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CLIMATE CHANGE: A NEW REASON TO RETURN TO LAND LAW REFORM

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Summary

- Climate change has emerged as a policy priority at both global and national levels over the last twenty years. The emergence of national climate laws in many jurisdictions, and the emphasis on land use change as a vehicle for meeting the climate obligations enshrined in these laws, raises important questions about existing land law.

- The Climate Change Act (Northern Ireland) 2022 and Ireland's Climate Action and Low Carbon Development Act 2015 are highly prescriptive laws that establish a range of obligations on both jurisdictions on the island of Ireland. Both laws use the language of carbon budgets, climate action plans, sector specific policy proposals and a just transition. Although there are important differences, both climate laws place a heavy emphasis on land use change as a key method of meeting legally binding emission and adaptation targets.

- In the area of land law reform, the reform of tenure has been studied as a way to enable agriculture which is sensitive to climate change and practiced in a way which adapts to and mitigates the impacts of climate change. Land ownership is also a critical consideration and there are important lessons from Scotland regarding reform of ownership, particularly with regard to community ownership models.

- Rules around planning, environmental regulation and how government policies regarding land use interact with environmental and climate obligations have also been scrutinised in academic analysis and via the courts. It is possible for land use and land law reform to become part of, rather than stand in opposition to, environmental regulation and climate change policy.

- Land *law* reform can (and should) enable land *use* reform in order to ensure climate resilience through democratic reform, community empowerment and legal change. A combination of public assistance, legal empowerment and democratisation of ownership builds powerfully into community and environmental resilience, which ultimately lie at the heart of responding to climate change.

Introduction

As part of the implementation of the Climate Change Act (Northern Ireland) 2022 (CCA), each five-year carbon budget sets out emissions reduction targets (or emissions ceilings) in an incremental fashion all the way to the statutorily mandated net-zero target in 2050. Each budgetary period in turn must be accompanied by a Climate Action Plan (CAP), containing policies and proposals to achieve these targets. We are currently (and literally) in the middle of the first Northern Ireland Carbon Budget, due to end in 2027. The consultation period on the first CAP has just closed.[1] One of the many sectors which the CCA mandates as part of the CAP is land use, land use change and forestry (LULUCF). The first CAP is – like with many other sectors – light on its proposals for leveraging LULUCF to bring down carbon emissions to below the emissions ceiling in the first Budget. This paper argues that climate change legislation provides a real impetus and an urgent need to revive a moribund topic in Northern Ireland legal reform – land – by way of a comprehensive approach which is integrated with planning and environmental governance. The paper also extends this argument across the island of Ireland by highlighting relevant similarities in land law and climate law in its two jurisdictions.[2] The essential argument here is that land *law* reform can (and should) enable land *use* reform in order to ensure climate resilience through democratic reform, community empowerment and legal change.

This paper is structured as follows. The first section provides an overview of the history of land law reform on the island of Ireland, drawing out the predominant theme in this history of the alienability of land. The second section looks at key provisions in the CCA (comparing it with equivalent legislation in Ireland) and how they, interpreted cohesively, provide the platform on which to ground a different approach to land law reform which focusses on LULUCF. The third section focusses on land-use and management as a tool of climate change policy. The fourth section draws specifically from lessons in land reform and sustainable development in Scotland. The fifth section highlights areas of further research on the island of Ireland in light of the lessons from Scottish land reform. The paper finally concludes with a call to seriously revisit land law reform and make it suitable for addressing climate change in the twenty-first century.

Land – a slowly alienable commodity

Before partition, the whole island of Ireland was governed by a single framework of land law. Irish land law has its origins – like with land law in England – in feudal practices and structures of land ownership. Space precludes a detailed or comprehensive exploration of these origins,[3] but the parallels with English land law at this time are hardly surprising. As the English Crown brought more and more of Ireland under its control through conquest and confiscation, structures and frameworks of Brehon law were swept away in favour of feudal ownership structures. All land ultimately belonged to the Crown, which allocated from its lands estates to its feudal subordinates, who in turn allocated estates to subordinates of their own (a process known as subinfeudation) until at the bottom of this pyramid lived tenant farmers who physically worked the land. In Ireland, this pyramid invariably clashed with the pre-existing domains and ownership

[1] See the EJNI response to the CAP, available https://ejni.net/publications/consultation-response-northern-irelands-draft-climate-action-plan-2023-2027/

[2] In this paper, I use the terms 'Northern Ireland' and 'Ireland' as the names of the two present jurisdictions on the island, using 'island of Ireland' when discussing the island as a whole.

[3] See e.g. William O'Connor Morris, 'Land System of Ireland' (1887) 3(2) *Law Quarterly Review* 133.

of Irish chiefs, with some becoming vassals of the English Crown and some remaining independent. Eventually however, even claims of nominal independence by Irish chiefs would be swept away in the consolidation of Ireland under the English Crown. By the time Ireland became part of the United Kingdom with Great Britain in 1801, Irish land was overwhelmingly in the hands of the Protestant Ascendancy and Irish Catholics were overwhelmingly dispossessed. The law governing land ownership in Ireland during this time however remained mostly unchanged. It was only in the latter part of the nineteenth century that land law *reform* began in earnest.

The Land War of the late nineteenth century eventually led to the successive transfer of land from wealthy landowning families to tenant farmers. Tenants at first gained increased rights, with usages (such as the 'Ulster Custom') gaining the force of law,[4] before successive statutes[5] towards the end of the nineteenth and the start of the twentieth centuries enabled the British Government to advance capital to tenant farmers to become proprietors by purchasing lands from their landowners. The large-scale transfer of land enabled by these statutes was judicially overseen and backed by public money and thus operated with tighter controls and greater security than a true free market system. For example, the land purchase legislation restricted – and in some cases severely reduced – the availability of rural credit across Ireland.[6] Nevertheless, the predominant theme in land reform at this time was to make land more alienable, in the interests of tenant farmers. Essentially, this was the redistribution of wealth in the interests of a specific category of land-*user*, rather than in the *use* of land itself.[7] The essential point underpinning this reform thus revolved around concepts of land ownership – who owned land (and thus decided its use) – which itself was interspersed with and overlaid ideas of identity, nationality and political power in Ireland. A detailed exploration of these issues is beyond the scope of this paper,[8] but the critical point here is that land law reform was not linked to land use reform, but rather to the broadening of land ownership.

The theme of greater – and indeed easier – alienability continued after the partition of Ireland and the emergence of its two jurisdictions. Land purchase continued in Northern Ireland and in the Irish Free State, albeit under slightly divergent statutory schemes. Matters eventually moved to expanding the scope of land registration to increase its alienability through easing its conveyancing. In this latter phase Ireland has moved further ahead than Northern Ireland: abolishing feudal tenure and greatly reforming (though not abolishing) the kinds of estates which could be created at law and those which must now have effect only in equity.[9] Meanwhile, attempts to compulsorily convert all residential property into freehold estates upon their purchase or transfer (by the 'redemption' of ground rents) – a significant area of land reform in Northern Ireland – have not yet fully taken effect despite being added to the statute book almost a quarter-century ago.[10]

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[4] Landlord and Tenant (Ireland) Act 1870, ss 1-2.
[5] The Purchase of Land (Ireland) Act 1885, the Land Law (Ireland) Act 1887, the Land Law (Ireland) Act 1888 and the Land Purchase (Ireland) Act 1903.
[6] Timothy W. Guinnane and Ronald I. Miller, 'The Limits to Land Reform: The Land Acts in Ireland, 1870-1909' (1996) 45(3) *Economic Development and Cultural Change* 591, 601-603.
[7] *Ibid*., 519.
[8] On which, however, see e.g. Rachel Walsh and Lorna Fox O'Mahony, 'Land law, property ideologies and the British-Irish relationship' (2018) 47(1) *Common Law World Review* 7.
[9] Land and Conveyancing Law Reform Act 2009 (Ireland), s 9(2) and 11.
[10] Ground Rents Act (Northern Ireland) 2001, s 2 – not yet in effect by the commencement provisions of the Ground Rents (2001 Act) (Commencement No. 1) Order (Northern Ireland) 2002, art 2.

More than a century and a half after land law reform was first attempted in Ireland, the interest(s) of the user guides – indeed controls – both the field and the desire to reform it. When the Northern Ireland Law Commission last explored this issue, its far-reaching (and as-yet unimplemented) recommendations[11] were prefaced with what it considered to be the underlying principles of land law reform: 'simplicity, clarity and certainty' and 'freedom of contract'.[12] These principles were distilled from what the Commission considered would be the fruits of land law reform: the improvement of property transfer, inward investment and the diversification of land use with a particular focus on 'more valuable' commercial property.[13] Climate change and environmental resilience were not part of the Law Commission's frame of reference, far less at the forefront of its mind when it was drawing up its recommendations. But this was in 2010. Fifteen years have passed, and land reform in Northern Ireland has stalled. In the meantime, climate change has only become more urgent and has emerged as a policy priority at both global and national levels. The emergence of national climate laws in many jurisdictions, and the emphasis on land use change as a vehicle for meeting the climate obligations enshrined in these laws, raises important questions about existing land law.

Climate legislation: an impetus for land reform?

Northern Ireland's CCA is a highly prescriptive statute. It sets statutory targets and timeframes mandating that these targets be achieved. Each timeframe – a five-year period – represents multi-year tapered emissions levels (a carbon budget) leading to the flagship net-zero target (in which the net of greenhouse gas emissions equals the carbon units deducted from those emissions) set in the CCA itself. It also requires the adoption of policies and proposals – collectively referred to as Climate Action Plans (CAPs) – to ensure that these targets are achieved within their timeframes.

The requirements around CAPs are numerous. In summary, there are three broad categories of duties: to have regard, to cooperate, and to support. The most extensive of these duties are those to have regard to various factors and principles in the development of the CAP. The Department for Agriculture, Environment and Rural Affairs (DAERA) is the nodal agency for developing a CAP, but all devolved Northern Ireland departments are required to cooperate with DAERA in developing the CAP.[14] The development of a CAP must account for an array of factors, including the just transition principle – itself a list of 11 factors[15] – and the future generations principle, which is concerned with meeting present needs without compromising the ability to meet future needs.[16] Northern Ireland departments must, when developing a CAP, consider the 'desirability of using and supporting nature-based projects'[17] and the CCA directs a CAP, in any event, to 'support nature based projects that enhance biodiversity, protect and restore ecosystems, and seek to reduce, or increase the removal of, greenhouse gas emissions or support climate resilience.'[18] 'Nature-based projects' are further defined as projects which protect, restore or

[11] E.g. the abolition of feudal tenure, see the Land Law Reform Bill (Northern Ireland) 2010, cl. 1(1). Of course, none of these recommendations are linked necessarily to any specific kinds of land use. The underlying impetus, as the Law Commission report shows, was to better fit land tenure with free market economics.
[12] Northern Ireland Law Commission, *Report: Land Law* (2010), para 1.17 available https://www.nilawcommission.gov.uk/land_law_report_nilc_8__2010_.pdf
[13] *Ibid*., para 1.4.
[14] CCA, s 29(5).
[15] *Ibid*., s 30(3).
[16] *Ibid*., s 30(4)(c).
[17] CCA, s 30(2)(b).
[18] *Ibid*., s 34.

sustainably manage ecosystems to provide human well-being, biodiversity or 'other environmental, social and economic benefits.'[19]

The substance of a CAP must encompass an array of 10 sectors, including 'land use and land-use change, including forestry'.[20] And in encompassing these sectors, a CAP 'must ensure' that the corresponding carbon budget is 'achieved'.[21] Carbon budgets are secondary legislation containing an annual average target for net Northern Ireland emissions over a five-year period.[22]

Finally, two provisions in the CCA provide an important connective dimension beyond Northern Ireland when developing the CAP. The first – a duty to have regard – requires each Northern Ireland department to have regard to the 'desirability' of coordinating CAPs with corresponding policies and proposals elsewhere in the UK and with Ireland.[23] The second requires that Northern Ireland departments, when adopting 'plans, policies and strategies' to meet the net emissions targets during each carbon budget must align such plans, policies and strategies with those in Ireland.[24] It is clear that 'plans, policies and strategies' referred to here link to the 'policies and proposals' which are required to be adopted in the form of a CAP, particularly when the alignment duty in this context relates to the duty not to exceed emissions targets contained in a carbon budget.[25]

This complex and layered set of prescriptions resolves – for present purposes – to two themes. First, the CCA prohibits the development of climate change policy in isolation or policy development in silos. The various prescriptive duties interlock (some with 'nests' of due regard duties within due regard duties) to create a cohesive statutory mandate for the development of climate change policy as a whole. This whole policy is also cast explicitly against the backdrop of the island of Ireland being a single biogeographic unit[26] and the need to coordinate with and indeed align with Irish climate change *policy*. This means that the CCA effectively asks Northern Ireland departments to consider *EU* climate change policy and legislation, considering that many significant legal obligations in Ireland in this regard stem from the EU.[27] In the context of these obligations, however, it is important to remember that the EU does not have the general competence to make laws regarding land as such.[28] Instead, any EU law which relates to land or land use may be premised on the EU's defined (including shared) competences, such as the environment. Indeed, the EU's LULUCF Regulation, which concerns methods for accounting for greenhouse gas emissions and removals in the context of LULUCF, was enacted precisely by reference to environmental protection, preservation and improvement.[29] Another significant area

[19] *Ibid*., s 30(5).
[20] *Ibid*., s 33(h).
[21] *Ibid*., s 33.
[22] See the Climate Change (Carbon Budgets 2023-2037) Regulations (Northern Ireland) 2024, reg. 2.
[23] CCA, s 30(1)(a).
[24] *Ibid*., s 52(1)(c) and (2).
[25] *Ibid*., s 52(1).
[26] CCA, s 30(1)(a).
[27] Consider, for example, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, otherwise known as the European Climate Law.
[28] Though the EU shares competences with its Member States in a number of areas which relate to land-use, see Treaty on the Functioning of the European Union (2012) OJ C 326/47, art 4(2)(d) (agriculture and fisheries, excluding the conservation of marine biological resources) and (e) (environment).
[29] Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU, (note the reference to Article 192(1) of the Treaty on the Functioning of the European Union – which falls within Title XX of the Treaty concerned with the environment – in the preamble

from which the EU draws its mandate to make laws concerned with the environment is the regulation of the EU Internal Market. Take for example the much-delayed EU Deforestation Regulation,[30] which regulates the 'placing and making available on the Union market as well as the export from the Union'[31] goods which are (among other things) deforestation-free.[32] Thus, the EU cannot *directly* legislate on the issue of land-use regulation in its Member States, but (for example) through the regulation of its Internal Market, can provide the impetus for Member States to reform their own land-use legal frameworks. The regulation of the Internal Market – especially for goods – is highly relevant to Northern Ireland, because of its continued barrier-free access to that market via the Windsor Framework. Northern Ireland is obliged to follow EU market rules in this context to maintain that access.[33] Consequently, where changes to goods regulations in the Internal Market obliges changes to Irish law, it also (generally) obliges corresponding changes to Northern Ireland law.[34] In this context, if EU obligations like the Deforestation Regulation can be taken to provide a reason for land-use reform in Ireland, it can[35] also be taken to provide a reason for land-use reform in Northern Ireland (and indeed, vice versa).

Second, insofar as land is concerned, the stress on nature-based projects and LULUCF shows that the CCA is concerned with how land is generally *used* in addressing climate change. There are two ways to interpret this concern. The first is to view the CCA as emphasising and thus relying on existing statutory mandates such as the promotion of afforestation[36] and existing strategies such as the restoration of peatlands. This appears to be the approach adopted in the current draft CAP.[37] The second interpretation is to view the CCA much more ambitiously: as providing the impetus for a rethink in how land is managed and used, who is involved in that management and use and how legal reform may enable such a rethink. This paper takes the second, more ambitious view of the CCA as its foundation.

The Irish equivalent of the CCA is the Climate Action and Low Carbon Development Act 2015 (CALCDA). Significantly amended in 2021,[38] the CALCDA provides the legal mandate for climate change policy in Ireland, against a flagship 2050 target to transition to a 'climate resilient, biodiversity rich, environmentally sustainable and climate neutral economy' in the CALCDA itself.[39] The CALCDA, similar to the CCA, uses the language of carbon budgets,[40] climate action

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of the regulation). Similarly, see Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 (the EU Nature Restoration Regulation).

[30] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

[31] *Ibid*., art 1(1).

[32] *Ibid*., art 3(a).

[33] See e.g. Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019) OJ C 384 I/01, Protocol on Ireland/Northern Ireland (now known as the Windsor Framework), art 5.

[34] *Ibid*., art 13(3), but note art 13(3a).

[35] The Deforestation Regulation has not been added to the Windsor Framework, see e.g. Minutes of Evidence (9 January 2025) of the Northern Ireland Assembly Committee on Agriculture, Environment and Rural Affairs available https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=34728&eveID=17508. But David Phinnemore and Lisa Claire Whitten argue that the Deforestation Regulation already applies via the Windsor Framework, see 'Using the Stormont Brake' available <https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/Explainers/UsingtheStormontBrake/>. For reasons relating to the mechanisms of democratic scrutiny by the Northern Ireland Assembly of the Windsor Framework (and thus beyond the scope of this paper), I agree with Phinnemore and Whitten.

[36] The Forestry Act (Northern Ireland) 2010, s 1(1).

[37] Draft CAP, p 175-180.

[38] The Climate Action and Low Carbon Development (Amendment) Act 2021.

[39] CALCDA, s 3(1). For a definition of these terms, see CALCDA, s 1.

[40] *Ibid*., ss 6A and 6B.

plans,[41] sector specific policy proposals[42] and a just transition.[43] Also similar to the CCA, the CALCDA directs the Irish Government to carry out functions in line with the statute's flagship target.[44] However, unlike the CCA, the CALCDA expressly immunises any action or failure to act under the statute from any remedy in damages.[45]

Although the revamped CALCDA was enacted only a year before the CCA, because of a period of devolution collapse at Stormont between 2022 and 2024, the CALCDA has been operationalised for longer than the CCA. Consequently, there is some early commentary on the statute and the policies adopted by the Irish Government in response to the statute's mandates towards climate neutrality. This commentary[46] is soberingly critical of (among other things) insufficient ambition and reticence in the amended statute, the expert advice given pursuant to the statute, the policies adopted under the statute and the dynamics and interests underlying those policies – in short, the entire present state of the project of climate change mitigation and adaptation in Ireland. In the specific context of LULUCF, no long-term policy has thus far been formulated, because a long-running land-use review has yet to have its second phase report published.[47]

Nevertheless, both jurisdictions on the island of Ireland find themselves at early stages of developing long-term visions against the reality of a rapidly changing climate and thus an increasingly urgent need for ambitious planning and bold delivery. It is with this in mind that this paper looks to the reform of land law as a possible part of these plans.

Managing land for a changing climate

The role of land use in adapting to the effects of climate change is not a recent development or a recent field of study. The effects of deforestation and its relationship to changing climate patterns at both regional and global levels have been well documented for some time.[48] And nor is the field of LULUCF merely about reversing deforestation or committing to widespread afforestation. That forests are not inexhaustible carbon sinks and may in fact diminish in their potential to act as such has also been known for some time – including in relation to the UK.[49] The ability of forests to act as carbon sinks is moreover threatened by increasing extreme weather events.[50] Nevertheless, the potential for LULUCF, in the context of natural climate solutions, is vast:

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[41] *Ibid*., s 4.
[42] *Ibid*., ss 6 and 6C.
[43] *Ibid*., s 4(8)(k).
[44] *Ibid*., s 3(2).
[45] *Ibid*., s 2A. Though see Andrew Jackson and Orla Kelleher, 'The implications of the European Court of Human Rights' climate rulings for climate litigation in Ireland: a new legal reality' (2025) 32(1) *Irish Planning and Environment Journal* 3, 10, in which the authors argue that this provision is a breach of the European Convention on Human Rights, specifically under the European Convention on Human Rights Act 2003 (Ireland), insofar as section 2A of the CALCDA may 'deny an effective remedy'.
[46] See e.g. Andrew Jackson and Orla Kelleher, 'Ireland's second-generation Climate Act: still playing the laggard during the climate crisis?' (2023) 70 *Irish Jurist* 283 and Amanda Slevin and John Barry, 'Reconciling Ireland's climate ambitions with climate policy and practice: challenges, contradictions and barriers' (2024) 24 *International Environmental Agreements* 24.
[47] Though see Eoghan Dalton, 'Big shift in favour of dairy farming among scenarios proposed in government's land reforms' (*The Journal* 8 June 2025) available https://www.thejournal.ie/land-use-review-ireland-6705873-Jun2025/ See also the Irish Government's most recent Climate Action Plan under the CALCDA: Government of Ireland, *Climate Action Plan 2025* (2025), 129 available https://assets.gov.ie/static/documents/c491032e/DECC_Climate_Action_Plan_2025_Main_Report_-_Final_Web.pdf
[48] See e.g. Brian Stone, 'Land Use as Climate Change Mitigation' (2009) 43(24) *Environmental Science and Technology* 9052.
[49] M.D.A. Rounsevell and D.S. Reay, 'Land use and climate change in the UK' (2009) 26S *Land Use Policy* S160.
[50] See e.g. Christopher S Galik and Robert B Jackson, 'Risks to forest carbon offset projects in a changing climate' (2009) 257 *Forest Ecology and Management* 2209; Jagmohan Sharma *et al*, 'Challenges in vulnerability assessment of forests under climate

with one 2017 study estimating a maximum mitigation potential of almost half of the *global* anthropogenic greenhouse gas emissions.[51]

Natural climate solutions – defined as 'terrestrial conservation, restoration, and improved practices pathways, which include safeguards for food, fiber, and habitat'[52] – go beyond afforestation and reforestation, and into areas such as wetlands restoration, animal management and nutrient management. The scope of natural climate solutions therefore goes into agricultural practices and policies. Although not defined precisely in these terms, the requirement in the CCA for CAPs to support nature based projects is worded with sufficient breadth as to encapsulate natural climate solutions. This paper therefore considers natural climate solutions as part of nature based projects insofar as land management is concerned. Thus defined, it is clear that for the purposes of realising the potential for and scope of nature based projects under the CCA, LULUCF cannot be siloed per se, but inevitably overlaps with other matters such as waste management,[53] agriculture,[54] fisheries[55] and even (as explored further below) energy production and supply.[56]

In the area of land law reform, the reform of tenure has been studied as a way to enable agriculture which is sensitive to climate change and practiced in a way which adapts to and mitigates the impacts of climate change.[57] Land tenure is less about outright land ownership and more about the aggregation of rights which a land-user may enjoy on land over which they have some form of entitlement recognised by law (or, in common law systems like both jurisdictions on the island of Ireland, by law, equity or both). This way of conceptualising tenure, sometimes referred to as a 'bundle of rights' relates not only to the physical land but also the resources found within or on it – including minerals, water, trees and wildlife.[58] The general insight here is that greater security of tenure may lead to greater climate-sensitive agricultural practices, because land-users who are secure in their rights pertaining to land do not have to worry about those rights being eroded or extinguished.[59] Of course, this generalisation may obscure the realities of the relationship between tenure security and climate sensitivity. Indeed, one of the main reasons for tenure security enabling greater climate-sensitivity may be because of the *period* when tenure security is attempted. Put differently, if farmers are legally empowered at a time when the climate crisis is severely impacting their newly secure farmland, they may necessarily adopt climate-sensitive practices. Consequently, greater tenure security may not per se enable greater responsiveness to climate change, but tenure reform has a potential role to play in that responsiveness. I return to this possibility later in this paper.

Tenure reform in Northern Ireland has stalled considerably since the Law Commission last explored this topic in 2010. In essence, the present system 'works' for existing land-users, thus

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change' (2013) 4(4) *Carbon Management* 403; and Jianjun Yu *et al*, 'Climate Change Impacts on the Future of Forests in Great Britain' (2021) 9 *Frontiers in Environmental Science* 640530.

[51] Bronson W. Griscom *et al*, 'Natural climate solutions' (2017) 114(44) *Proceedings of the National Academy of Sciences of the United States of America* 11645.

[52] *Ibid*., 11646.

[53] CCA, s 33(f).

[54] *Ibid*., s 33(g).

[55] *Ibid*., s 33(i).

[56] *Ibid*., s 33(a).

[57] Alexis Rampa, Yiorgos Gadanakis and Gillian Rose, 'Land Reform in the Era of Global Warming – Can Land Reforms Help Agriculture Be Climate-Smart?' (2020) 9 *Land* 471.

[58] Note that the 'bundle of rights' metaphor is one among many such conceptions. For an alternative conception, see e.g. James Penner, *The Idea of Property in Law* (OUP 1997).

[59] Rampa, Gadanakis and Rose, 481-482.

reducing the drive to reform it any more significantly than it has been reformed thus far.[60] However, tenure reform in this context still adheres to the ethos of traditional land law – the protection of users rather than a focus on use, with climate resilience low (or even non-existent) on the list of priorities. This is a critical distinction when it comes to understanding how the public interest regarding climate change sometimes clashes with the underlying ethos of land law. This is where the planning system comes in.

In Northern Ireland (as indeed, elsewhere in the UK and Ireland), planning permission for proposed developments is generally determined by local authorities, with the possibility of submissions (including objections) made in respect of the proposed development by concerned individuals or groups. In Northern Ireland, the primary law is the Planning Act 2011. Grants of planning permission can be challenged by way of judicial review by individuals or groups with sufficient interest in the planning permission,[61] and refusals (and conditions) of planning permission can be appealed by applicants or developers to the Planning Appeals Commission,[62] where third parties (i.e. those who are not the planning applicant/developer or the local authority) have no right to be heard (but may be invited to be heard).[63] The theme of the planning system largely parallels the underlying ethos of land law: the primary concern is the *applicant/developer's* application regarding *its* land. Of course, the planning system is not entirely laissez-faire, and multiple statutory provisions exist to prevent runaway development, especially where sensitive environmental concerns are relevant.[64] But these provisions act as restrictions on a system which is inherently permissive of development by a land-user in respect of *their* land. Environmental restrictions on the potential for land use are thus conceptually opposed to the freedom of the land-user. In this way, land-use – of which planning law is a major enabler – and environmental law stand in contradistinction to one another. This contradistinction does not sit only on a conceptual plane but spills into narratives vilifying environmental activism (despite the use of environmental groups to monitor environmental crime),[65] calls to abandon existing emissions reduction targets[66] and the enactment of ever more sweeping anti-protest legislation.[67]

But the relevance of land-use is not limited to planning law or environmental limits thereto. As previously examined, it is a significant component – in the form of LULUCF – in climate resilience and thus, falling within the purview of the CCA. The CCA has a significantly disruptive potential. The far-reaching nature of its emissions reduction targets as they relate to the planning system was conclusively shown in the recent case of *Hassard and others*.[68] The Northern Ireland High Court (Mr Justice McAlinden) in *Hassard* considered whether the decision to proceed with a significant road project – the A5 Western Transport Corridor – was caught by the CCA (and if so, how). Against the backdrop of the targets within the CCA and those set by carbon budgets,

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[60] Mary Dobbs, Sarah E. Hamill and Robin Hickey, 'Land Law and Land Use' (2023) 34(2) *Irish Studies in International Affairs* 149, 160.
[61] Judicature (Northern Ireland) Act 1978, s 18(4).
[62] Planning Act (Northern Ireland) 2011, s 58(1).
[63] Planning and Water Appeals Commissions, *Appeal Procedures: Planning and Water Appeals Commissions* (2016), [24] available < https://www.pacni.gov.uk/files/pacni/2023-09/Procedures%20for%20Planning%20and%20Water%20Appeals%20%20-%202016.pdf>
[64] See e.g. The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (as amended).
[65] See e.g. Olivia Hasler, Reece Walters and Rob White, 'In and Against the State: The Dynamics of Environmental Activism' (2020) 28 *Critical Criminology* 517.
[66] Richard Moss, 'Badenoch says ditching net zero will not cost jobs' (*BBC News* 5 October 2025) available < https://www.bbc.co.uk/news/articles/cqlz1k40rxpo>
[67] See e.g. the Public Order Act 2023, s 1(1).
[68] *Re Hassard and others* [2025] NIKB 42.

McAlinden J found that the department responsible for the project – the Department for Infrastructure (DfI) had not considered the overall emissions impact from the project to Northern Ireland as a whole, and thus the DfI did 'not even pay lip service to the legal requirements set out in the [CCA].'[69] This was despite the PAC having recommended that the DfI *not* proceed with the project without first publishing detailed, inter-departmental calculations showing the impact of the project on emissions between 2030 and 2050.[70] Essentially, the DfI had ringfenced the project because of its status as a 'priority investment for the Northern Ireland Executive',[71] rather than assessing whether the project was compliant with the emissions targets in or made under the CCA, especially in light of the CAP as a whole.[72] The decision to proceed with the project was ultimately quashed under numerous grounds, among them being the duty in section 52 of the CCA for departments (including the DfI) to exercise their functions consistently with achieving targets set out in or under the CCA.[73] The key point here is not that the CCA *prevents* projects like the A5 corridor from being carried out, but that it requires departments to be clear about what they are doing in light of the emissions reduction targets which must be achieved. The duty is to exercise departmental functions 'as far as is possible to do so' consistently with emissions targets, which cannot conceivably be discharged if the relevant department is not even aware of what (if any) impact a project will have on those targets.

At the time of writing, *Hassard* is under appeal. Nevertheless, it shows the far-reaching impact of the CCA in terms of a departmental reorientation in functioning. It is not enough to aspire towards the achievement of net-zero emissions, departments must also be clear about how their actions are geared towards achieving (and how these actions may negatively impact the achievement of) that goal.

Hassard is paradigmatic of the clash of interests between land-use and environmental regulation set out above. What is needed is a shift in this narrative: from clash to cooperation. Instead of environmental regulation being viewed as a *limit* to the freedom of land-use, it may more usefully be viewed as a *type* of land-use, particularly among communities. McAlinden J in *Hassard* noted the importance of the 'genuine' democratic credentials underlying the public consultation and Assembly approval elements of a CAP.[74] In this vein, environmental regulation, and its relationship with land-use, may be more usefully conceived as a strategy for climate change mitigation and adaptation if that relationship were operationalised more democratically. Instead of only being a top-down exercise of climate change policy being set by the government for the people, is it also possible for aspects of that policy to be forged from the ground up, by the people and enabled by the government? The next section explores ongoing Scottish efforts in land law reform designed to enable much greater community ownership of Scottish land, with sustainable development (particularly renewable energy generation) being a key factor in this reform.

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[69] *Ibid*., [129].
[70] *Ibid*., [124].
[71] *Ibid*., [127].
[72] This was especially difficult given that the draft CAP had then just been published. One could argue that the DfI essentially 'jumped the gun' inn light of the fact that the CAP had yet to be formally adopted by the Assembly, instead of awaiting that adoption and reassessing the project in light of the adopted CAP. Alternatively, the project ought to have taken up a more prominent position in the draft CAP, with the policies and proposals of the CAP – specifically in the transport sector – balanced to account for the project and to offset its increased emissions profile.
[73] *Ibid*., [300].
[74] *Hassard*, [115].

Community land management: notes from Scotland

At the outset, it is important to note that land ownership patterns which triggered modern land reform in (devolved) Scotland do not necessarily plague in Northern Ireland. The sweeping land reforms which characterised late nineteenth and early twentieth century Ireland have meant that land in Northern Ireland is not concentrated in the hands of relatively few wealthy landowners as it once was, and which was a key reason for engaging in significant land reform in Scotland in the early twenty-first century.[75] However, it is instructive that land reform in Scotland has taken a somewhat different turn to that on the island of Ireland. Irish land reform entailed transfer of property from a highly concentrated and wealthy landowning class to a far more numerous class of farmers who themselves became the new landowners. Scotland has instead sought to empower community ownership of land owned by a small class of private landowners.

Reform in this context began in 2003, with the Land Reform (Scotland) Act 2003 (LRA 2003). This Act introduced two community rights: the Community Right to Buy (CRB)[76] and the Crofting Community Right to Buy (CCRB).[77] The distinction between the two rights, aside from the CCRB applying only to 'eligible croft land',[78] is that the CRB is a right to register an interest in 'registrable land' should it come up for sale;[79] the CCRB instead is an absolute right to buy, whether the landowner is willing to sell or not.[80]

Further reform in this context was enacted in 2015 and 2016. In 2015, the Community Empowerment (Scotland) Act 2015 removed the power of the Scottish Ministers to set out by secondary legislation land excluded from registrability under the LRA 2003, and instead defined it restrictively by statute, thus expanding the scope of the CRB to land across Scotland.[81] In addition, the 2015 Act relaxed a number of restrictions relating to community bodies which may register an interest via the CRB and transfer of land under the CRB. Finally, the 2015 Act introduced an absolute community right to buy abandoned, neglected or detrimental land.[82] This new right is subject to ministerial consent, with the Act directing that consent may only be given if a number of conditions are satisfied, including that the landowner would not further the achievement of sustainable development.[83]

In 2016, a new Land Reform (Scotland) Act (LRA 2016) created a new absolute community right to buy land for 'sustainable development'.[84] The statute does not define 'sustainable development' but it recognises eligible community bodies only where their main purpose is confirmed to be 'furthering the achievement of sustainable development.'[85] Moreover, the LRA

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[75] See e.g. James Hunter, *et al*., *432:50 – Towards a comprehensive land reform agenda for Scotland: a briefing paper for the House of Commons Scottish Affairs Committee* available < https://www.parliament.uk/globalassets/documents/commons-committees/scottish-affairs/432-Land-Reform-Paper.pdf>

[76] Land Reform (Scotland) Act 2003, s 33(1).

[77] *Ibid*., s 68(1).

[78] *Ibid*., s 68(2)-(4). Crofting tenure is a peculiarly Scottish tenure and does not have an Irish equivalent. Though beyond the scope of this paper, see e.g. Allan W. MacColl, *Land, Faith and the Crofting Community: Christianity and Social Criticism in the Highlands of Scotland, 1843-1893* (Edinburgh University Press 2006).

[79] As originally defined, registrable land was anything other than 'excluded land', which Scottish Ministers had the power to define by secondary legislation, see the Land Reform (Scotland) Act 2003, s 33(2) (as enacted).

[80] See e.g. the Land Reform (Scotland) Act 2003, s 74(1)(h) – directing that Scottish Ministers will not consent to an application to buy using CCRB unless satisfied (among other things) that the landowner is 'not prevented from selling the subjects of the application' and is not subject to any enforceable obligation; not that the landowner does not object to the transfer of land.

[81] See the Community Empowerment (Scotland) Act 2015, Explanatory Note, paras 56-58.

[82] *Ibid*., s 74, which inserted Part 3A in the Land Reform (Scotland) Act 2003.

[83] Land Reform (Scotland) Act 2003, s 97H(1)(c).

[84] Land Reform (Scotland) Act 2016, Part 5.

[85] *Ibid*., s 49(7).

2016 directs the Scottish Ministers to refuse an application unless (procedural conditions aside) certain 'sustainable development conditions' are met. These include the requirement that the transfer of land be in the public interest,[86] result in 'significant benefit' to the relevant community,[87] that the transfer is 'the only practicable, or the most practicable, way of achieving that significant benefit'[88] and that *not* transferring the land would result in harm to the relevant community.[89] These statutory provisions are buttressed in policy terms by (among other things) access to funding for community bodies seeking to exercise rights to buy, through grants for example provided by the Scottish Land Fund and the Empowering Communities Fund.

The current Scottish Government has invited responses to a consultation on reforming these four community rights to buy. At the time of writing, that consultation is closed.[90] The Scottish appetite for land law reform, in contrast to that of the Northern Ireland Executive, seems to have remained strong. But the ongoing Scottish attempts at reforming land law are not without problems. Conditions for approving transfer of land under community rights to buy are onerous,[91] and as Aileen McHarg has noted, much depends on how these conditions – especially those under the LRA 2016 – are interpreted.[92] Statutory conditions aside, there are problems of capacity for exercising the available community rights by interested groups, especially where they may struggle to gather sufficient numbers to be recognised as community bodies in the first place. Challenges of skills and expertise (and financial commitments) in making applications by community bodies[93] and the over-reliance on volunteers (and consequent volunteer fatigue) in the management of community-owned land[94] also arise. Moreover, although community ownership is a significant way to democratise land in Scotland, the mere possibility of handing over land to a community body does not guarantee a democratic success. Given that community bodies are highly self-regulating, McHarg notes '[q]uestions … need to be asked about who participates, how decisions are made, and how decision-makers are held to account'.[95] Carey Doyle also notes, '[t]here is also a tendency for communities to attempt to use their Land Rights to stop development, when these rights are really designed for delivering community need.'[96] Finally, any government or legislative attempt to effect land transfer at scale may be vulnerable to challenge under the Human Rights Act 1998 as a potential breach of rights under the European Convention on Human Rights (ECHR). Article 1 of Protocol 1 to the ECHR – the right to peaceful enjoyment of one's possessions – is particularly relevant here. A challenge to the CCRB for containing insufficient safeguards and thus breaching Article 1 of Protocol 1 failed,[97] but the vulnerability of devolved legislation to human rights challenges is especially serious. Unlike the

[86] *Ibid*., s 56(2)(b).
[87] *Ibid*., s 56(2)(c)(i).
[88] *Ibid*., s 56(2)(c)(ii).
[89] *Ibid*., s 56(2)(d).
[90] Scottish Government, *Community right to buy review: consultation* (July 2025) available < https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2025/07/community-right-buy-review-consultation/documents/review-community-right-buy-draft-consultation/review-community-right-buy-draft-consultation/govscot%3Adocument/review-community-right-buy-draft-consultation.pdf>
[91] Megan McInnes and Kirsteen Shields, 'The Land Reform (Scotland) Bill and Human Rights: Key Points and Recommendations' (2015) available < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2698578>
[92] Aileen McHarg, 'Community Benet through Community Ownership of Renewable Generation in Scotland: Power to the People?' in Lila Barrera-Hernández et al (eds) *Sharing the Costs and Benefits of Energy and Resource Activity: Legal Change and Impact on Communities* (OUP 2016), 310.
[93] See e.g. *Community right to buy review: consultation*, Annex B, p. 17-18.
[94] Carey Doyle, 'Rethinking Communities, Land and Governance: Land Reform in Scotland and the Community Ownership Model' (2023) 24(3) *Planning Theory and Practice* 429, 433.
[95] McHarg, 314.
[96] Doyle, 433.
[97] *Pairc Crofters v Scottish Ministers* [2012] CSIH 96.

UK Parliament, the devolved legislatures have no competence to make law in breach of the ECHR,[98] meaning that the affected devolved law (or provision of such law) is usually invalidated. Practically, this can have considerable impact if the invalidated provision is a key part of the legislative framework of community ownership and cannot be easily replaced by amending the affected statute or bringing a fresh statute to the legislature.

Concerns notwithstanding, community ownership in Scotland has produced some notable successes, especially in the area of renewable energy. McHarg points to the Isles of Gigha (off the west coast of Kintyre) and Eigg (part of the Inner Hebrides) as well-known examples of community-owned renewable energy projects which yielded considerable community benefits.[99] Gigha is owned by a community trust which comprises a board elected by the trust membership, and a trust subsidiary company owns and manages the island's renewable (wind) energy facilities. The company also sells excess renewable energy, putting profits back into the island community in terms of estate maintenance and employment opportunities.[100] Eigg meanwhile is owned by a limited company and registered Scottish charity whose directors are appointed by (among other bodies) the island's residents association.[101] One of the charity's subsidiary companies – Eigg Electric – runs a renewable energy supply drawn from wind, hydro and solar sources.[102] Beyond specific successes, community participation *in* land use is relevant to climate change policy in Scotland.[103] The most recent consultation on Scotland's Fourth Land Use Strategy, for example, sets out three themes around which the strategy is proposed to be organised. Of these, the third theme – 'Communities, Place, People, and Equity' – includes multiple references to community owned land, including croft land, as indicators and monitoring points for policy outcomes.[104] This is despite Scotland's emissions profile in the period 1990-2016 showing land-use as among the lower sectoral contributors towards that profile.[105]

Climate-oriented land reform on the island of Ireland

As Scotland shows, it is possible for land use and land reform to become part of, rather than stand in opposition to, environmental regulation and climate change policy. But the point of exploring the Scottish experience in this regard is not to call for its wholesale adoption on the island of Ireland. This is for three reasons, all of which in turn mark three points of further and necessary research in the area of land reform and its relationship to climate change mitigation and adaptation efforts.

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[98] See the Northern Ireland Act 1998, s 6(2)(c); the Scotland Act 1998, s 29(2)(d); and the Government of Wales Act 2006, s 108A(2)(e).
[99] McHarg, 304.
[100] See < https://www.gigha.org.uk/Dancing-Ladies-turn-30> accessed 12 December 2025.
[101] See < https://isleofeigg.org/ieht/> accessed 12 December 2025.
[102] See < https://isleofeigg.org/eigg-electric/> accessed 12 December 2025.
[103] Scottish efforts at climate resilience and interim failures towards achieving its highly ambitious net-zero target have recently come under significant criticism and the abandonment of its interim 2030 target, see Colin T Reid, 'Climate, Constitution and Party Politics: How a Climate Crisis Created a Political Crisis in Scotland' (*Verfassungsblog* 14 May 2024) available < https://verfassungsblog.de/climate-constitution-and-party-politics/> accessed 10 December 2025.
[104] Scottish Government, *Scotland's Fourth Land Use Strategy: Consultation* (August 2025), 25, 34-35 available < https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2025/08/scotlands-fourth-land-use-strategy-consultation/documents/scotlands-fourth-land-use-strategy-consultation/scotlands-fourth-land-use-strategy-consultation/govscot%3Adocument/scotlands-fourth-land-use-strategy-consultation.pdf>
[105] Committee on Climate Change, *Net Zero: The UK's contribution to stopping global warming* (May 2019), p. 167 available < https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf>

First, the primary trigger for land reform in Scotland was not sustainable development per se, but the redistribution of land from a small cohort of landowners to the wider community. This is categorically different from present land ownership patterns across the island of Ireland, though the historical development and legacies of land concentration in Scotland and that in Ireland have some similarities.[106] Community owned land in Scotland is tied to community benefit, whether that lies strictly in environmental regeneration or beyond it. But many of the matters which the LRA 2016 sets out as strong factors for approving community ownership – public health and social well-being, for example[107] – have equivalents in the CCA.[108] Most relevantly, although the LRA 2016 does not define 'sustainable development', the CCA sets out one of the more influential definitions of the term as its 'future generations principle': 'acting in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.'[109] Meanwhile, Irish climate legislation - namely the CALCDA – also references environmental sustainability,[110] a just transition[111] and community support as part of a just transition[112] as important aims and factors to account for in policy-making. Consequently, although there are similarities between Scottish land reform legislation and climate change legislation on the island of Ireland, a straightforward importation of community land rights from the Scottish model may not serve the purposes of the climate legislation as such. Instead, greater consideration needs to be given as to how nature-based projects, overall emissions reduction targets, a just transition and a sustainable development can be realised *through* community-based land ownership, management and stewardship.

Second, the reality that community-based land rights are sometimes used to thwart development proposals rather than generate community benefits provides a significant opportunity to consider how the planning system can be integrated with land reform in a climate-sensitive manner. As previously explored, communities or community groups on the island of Ireland which are active in environmental issues have a single avenue for making their voices heard: objecting to planning applications and possibly challenging them through judicial review. This exacerbates narratives that environmental activism is anti-development (as above). Instead of this exclusionary and confrontational approach, environmental activism can be an inclusive and integrated part of the effort to mitigate and adapt to the impacts of climate change. Scotland shows us some ways in which this can be done – particularly through democratising legal change and the availability of funding and other support for community empowerment in land redistribution. However, the scope for and realisation of this kind of reform on the island of Ireland is different (for the Republic of Ireland radically so) from Scotland. This is mainly because of the differences in legislative competence between Scotland and Northern Ireland, where each jurisdiction has competence over some but not all subjects where land reform can enable better environmental outcomes (and that each jurisdiction is competent to make laws in respect of slightly different areas). Ireland as a

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[106] Ewan A Cameron, 'Communication or Separation? Reactions to Irish Land Agitation and Legislation in the Highlands of Scotland, c.1870–1910' (2005) 120(487) *The English Historical Review* 633.
[107] Land Reform (Scotland) Act 2016, s 56(12)(c) and (d).
[108] See especially the CCA, s 30(3) (the just transition principle) and (5) (nature-based projects).
[109] CCA, s 30(4)(c). The origin of this lies in the Brundtland Report, see Gro Harlem Brundtland *et al*, *Report of the World Commission on Environment and Development: Our Common Future* (1987), IV, para 27, available < https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> accessed 10 December 2025. This was subsequently enacted by Senedd Cymru in the Well-being of Future Generations (Wales) Act 2015, s 5(1), and then the CCA.
[110] CALCDA, s 3(1).
[111] *Ibid*., s 4(8)(k).
[112] *Ibid*., s 4(8)(k)(ii).

sovereign country is of course competent to make laws in respect of every relevant field, though there is a degree of cross-border coordination with Northern Ireland in some respects.[113] Moreover, as previously set out, much of the substance of environmental legislation in force in Ireland is sourced in EU law, which no longer applies as such in respect of Scotland. Consequently, any legal framework of land reform which involves community rights on the island of Ireland has to account for matters which are not strictly necessary in the Scottish context: management of land (including ecologically sensitive land) and resources across an international border, and the impact of EU law and policy. Finally, it should be remembered that community land ownership and management in Scotland is enabled by significant public investment, for example in the form of grants. Whether this model could be replicated on the island of Ireland is a complex question. Northern Ireland has a panoply of financial commitments, some around long-standing issues.[114] However, the ability of Northern Ireland's devolved authorities to raise revenues or borrow money does not match the ability of either the UK or Irish Governments. Moreover, long-term fiscal arrangements between the UK Government and the Northern Ireland devolved institutions remain under negotiation.[115] Finally, the Irish Government has some defined financial commitments towards projects jointly funded with the Northern Ireland Executive.[116] There is thus much scope for further study as to financial capacity to enable community ownership across the island of Ireland, but that further study has to account for the multiplicity and scope of fiscal frameworks and the reality of fiscal commitments and relationships. It also must be remembered that community land ownership and management in Scotland is not *solely* down to statutory rights and public funding. Indeed, there is significant evidence that the existence of these statutory community rights enables other methods of community empowerment, particularly by facilitating negotiated land sales to community groups outside the relevant statutory framework.[117] Consequently, land reform through statutory means in this context can have wider impacts on community bargaining power in areas of community benefit. That in itself is a point worth exploring in the context of democratising environmental governance and sustainable development through land reform.

Third, we simply do not know what the level of public interest is in attempting something like the Scottish model on the island of Ireland. Community ownership and management of land as a norm is alien to the history of land law reform on the island[118] and would not be possible without public buy-in. This is hardly surprising, of course, but it pays to reinforce the point: public trust (rather than political ideology) is one of the most important drivers behind public support for environmental protection.[119] Public trust in politics and political frameworks is especially important in relation to the Northern Ireland devolution settlement, which has collapsed multiple

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[113] Under the auspices of the Belfast/Good Friday Agreement 1998, which is the international and multiparty framework underlying present devolution arrangements in Northern Ireland, as well as intergovernmental bodies on a North-South and East-West basis, that is, within the island of Ireland as well as between the islands of the UK and Ireland. Relevant areas for environmental protection include the Loughs Agency and its role in conservation of Foyle and Carlingford Loughs.

[114] See e.g. in the context of healthcare spending, the Northern Ireland Fiscal Council, 'Sustainability Report 2022: *special focus* - Health' (2022) available < https://www.nifiscalcouncil.org/files/nifiscalcouncil/documents/2022-10/Sustainability%20-%20health%20launch%20Sept%202022%20-%20presentation%20-%2026.10.22.pdf>

[115] See, e.g. in the housing context, Brendan Hughes, 'New housing plan "hitting brick wall" over funding, says minister' (*BBC News* 26 October 2025) available < https://www.bbc.co.uk/news/articles/ce3kvqep11do>

[116] See e.g. Davy Wilson, 'Irish government money for A5 "remains in place"' (*BBC News* 25 June 2025) available < https://www.bbc.co.uk/news/articles/c5yg2836el5o>

[117] Land Reform Review Group, *The Land of Scotland and the Common Good* (2014), 98.

[118] For the avoidance of doubt, commonage, which has considerable history in Irish land reform, is not conceptually or historically the same thing as community rights to buy under the Scottish model.

[119] Malcolm Fairbrother, 'Trust and Public Support for Environmental Protection in Diverse National Contexts' (2016) 3 *Sociological Science* 359.

times and has also been criticised as inherently flawed.[120] But public trust is not only essential in understanding the appetite for land reform; we must also understand ways in which land reform can enhance public trust in politics. McHarg noted that community-owned renewable energy projects had helped to combat energy poverty in the Isle of Eigg.[121] Energy poverty on the island of Ireland is a significant concern. A September 2024 poll found around 40% of households in Northern Ireland spent more than 10% of their income on household energy costs.[122] Meanwhile, a 2025 report commissioned by the Irish Government showed that figure at 42% for Irish households in 2023.[123] Consequently, it is important both to know levels of public trust in political systems across the island of Ireland, as well as identify measures by which this trust can be improved where necessary, if ambitious climate-sensitive land reforms are to be successfully attempted.

Despite the caveats presented here, it is worth stressing some potential benefits. First, the democratisation of environmental governance through community empowerment may enable governance to be carried out more sustainably and effectively in the long term. This would be especially important in any scenario where Stormont collapses and the development of climate change policy (including to be responsive to emerging requirements) stalls as a result. Second, the empowerment of communities over land for sustainable development may embed the need for environmental protection at a local level, more effectively protecting that need from reactionary political currents and the vilification of environmental activism. Third, community empowerment may assist in developing community resilience by alleviating poverty and potentially reversing socio-economic decline.

Thus, what this paper ultimately argues for is twofold. First, tenure reform can enable climate resilient, democratic and community empowering land use and management. This can take place through targeted reform of land law, wherein communities are given preferential rights to buy (even over the objections of existing landowners) as Scotland has shown. But we can also adapt the Scottish model, by predicating community rights to buy land on the management of that land to further climate change mitigation and adaption, whether through renewable energy schemes, ecological stabilisation and maintenance or other schemes to ensure climate resilience. Second, before the kinds of reform suggested here are attempted (which on any view would be radical given the previously explored history of land law on the island of Ireland), we need to undertake significant research into how successful such reform would be. This research should focus on the capacity for tenure reform to enable climate resilient and community-managed land use, the capacity for governance and public finance to enable any legal reform to be translated into reality and (crucially) the public appetite for climate resilient land use at the community level, to ensure that any reform is truly democratic in character.

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[120] See e.g. Written Evidence submitted by the Alliance Party of Northern Ireland to the Northern Ireland Affairs Committee of the House of Commons (2017), available < https://committees.parliament.uk/writtenevidence/85388/html/>
[121] McHarg, 304.
[122] National Energy Action, *Fuel Poverty in Northern Ireland* (2024) available < https://www.nea.org.uk/fuel-poverty-in-ni/>
[123] Sustainable Energy Authority of Ireland, *Energy Poverty in Ireland: Analysis of 2023 data from the Behavioural Energy and Travel Tracker* (2025), 10.

Conclusion

This paper has set out a tentative vision for engaging in the discussion and consideration of land law reform in the context of climate change mitigation and adaptation. Though the vision concerns itself somewhat more with Northern Ireland, it extends to the whole island of Ireland because of the similarities in land law and climate law across the two jurisdictions. More to the point, the island of Ireland is a single biogeographical unit – as indeed now expressly recognised in the law of Northern Ireland – and which continues to be bound by EU law in a way which no longer applies to Great Britain. The two jurisdictions are also at early stages of seriously developing climate change policy and considering integrated approaches to that policy, but with an increasingly urgent need to do so.

All of these relevant similarities provide fertile ground for ambition and openness to lessons from neighbours and beyond. Scotland provides a useful picture of land reform as a growing and important part of mitigating and adapting to the impact of climate change. A combination of public assistance, legal empowerment and democratisation of ownership builds powerfully into community and environmental resilience, which ultimately lie at the heart of responding to climate change. The scope to learn from these models and how they may be adapted on the island of Ireland is considerable. The time to do so is now.