on their own State to carry out a public participation process, and it may be difficult to get substantial engagement on a project in another jurisdiction. The [Hinkley Point C](#) case is a good example of the failure of transboundary EIA mechanisms where neither State Party (in this case the UK where the project was based, and Ireland, where impacts might occur) seemed interested in activating the transboundary EIA process. This was only done after an unsuccessful series of court cases taken in the UK by [An Taisce](#) (the National Trust, Ireland), and a complaint to the Espoo Compliance Committee and finally a successful complaint to the Aarhus Convention Compliance Committee resulting in a finding that transboundary EIA should have taken place²⁸. This was followed by a lacklustre public consultation in Ireland, five years after it should have taken place, and long after the project had commenced construction.
- In 1979, the [UNECE Convention on Long-range Transboundary Air Pollution](#) was signed, entering into force in 1983. It was a response to the “acid-rain” crisis of the 1970s and was the first international treaty to deal with air pollution on a transboundary basis. It set out general principles to guide international cooperation for reducing air pollution, aiming to be science based, and establishing research and policy cooperation. Over the years, the number of substances covered by the Convention and its protocols has been gradually extended, notably to ground-level ozone, persistent organic

²⁸ The decision which explains much of the background can be found here in the documents for ACCC/C/2013/91 https://unece.org/env/pp/cc/accc.c.2013.91_united-kingdom

pollutants, heavy metals and particulate matter. (UN, 2020). The Convention has been followed by drastic improvements in relation to air pollutants of serious concern to human health such as Sulphur Dioxide. It has an implementation committee to tackle failings by State Parties and a range of working groups. It is widely acknowledged as a successful example of multilateral action on global environmental problems. (Lisowska-Mieszkowska, 2020)

- The [European Convention on Human Rights](#) 1950 (ECHR) was a hugely significant post-war agreement in terms of setting global norms for human rights protection and enforcing them through the European Court of Human Rights (ECtHR). The Convention does not explicitly mention environmental rights or the right to a clean and healthy environment (Dogaru, 2014). The link between environmental rights and human rights has been drawn more clearly by a series of instruments since then such as the Stockholm Declaration of 1972 (the first document formally recognising the link between human rights and the environment), the Framework Convention on Climate Change (UNFCCC), the 1998 Aarhus Convention, and the 2016 Paris Agreement. The increasing recognition of environmental rights as human rights (for example by the Dutch Supreme Court in the [Urgenda climate case](#) which recognised environmental rights based on Articles 2 and 8 of the ECHR) has filtered its way into the jurisprudence of the ECtHR (Dogaru, 2014) (Pedersen, 2010) as it interprets the provision of the ECHR. This can be seen in cases such as [Tasking v Turkey](#), or [Öneryildiz v. Turkey](#). Ultimately, the jurisprudence in this area is still under development, but the increasing recognition of the impacts of climate change on the human rights of affected populations makes the call to recognise a human right to a clean and healthy environment harder to ignore. Several [cases involving young climate activists](#) are under consideration before the ECtHR right now such as the [case involving Norway](#), and another where [33 young people](#) alleged the Portuguese Government's lack of action on climate change is infringing their human rights. The growth of human rights-based climate litigation in such cases is likely to lead to the Convention taking a more prominent role in environmental protection. The ECHR also has strong links to the Good Friday/Belfast Agreement, which is also in part a human rights agreement and sought to import into both the UK and Irish jurisdictions the provisions of the ECHR in order to create a “level playing field” for human rights and contained specific equalisation provisions aimed at this. This was implemented in the UK/NI by the [Human Rights Act 1998](#). The ECHR was implemented in Irish law by the [European Convention on Human Rights Act 2003](#).²⁹
- A brief mention of the [Ramsar Wetlands Convention](#) is merited, which is discussed also below in the international examples. This Convention protects wetlands as habitats. Under the Ramsar Convention (and related EU law), contracting parties must designate relevant sites as wetlands of international importance. While there is potential to register

²⁹ There are currently discussions regarding the express incorporation of relevant environmental rights into the ECHR's charter on economic and social rights.

transboundary sites, Ireland and Northern Ireland/the UK [do not formally share such a site](#) – although there are several along the border on either side, e.g. in Carlingford Lough (NI) and Dundalk Bay (ROI), or most blatantly in Pettigo(e) Plateau in Donegal (ROI) and Derry/Londonderry (NI), where the description for the [site in NI](#) notes it is ‘abutting the border’. The Convention generally provides for underpinning approaches and values in protecting these wetlands, but also for instance obligations regarding consulting with each other especially regarding transboundary wetlands or water systems (Article 5). Generally, its approach is one centred on information, designation and international cooperation, rather than command-control/focused on strict rules and enforcement. Although the Convention is critiqued for having [too wide a focus](#) and being [insufficiently financed](#) and [without effective enforcement measures](#), nonetheless it can be a [useful, influential framework](#) and [has scope to implemented further](#). It also highlights the existence of international environmental agreements addressing substantive areas and binding both Ireland (and the EU) and the UK simultaneously.

3.5 International agreements that do not bind Ireland and the UK simultaneously

Some important international agreements do not bind both Ireland and the UK [simultaneously](#), and their usefulness in promoting effective environmental outcomes and cooperation on the island is considerably undermined where they do not apply to both jurisdictions. This is highlighted by, for example, the [Water Convention](#) (on transboundary water bodies). This Convention amongst other things addresses water quality, avoiding transboundary environmental impacts and the need for transboundary cooperation. It was signed, ratified and approved by the EU, underpinning the Water Framework Directive and the river basin approach therein. However, the UK has only signed the Convention without subsequently ratifying it and Ireland has not signed it independently. While both were members of the EU, this was not so significant since the EU’s Water Framework Directive transposed much of the obligations into EU (and thereby national) law. There were still some impacts caused by not being independent members, e.g. reporting obligations were those of the EU. However, Brexit impacts the situation and obligations significantly because the UK is no longer bound as an EU Member State (UKELA, 2017, p.9). Convention [implementation reports](#) highlight a range of practical challenges regarding international/transboundary water bodies including the lack of national alignment, different structures and one country not being a party to the Convention. While the domestic implementation of the Water Framework Directive offsets this to an extent for the time being, it does not prevent regulatory divergence in the future (as discussed above). Of note, the implementation reports also highlight funding as a primary concern and indicate that cooperation might fall by the wayside if insufficiently resourced.

Clearly, one (partial) solution would be for the UK to ratify the Water Convention and other similar international environmental agreements. Ratification may not always be an option and may take considerable time or may lack political support, but it should be investigated and considered. It would still leave a difference in approach compared to pre-Brexit – with the loss of the Water Framework Directive’s obligation on EU Member States to cooperate and coordinate

with each other in managing transboundary river basins (of which there are 3 [on this island](#)), backed up by EU governance mechanisms.

3.6 Conclusions

International environmental agreements have the advantage of potentially continuing to apply either side of the border irrespective of Brexit, providing a potential route of alignment of environmental law standards and recourse in the absence of EU oversight of many areas Environmental Law. However, they also have disadvantages as the main mechanism of regulatory alignment. They are generally not considered to be directly effective in the legal systems of Northern Ireland and Ireland, and do not of themselves give rise to enforceable obligations unless they are reflected in implementing instruments in the relevant legal systems. They are perceived as “soft” law, lacking enforcement mechanisms and being subject to the consensus requirement of international law. The Aarhus Convention and Espoo Convention both have compliance mechanisms, but their proper functioning depends on their findings being accepted by consensus at the respective Meetings of the Parties, and this is no longer a given as a result of the actions of the EU in its capacity as State Party to the Aarhus Convention in case [ACCC/C/2008/32](#) and more recently [ACCC/2015/128](#), in refusing to allow the findings against them to be approved by the Meetings of the Parties. The GF/BA lacks any oversight or enforcement mechanism. The European Convention on Human Rights benefits from the oversight of the European Court of Human Rights but is subject to the nebulous obligation to exhaust all domestic remedies. International human rights law usually affords a wide “margin of appreciation” to States as to how they wish to implement, and it can be difficult to make a determination that implementation failures or divergences are sufficient to constitute clear breaches.

None of these mechanisms can replace the enforcement system of the EU. This is (when activated) highly effective at maintaining regulatory alignment and disincentivising breaches through hefty fines and penalties via both the “infringements” system, as well as through the preliminary reference mechanism. It also entails significant political pressure for member states, as well as applying political pressure. The mechanisms in the Protocol giving some EU oversight of certain areas of law is too narrow in purview to prevent potential divergence from Aarhus rights, or indeed ongoing breaches of them. This means that efforts will have to be made to provide oversight by other means, for example through the introduction of a truly independent regulator in Northern Ireland, an all-island body to oversee alignment of environmental law, and the full implementation of the Good Friday Agreement. Finally, it must also be borne in mind that some international agreements such as the Water Convention do not automatically continue to bind the UK/NI post-Brexit. Consideration is needed as to the ramifications of this and what options (and their implications) exist to address these emerging issues.

4. Environmental cooperation on the island of Ireland in practice

4.1 Introduction

“I work cross border a lot. And it is really the only way to achieve biodiversity gains for a lot of the habitats that we have in our area, because obviously everything's cross catchment, everything is topographically linked and geographically linked, we are all on the one island” (Workshop 1 Participant)

While there have been important collaborative projects or exercises relating to the environment on the island of Ireland, these have not extended to all possible areas of cooperation and have been demonstrably underdeveloped in other areas. Brexit now threatens existing cooperation on a number of levels (as discussed in chapter 2), whilst simultaneously increasing the need for enhanced cooperation by all actors. In addition, existing international agreements (in particular, the GF/BA and Aarhus Convention) have been incompletely implemented, so their full potential to enable cooperation has not been developed. This chapter draws upon both literature and the empirical research (surveys, interviews, and workshops) to explore environmental cooperation and engagement on a cross-border or all-island basis by a range of actors, in principle and in practice, and builds on the recent NESC [report](#) *Collaboration on Climate and Biodiversity: Shared Island as a Catalyst for Renewed Ambition & Action*. The core focus of this chapter is on the experiences of environmental NGOs in cooperation with public authorities and the public, and within the sector. The purpose is to highlight the challenges, opportunities, and successes or indeed failures experienced, drawing lessons for other actors on this island and beyond.

4.2 Emerging themes

In terms of overarching themes which emerged from both the survey and the two workshops, environmental NGOs and citizen-led initiatives seeking to engage in cross-border or all-island environmental governance or cooperation on the island of Ireland are faced with both general challenges and also ones particular to this island. Therefore, the context must be borne in mind carefully by these actors, by those seeking to enhance conditions/improve environmental governance and cooperation, and for the purposes of drawing lessons or transposing approaches elsewhere. Specific issues or challenges that arise typically relate to: 1) political, historical and legal relations on the island and with GB; 2) political and legal relations with the EU; 3) poor environmental history and status in both jurisdictions, in particular near or at the border; 4) domestic regimes/structures that vary, are restrictive or are flawed. In some instances, it is the concern regarding others' perceptions linked to these points that create the barrier. Throughout, workshop and survey participants stressed:

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- The need for common language (whether this be maps, monitoring approaches, or ideally all-island objectives);
 - The value of common or similar policies, approaches, and practices, with clear information in the case of any major changes;
 - The need for access – to information, policy-makers, appeals etc – and having voices heard;
 - The usefulness of providing positive examples (and thus the need for flagship projects to bring others with them and explain how they addressed shared challenges);
 - The critical need to maintain good relations, as most examples of cooperation remain *ad hoc*, driven by a few key individuals and rely on shared goodwill;
 - The reliance on limited and over-stretched resources to foster engagements, including long-term/sustained activities or projects; and
 - The opportunity for schools and universities to play a greater role in environmental education also on a cross-border/all-island basis.

4.3 Mapping existing transboundary cooperation on the island of Ireland

Environmental cooperation across the border, and, more broadly, international environmental cooperation involving either or both Irish or Northern Irish partners is not new and has taken many forms. As both Brexit and the worsening climate and biodiversity crises spur further cooperative efforts, we need to take stock of the experience and practice of cross-border and all-island cooperation, both formal and informal. The 2021 [report](#) by NESC details a number of initiatives, alongside the importance of considering “east-west alignments as well as north-south”, with cooperation between for example NI and Scotland, or ROI and Wales. NESC’s 2022 [report](#) argued that “climate change and biodiversity loss provide a clear and urgent platform for ambitious all-island action and collaboration”. This shows not only clear political appetite for collaboration on the part of Irish partners, but also the importance placed on environmental issues in developing this cooperation. Efforts are also underway to map community and civil society environmental initiatives (including those which traverse the border) by a number of organisations across the island.³⁰

Starting at the formal end of the spectrum, EU schemes provided repeated funding for cross-border cooperation. A quick review of EU funding for inter-regional cooperation (the INTERREG schemes) reveals how frequent such cooperation is, and the high proportion of environmental projects in the funded schemes. Thus, INTERREG VA (encompassing Ireland, Northern Ireland and the west coast of Scotland, and discussed in Chapter 3) funded 34 projects between 2014

³⁰ The Community Foundation Ireland and the Community Foundation Northern Ireland’s cross-border funding scheme has led to, for example, funding to commission the production of this report but also a collaborative effort between EJNI, Community Law and Mediation and Friends of the Earth NI to create a ‘Manual of Environmental Justice’ online resource – this will include a directory and map of environmental campaigns across the island. Collaboration for Change are also coordinating an additional mapping exercise which is much broader in scope.

and 2021, 17 of which were environmental, in particular across water quality (such as [Catchment Care](#)) and sustainable transport (e.g. [Ulster Canal Greenway](#)) but also including biodiversity, marine protection and renewable energy. Collaboration on water quality is long-standing, and it is one of the areas where GF/BA structures – NSMC, Loughs Agency etc. - are particularly involved, although, as the recent NESC reports explain, differences and challenges remain (such as diverging approaches to tackling invasive species). It is noteworthy that major themes for INTERREG funding, such as water, sustainable transport or biodiversity, are all outside of the scope for regulatory alignment in the NI Protocol – this demonstrates clearly the need to consider cooperation (past and future) beyond the narrow scope of the NIP.

Environmental projects were also funded over the wider INTERREG VB Northern Periphery and Arctic (which includes Nordic partners), with 19 further environmental projects funded between 2014 and 2020 including both NI and Irish partners (alongside partners, amongst others from Norway, Iceland and Finland).

CLIMATE (2017-2020, Collaborative Learning Initiative Managing and Adapting to The Environment⁹), led by Derry Strabane District Council, is a particularly interesting example of INTERREG funding as it builds on the broader North-West Strategic Growth Partnership bringing together Derry Strabane District Council and Donegal County Council and representatives of NI and ROI central government departments, and was established in 2016 under the auspices of the NSMC. This shows not only how non-environmental specific forms of cross-border cooperation can offer opportunity for environmental projects, but also how partners in cooperation can mix and match a wide range of support (from GF/BA structures to EU funding) making it difficult to ascertain where one form of cooperation stops and another starts. It can also lead to long-term engagements and enable taking advantage of well-developed existing relationships and experiences.

Thus, for example, since the end of the INTERREG CLIMATE project, the two councils have continued working together on environmental projects such as putting forward [plans](#) for a green recovery from Covid19 and the overall “green transformation” of the City Region. These include amongst others, a citizens’ assembly, reaching out to young people, and collaborative work on building a North West Regional Strategy. The NESC 2021 report cites several further examples: Community Resources Network Ireland and the Northern Ireland Resources Network, or Natural Capital Ireland amongst others.

While welcome and highly important in their respective areas, these larger well-known projects are only a small part of a wide spectrum of environmental cooperation currently happening, across a wide range of scale (one organisation to many), from highly formal and regulated to informal and ad-hoc. In addition, as set out in Chapter 2, while EU funding drove large cross-border cooperation projects, EU funding does not underpin *all* cross-border or all-island projects. Large projects, such as the All-Island Pollinator Plan, bring together central and local governments across the two jurisdictions, together with scientists, charities, utilities, beekeepers and farmers amongst many others, with thousands of actions to support pollinators taken across the island and recorded on the project’s [website](#). Furthermore, daily practices of cooperation between services or organisations are often informal and unfunded. Yet it remains that the

surge in large cross-border cooperation projects in the last 20 years has been mainly (co)funded through the EU.

As highlighted above, at environmental NGO and community level, information about cooperation across the border in Ireland or all island initiatives is far more piecemeal with no overarching study has been undertaken to date on either levels or modes of cooperation. The overall extent of existing cross-border cooperation is likely to be underestimated and would merit further investigation. For the purposes of the present scoping study, workshop participants and survey respondents shared their experience, from small environmental NGOs starting in one county and gradually developing activities in a growing number of counties across both jurisdictions, to organisations, such as Bat Conservation Ireland, recruiting citizen science volunteers on both sides of the border to much bigger organisations, such as BirdWatch Ireland who collaborate with the RSPB since the late 1990s to produce a report every 7 years on [Birds of Conservation Concern Ireland](#) and with Ulster Wildlife to produce a [map](#) of Barn Owl sighting across the island in 2021. Collaborating on generating data for the whole island is particularly common in the area of nature protection – thus in addition to long-standing bird conservation cooperation, we can note the [Marsh Fritillary Monitoring Scheme](#) led by the National Biodiversity Data Centre, as well as cooperation between Ireland and Northern Ireland on addressing invasive species. However, one aspect to flag is that such cooperation can be long-standing or on a temporary or fixed term basis – and in a practical sense, funding will play a key role here. In addition, there has been more recent interest in the establishment of explicitly ‘all-island’ organisations or initiatives (e.g. EJNI, the All-island Climate and Biodiversity Research Network (AICBRN)), possibly in response to the increasing recognition of the nature of the island as a single biogeographic unit for the purposes of environmental protection, but also in response to the geo-political and practical implications of Brexit.

Because of Brexit, cross-border environmental cooperation can no longer operate in the same way that it did when the UK and Ireland were both EU Member States. There are two main reasons for this: (1) changes to accessibility of EU funds (2) decoupling of law and policy frameworks. In respect to the first, Northern Ireland is no longer covered by major EU funding initiatives such as the European Regional Development Funding, the Common Agricultural Policy or the Common Fisheries Policy and cannot, therefore, ‘draw down’ funding from these sources. For Northern Ireland there is one key exception: the Peace Plus funding programme is designed to be a post-Brexit continuation of previous dedicated Peace funding and Interreg programmes. The new programme is provided for in both new ERDF and Interreg regulations. It is, however, important to underline that the arrangements for Peace Plus do not equate to a continuation of Interreg or ERDF funding in Northern Ireland, instead, the arrangements for Peace Plus are distinct within the new EU programmes. Although the total amount of funding available under PEACE PLUS is larger than it was in any of the previous iterations of PEACE funding (see 3.2.4 to 3.2.6), this ought to be understood in the context of the loss of other sources of EU funding for Northern Ireland that also (pre-Brexit) helped facilitate environmental cooperation. One new opportunity for local authorities that previously engaged with EU funding to conduct cross-border initiatives is the recently announced [Shared Island Local Authority Development Funding Scheme](#), offering smaller, but potentially less bureaucratic, support.

In respect to the second – decoupling of law and policy frameworks – the ‘on-the-ground’ implications are more difficult to define. This is because many impacts are still contingent on decisions on policy development and policy implementation yet to be made in Belfast, Dublin, London, and Brussels, and the extent to which these facilitate convergence or divergence of policy on the island of Ireland and/or between the islands of Great Britain and Ireland. Changes to the law and policy architecture are covered in detail in Chapter 2. What is already certain is that an overarching impact of Brexit is that the law and policy basis for continued cross-border environmental cooperation on the island of Ireland is less secure than it was.

These changes make investigating and understanding cross-border or all-island environmental cooperation even more important. There is a wealth of experience in cross-border cooperation, and in innovative structures and projects aimed at tackling environmental harm which could perhaps be broadened on both a North/South or even East/West basis. It is essential to map the diversity of experiences and the lessons that can be learned from them – taking into account also how the changes above may impact on insights to be drawn. The following section draws on our discussions with workshop participants drawn from public and civil society sectors across both jurisdictions, as well as (where relevant) recent commentary on these issues.

4.4 The experience of undertaking environmental cooperation in practice

4.4.1 Establishing all-island initiatives and organisations

Our research identified relatively few organisations operating under one management/executive structure on an all-island basis. Some obvious examples include EJNI, AICBRN and the AIPP. On a political level the ROI’s recent ‘Shared Island Initiative’ is a rare example of a ‘whole of government’ initiative driven and coordinated by a unit within the Department of Taoiseach in ROI. All-island initiatives are clearly sensitive in a political sense on the island, and there are also practical considerations. On the one hand, if NI and ROI have respective organisations fulfilling particular roles on a local level, an ‘all-island’ solution to any particular problem may be considered redundant or even counterproductive. On the other hand, there is now widespread recognition that the absence of proper coordination in response to serious environmental threats across the island requires a more coherent response and that, across many areas, this coherency may be best served by a single organisation rather than through piecemeal cross-border engagements. However, the establishment of explicitly all-island organisations is challenging. Issues raised included:

- **administrative hurdles** (such as rules and regulations around charities, tax, employment);
- **funding** (where activities span two jurisdictions this may fall outside of single jurisdiction funder criteria and be more expensive);
- **perceptions** on either side of the border that a new organisation is in reality ‘northern’ or ‘southern’ (e.g. if its members or staff are predominantly from one side of the border or if

concerns around duplication of efforts can lead to territoriality in a competitive funding environment);

- **knowledge gaps** (e.g. around public participation processes, legislative differences or governance structures) and;
- **uncertainty** (e.g. for new organisations the complexity of operating on an all-island basis may be off-putting).

Case study: Environmental Justice Network Ireland (EJNI)

“EJNI was launched in 2019, initially as an informal network of academics, lawyers, NGOs and community/grass-roots campaigners interested in environmental justice on the island of Ireland. Its goal is to create a platform to help facilitate collaborative working in the hope of producing more impactful research, advocacy and action. Its founding members were predominantly based in NI, but worked in each of their own capacities on environmental justice issues which transcended the border in Ireland. A launch event at the Ulster Museum attracted attendees from both sides of the border and raised the profile of the work considerably. As the organisation developed, links were formed with collaborating partners from across the island such as the Gathering, Community Law and Mediation, Friends of the Irish Environment, Climate Case Ireland, the Climate Bar Association and Friends of the Earth (NI and IE) - in addition to academics from institutions from north and south of the border.

Interest in EJNI’s work led its steering group to the decision to formalise the network and a number of paths were explored in terms of the best way to do this in a legal sense. After very helpful consultation with the Northern Ireland Council for Voluntary Action (NICVA), the decision was taken to establish EJNI as a company limited by guarantee and apply for charitable status in Northern Ireland. Recent changes meant that it was not necessary to apply for charitable status in the Republic of Ireland as well, which removed one layer of administration. However, in all other senses the administration of the organisation – which now operates on an all-island basis and on EU-level issues has been very complex.

Key issues surround employment contracts/payments for staff/collaborators based in the Republic of Ireland. We have had to appoint employment lawyers to construct bespoke contracts, and accountants to examine tax liabilities. There are limitations to the type of contract we can offer collaborators in the south without registering as a company/for tax in the Republic as well. Lobbying regulation checks had to be undertaken in both jurisdictions. There are additional complexities regarding payment in euros versus GBP. Business insurance has required bespoke cover. By giving our Executive Board a very limited mandate and resting most strategic decisions with a steering group which reflects our all-island approach we have sought to counter these issues, however in some respects EJNI is sometimes still considered a ‘Northern’ organisation – at least in administrative terms. It has also been expensive to get advice on these questions which I can see would be a barrier or disincentive to organisations without funding, or small organisations or initiatives at an early stage of their development.”

(Dr Ciara Brennan, Director of EJNI)

4.4.2 Heightened challenges in the border region

“How can we talk to each other if we are not even on the same map”³¹

³¹ Workshop 1 participant.

‘the area around the Irish border in particular “has been very convenient for environmental injustice”, but community groups, grassroots groups, are beginning to recognise this as well and are cooperating’³²

This history of poor, and often diverging practices, has particular resonance at the border. Participants in cross-border projects, on topics such as water quality, marine or nature protection report a suite of interconnected problems that are particularly heightened in proximity of the border itself:

- **Missing or inaccurate data** - this is in part a legacy of the Troubles, with, in particular on the South of the border, a lack of historical data on species and habitats that local authorities have been slowly addressing since the mid-2000s. This affects the quality and relevance of, for example, site designation.
- **Incompatibility of data** collected in the two jurisdictions – survey respondents raised this in particular in relations to spatial/GIS data which are often incompatible, or do not join well in the border area leading to gaps/errors in official maps. This means NGOs/specific projects having to build their own cross-border maps which raises further issues of interoperability and legacy of data, as well as relying on access to land. This is an area that was [identified](#) by NESC as a priority for Shared Island work: “both administrations could place a greater focus on interoperable statistical data and co-operation between the CSO and NISRA, for sectors which are important in terms of all-island co-operation or comparison, including environment, health and trade”.
- **Common EU rules do not preclude major practical differences** in how they were implemented, raising barriers for effective cooperation. This is a well-known weakness across the EU (see for [example](#), differences in what species are protected and how habitats are listed in the Adriatic between Italy and Croatia). On the Irish Border, this manifests in for example diverging priorities on peatland protection between the UK and Ireland, and the same habitat straddling the border being designated differently in the two jurisdictions.³³ These differences are expected to increase as post-Brexit divergence sets in.
- **Lack of parallel/joined-up structures.** This makes it first, more difficult for establishing cooperation as stakeholders need to become aware of very different groups of actors or levels of institutions in charge of the same issues on both sides of the border. Second, it also makes cooperation more onerous – for example, as a survey participant explained, having to write two different wildfire management plans for a habitat straddling the

³² James Orr speaking to Luke Butterly for the Detail Data, April 2022. Available [here](#).

³³ See for example “Dummy’s Lough one of the Kilroosky/Magheraveely Lough Cluster lakes is a Special Area of Conservation in Ireland, but not in Northern Ireland. This creates a designation boundary in the middle of a lake habitat.” (Clerkins, 2020, 114). This is also an issue for Sliebh Beagh (SPA on both sides, SSC only on one side)

border. This challenge does not only concern conservation but also advocacy, with different political systems and issues on the agenda in each part of the island hampering all-island advocacy. It further matters when it comes to enforcement – while judicial review is never easy, doing so on cross-border matters raise additional issues of standing.

- **Cooperating in a post-conflict context.** The immediate border area has long been a site of disengagement for the two governments. This has made the availability of cross-border international/EU funding critical in addressing needs not suitably addressed by either the Irish government or NI Executive. But the immediate border area has also long been the site of environmental crime (e.g. illegal waste dumping, illegal turf cutting, illegal bog burning) which creates additional hurdles for cooperation.

These issues resonate beyond the border regions also and affect all-island cooperation more generally, e.g. in developing and implementing waste management plans (including determination of landfill fees), river basin plans or networks of nature sites.

4.4.3 Collaboration between NGOs/civil society and public authorities

*“Every consultation needs to be specific enough to be useful”.*³⁴

Successful INTERREG projects and the existence of bodies such as the East Border Region demonstrate that there is long-standing cross-border cooperation involving civil society and public authorities together. Many of our participants were highly positive in speaking of their experience working in such projects/areas but this does not mean that such forms of cooperation are easy to develop or sustain, nor that they sufficiently address the environmental needs for greater cooperative action.

- **Ad hoc cross-border cooperation still prevails.** Participants report lots of positive experiences in cooperation between NGOs and public authorities within jurisdictions (e.g. with local government via the PPN network in ROI), but these still tend to be project or place-specific, are often led by a few key individuals and there is no broader culture of cooperation on conservation work or sufficient NI/ROI or all-island mechanisms to deliver these on a wider or more coordinated scale.
- **Local cooperation to overcome central lack of interest.** Participants relayed how often such big projects, criticised for their high level of administrative burdens and complex funding schemes, were the only way to obtain sufficient support for environmental conservation work, especially in the border region. As NI will not have the

³⁴ Workshop 2 participant

same access to EU funding as before due to Brexit, this puts massive onus on new all-Island schemes such as the Shared Island Initiative to offer funding for practical cross-border projects.

Case study: CANN Project, Cuilcagh Mountain

The [CANN](#) project is 'a cross-border environment project which aims to improve the condition of protected habitats and to support priority species found within Northern Ireland, the Border Region of Ireland and Scotland, allowing the region to meet key EU biodiversity targets and ensuring the future of these internationally important habitats and species. With €9.4 million of funding from the INTERREG VA programme the CANN project team will produce Conservation Action Plans for a range of sites across the jurisdictions which are designated as Special Areas of Conservation (SACs) and accumulatively account for over 25,000 hectares of land. Direct conservation actions will be carried out on 3,650 hectares of these SACs, all with an aim to help and guide the habitats and species found at these sites towards a favourable conservation status.' The CANN [website](#) reports that: 'The Cuilcagh Mountain and Cuilcagh-Anierin Uplands Special Areas of Conservation (SACs), hereafter referred to as "Cuilcagh", are part of an extensive cross-border upland area which runs from south-west Fermanagh, through Cavan and down to Slieve Anierin in Leitrim. The site is a diverse mosaic of habitats, and the blanket bog found here represents one of the most significant expanses of blanket bog on the island of Ireland, much of which is relatively undisturbed.' Cuilcagh is also an SAC and its management is funded via CANN under INTERREG. In addition, Cuilcagh Lakelands Geopark became the [world's first cross border Geopark](#) in 2008, stretching across almost 20,000 hectares of public land jointly managed by Fermanagh and Omagh District Council and Cavan County Council. In November 2015, the Geopark was awarded UNESCO Global Geopark status.

One of the clearest examples of cross-border cooperation between the CANN team and authorities on both sides of the border relates to a wildfire management plan developed for the SAC which applies on both sides of the border. Fire authorities on either side of the border can respond. A key lesson here is that this type of arrangement is being done on an *ad hoc* basis, and that without the central organising force of CANN this type of arrangement would be difficult to coordinate (Workshop 2 participant).

- **Cooperation at the delivery, not design end.** The same NGOs whose work may be valued in delivering conservation action across the border may be side-lined in their advocacy work – be it in relation to public authorities or stakeholder groups (such as farmers). Challenges were particularly identified in ROI organisations, on key issues such as farming and land use, and for specific forums such as the North/South Ministerial Council which profoundly lacks transparency and avenues for civil society input. One workshop participant highlighted the value of feeding into policy documents/work programmes at an early stage as this provided a 'hook' for engagement/support further down the line. However, another participant highlighted that this is frequently not an option and even the final work programmes may not be made freely available, hindering opportunities to engage effectively.

- **This lack of communication on high level policy priority between government, local government and NGOs creates hurdles for jointly applying to funding** (such as PEACE+ or INTERREG) and co-developing projects that fit both political and environmental objectives. Time pressure, lack of clarity in advance and limited resources all make it challenging to design major, long-term sustainable projects.
- **Consultation fatigue, problematic timing and overstretched groups.** While greater engagement is needed, focus should be on *quality* not *quantity* of consultation exercises as environmental NGOs suffer from high pressure on their limited capacities. Publishing numerous related consultations at the same time, where the same actors may wish to respond, makes engaging effectively much more challenging. Consultations should be organized with sufficient time to response, not over traditional ‘off time’ such as December or mid-July/August and with a clear focus (so it is clear which environmental NGOs should be responding/leading joint response).

4.4.4 Collaborations between NGOs

“Umbrella groups are needed to translate high levels into practical consequences for their members. Brexit/Protocol appear high level but on the ground implications are very real: for example we can’t give out trees to community groups because can’t get them from Rol or Scotland.”³⁵

‘ [we are] “engaging much more, very actively with organisations in Northern Ireland, and looking at taking a much more concerted approach on a cross border basis”³⁶

‘...a lot of investment [in cooperation] done by specific people, if they changed jobs the work would be gone...[cooperation] is contingent on interest, goodwill and meagre resources and even that can disappear in the morning’³⁷

- **Uneven collaboration practices across policy areas – success stories and gaps.** Participants spoke of different strengths/levels of policy development across different policy areas in the two jurisdictions. Such cooperation is thus needed whether to (a) bolster/help the other jurisdiction catch up and share best practices or (b) to share the burdens of addressing a relatively new area. But the resources needed to establish and maintain such cooperation are often lacking or at least not prioritised by NGOs.
- **Uneven playing field.** While environmental challenges are shared, resources of NGOs and level of access to politicians and the civil service widely differ on both sides of the border. NI organisations that are part of broader UK-wide groups, or with strong relationships with them, can benefit from their practical and sometimes financial support

³⁵ Workshop 2 Participant.

³⁶ Ian Lumley, Head of Advocacy at An Taisce (Ireland’s oldest environmental NGO) speaking to Luke Butterly for the Detail Data, April 2022. Available [here](#).

³⁷ Workshop 2 Participant.

to a much larger extent than ROI organisations. ROI organisations conversely have much smoother access to EU funding and (in)formal networks post-Brexit than their NI counterparts.

- **Lack of forum and process for all-island advocacy** – Irish and Northern Irish NGOs were able to jointly go to Brussels and weigh in on the Brexit negotiation process to push for recognition of the island single biogeographic unit status and existing cooperation – and yet, such joint advocacy on an all-island level is much more complicated on the island itself. Institutions where such joint advocacy may be targeted – North/South Ministerial Council, or British/Irish Council are intergovernmental, with a lack of transparency, high degree of politicisation and low frequency of meetings further hampering access. This means opportunities to feed in – such as via the Shared Island Initiative – are *ad hoc*, and originating from one, not both jurisdictions, with limited consequences for practical cross-border or all-island actions. This is clearly linked to the analysis in Chapters 2 and 3 surrounding the sub-optimal use of the GF/BA mechanisms, civic forum and the potential for the EU Commission to engage with stakeholders as part of the out-workings of the NI Protocol.
- **Success and opportunity for data-driven collaboration.** Participants talked in depth about experience and success of all-island surveys on e.g. butterflies (marsh fritillary) or broader cooperation on [Birds of Conservation Concern Ireland](#). Yet, there is scope for much more all-island data gathering and sharing, especially in the field of tackling invasive species – highlighted by the previous invasive species project.
- **Collaboration can be the result of specific events or triggers.** For example, the Detail Data [reported](#) in April 2022 that one reason for An Taisce’s recently enhanced collaboration with environmental NGOs in Northern Ireland could be the donation of over 2,200 acres of land which straddles the Irish border at Sliabh Beagh. This is the first site in Northern Ireland managed by the organization. Other ‘triggers’ mentioned in the Detail Data report are pressures due to Brexit and mounting concern over cross-border pollution (e.g. ammonia pollution from intensive agriculture).

4.4.5 Involving the public

‘Recourse to legal challenge is a reflection of a broken system’³⁸

We have seen wide-ranging and growing efforts to engage the public in environmental action on the island, at various levels. Key observations from those engaged in this type of collaboration include:

³⁸ Workshop 2 Participant.

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- **Uneven support for participatory and deliberative approaches.** The vast majority of these initiatives have been driven either by EU policy requirements (consultation on river basin management plans under the EU Water Framework directive notably) or Irish government initiatives (Shared Island Initiative most recently, including the Citizens' Assembly on biodiversity loss). There has been a lack of support for such approaches from the NI Executive, with support for public involvement being pushed either by local government (e.g. North West Strategic Growth Partnership), or by groups of citizens organising their own initiatives/campaigns or co-organising with NGOs (see e.g. a planned submission to the Citizens' Assembly on 'Rights of Nature' co-organised by EJNI, QUB and Lawyers for Nature). Citizens' Assemblies have clearly had an impact in ROI but are considered by some as an '*easy way out for politicians*'³⁹ and the strengths and weaknesses of potential Citizens' Assemblies in the context of NI have been explored in detail (Suitor, 2021).
 - **Many efforts to involve the public are not cross-border in nature** – there is thus for example no mention of the border in the Irish Citizens' Assembly 2018 report on climate action. The current 2022 biodiversity Citizens' Assembly will ask its members to consider all-island issues as part of its remit and will engage with NI experts (see example above) – but its members will only be Irish residents. The Public Participation Network (PPN) initiative provides structured pathways of consultation on policy between local authorities and local community groups in Ireland but does not extend to project work. This is not all-island and no equivalent structure exists in Northern Ireland.
 - **Efforts that tackle all-island or cross-border issues suffer from unbalanced participation.** For example, the NESC report on Collaboration on Climate Change and Biodiversity saw a sharp imbalance in where organisations who responded were based: 70% overall were based in Ireland and 19% based were all-island organisations, with only 8% being from Northern Irish organisations. As noted in the report, this may be in part due to the investigators' own networks being based in Ireland and insufficient engagement with those based in NI. This does not only impact efforts from large public organisations – workshop participants related how small NGOs can struggle to recruit volunteers for cross-border actions in the jurisdiction they are less familiar with, often through lack of embedding in informal networks/understanding of how the two different systems work.
 - **Citizen groups sharing similar environmental issues on both sides of the border face procedural hurdles (similar to all-island non-profit organisations as discussed above) in order to cooperate** – e.g. difficulties of navigating the two legal systems, planning or indeed funding systems. Nevertheless grassroots groups – from The Gathering to anti-mining groups (e.g. CAIM) are increasingly active cross-border. In addition, community-orientated campaigns can be piecemeal, place-based and of short

³⁹ Workshop 2 Participant.

duration if the campaign in question addresses a particular issue. Their organic nature allows them to fill gaps but it hampers efforts for coherency, resourcing, expertise, and continuity in terms of knowledge and experience. Organisations such as the Environmental Gathering have emerged in response to these issues, offering stability and coherency through a central group of organisers and sub-groups with an increasingly broad reach.

Case study: The Environmental Gathering

This is a platform for/community of environmental activists coming together to help share stories, experiences and expertise, and deliberate on how to collaborate for environmental change. The Gathering was initiated by Dean Blackwood (River Faughan Anglers), Eamon McCann (Into the West) and Mary McGuigan ZWNW (Zero Waste North West) and hosted by Nuala Crilly (Compassionate Campaigning) and brought together representatives from groups all over the island. The aim was to enable grassroots discussions and support environmental campaigns. This has continued to date (including online during the pandemic), but with increasing participation and focus points. It now represents almost 100 different groups and campaigns from across the island of Ireland. It has 7 or 8 subgroups that have a range of focus points including Aarhus, the Mobouy dump (a major factor in initiating work on the environment) and post-Brexit governance. These focus points can be fluid and change depending on need, or sometimes develop into stand-alone entities (e.g. anti-mining groups were part of the Gathering later amalgamated to form their own group but remain part of The Gathering). A large component of its work is supportive and capacity-building within the community, e.g. sharing information, undertaking FOIs, facilitating discussions, making or helping with planning appeals, etc. through coming together. It also seeks to amplify the voice of individuals. Recently, members of the Gathering engaged formally with NI Assembly Committee on an inquiry regarding the planning process. The Gathering collaborates closely with other organisations such as Friends of the Earth NI, Compassionate Campaigning and EJNI – as well as working closely with a broad range of influential campaigning groups (e.g. Rostrevor Action Respecting the Environment, Save our Sperrins, Zero Waste North West and many other emerging and established sources of community activism).

- **The operation of citizen and community-led groups has evolved organically in a way which mirrors the ‘reach’ or nature of the environmental threat being responded to.** For example, CAIM (the all-island anti-mining group formed in 2021) was established in direct response to consideration of Ireland as one ‘entity’ by the mining industry.

“It became very clear that, when it comes to industry, and state approaches to the mining industry, Ireland is very much sold as one island...So we thought it was very important that our resistance links up across the border as well, because climate change knows no borders.”⁴⁰

⁴⁰ V’cenza Cirefice, speaking to Luke Butterly of the Detail Data in April 2022. Available [here](#).

4.5 Conclusions

Cross-border and all-island conservation efforts, on a wide range of issues, have been going on for years. Current efforts at mapping patterns of cooperation, as well as successful local stories and examples which may be fruitful to share across both jurisdictions – such as those done in this report, and recently in the NESC Shared Island work – have only started to scratch the surface. What they do indicate already is the existence of a deep and complex web of mostly informal collaboration sustaining environmental action on the island, but one existing in the context of information and resource deficits. The most noticeable gap is frequently that of structured, formal mechanisms for all-island cooperation,

Critically, our workshop participants relayed how civil society find cross-border or all-island advocacy much more complex than cross-border conservation, even if the latter is already quite challenging. Governments and local authorities appear much more willing to engage with environmental NGOs when it comes to implementing their policies than when it comes to developing them, although this does differ between environmental sectors. These challenges for advocacy can in part be addressed through greater engagement with the public and through the establishment of all-island organisations/structures.

However, we are particularly cognisant of the need to consider a wide range of perspectives and to avoid simply suggesting a good initiative in one jurisdiction could become cross-border – while this may be the case in some areas, in many areas there is extensive experience on both sides which need to be compared, and the potential challenges of amalgamating two overlapping, competing schemes (e.g. TidyTowns and Best Kept; Farming for Nature and the Nature Friendly Farming Network) or organisations need to be addressed. The status and form of cooperation, the needs and indeed the available opportunities widely differ between environmental sectors which hampers such attempts at mapping existing and possible collaborations.

5. Lessons from international experiences

5.1 Introduction

Chapter 4 explored in depth the extent and nature of existing pathways and opportunities for environmental cooperation across the island of Ireland – as well as the barriers or challenges to enhancing existing joint efforts. Ahead of designing and proposing mechanisms which might help overcome challenges to cooperation, it is worth considering two overarching considerations – namely what is meant by ‘successful environmental action’ and what is meant by ‘successful cooperation’. It is also useful to consider international examples of cooperation across borders/within regions in practice as these examples have helped inform our own approach. Examples include EU level NGO initiatives, the Baltic, Adriatic and Salish sea areas and a range of examples drawn from post-conflict ‘peace-building’ environmental cooperation between states. Once again, we will briefly consider broader international examples of transboundary cooperation on the environment before focusing on initiatives which have promoted cooperation within and between civil society. While this chapter explores these experiences in brief, there is significant potential for further academic research to explore how these lessons might help shape the future of environmental governance on the island of Ireland.

5.2 Defining ‘success’

5.2.1 *Successful environmental action*

There are many different ways of measuring the success of environmental *action*. For example, ‘success’ can mean achieving beneficial environmental outcomes (Cox *et al.*, 2010), but can also be an increase in trust and more positive working relationships and cooperation (Reed, 2018). This ability to work together is particularly important cross-border, as a common feature of the natural environment is that it is ‘shared’ among users, and this shared nature of the environment means that in belonging to everyone, it, in effect, belongs to no one (Hardin 1968). Hardin’s ‘Tragedy of the Commons’ is now playing out to devastating effect in relation to transboundary environmental issues such as climate change, biodiversity loss, over-fishing, plastic pollution and resource depletion etc., as the environment does not respect national boundaries and many biophysical features cross boundaries, and threats to habitats and species are often of a transboundary nature.

In terms of developing ideas about what ‘success’ looks like in relation to managing the global commons, consideration of structures such as the EU can provide some insights. In many respects, the EU can be considered ‘successful’ in that it is the global exemplar of transboundary environmental governance (Jordan and Gravey 2021; Brereton and O’Neill 2019). Today, the EU has arguably one of the most progressive environmental policies in the

world and constitutes one of the most comprehensive bodies of environmental protection law, adding up to more than the sum of national policies. However, 'best practice' in a formal governance sense doesn't always equal successful environmental action on the ground and the EU has an implementation deficit in the application of environmental law in Member States (Jordan and Gravey 2021). The EEA (2020) 'State of the Environment Report' (SOER) states that:

"Europe will not achieve its 2030 goals without urgent action during the next 10 years to address the alarming rate of biodiversity loss, increasing impacts of climate change and the overconsumption of natural resources. The European Environment Agency's (EEA) latest 'State of the Environment' report states that Europe faces environmental challenges of unprecedented scale and urgency."

This gap between the legal basis for strong environmental protection and what happens on the ground is referred to as the 'implementation gap'. Hence, strong legal protections are a necessary, but not in and of themselves a sufficient condition for 'successful' transboundary environmental protection. Current examples of cross-border international cooperation include ocean management such as the Baltic Sea (Brady *et al.*, 2022). International environmental agreements relating to the Baltic Sea have been in place since the 1970s with *The Convention on the Pollution of the Marine Environment of the Baltic* signed by all Baltic States in March 1974, coming into effect on May 3rd, 1980. This Convention is said to be one of the most comprehensive environmental agreements ever ratified (Hagerall, 1980). However, the Baltic Sea shows declining environmental performance. Brady *et al.* (2022) suggest that the institutions of the EU should be leveraged for achieving the goals set out in the Baltic Sea Action Plan (BSAP) as the EU has the economic, political and legal mandates to further implementation and compliance. However, critics argue that in choosing the 'tools' to manage the Baltic Sea, the designation of sites depends too strongly on governmental politics, economic and cultural criteria, and interactions between society and the environment (Trochet and Schmeller 2013).

Deficits in the implementation and enforcement of existing international environmental law means that robust national level implementation is required. It is not enough to rely on legal frameworks themselves which means that even if strong legislative frameworks exist, countries must take national ownership of environmental protection goals to avoid adverse environmental outcomes. This 'national ownership' narrative has become increasingly [prominent](#) in the context of climate governance within the EU for examples. On the island of Ireland, Brexit has clearly complicated the role that the EU can play in promoting or leveraging all-island environmental initiatives – this means that governments both north and south of border must play a more proactive role in delivering at national and all-island level. NGOs can play a critical role in this process through developing advocacy goals which explicitly consider transboundary issues with a focus on enhancing national level protections.

5.2.2 Successful cooperation

There are also different ways of framing the success of cross-border environmental *cooperation*, and often metrics beyond environmental impacts are used. Social metrics (such as increased social cohesion across borders, enhanced wellbeing and improved policy-making) can be easier to report because they can be measured qualitatively in the short-term. However, the quantitative environmental impacts of cooperation may not be observable until the medium-long term. Even then, isolating on-the-ground impacts as the result of specific cooperation projects can be complex. As a result, some cross-border projects more readily report success in terms of events and network building, irrespective of whether the environmental outlook has improved or not. For example, The Interreg funded Belgium/France ‘Save our Pollinators’ project, reports that 1,000 families registered gardens in the cross-border network of refuges for the protection of pollinators, and 600 people attended pollinator courses. While the cross-border project can be considered a success in this regard, the impact on pollinator numbers remains to be seen. Similarly, the Interreg funded ‘Smart Schools’ project focused on renewable energy, involving Croatia and Bosnia and Herzegovina border regions, reports success in terms of workshops held and schools reached, but does not report on the impact the project has had on CO2 emissions displaced. Closer to home, the [All-Island Pollinator Plan](#) is often cited as a successful example of cooperation, but pollinators numbers such as those for bumblebees still appear to be in decline, and whether the Plan is a success by such measures is too early to tell.

“I’ve seen first-hand just how impactful they can be – not only for bumblebees, solitary bees, honeybees, hoverflies and other pollinators, but for people too. Through the Plan, these amazing insects have brought us together in new ways, enhancing social cohesion and helping to improve our physical health and mental wellbeing”⁴¹

5.2.3 Successful policy interventions

Successful policy interventions can be based on a number of criteria including effectiveness, efficiency, equity, acceptability and institutional feasibility. Shahab et al. (2019) provide a comprehensive framework for measuring the success of a policy intervention, combining theoretical approaches from the fields of planning, welfare economics and new institutional economics. These criteria can be applied to determine the success of interventions for different environmental issues. For example, policies which are more efficient or least cost (e.g. Market-Based Instruments such as taxes, levies, trading schemes) tend to not to be as socially acceptable as other regulatory (e.g. ban, law etc.) interventions.

At an international level, ‘successes’, understood as cases that reported successful long-term environmental management’ (Cox *et al.*, 2010), tend to be more economically related e.g. linked to the rational utilisation of resources. Examples include the EU and CO2 emissions reductions, waste management and circular economy, or they tend to be related to the protection of human health (EEA, 2020) as there is more immediate public demand for this. In these ‘successful

⁴¹ Malcolm Noonan T.D. speaking about the all-island pollinator plan, available [here](#).

cases', market-based instruments have been applied including pricing carbon or taxing pollutants (internalizing externalities) and there are clear market forces to encourage the rational utilisation of resources (e.g. minimum levels of recycled material in new products) (e.g. the [Single Use Plastic Directive](#)). This dynamic has been recognized at international level. For example, the EEA 'State of the Environment Report' (SOER) 2019 subdivides problems and issues into 3 categories: (1) protecting natural capital, (2) resource efficiency linked to market forces and (3) environment and human health. It is striking from their analysis that 'successful' environmental protection is much more likely where the issue is related to market forces or human health, as opposed to environmental protection for the environment's sake.

However, when considering protection of nature and biodiversity, the linkages to market forces are less clear and the outcome and prospect is less favorable. For example, soil condition, climate change impacts on ecosystems and common species (birds and butterflies) all show deteriorating conditions out to 2030. Indeed, the only areas of the natural environment showing improvement are terrestrial and marine protected areas. Hence, new alternative approaches to environmental (biodiversity) protection maybe required, for example payments for ecosystem services and (e.g. the 'Greening Measures' in CAP), or Natural Capital accounting. However, such monetary approaches should be carefully considered. The deeper long-term effects are still not fully understood, but existing research suggests that once market norms displace social norms, the effects can be difficult to reverse (Raworth, 2017).

There is no one size fits all approach to environmental cooperation. Designing successful cooperation needs to be tailored to the specific characteristics of the environmental issue, the place concerned, and stakeholders involved. However, researchers have undertaken studies of cross-border cooperation involving NGOs and civil society in regions across the world, with potential relevance for the context of the island of Ireland. The research undertaken in preparation of this report did not involve a systematic review of these studies, however we can draw some key points to inform efforts to improve cooperation on the island of Ireland.

5.3 Considering international examples

5.3.1 Transboundary cooperation and enhanced structured NGO engagement

The Ramsar Convention is an international Convention that seeks to protect wetlands internationally, in particular due to their role as habitats. It provides for states to designate sites of international importance, including transboundary sites. This is not required however, and there is, for instance, [no Irish/UK transboundary site designated](#). The Convention also facilitates [regional initiatives](#). However, the cooperation goes beyond states, with key roles for NGOs in particular and in a [more unusual fashion](#) than typically provided for in international environmental agreements. This is exemplified by the role for ['International Organisation Partners' \(IOPs\)](#). Six IOPs have been formally recognised by [Resolution VII.3](#) (1999), [Resolution IX.16](#) (2005) and [Resolution XII.3](#) (2015). These are Birdlife International; IUCN – International Union for Conservation of Nature; Wetlands International; WWF; International

Water Management Institute; and Wildfowl and Wetlands Trust. (N.B. IOPs can include ‘international intergovernmental and non-governmental organizations’ and some of these IOPs do include governments within their memberships) Other stakeholders may be granted this status where they meet the relevant [criteria](#). [Memorandums](#) are signed between the Convention parties and new IOPs recognising this status and the rights and responsibilities that flow from such status. IOP status provides for [formal structured engagements](#) that leads to nearly equivalent roles as for the contracting parties. According to [Resolution VII.3](#), they thus are ‘expected to contribute on a regular basis and to the best of their abilities to the further development of the policies and technical and scientific tools of the Convention and to their application’, with roles as observers and ‘advisors in all activities of the Convention, including the meetings of the Conference of Contracting Parties, the Standing Committee, and the Scientific and Technical Review Panel, as well as regional and subregional meetings’. This reflects the shared goals, values etc (even if conflicts may arise) and recognising the role of IOPS in driving the creation of the Convention, as well as their potential to provide essential expertise, human resources and even financial support in its implementation.

The Ramsar [Handbook](#) also outlines some key areas where IOPs operate and also the existence of Memoranda of Cooperation with numerous other stakeholders – this reflects the capacity for those interested or engaged in the field to cooperate, without taking on the role of IOP. The Handbook further notes that the Convention’s partnership approach also involves working with ‘community groups, indigenous peoples and other stakeholders at local level’ – it is simply the nature or extent of engagement that varies. (The extent of engagement with these groups in practice however has been [questioned](#)). The approach taken by the Ramsar Convention in its development and implementation is highly unusual. It is also not within the UN framework (or indeed within the EU), so it is lacking the opportunities to avail of the institutions, governance mechanisms or indeed funding supports that are present within these. For instance, [Prideaux](#) praises the structured, formalised roles for NGOs that are crucial in the Convention’s implementation – more so because of this context. She highlights the main issue being that of limited resources and capacity for both Convention bodies and activities. There is a need for funding generally, with the hope here that NGOs could help – including through providing expertise and human or financial resources. One risk exacerbated by broad engagement is that where there are numerous actors involved, who have more diverse interests and who have strong roles in guiding policy development and the scope of action, then the key focus may be lost and the Convention can seek to do too much – as highlighted by [Bridgewater and Kim](#). While it is necessary to identify key overarching aims and focus points, nonetheless a holistic approach and one that engages meaningfully with stakeholders is essential – the challenge as recognised by Bridgewater and Kim is to balance it well and also fund/resource it adequately.

The World Wetland Network published a [review](#) in 2015 based on a survey of its members and the broader wetland conservation community regarding the Convention and the role of NGOs and civil society organisations. The general conclusions indicate that NGOs ‘are committed to Ramsar and want to do more’ – with much potential to implement (and enforce) the Convention further and for broader engagement by NGOs that are not IOPs, e.g. with national focus points.

It provides the following recommendations (CEPA Programme = Communication, Education, Participation and Awareness Programme):

- a) Recognize that NGOs often create a longer-term and more continuous link for Ramsar than Government Representatives.
- b) Develop more structured guidance for Ramsar Parties, and National Focal Points, on how to engage civil society, possibly as part of a CEPA programme.
- c) Explore options to expand on the International Organisation Partners status to include more NGOs and civil society organisations in the decision-making process for Ramsar at international, regional and country levels.
- d) Explore options for inviting NGO and civil society input into reporting on the state of wetlands, as well as having input to the Ramsar wetland nomination process and the Montreux Record.
- e) Prioritize funding and support for NGOs and civil society organisations that are working on Ramsar listed wetlands.

In terms of relevance to environmental cooperation on the island of Ireland, the Ramsar Convention demonstrates the significance of having structured mechanisms for engagement by environmental NGOs (and other stakeholders also), not only in monitoring and enforcing environmental policy, but also in its review and design. It highlights the advantages of enhancing engagement by core NGOs, but also that this imposes considerable burdens on them. There should be formal scope for other NGOs to also engage in a structured manner to varying extents. Considerable ring-fenced funding is essential to support NGO engagement. The need for funding applies equally to public bodies. The case study also provides considerable insights regarding the broader nature of governance mechanisms, the value of effective enforcement mechanisms and the risks of trying to do too much with too little. The Convention and its functioning in practice merit further investigation. It should be borne in mind that the context differs, so that a simple transplantation of approaches would not necessarily lead to the same outcomes.

5.3.2 Triggers for civic activism and cross-border cooperation

The Salish Sea is an inland sea on the west coast of North America in the north-western corner of Washington State (USA) and the southwestern corner of British Columbia (Canada). An [extensive study](#) was carried out by Western Washington University's Border Policy Institute (Säre, 2020), with a focus on NGOs and cross border cooperation in the Salish Sea and (with useful comparison to Baltic Sea regions). The report found that:

'Despite active NGO work around the Salish Sea, there are few NGO-to-NGO partnerships that are jointly planned and funded. The few existing cross-border NGO projects that do exist are mostly technical ones, with scientific research or conservation as the main component....interviews with non-state stakeholders showed that these groups are also concerned about the lack of jointly agreed-upon biodiversity and water management protection measures, such as protections for endangered Southern

Resident orca whales. Fundraising happens separately on each side of the border. The absence of public and private funding for cross-border cooperation and general policy support for transboundary and basin-wide cooperation is a major obstacle for non-profit cooperation.'

Key recommendations from the report relating to the Salish Sea were that:

1. *'Universities can play a neutral but strong stakeholder role for leading processes to promote transboundary collaborations, including with environmental NGOs and local communities.'*
2. *The Salish Sea Ecosystem Conference could devote sessions specifically for NGOs to help develop community-led cross-border cooperation, perhaps with a long-term goal to have a specific conference for Salish Sea NGOs in the future.'*
3. *For NGOs focused on environmental education, educators and leaders could plan a joint conference to discuss possible education programs and the development of shared online materials.'*
4. *Greater support for initiatives like the Salish Sea Day of Action could help to promote the development of a transboundary Salish Sea identity.'*
5. *Develop a grant program with major donors and funders for NGO- and community-led cross-border cooperation projects.'*

In this case study, there was a sharp rise in civic activism and cross-border cooperation in response to plans for a Trans Mountain pipeline expansion project. This unifying advocacy target may provide interesting examples for the island of Ireland – where NGOs and citizens could centre around a small number of shared challenges/ environmental threats and focus collaborative efforts on these. Climate change is an obvious example, but another possibility is shared action and advocacy around the 'Rights of Nature' movement which has already captured imaginations of communities both north and south of the border.⁴² NGOs on both sides of the border in Ireland could identify key shared 'threats' and use these as a starting point or focal point for enhanced cooperation. In addition, publicising and making information about ways to get involved easily accessible has been shown to work across multiple international examples, including for example the Water Framework Directive's Common Implementation Strategy's stakeholder groups (in reviewing implementation).

5.3.3 Transboundary conservation and peacebuilding

Environmental cooperation has been considered as a tool to help promote peace between neighbouring jurisdictions in post conflict settings. This has connection has been widely explored in academic literature (Carius, 2008; Dresse et al, 2018) and has also been recognised in multiple international examples of cooperation e.g. the [UN Environment's Environmental](#)

⁴² Key strands of the Rights of Nature debate have been summarized in EJNI's recent submission to the Citizens' Assembly on Biodiversity Loss, available [here](#).

[Cooperation for Peacebuilding](#) ‘supports efforts to consolidate peace by providing expertise on the conflict risks and peacebuilding opportunities associated with natural resources and the environment in countries emerging from conflict, or still experiencing conflict around the world’. In terms of cooperation, UNEP ECP works on a number of levels: ‘First, it works with academics and practitioners to develop an extensive evidence base of good practices and lessons learned from conflict and peacebuilding case studies. This wealth of material is managed in a global knowledge platform and disseminated to a community of practice on environmental peacebuilding. Second, it conducts policy analysis and creates partnerships with UN and other actors in order to help formulate more effective response policies and programmes across the spectrum of peace and security operations. Finally, it provides technical support to UN country teams, conflict-affected countries and other stakeholders in the field to conduct assessments and apply good practices through catalytic partnerships and pilot projects.’

The UNEP ECP engagement in Afghanistan involved:

- A major post-conflict environmental assessment, conducted in conjunction with the Government of Afghanistan and Afghan environmental experts.
- UNEP ECP’s work expanded to focus on rebuilding structures of governance and on addressing urgent urban environmental and natural resource management issues.
- A key vehicle for the ECP’s work was the [Afghanistan Resilience Consortium](#) (ARC) which was established in 2014 and ran until 2019 as a partnership between Afghanaid, ActionAid, Concern Worldwide, Save the Children and UN Environment (UNEP).

Recent [research](#) (Hwang, 2021; Small 2022) explores the role of environmental cooperation as an instrument for peacebuilding in post-conflict societies, with a focus on Ireland. Hwang concludes that ‘the island of Ireland already has institutional arrangements and resources to implement any of the proposed models. Building a sustainable peace requires an approach to not only facilitate good relationships between divided human communities, but also resolve the human-nature conflict’. This has been reaffirmed in the course of the current research project, which has highlighted the potential of existing pathways to cooperation on the environment to be developed. The emphasis on the ‘human-nature’ conflict has also been a recurring theme in recent community and activist movement through the ‘rights of nature’ movement which has a strong all-island component fostered through communities from across the island working together. NGOs could consider how best to support the emergent grassroots movements focusing on these issues, ideally in cooperation and not limited to environmental organisations. It is notable that organisations like Concern Worldwide and Save the Children also played a key role in the ARC partnership and the link between rights, social and environmental justice is becoming increasingly prominent on the island of Ireland and was raised throughout the workshops undertaken during the current research project. NGOs could also work together across the border to make more explicit arguments linking environmental degradation across the whole island (but particularly in Northern Ireland and in border areas) to the conflict and to post-conflict governance arrangements which have prioritised security and political concerns over effective management of the environment. Making these connections could elevate environmental concerns within the policy hierarchy at a time when critical governance elements

are in flux (e.g. reaffirming the importance of environmental elements in the Protocol for example).

5.3.4 Developing joint governance structures across borders

On the island of Ireland, while we have to contend with two jurisdictions sharing a single biogeographic space, other small European states or regions face similar challenges – such as along the [Adriatic sea](#), where effective marine protection (in particular for both bottlenose dolphins and loggerhead turtles) would require cooperation between Italy, Slovenia, Croatia and Montenegro. While “ideally, key areas should be identified without concern for jurisdiction in the expectation that the concerned countries will collaborate for conservation” (Fortuna, 2018) in practice this is very difficult to achieve due to both different implementation choices and prioritisation of EU member states in how they build the Natura 2000 network, and the fact that both species move in and out of EU waters. Furthermore, the lack of a shared institutional structure with a focus on environmental issues makes it much harder for governments to jointly address this conservation challenge.

In that respect, the Adriatic differs widely from the Baltic where such a joint governance structure, HELCOM (Helsinki Commission, also known as the Baltic Marine Environment Protection Commission). It brings together the 9 countries bordering the Baltic since 1974. Critically for our focus on the island of Ireland, this is a body with environmental focus, which compiles expertise and makes (non-binding) recommendations for the government, and to which environmental NGOs can gain observatory status giving them the possibility to attend and participate in meetings (Boström et al, 2015). While environmental NGOs along the Baltic can participate in structured intergovernmental cooperation on the environment, in Croatia as in other relatively recent EU member states such as Slovenia and Poland, environmental NGOs still face an uphill struggle in accessing environmental information and weighing in on decision-making. Consultations, when they do happen, can either be limited in scope (with few organisations invited to respond), or in what is considered acceptable to discuss (e.g. refusal to consider alternative to official plan in an environmental impact assessment) (Boström et al, 2015).

5.3.5 Developing supranational NGO cooperative structures

In the face of governmental reluctance to involve environmental NGOs, bilateral cooperation but also cooperation at international level through coalitions or umbrella organisations is key (Berny, 2013). In a study which explored factors affecting sustainable cross-border cooperation in the Czech–Polish borderland, NGOs in both the Czech Republic and Poland considered ‘the quality of human relationships, mutual desire to know each other better’ as important (71% and 59% respectively) (Kurowska-Pysz and Szczepańska-Woszczyzna., 2017). While existing cooperation (as set out in Chapter 4) clearly exists on the island of Ireland, there is potential for this to be significantly developed – and building relationships between organisations and individuals will

be key driver in this process. Mechanisms through which this can be delivered will only be attractive if they are impactful, provide added benefits and do not place either administrative or time-intensive burdens on organisations involved. An example of where this has been done effectively elsewhere can be seen in the cooperation which occurs in NGOs operating on a pan-EU level, where significant coordination exists through the co-signing of [joint letters](#) and coordinated advocacy campaigns around agreed priorities. A replicable model could be based on the [European Climate Foundation's](#) monthly climate governance 'hubs', which bring together EU and national level environmental organisations and think tanks to raise awareness of initiatives and emerging advocacy opportunities, provide opportunities for sharing best practice or 'what works' stories from across the EU and also help prevent duplication of efforts and facilitate strategic effort-sharing with regards to advocacy campaigns. These hubs can help enhance recognition of the value of bottom-up approaches/efforts and draw these efforts closer to the policy-making processes.

Coordination between NGOs can amplify the impact of advocacy campaigns and make it easier to influence top-down policy/law making processes. On the island of Ireland there is significant potential for enhanced collaboration between environmental organisations which could boost influence and impact across a range of areas. Organisation of a regular 'hub' type set up on the island could help deliver this. In addition, given the nature of the shared challenges across the island there is likely to be existing overlap between NGO-led research and advocacy activities. Coordination and regular meetings between organisations working in the same areas could help identify new advocacy opportunities, promote strategic division of labour and facilitate more efficient use of funding.

6. Conclusions

Cross-border and all-island environmental cooperation and engagement by all environmental actors are essential to achieve much-needed positive environmental outcomes on the island of Ireland. However, the legal and political landscape is highly complex and also evolving at a rapid pace. This, poses its own challenges for cooperative activities but also casts a spotlight on these issues, incentivises consideration of a range of other possible tools and may lead to positive innovations.

This research, commissioned by NI Environment Link and the Irish Environment Network and funded by the Community Foundation Ireland and Community Foundation Northern Ireland, considered the current and evolving regulatory and governance arrangements on the island – including in light of Brexit and core international agreements. It also considered the practical experience of existing and previous cross-border/all-island environmental cooperation and engagement on the island of Ireland, with some insights from international case-studies.

Our key conclusions are as follows.

1. There are similarities between the two jurisdictions that facilitate dialogue and, to some extent, also deeper cooperation and engagement.
 - These similarities derive from a combination of international law, EU law, the historical political and legal influence of the UK over the island as a whole, and simply the proximity and close relations between the two jurisdictions.
 - They are reflected at present in both shared EU frameworks and to a lesser extent domestic environmental law and policy, e.g. on nature conservation, pollinators, plastic bag levies and TidyTowns/Best Kept competitions.
 - Practical examples of cooperation arising from these similarities include the All-Island Pollinator Plan, the previous Invasive Species project and the Best Kept Town award.
 - It is important to foster and maintain these relationships and similarities.
2. However, significant divergence also existed even before Brexit and this has created considerable challenges for cross-border and all-island cooperation and engagement. This has been compounded by problematic environmental governance experiences on both sides of the border.
 - Divergence is reflected in structures, power divisions, procedures, terminology etc.
 - The presence of divergence enhances the need for cross-border/all-island cooperation, to share resources, insights and expertise and to deal with shared challenges.
 - There is a need to identify existing areas of divergence and to monitor whether this increases as a result of Brexit or other jurisdiction-specific legal or policy changes. This should include critical analysis of how these divergences could be minimised but also whether new pathways are beneficial or not.

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3. Brexit raises valid concerns over increased declines in environmental standards, policy/governance uncertainty and regulatory divergence.
 - Retained EU law in the EU Withdrawal Act 2018 is only a stop-gap measure and does not prevent the UK/NI or the EU/Ireland moving away from the status quo, including to gain competitive advantages.
 - The UK/EU agreements (Withdrawal Agreement, NI Protocol and Trade and Cooperation Agreement) provide some limited protection, but do not adequately resolve these concerns.
 - Major areas of current cross-border cooperation are outside the scope of the Protocol: water quality, biodiversity, sustainable transport. While there is, in principle, potential to add areas to the NI Protocol or to develop it in its implementation, this is of limited value in practice in the near future.

 4. A combination of UK and NI legislative and policy developments, largely responding to Brexit, as well as EU/ROI legislative and policy developments introduce increased divergence and highlight the likelihood for more substantial divergence in the future. These include (for example):
 - For the UK, this includes provisions within the UK Environment Act 2021, Internal Market and Common Frameworks.
 - In NI, it also includes the development of NI strategies and policies, including the new climate legislation but also potential structural change regarding independent environmental regulation (all caveated by the potential for policy stasis created by the current devolved political impasse);
 - In ROI, this includes development of the existing climate law and the citizens' assemblies on biodiversity and on climate change.
 - For the EU, this includes renewed environmental action to deliver on the European Green Deal, review and revision of large swathes of environmental rules as part of the 'Fit for 55' legislative agenda, and on-going reforms of the Common Agricultural Policy.

These changes make engaging more difficult:

- Even where changes introduce positive policy outcomes, uncertainties, changes and divergence create extra challenges and burdens for cross-border or all-island activities, whether by public bodies, NGOs or broader civil society.
- Changes are challenging to monitor, understand and evaluate – something that is essential if actors are to engage with environmental governance in NI or the ROI, on a local, cross-border or all-island basis.

These challenges will be felt differently by different actors. For some groups, in particular NGOs seeking to engage on a cross-border/all-island basis (in policy advocacy, design, implementation, monitoring etc.), the changes simultaneously create new demands on their resources (as protections are threatened), undermine resources (loss of funding opportunities), and increase costs and barriers (through the increasing divergence and uncertainties).

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5. The Good Friday/Belfast Agreement binds the UK/NI and Ireland and is an underused tool, with multiple pathways to help promote cross-border and all-island engagement.
- The role and significance generally of the GF/BA has been further highlighted by Brexit – not solely for peace, but for N/S and E/W cooperation more generally.
 - Environmental cooperation is an area reflected across the GF/BA and important roles are played by bodies such as the NSMC (in its Environment Sector capacity), Loughs Agency and the Special European Union’s Programmes Body (regarding funding).
 - There is potential to further develop and use the role of the NSMC, as well as the BIC and BIIC – including on environmental matters. Scope of environmental action undertaken by GF/BA bodies such as the North/South Ministerial Council is much more flexible than the Protocol: as both jurisdictions have agreed new Climate Acts, collaborative working on delivering net zero (among other priorities) would be a sensible development.
 - Implementation bodies could be expanded – either extending the remit of existing bodies (e.g. the Loughs Agency) or establishing further ones as needed.
 - The GF/BA also provides for an all-island civic forum, which could have focus points on environmental matters and would help facilitate stakeholder engagement.
 - However, key issues currently arise including: limited focus points within the work programmes; lack of transparency (e.g. publishing detailed work programmes in advance, or detailed reports on discussions); lack of meaningful engagement with stakeholders (e.g. lack of access in working groups); and the lack of a Bill of Rights.
6. Some external international commitments will continue to bind both NI/the UK and Ireland/the EU, providing for continued shared frameworks and understanding – with potential to build upon these further.
- Where the UK and Ireland/the EU have each ratified international agreements, these will continue to bind and inform relationships.
 - Key examples include the Aarhus Convention (role of the public/NGOs), the ECHR (environmental protection through human rights), the Espoo Convention (transboundary environmental impact assessments) and the Ramsar Convention on Wetlands.
 - EU law plays important roles in developing and enforcing these conventions within EU Member States, which will be impacted in NI by Brexit.
 - Nonetheless, these Conventions may provide key avenues for engagement post-Brexit, e.g. via external compliance mechanisms, convention bodies, and domestic structures and procedures implementing the agreements. This includes site designations under the Ramsar Convention and the need to cooperate on a transboundary basis.
 - These Conventions have not been implemented (or enforced) to their full potential in either jurisdiction, leaving scope to develop their role further on the island – something which is of increasing value post-Brexit.

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- Key concerns currently include that the potential for watering down the implementation of these international commitments (as Ireland is proposing regarding access to justice) and that the UK/NI may also renege on individual Conventions, such as the European Courts of Human Rights.
7. Other external international commitments no longer simultaneously bind both Ireland and the UK/NI (or potentially never did, even when the UK was an EU Member State) – there is scope to identify and commit to these.
- The UK and Ireland have not ratified all international (environmental or related) agreements that are open to them.
 - This includes Conventions where the EU has ratified them and therefore there is less need for Member States to independently do so, e.g. the Water Convention.
 - Other agreements such as the Lugano Convention (addressing questions of jurisdiction for instance) are also of increasing importance post-Brexit.
 - Key concerns include increasing governance gaps and regulatory divergence (without either the EU or international shared frameworks). Accession may be possible (it is not always guaranteed and takes time) or alternatively, bilateral agreements could be created in light of international frameworks, but clear information is first required regarding which international agreements are relevant post-Brexit.
8. Funding opportunities are crucial on multiple fronts, but their availability is shifting.
- There are numerous, increasing financial pressures on environmental actors (including inflation, addressing new challenges, limited finances/reduced donations etc.). Brexit adds to this, through increasing the workload significantly especially of those working in NI or on a cross-border or all-island basis. Sustained, increased funding is needed, rather than reductions.
 - PEACE Plus is the core funding relevant to the border areas (and indirectly to the island), building on earlier versions such as Interreg, and the SEUPB will play a key role here still in administering the funds.
 - A range of other funding exists, e.g. the Community Foundation Ireland/Community Foundation NI, from the EPA or NIEA, state bodies/departments such as the Shared Island Initiative, the Irish Research Council, the Economic and Social Research Council, Nuffield, Horizon Europe etc.
 - New funding opportunities are arising, e.g. under the Shared Island Initiative, or through relevant themes in other funds. However, eligibility criteria can be restrictive, timelines can be short and environmental actors (and academics) are not always aware of the various funds in time (including where they may need other partners to apply). Identifying and engaging with changes can entail significant burdens/resources. Clear information is required regarding these opportunities.

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9. Numerous examples exist of effective cross-border and all-island engagement and cooperation, but they face wide-ranging and varied challenges.
- Local governments have long been very active in cross-border action, either on a bilateral basis (such as the North West Strategic Growth Partnership bringing Donegal County Council and Derry City and Strabane District Council since 2016) or on a multilateral basis with a broader mix of partners (such as the CANN project, led by Newry, Mourne and Down District Council, whose 11 partners bring together academia, charities, public sector bodies and community associations, across Scotland, Ireland and Northern Ireland).
 - There are also existing and emerging collaborative partnerships between NGOs and civil society across the island (as detailed in Chapter 4) and appropriate funding (e.g. the expansion and continuation of the CFI/CFNI all island collaboration fund) should enhance these further in years to come.
10. Diverse international examples of cross-border engagement and cooperation exist, with deeper investigation required to extract further mechanisms/perspectives of potential relevance to the island of Ireland. Some key lessons relate to:
- The development of enhanced structured NGO engagement.
 - The development of triggers/opportunities for cross-border NGO/civic activism.
 - The relevance of cross-border cooperation to peacebuilding.
 - The development of transboundary governance structures.
 - The development of supranational NGO initiatives.
11. Overall, these issues highlight some key needs for environmental actors:
- Guidance and coordination on cross-border and all-island matters.
 - Access to information, policy-making and justice in both jurisdictions.
 - Maintenance of alignment in so much as possible (where this is not maintaining poor environmental structures or practices).
 - Clear information about existing divergences and especially divergence that is newly introduced.
 - Clear information about international environmental commitments by both Ireland and NI – how have these changed.
 - Examples of positive engagements, on this island and elsewhere.
 - Information about key actors (and avenues of engagement) in both jurisdictions and beyond.
 - Resources dedicated to cross-border and all-island matters (that does not deplete existing resources).
12. Chapter 7 sets out a series of recommendations based on this research which, if adopted, could go some way towards addressing these needs and creating the enabling conditions which are required to translate existing piecemeal cross border initiatives into impactful, long-lasting all-island cooperation on environmental matters. However, NGOs and umbrella bodies will need to be prepared to be responsive in the face of very swiftly moving political

developments but also in response to the increasing urgency needed to respond to environmental crises. This will require adequate funding across the sector. Research and knowledge development is critical to helping stakeholders (both government and civil society) identify policy priorities around the environment and develop plans which can be insulated from external political turbulence. Cooperation is also key – not just across the border but between actors who have worked in separate spheres. Community-led initiatives are also becoming an emergent force in calling for environmental justice and these voices must be listened to by decision-makers. There is significant appetite for meaningful cooperation on the environment within academia, NGOs, and communities. Decision-makers must match this appetite with the strengthening of existing pathways of cooperation, funding to allow development of deeper relationships and promotion of collaborative approaches based on best practical and environmental outcomes on the island - even where political sensitivities exist.

7. Recommendations

These recommendations have been grouped under seven key objectives designed to achieve the goal of linking the Irish environment: reaffirming political commitment to cooperation; enhancing civil society structures and strategies; monitoring the impact of Brexit; enhancing government accountability; supporting enduring and productive civil society relationships; ensuring citizens are aware of and can operationalise their environmental rights; and enhancing knowledge about environmental actors, activities and opportunities for collaboration.

Reaffirming political commitment to cross-border/all-island

cooperation on the protection of environment on the island of Ireland

1. The Irish and UK governments (in the absence of a devolved government in Northern Ireland) should develop a joint political or legal commitment on the environment.

As per NESC's recommendations, a Joint Statement (or Memorandum of Understanding) would be highly desirable. However, this should address environmental matters generally and go beyond areas such as biodiversity and climate change. It could include environmental governance structures, approaches, aims, funding etc, as well as an indicative list of areas including water, rewilding, peatlands, mining, etc. Governments should make a commitment not to introduce any significant regulatory divergence without good cause and without prior consultation on an all-island basis. This could draw on approaches within the UK's common frameworks and the idea of a 'no surprise' policy, as well as having procedures for addressing proposals for divergence where they arise. If possible, this should be created upon a legal basis that binds both parties.

2. The impact of environmental aspects of the NI Protocol/Windsor Framework should be monitored closely by both the UK and Irish Governments.

The NI Protocol/Windsor Framework creates challenges and opportunities, generally and for environmental governance. From an environmental perspective, key elements include the continued applicability of some EU laws (those in Annex II especially) to NI as if NI were still part of the EU and Article 11's provisions on implementation and application and the related obligation to maintain necessary conditions for N/S cooperation. However, there is considerable uncertainty and also political tension surrounding the implementation of the new arrangements.

- (i) A cross-border stakeholder working group could be established to engage/inform the work of NI Protocol oversight bodies: the UK-EU Joint Committee, Specialised Committee and Joint Consultative Working Group.

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- (ii) In addition, an updated mapping exercise on N/S cooperation, in light of the NI Protocol, should be undertaken on a reasonably regular basis, e.g. every 3 years and if there have been major developments. The review should be the responsibility of public bodies in both jurisdictions (with the support of the UK and EU also) and undertaken by experts/academics in the field. There should be an opportunity for civil society actors, including NIEL and IEN, to feed into this and engage in the process. This should note the data from the 2017 review, undertake a similar mapping exercise for current cooperation, note the scope and role of the Protocol in these areas, and evaluate the impact of the Protocol's application (or lack thereof). The mapping exercise should also note other initiatives that have sought to facilitate and strengthen cooperation, as well as considerations that may have hindered it. Efforts are needed not only to monitor change but also to effectively communicate about it – there is a risk of divergence occurring by default and under the radar – this has already been an [issue](#) with scrutiny of environmental legislation post-Brexit.

3. The UK and Irish governments must ensure the full potential of the Good Friday/Belfast Agreement as a lever for ensuring the environment on the island of Ireland is fulfilled.

The GF/BA has considerable unused potential, with improvements possible in its focus, engagement, accountability and mechanisms. Its potential in the context of the environment has been highlighted by Hough in the 2019 [report](#) 'Brexit, the Good Friday/Belfast Agreement and the Environment: Issues Arising and Possible Solutions' and the recommendations there should be re-visited. In particular: NSMC should review and develop its work programme further to cover a wider range of issues/regimes and add greater detail on how cooperation will occur; there should be improved routes for stakeholder engagement with the NSMC Environment Sector meetings; there should be enhanced roles for Treaty bodies – including the NSMC, BIIC and BIC – including expanded scope/focus points, but also more regular meetings and for adequate funding of each body; establishment of an all-island civic forum on environmental matters; and research should be undertaken into the feasibility of establishing a Treaty oversight body for monitoring and promoting full implementation of the GF/BA, and possibly resolving disputes regarding interpretation and application.

4. Full and effective implementation of the Aarhus Convention.

The Aarhus Convention is essential for environmental actors (through providing environmental rights), but also for helping deliver environmental outcomes. Ireland and NI are both bound by it and should implement it fully, with Ireland also bound by the EU's measures on it. A clearer picture is required regarding the Convention's implementation across the island, but also improved understanding and strong political and legal support.

(i) Joint political commitment to the Aarhus Convention through establishment of a dedicated all-island monitoring body

- Securing a joint political commitment on Aarhus rights would be valuable in helping to guard against erosion, highlighting their significance and indicating support for their use on a cross-border/all-island basis.
- A concrete manifestation of this could be the establishment of an all-island mechanism for ensuring coherence of environmental participatory rights, which would monitor implementation of the Convention and guide future government action towards implementation.
- One option is to have a dedicated body/centre that would help individuals and NGOs access environmental information, including about all-island and cross-border matters. It would also provide a basis for capacity-building and helping individuals utilise their Aarhus rights.
- This could take the form of an all-island Aarhus Centre that would also have an information giving and capacity building role, or as part of the body recommended above, or as an entirely separate body.

(ii) Legislative changes to fully implement the Aarhus Convention

- Governments should seek to improve implementation of Aarhus rights in both jurisdictions, in light of Aarhus Convention Compliance Committee decisions (including regarding other States) and in light of recommendations made in a 2022 review of Aarhus Convention implementation '[Finding Common Ground](#)' across the island of Ireland produced by Hough et al, (2022).
- Review and control of [SLAPPs](#), as undermining Aarhus Rights.

5. Development of rights to a healthy environment and rights of nature.

Environmental rights (broadly understood), as discussed above, can be a very valuable tool. However, they have a limited presence and function in both jurisdictions on the island. They could be developed expressly, expanded and strengthened, if the political will is there. They are becoming more and more mainstream, as their value in the various environmental crises becomes clear (as demonstrated by Ireland's Citizens' Assembly on Biodiversity Loss).

(i) Express political and legal recognition of environmental rights (both human rights and the rights of nature)

- Development of a joint statement by NI and Ireland on environmental rights, recognising them and their value.

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- Development and publication of an all-island Environmental Charter and a NI Bill of Rights. This should be the responsibility of the two governments/departments, but to be undertaken by experts/academics with input from environmental stakeholders.
 - Incorporation of the Environmental Charter within a binding bilateral agreement between Ireland and the UK (on behalf of NI or the UK as a whole), and/or in each jurisdiction (e.g. in the Irish Constitution and in NI human rights legislation).
 - Legal and political recognition of the rights of nature in both jurisdictions.

(ii) Maintenance and protection of environmental (and human) rights as they currently exist

- Rights must be protected in both jurisdictions.
- Maintenance of human rights under the ECHR and HRA, in particular in Northern Ireland.
- Establishment of a Bill of Rights in Northern Ireland, to help enshrine human rights and protect against the reduction of protections via reviews of the Human Rights Act 1998.

6. Provision should be made for adequate, ring-fenced funding from the UK and Irish Governments for both short and long-term all-island collaboration on environmental issues.

As highlighted by international examples (such as those identified in the Salish Sea report, see Chapter 5), funding needs to be ring-fenced for cross-border cooperation and not deplete other funding for the same actors. It also needs to be on both a short and long-term basis, with the latter enabling sustained projects where appropriate. Funding for educational activities should not be limited to schools/formal education (although this is one possible avenue), but should be focused on the public at large, e.g. via online resources, MOOCs, seminars etc.) Funding such as from CFI/CFNI, PEACE Plus should be maintained. Funding should have flexible criteria, e.g. actors in NI should have access to a broad range of Irish and EU funding, beyond PEACE Plus, especially where considering cross-border or all-island matters. Likewise vis-à-vis actors in Ireland regarding UK funding. This includes funding for research projects that include higher education institutions, e.g. ESRC, IRC and Horizon Europe funding. Funding should not be limited to scientific or practical projects (although these are clearly very important), but should also extend to issues around environmental and social justice, peace-building, support for communities and upholding of environmental and human rights.

7. Dedicated support should be provided for civil society organisations seeking to operate on an all-island basis.

A one-stop cross-border information website should be established which would provide comprehensive and easily accessible information on key aspects of operating a civil society organization (e.g. environmental/social justice NGO) on an all-island basis. The core of the initiative would be practical advice on issues like compliance with lobbying, financial regulations in both jurisdictions and sign-posting to e.g. HR, accountancy support from firms with experience in cross-border working. This could be developed by a number of organisations e.g. the Northern Ireland Community and Voluntary Association, as a joint service via the umbrella bodies NIEL/IEN themselves, or in collaboration with existing all-island organisations (e.g. EJNI, who are currently developing a digital ‘Manual of Environmental Justice’ toolkit in collaboration with Community Law and Mediation), and potentially via the Centre for Cross-border Studies which has already developed the ‘border people’ [website](#) providing some of these citizen-advice type functions to cross-border workers and hosted a [technical workshop](#) for organisations operating on an all-island basis in September 2022.

8. The UK and Irish governments should ensure continued and enhanced support for sustained, collaborative research on all-island/cross-border environmental matters.

All-island and cross-border environmental research is essential, but also requires considerable resources and political support. Governments should commission/fund all-island research and policy engagement on issues such as biodiversity, climate action and water quality – areas where cooperation typically exists, there is political momentum and which have been highlighted by NESC, but where the Protocol largely does not ensure such cooperation. Funding should not be limited to these areas but also extend to broader environmental governance, environmental and social justice, peace-building, community resilience and rights. Research funding should be provided for collaborative academic research across areas where there is a clear/emerging research need.

*Enhancing cross-border/all island civil society structures
and strategies to improve cooperation and collaboration*

9. Both NIEL and IEN should consider appointing and maintaining a number of individuals within their permanent staff dedicated to cross-border/all-island engagement and issues.

In addition to developing expertise on cross-border/all-island issues, having such individuals based in both umbrella environmental NGOs provides additional benefits through centralising access to diverse networks and creating and sustaining forums for cooperation on wide-ranging

areas of environmental matters. These roles could entail monitoring of any updated mapping exercise on cross-border cooperation and the joint creation of resources to help inform environmental NGOs and broader civil society of updates/changes to relevant policies, practices and structures. Dedicated staff would also deliver a convening function in relation to joint advocacy and policy and research efforts. Dedicated roles ensure that knowledge/expertise is not lost when staff members leave for other roles. Where feasible, other environmental NGOs (beyond umbrella bodies) should ensure consideration of these shared issues forms part of the role of permanent staff.

10. NIEL and IEN could consider the creation of a joint statement/position on cross-border and all-island environmental cooperation and engagement.

This statement could confirm their commitment to focusing on, promoting, and engaging in cross-border and all-island environmental cooperation and activities, as well as shared general ambitions and areas of interests. It could include elements such as a commitment to dedicating and developing resources (including personnel) for this purpose, as well as identifying potential next steps. This could be developed with their membership and revised as necessary in light of surrounding developments. A joint position on key headline issues could then be developed and used as a guide for further cooperation. NIEL and IEN could collaborate to identify long-term shared ambitions and strategic common purposes, along with complementary skills and resources. This strategy document (which could include a high level 'Memorandum of Understanding' type commitment) could be published. Public consultation/consultation with members could be undertaken when developing this strategy. This could also be an iterative process, revising the strategy as appropriate.

11. NIEL and IEN could consider developing a joint strategy focused on cross-border and all-island environmental cooperation and engagement.

This strategy could encompass shared aims regarding (i) promotion of all-island cooperation and action on the environment and (ii) ambitions vis-à-vis environmental actions or outcomes. It could also identify and highlight the complementary areas of skills and expertise. A useful first step could be for NIEL and IEN to identify a discrete number of issues of common interest (beginning possibly with 'easy-win' issues where cooperation is already happening or where there is a pressing need, e.g. marine protected areas) to 'champion' on an all-island basis. The process of identifying these focus areas will in itself develop knowledge about how structures on either side of the border operate.

12. NIEL and IEN could consider establishing a general cross-border/all-island committee to deal with shared environmental issues.

Consideration must be given to time commitments and participation in the committee clearly defined in the job descriptions of those involved. This committee could provide for an overarching perspective, enabling direct channels of communication between people working on similar issues across the island and organising/contributing to the organising of all-island environmental conferences/dialogues/fora. A key function of this committee might be to review and evaluate the data from any updated mapping exercises, information on environmental governance changes and provide scrutiny/updates of the activities of accountability structures (e.g. the European Commission, activities of OEP in NI) and publish this information.

Themed working groups (with fluctuating membership as appropriate) to operate within a general all-island environmental NGO committee could be established to deal with more granular/detailed collaborations on shared challenges. This could build on the model developed by NIEL Brexit Coalition (different cross-organisations working groups on key environment themes such as agri-environment, marine, nature protection, governance) but on an all-island basis: e.g. on sustainable tree planting/agroforestry, on marine etc. Each group could identify and focus on their specific needs (e.g. agreeing common/similar policies, sharing knowledge on effective enforcement, sharing practices on evidence gathering etc, joint responses to consultations, applying for funding, how to engage with other types of actor etc) and context (e.g. does EU law still provide a common framework), as these vary considerably for different environmental areas. Monthly or bi-monthly online 'hubs' could provide an accessible space for exchange of news/views and to discuss concrete plans for cooperative actions.

In determining initial focus points/themes, options include: (i) focusing on the most urgent and/or topical issues; (ii) targeting 'easy wins' where positive outcomes may be more easily achievable and encourage further engagements/actions; and (iii) if and when relevant, matching the proposed strategic working groups by NESC and also the work programme for the NSMC, enabling feeding into both of these. This Committee could also highlight existing (and evolving) accountability challenges. In particular, the Committee could seek to draw attention to breaches of international commitments relating to all-island environmental concerns and the difficulties in addressing these in international fora, as well as highlighting the length of delays involved in EU enforcement actions.

13. NIEL and IEN could consider developing a joint research programme for jointly commissioning and engaging in all-island/cross border research from a civil society perspective.

Umbrella bodies, NGOs and similar groups with funding should commission research themselves (preferably with funding that they have received for this purpose). This research should preferably be jointly commissioned (by groups in both jurisdictions) and address cross-border or all-island matters. The present report is an example of research commissioned jointly by the umbrella bodies IEN and NIEL using funding from the Community Foundation Ireland/Community Foundation Northern Ireland's all-island fund. These efforts should then be highlighted to demonstrate the value of maintaining such activities in the long-term. In doing so, NGOs should establish links with academic researchers/academic networks/non-profit research

platforms (e.g. AICBRN, EJNI) with an interest in undertaking research with a focus on all-island issues (this is also linked to recommendations on building relationships). NIEL and IEN could also play a more proactive ‘match-making’ role helping partners on either side of the border to jointly apply for available funding and assist with grant applications. Priority issues could include: more detailed investigation of existing cross-border/all-island cooperation, with a particular focus on ‘modes’ of cooperation (i.e. how did cooperation start, develop and what form did it take) as well as a cost-benefit analysis of key proposed initiatives; updated mapping exercise reviewing impact of Brexit and/or other factors; deeper investigation of the issues within this report, including engaging with public bodies and communities to a greater extent – semi-structured interviews with key actors would be a useful next step; design and implementation of an all-island consultative forum; and evaluation of the GF/BA bodies and their work in practice. International perspectives should be investigated in more depth via a systematic review, including international frameworks, case-studies – EU level and beyond – ideally this could occur with international co-investigators from other jurisdictions with cross-border environmental challenges.

Monitoring the impact of Brexit on the environment on the island of Ireland

14. NIEL and IEN could consider a joint and dedicated workstream to monitor and highlight issues regarding implementation of the NI Protocol/Windsor Framework.

This would involve identifying and highlighting key aspects of EU law that still bind NI, including as the EU laws evolve and therefore change the obligations upon NI – including in areas not highlighted within this report. This is particularly important in cross-cutting areas which will impact on environmental governance even if the policies do not directly relate to explicitly ‘environmental issues’ (e.g. transport). Umbrella bodies could play an important role in raising awareness of these issues across the island and how they relate to cross-border environmental concerns. In particular, through identifying, highlighting and utilising available mechanisms to help challenge flawed implementation. These activities could act as a precursor to undertaking joint challenges, complaints, strategic litigation and/or advocacy campaigns where failures occur.

This would involve monitoring and publicising gaps emerging in post-Brexit environmental policy/frameworks in NI and regulatory divergences on the island, due to changes in NI/UK or ROI/EU environmental law. It could also identify and highlight how these impact on an all-island basis in parallel to the mapping exercise (discussed above). In addition, it would be useful to review the areas of EU law binding NI in light of potential for cross-border and all-island environmental impacts (including on cooperation) and propose additional areas to be adopted. This exercise could draw on any updated mapping exercise to achieve this. When discussing what new EU legislation may be added to the Annexes of the NIP (or considering whether new EU legislation is replacing/updating laws within the Annexes), umbrella bodies could advocate for the prioritisation of the environmental benefits of shared or differentiated action. If a shared

framework would prove useful and sensible, then NIEL and IEN could outline the alternatives and their pros and cons, e.g. options of adopting EU laws within the NI Protocol, having an all-island framework, having a two-island framework, relying on international frameworks or none.

Enhancing the accountability of governments on environmental issues

15. NIEL and IEN could consider taking joint action to hold critical bodies such as the NSMC accountable.

- (i) IEN and NIEL (as representatives of NGOs across the island) could consider the preparation and presentation of a joint statement or co-signed letter to both the UK and Irish Governments highlighting the remote nature of the NSMC and the lack of transparency relating to its work on the environment. Next time (each time) an NSMC meeting takes place NGOs and umbrella bodies could have a clear statement/event on what such a venue should be delivering and clear criticism of how little is done, or how untransparent it is. This is particularly important while there is a lack of avenues for stakeholders to engage in a meaningful way with the NSMC. Umbrella bodies should consider jointly commissioning research/dedicating a workstream to examining the potential to expand the scope of the NSMC, (e.g. to play a role in coordination of climate adaptation/mitigation) and to also monitor on a rolling basis the operation and effectiveness of political structures established under the GF/BA post-Brexit – specifically in the context of the environment. Both umbrella bodies and NGOs could consider enhancing the extent to which they engage in formal structures, especially those directed at cross-border/all-island matters. NIEL and IEN could play a useful role in publicising opportunities for engagement in these structures with their members.
- This includes, in particular, any potential NESC working group, GF/BA committee/working group (linked to the NSMC) or NI Protocol committee/working group, if access is possible. It also includes relevant working groups or taskforces in county councils, agencies or similar that may focus upon or encompass some elements of cross-border/all-island matters.
 - Where working groups exist locally, advocate for membership extending to relevant (NGO and other) counterparts in the other jurisdiction.
 - Actively engage in consultations and similar public inquiry activities, whether as an invited stakeholder or otherwise – this could be done on a joint or collaborative basis if seeking to highlight interest, expertise and also a common position.
 - Collaborate with public authorities on policy design and implementation where relevant and possible through feeding into expert working groups established by public authorities e.g. DAERA's stakeholder groups and their work on agriculture is a positive existing example.

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- If there is a cross-border or all-island element, but there is no capacity for actors from the other jurisdiction to engage directly, then environmental actors should consult with their counterparts (to the extent possible, as confidentiality issues may arise) and help provide their perspectives.

(ii) Identify key actors in relevant bodies and engage with them early

- When working with public authorities in particular, it may be useful to check what needs or gaps they have that can be usefully filled and propose activities along these lines. They may not otherwise have considered seeking assistance from environmental actors, but it may prove convenient and beneficial for them to do so.
- Similarly, it may be a matter of highlighting your own interests, expertise and remit, with an offer to engage in the future. Providing them with resources, e.g. reports, data, options to engage with networks, etc., may be influential. There may be opportunities to feed into and inform work programmes, descriptors for funding, draft policies and consultations etc.

(iii) Tailor activities and proposals in light of public bodies' work programmes, remit, interests and language

- Access work programmes (where available) for relevant departments, councils, agencies etc., and NSMC, and develop proposals/actions in light of these.
- Where unavailable, NGOs and umbrella bodies should put pressure on Governments and public bodies to enhance transparency and make the work programmes more readily available in a more timely manner (discussed further below). Bear in mind that public bodies in particular may be curtailed as to the scope and nature of their activities. This does not mean limiting one's own remit to a public body's remit, but simply tailoring one's engagement with that body in light of their specific context.

(iv) Active engagement in public events

- This may include hosting or co-hosting events (e.g. field trips, workshops, seminars, conferences, or some version of a public assembly or all-island forum) with representatives from key bodies.
- Consideration should be given to the roles played, funding sources and questions of independence and politics. It may also simply include participating in events organised by others – whether environmental NGOs, broader civil society or public bodies.

16. Governments must ensure improved, meaningful access to policy-making/decision-making through ensuring existing mechanisms function properly.

Although access to environmental decision-making by stakeholders is an Aarhus Convention right and also helps improve the quality of decision-making and outcomes, it is frequently very limited and tends to either rely on informal mechanisms or entail participation at later stages when the core direction of policies and decisions has already been largely decided or shaped. Early and meaningful access to underpinning documents and actors/groups is crucial. As with building relationships with public bodies above, this involves convincing other parties of the benefits offered, but also entails highlighting how this is based in existing rights and frameworks. Considering the broader significance and the potential for wide-sweeping effects, access to all-island groups and committees designing, reviewing and implementing environmental policy is especially important. This is the focus of the recommendations, but these could be adapted for other contexts.

(i) Formal, meaningful access by environmental NGOs to cross-border/all-island committees/working groups

- Creation of formal structures to enable stakeholder engagement within the GF/BA and NI Protocol remit - especially with the NSMC, Protocol Committees/working groups and an All-Island Civic Forum.
- Provision for a 'northern' voice in Irish Citizens' Assemblies (and vice-versa), beyond speakers or members of the expert advisory group.
- Invitation for NIEL (and other relevant bodies from NI) to become formal members of the NESC Council and any strategic working groups proposed by NESC in the interest of all-island cooperation.
- Greater transparency of work programmes, agendas and decisions from Governments relating to the operation of bodies such as the NSMC and Protocol committees/working groups. To ensure greater access this will require: advance information regarding work programmes, areas of interest, potential needs, future funding streams etc.; the early publication of detailed work programmes and more detailed records of discussions.

(ii) Expansion/adjustment of the focus of cross-border/all-island groups

- There should be engagement with organised civil society on draft work programmes by key groups or committees, including those of the NSMC and regarding the NI Protocol. As highlighted above, this will require that groups/committees make accessible their draft work programmes at an early stage, e.g. via an open consultation and/or direct engagement with relevant stakeholders several weeks or months in advance of finalising the work programme. It should also provide for revising the work programme if necessary.
- Advocate for additional themes for NESC's proposed strategic working groups, including e.g. environmental governance.

17. New governance mechanisms could enhance accountability.

Good governance requires appropriate accountability mechanisms, including fora, standards/rights and avenues of access. These relate to the recommendations on the Aarhus Convention and environmental rights also, e.g. the creation of an all-island Environmental Charter and a NI Bill of Rights. Accountability can be on a domestic, all-island or international basis. We are not addressing issues of enforcement actions against individuals or companies here or, for instance, the limited nature of fines applied, as this is far beyond the scope of the report. Instead, the focus is on the structures and holding public bodies or the state(s) accountable.

(i) Establishment of an independent environmental agency in NI

- Independent environmental agencies are required in both jurisdictions. Highlight the presence (in principle) of such bodies on the island of Ireland and the rest of the UK.
- Note the difference between this and the OEP, and the need for both bodies to co-exist. This could be a revised version of the NIEA, provided it is truly independent and insulated from political decision-making.

(ii) Establishment of an oversight body/commission/rapporteur dealing specifically with cross-border/all-island environmental challenges

- This body should have a dedicated and very defined remit and it should supplement/complement, rather than replace existing accountability mechanisms.
- First, it could monitor the implementation of international agreements such as the Aarhus Convention, the Espoo Convention and even the Good Friday/Belfast Agreement (without supplanting the bodies provided for within these agreements).
- Second, it could monitor and review regulatory alignment on an all-island basis to ensure that retained EU law in Northern Ireland does not needlessly diverge from how EU law is implemented in Ireland (and vice-versa), and that procedures at local level and national level retain sufficient common elements that they are not preventing cross-border exercise of legal rights. This would not involve oversight of the implementation of the NI Protocol, but specifically the areas of environmental governance (currently) outside the Protocol's scope – including cross-cutting issues.
- Thirdly, a further function could be to identify and suggest policy responses to emerging environmental threats.
- This body need not be along the lines of the European Commission or CJEU with strong enforcement powers, however, it should be able to, at a minimum, monitor and report on problems to bodies tasked with holding governments (including where relevant EU bodies) on either side of the border to account.

*Supporting enduring and productive relationships between
environmental civil society actors across the island*

18. An all-island event/convention/civic forum on environmental matters should be established.

An all-island event/convention/forum could be held annually (at least), led by environmental NGOs and broader civil society, but also engaging with other actors including public bodies, politicians and academics. If a formal version of the civic forum under the GF/BA is established by the two governments, this could be amalgamated/run instead, but the environmental NGOs and civil society could play key roles in its design and running. In light of their overarching nature, relatively enhanced capacity and focus points, IEN and NIEL could lead on this. Besides some general content on cross-border/all-island environmental cooperation and governance, it could have specific focus points, decided in collaboration with the public/stakeholders in advance.

19. Existing cross-border/all-island networks and engagements should be expanded and enhanced.

Where parties engage in existing cross-border or all-island activities, these could be developed further, e.g. expanding the role of the Best Kept Town (beyond the top participants in both jurisdictions), mirroring primary school activities in the Republic of Ireland regarding bees within the AIPP, or applying approaches in CANN and CABB to other nature sites. It could also entail expanding projects/events that are only run in one jurisdiction to be mirrored in both jurisdictions or preferably run on a cross-border/all-island basis. IEN and NIEL are already very active members of the Ad Hoc Group set up by the Centre for Cross-Border Studies (CCBS). However, actors should engage with and promote the [Common Charter](#) developed by the CCBS (a set of agreed principles for civic society organisations participating in North-South and East-West cooperation), which also has the potential to function as a valuable informal network fostering and supporting cross-border cooperation between a wider group of stakeholders.

20. Support should be provided to enable a broader range of civil society organisations to undertake informed, efficient funding applications.

Funding applications can vary in their complexity, hurdles, eligibility criteria, deadlines etc and it takes considerable effort to apply – successfully or unsuccessfully. There may also be strict timelines for when activities need to be undertaken. Some funding will also open and close other doors, e.g. opening up follow-on funding or restricting the number of applications that may be made. If successful, undertaking funded projects can entail considerable burdens – this can be disproportionate to the value of the funding or the activities to be undertaken. It would be

helpful if NIEL and IEN could collaborate in creating a database of funding sources available to actors on the island – this information should not necessarily be limited to members of each umbrella organisation. This database could include elements such as: funding bodies, usual or previous focus points for funding, nature of activities/resources funded, eligibility requirements, whether complementary funding is permitted or required, usual timing or frequency of funding calls/opportunities etc. Once established, it could be updated relatively easily and also shared across relevant organisations and individuals. Actors would then be able to identify sources relevant to them and new potential collaborators. Engaging with funding bodies in advance to check their normal criteria and also future focus points in order to design proposals effectively and allow time to identify suitable collaborators. Sometimes there may be discretionary funding or rolling funding available, that is not advertised in the same way as other sources – engagement may help identify these. (These steps can also help inform any database). It may also be possible to feed in to review activities for funders and the development of funding calls prior to their finalisation, thereby helping shape calls in a mutually advantageous fashion.

*Ensuring citizens on the island of Ireland are aware of, and can operationalize
their environmental rights*

21. Civil society organisations should develop, share and utilise expertise on Aarhus Convention and other ‘environmental’ rights.

Environmental rights, broadly understood, exist that may be of use to protect environmental interests, including via the courts. However, they vary in nature, source and implementation. For instance, they can be procedural (e.g. a right of access to information or the courts) or substantive (e.g. a right to a clean and healthy environment); and they can be human-focussed (commonly referred to as ‘environmental rights’, but narrowly understood) or nature-focussed (commonly referred to as ‘rights of nature’). Reliance upon them can be highly challenging, knowledge and understanding of them varies considerably, and they can also evolve. It is essential to understand their potential, but also their limits in order not to rely pointlessly on them and to identify where legal changes might be required. Clearly, this will therefore also relate to advocacy goals. It is worth noting that it may be possible to use environmental rights without being aware that is what is happening, but fuller knowledge and understanding may allow effective, enhanced use and application, as well as the development of these rights in society. This also includes understanding their limitations.

(i) Highlight the role of environmental rights (broadly understood)

- In doing so, highlight examples from across the world (including developed countries and especially in Europe), demonstrating how these rights are becoming more mainstream and can ‘fit’ within existing legal systems and structures, even while leading

to a fundamental rethink of how we operate/exist and providing useful tools for environmental governance.

- To this end, highlight the incorporation of both rights of nature and human rights to a clean and healthy environment in a range of jurisdictions, highlight the ECtHR's and various domestic courts' interpretation of the ECHR to encompass environmental rights and highlight the gaps and discrepancies across this island, including in recent case-law.
- Hold events, commission reports, and disseminate widely on this front. Engage with community leaders (as above) on rights of nature when undertaking this work.

(ii) Host an all-island civic forum/conference/assembly on environmental rights

- Avail of experts in the field of environmental rights to provide introductions and explain the significance of these rights (as above). Seek to co-design an environmental charter (as discussed above), encompassing rights, duties, and objectives. Consider potential avenues for how the charter could be developed and incorporated within policy or law and what role it should play.

(iii) Undertake and publicise a detailed review of compliance with the Aarhus Convention

- Detailed information is required regarding implementation and compliance across the island, especially bearing in mind concerns of the Compliance Committee. This is currently being undertaken in an IRC-funded project addressing implementation across the island of Ireland led by Alison Hough. It will need to be publicised widely and updated regularly.

(iv) Support the education of individuals regarding their Aarhus rights

- Propose the provision of clear, accessible information to individuals regarding Aarhus rights and how to avail of them – including on a cross-border/all-island basis. Feed into the process and help identify practical resources and guides.
- Support, including through helping co-design, the development of an educational programme on Aarhus rights – tailored depending on the role of individuals. The explainer(s) proposed above would be a valuable tool here, but the state(s) should also play a role through supporting educational activities for citizens. This should not be limited to schools/formal education but should encompass the population at large.

(v) Develop and disseminate basic explainer(s) on environmental rights (broadly understood) and their practical use

- Key NGOs and umbrella bodies could work with public bodies/academics and develop and make available (an) explainer(s) on environmental rights and their practical use (the

forthcoming IRC-funded report⁴³ led by Alison Hough could feed into the process of developing recommendations in this area).

- This should focus primarily on rights as they currently exist within NI and Ireland (e.g. under the Aarhus Convention, ECHR and HRA) and how this manifests in practice, e.g. impacts on standards of judicial review or standing for NGOs, rights regarding consultation, EIAs, FOIs etc. It should highlight also the greyer areas of rights that might be relevant and useful, with examples of where they have been used elsewhere previously, but noting any relevant caveats, e.g. the role of a right to life in another jurisdiction, or potential developments in the ECtHR. However, information regarding practical limitations and disadvantages should also be included, e.g. costs of litigation, likely practical outcomes even if successful in court, standards of proof etc.
- The explainer(s) should be in accessible language and from a practical perspective, including for example discussing what the right of access to environmental information means regarding policy making or planning permission or the like – ‘Aarhus Convention rights’ means little to most people. These should be updated as significant developments occur.

(vi) Develop enhanced expertise on environmental rights (broadly understood) and reflect on desired outcomes and potential pathways

- Engage with experts (NGOs/community leaders with practical experience, academics, practitioners etc.) who have deeper knowledge of the wide range of environmental rights (broadly understood) to develop and share expertise.
- Investigate the range, nature and role of relevant rights within human rights instruments and constitutions. Through research and engaging with experts, identify the potential roles for environmental rights (broadly understood) across the island and what would need to be achieved to facilitate their optimal role, e.g. incorporation within constitutional, legislative and/or policy documents; incorporation within NGO/groups’ key aims or remit; public engagement and engagement with policy-makers to help shift perceptions, attitudes and approaches to these rights.
- Host events on environmental rights to help share key information and debate the future of environmental rights on this island, e.g. including the points above, and the framing and content of rights.
- In light of the particularly challenging position of ‘rights of nature’ and the surrounding movement, consider how environmental NGOs can provide suitable support. Reach out to community leaders and environmental NGOs already engaged with this issue. Again,

⁴³ Synthesis Report on all-island Aarhus Implementation” (2022) - Forthcoming report on Aarhus implementation in Ireland by Alison Hough, available at www.findingcommonground.ie.

this understanding will require updating as significant developments arise on the island and internationally.

(vii) Use rights effectively and strategically

- Rights can be used on a daily basis in accessing information or engaging in policy-making, but also in holding bodies to account through complaints and litigation. Typically, this will not involve expressly referencing environmental rights, but might be about making an FOI request, submissions to a planning or licensing application, taking a judicial review or otherwise. In some instances, references to rights may be helpful in this context, e.g. if claiming a breach of rights in the context of a JR. Rights can also be used in publicity and advocacy campaigns, through highlighting or supporting various points – in this situation, making express reference to environmental rights (broadly or narrowly understood) can be very useful when undertaken in light of legal advice.
- Work together on an all-island basis to ensure compliance with international commitments through jointly authored complaints to compliance bodies/ strategic litigation. If the Aarhus Convention is undermined or has flawed implementation in either jurisdiction, then this makes the work of environmental actors much more difficult – including on cross-border/all-island basis.
- Sharing knowledge, expertise, input etc. can help. For instance, identify breaches of the Aarhus Convention and challenge/complain about these breaches (including co-authoring of complaints to bodies such as the Aarhus Convention Compliance Committee).
- Undertake joint advocacy efforts designed to enhance rights across the island (see below).

(viii) NGOs could consider jointly engaging in strategic litigation relating to environmental human rights and rights of nature on the island of Ireland

- Careful consideration must be given to the selection of, and approach to, potential cases.
- Lawyers and groups that are experts in the field should be consulted with and international examples of strategic litigation should be considered – in particular where issues transcend political borders.
- Support should be given to grassroots rights of nature movements and consideration should also be given to potential legal opportunities (beyond litigation) which may arise as legislation is developed in the short to medium term (e.g. constitutional changes, creation of legally enforceable rights via other mechanisms). Some current opportunities are set out in EJNI's [recent submission](#) to the Citizens' Assembly on Biodiversity Loss.

Enhancing knowledge about environmental actors, activities and opportunities for collaboration on the island of Ireland

NGOs and civil society members all have their own networks but would benefit from developing these further – including with actors from other stakeholder groups and also other backgrounds. Knowledge of key actors (including ‘allies’ or friendly faces), as well as their activities, projects, resources etc., is highly valuable. This is more so where one party is seeking to engage on a cross-border or all-island basis, but does not have local knowledge or expertise. Becoming familiar with the regime involves considerable investment (of time, money and energy), whereas others may already hold that expertise. Consequently, it can be highly beneficial to be able to identify relevant actors. Each actor has their own individual expertise and also has their own networks, across the island and beyond, which may be of help to others. Enabling the sharing of these networks and information regarding activities is central to cross-border and all-island cooperation. Including examples of previous or on-going projects can also help provide further insights and inspire further cooperation. Although the focus should be on this island (and also GB), including actors and projects internationally would also be desirable. This recommendation will also help support the recommendations regarding building relationships, funding applications etc.

22. NGOs and umbrella bodies should collaborate to develop and make freely available a database of environmental actors.

- A database could be created outlining environmental groups/bodies/individuals, issues they focus upon, roles and key contacts (while complying with GDPR). This should primarily focus on the island of Ireland (N.B. EJNI, Community Law and Mediation, with contributions from Friends of the Earth NI, are working on a collaborative online ‘Manual of Environmental Justice’ -funded by CFI/CFNI- which will at least partly fulfil this recommendation and is scheduled for publication in October 2022). This could also include actors beyond this island, focusing on GB and the EU in particular, but also internationally.
- It could also include a section on public bodies – those that environmental actors would be engaging with depending on the issue, area, etc. This database should be hosted on a website that is openly accessible and also publicised to environmental actors. It should be updated regularly.

23. NGOs and umbrella bodies should collaborate to develop, make freely available and publicise a database of collaborative projects where successful elements are highlighted.

- A database could be created outlining collaborative projects across a range of areas, indicating where they highlight successful elements, e.g. in effective cooperation,

establishing long-term relationships or environmental outcomes. The database should also outline what mechanisms and aspects helped facilitate the successes. Particular challenges or considerations should also be outlined.

- The database could focus on projects across the island of Ireland, e.g. the CANN project, the CABB project, the Gathering, the activities of NIEL and IEN etc. It could include GB and international examples, e.g. regarding the Ramsar Convention, the Common Implementation Strategy for the Water Framework Directive and any others that seem particularly illuminating. This database should be hosted on a website that is openly accessible and also publicised to environmental actors. It should be updated regularly. One possible location could be the CFI/CFNI funded digital 'Manual of Environmental Justice' website being developed by EJNI and FOE NI which incorporates a mapping element. Individual projects from this should be publicised more generally as positive examples highlighting the benefits of transboundary cooperation and engagement.

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