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DEMYSTIFYING POST-BREXIT ENVIRONMENTAL COOPERATION ON THE ISLAND OF IRELAND

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Demystifying post-Brexit environmental cooperation on the island of Ireland

The 2023 [Linking the Irish Environment \(LIE\) Report](#) explored all-island and crossborder cooperation on shared environmental challenges on the island of Ireland. One of the recommendations of the LIE report was to establish an [all-island civil society forum on the environment](#), which was organised by the Northern Ireland Environment Link (NIEL) and Irish Environmental Network (IEN) in 2024. One of the key observations which emerged from this forum was that many questions remained about all-island environmental governance and the complexity around the new arrangements in the post-Brexit era. In addition, it has become clear that arrangements are continuing to evolve as the Windsor Framework plays out in practice. The aim of this short resource is to demystify the complex legal and political developments which have occurred post Brexit which are relevant to all-island/cross-border cooperation on the environment on the island of Ireland.

The report is organised into five parts:

1. A list of commonly used abbreviations.
2. A table explaining key terms and concepts.
3. Frequently asked questions.
4. A bibliography of references and further reading organised by theme.
5. A list of useful web resources.

1. Abbreviations

NESC	National Economic and Social Council
NIEL	Northern Ireland Environment Link
IEN	Irish Environment Network
TCA	Trade and Cooperation Agreement
MLA	Member of the Legislative Assembly in Northern Ireland
EPA	Environmental Protection Agency
NIEA	Northern Ireland Environmental Agency
BIC	British-Irish Council
CAP	Common Agricultural Policy
CJEU	Court of Justice of the European Union
DAERA	Department of Agriculture, Environment and Rural Affairs
DUP	Democratic Unionist Party
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
EUWA	European Union (Withdrawal) Act 2018
NGO	Non-governmental organisation
NIEA	Northern Ireland Environment Agency
NIO	Northern Ireland Office
NSMC	North South Ministerial Council
OEP	Office of Environmental Protection
REUL	Retained EU law
TCA	EU/UK Trade and Cooperation Agreement

TFEU	Treaty on the Functioning of the European Union
UKIMA	United Kingdom Internal Market Act 2020
UNECE	United Nations Economic Commission for Europe
WA	Withdrawal Agreement
WFA	Windsor Framework Agreement

2.Key terms and concepts

The 1998 Agreement/Belfast Agreement/Good Friday Agreement	The 1998 Agreement (also sometimes referred to as the Belfast or Good Friday Agreement) is an international treaty that was signed between the UK and Ireland on 10 April 1998.
The Northern Ireland Protocol/The Windsor Framework	The Windsor Framework is the new title of the Protocol on Ireland/Northern Ireland which forms part of the EU-UK Withdrawal Agreement. Its objective is to maintain necessary conditions for North-South cooperation on the island of Ireland, to avoid a hard border and to protect the 1998 Agreement in all its dimensions after Brexit.
UK-EU Joint Committee	The UK-EU Joint Committee was set up under the UK-EU Withdrawal Agreement to oversee its implementation, including the Windsor Framework. It is a decision-making body which is co-chaired by a European Commissioner and a central UK Government Minister.
Specialised Committee	The Specialised Committee is a joint UK and EU body set up to oversee the implementation of the Windsor Framework specifically. It reports to the UK-EU Joint Committee and can receive representations from certain North-South bodies and NI rights organisations.
Joint Consultative Working Group	The Joint Consultative Working Group was set up under the Windsor Framework to assist in its implementation. It is made up of UK and EU officials and allows for information exchange between the two sides, in particular on issues to do with Northern Ireland's continued alignment with aspects of EU law.
North South Ministerial Council	The North South Ministerial Council was established under Strand Two of the 1998 Agreement. It provides a forum for cooperation between the Irish Government and the Northern Ireland Executive.

Trade and Cooperation Agreement	The Trade and Cooperation Agreement is an international agreement between the UK and the EU which sets out the terms for trade and non-trade relations between the two parties after Brexit. It provides for tariff-free and quota-free trade but allows for divergence of standards and rules between the UK and the EU; this results in trade frictions.
Regulatory divergence	Regulatory divergence refers to a scenario in which two or more governments pursue different policy objectives or legal mechanisms to achieve them.
Retained EU Law	Retained EU law is a category of UK law created under the European Union (Withdrawal) Act 2018 which provided for all laws that applied to the UK as EU law on the exact date and time of the UK's exit from the EU to continue to apply in the UK as 'retained EU law'. UK Ministers could make changes to this new category of retained EU law but a UK-version of some of the legal principles of the EU continued to apply to it.
Assimilated EU law	The Retained EU Law (Revocation and Reform) Act 2023 (REUL Act) changed the name of 'retained EU law' to 'assimilated EU law' and made it easier for UK Ministers to make changes to it and removed the UK-version of EU legal principles.
The 'Stormont Brake'	The Stormont Brake procedure enables the UK to deviate from the otherwise automatic dynamic regulatory alignment of Northern Ireland with EU rules on standards of and trade in goods on the instruction of Members of the Legislative Assembly (MLAs), subject to UK Government approval.
Dynamic alignment	Dynamic alignment is an arrangement that requires the laws and rules of one jurisdiction to be updated to reflect any changes made in the laws and rules of another jurisdiction. Post-Brexit, this is the arrangement established for Northern Ireland under the Windsor Framework which stays dynamically aligned with a sub-set of EU laws and rules.
The Aarhus Convention	The Aarhus Convention is a UN treaty guaranteeing the public's right to access environmental information, participate in environmental decision-making, and access justice in environmental matters.

The Espoo Convention	The Espoo Convention is an international agreement that requires parties to assess the environmental impact of certain activities at an early stage of planning and notify and consult each other on the activities listed in the convention that are likely to have a significant adverse transboundary (cross-border) impact.
Office of Environmental Protection	The Office for Environmental Protection (OEP) is a public oversight body for environmental protection in England and Northern Ireland. It was created as a statutory body by the Environment Act 2021 to replace the oversight functions previously delivered by EU institutions.
European Commission	The European Commission is the executive body of the European Union which means it is responsible for proposing new laws and policies, monitoring their implementation, managing the EU budget, and negotiating international agreements on behalf of the EU. It is made up of a cabinet or 'college' of Commissioners – one from each Member State – and is led by a President. Together with the European Parliament and European Council, the European Commission is one of the three main institutions that make up the EU.
European Court of Justice	The Court of Justice of the European Union is the judicial institution of the EU which ensures that EU law is interpreted and applied in the same way in all EU countries. It settles legal disputes between EU institutions and national governments, individuals or organisations. The Court of Justice of the European Union is composed of the General Court and the European Court of Justice – the latter is the higher court meaning decisions made in the General Court can be appealed to the European Court of Justice.

3. Frequently asked questions

Why is cooperation on the environment on the island of Ireland so important?

Cooperation on the environment is vital for a number of reasons:

- **Shared ecosystems and resources:** The island of Ireland, including its surrounding seas, is considered a single biogeographic unit, meaning it has a common set of natural resources, landscapes, and ecological processes. This includes shared water sources, flora, fauna, and habitats. Co-management of these shared resources is essential. Effective environmental management requires cooperation and engagement by all environmental actors across the island. This includes governments, NGOs, research institutions, and local communities.
- **Responding to shared environmental challenges:** The island is facing a climate and biodiversity crisis, with both Ireland and Northern Ireland facing similar challenges in addressing these issues. Protecting the shared environment requires coherent policy-making, high standards, and regulations, as well as effective enforcement of environmental law on both sides of the border.
- **The impact of brexit:** The United Kingdom's withdrawal from the European Union has the potential to disrupt cross-border cooperation and shared standards, posing a significant risk to the all-island environmental integrity, to the economic level playing field on the island and to existing cooperation on the environment. Post-brexit regulatory divergence has the potential to create different standards on each side of the border. This could lead to transboundary pollution and impact the environmental rights of people across the island.
- **Benefits of cooperation:** Cooperation can lead to more coherent and cost-effective environmental management leading to better environmental outcomes. All-island environmental cooperation can also lead to economic and social benefits, such as supporting the all-island market for sustainable products and services, improved connectivity for trade and tourism and better quality of life for citizens.

The importance of all-island/cross-border cooperation on the environment was recognised in the 1998 Agreement.

What does the 1998 Agreement say about environmental cooperation on the island of Ireland?

The 1998 Agreement has been praised for the nuanced understanding of the link between environment, peace and security evident in its focus on environmental issues. Environment is one of the 12 nominated areas for North South cooperation under Strand 2 of the Agreement, along

with areas that area environmental in nature such as watercourses, aquaculture, agriculture, urban and rural development and tourism. Environmental issues are within the remit of the North-South Ministerial Council in Strand 2 and the British-Irish Council in Strand 3.

The explicit presence of access to information and public participation in public body decision-making and in the making of plans and programs relevant to the environment was cutting edge in international terms, with the 1998 Agreement being concluded the same year as key international law agreements governing these areas, such as the Aarhus Convention 1998 UNECE on public participation in environmental decision making.

Under the 1998 Agreement, the UK Parliament also devolved legislative and executive powers to the Northern Ireland Assembly and Executive. The Assembly and the Northern Ireland Executive make laws and decisions on a wide range of 'transferred matters' – this includes most decision-making on the environment.

These issues are explored in detail by Alison Hough in her 2019 paper *Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions*, available [here](#).

What are the challenges to all-island cooperation on the environment?

Cooperation on environmental issues was envisaged in the 1998 Agreement (see above) but despite examples (see below) has remained challenging in the years since 1998, even before brexit. There are a number of reasons for this:

- 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**.
- Significant **divergence** which existed even before Brexit has been compounded by **problematic experiences of environmental governance** within each jurisdiction. 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**. 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 Windsor Framework and other post-Brexit governance arrangements remains uncertain.
- The **unstable nature of the devolved government in NI** has meant that for long periods Northern Ireland has been without a government and that core 1998 Agreement implementation bodies (e.g. the North South Ministerial Council) have not been able to function.

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.
- There is a **lack of transparency** about how civil society can engage in formal processes and discussions around the environment at policy level, there is also a lack of a forum for all-island advocacy on shared environmental challenges.
- **Missing, inaccurate or incomplete data** on either side of the border means that it is difficult to assess priority areas for cooperation or compare approaches to identify best practice.
- There have also been concerns raised about the **extent to which proper transboundary consultation on important environmental decisions has occurred**.
- **Funding streams and opportunities also differ**, with relatively low incentives to engage in sustained cross-border or all-island work and only relatively recent investment in environmental advocacy work designed to transcend the political boundary.
- **Lack of capacity** means that many NGOs consider crossborder/all-island cooperation as a 'nice to have' rather than a priority. Funding to date has not addressed the need for long-term civil society capacity to work to together on shared environmental challenges.

Navigating the differences between the two jurisdictions is therefore very complex for third sector organisations seeking to operate or collaborate across the island. A detailed empirical study of the experience of all-island cooperation on the environment forms part of the 2023 *Linking the Irish Environment* report, available [here](#).

Did North-South cooperation exist before Brexit, and how much of this cooperation relied on EU membership?

Despite challenges, formal cooperation between the governments of Ireland and Northern Ireland existed across many policy areas pre-Brexit, as demonstrated by 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. 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 revealed the degree of exposure of existing cooperation on the environment to the out-workings of Brexit. The findings of the Mapping Exercise also 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. While Brexit has fundamentally changed the legislative context for cooperation, and created significant challenges, it is therefore also true that some pre-existing crossborder environmental cooperation has not been directly affected. Civil society cooperation on environmental issues also existed before Brexit, this is explored in detail in the '[Linking the Irish Environment](#)' report and has also been explored by [NESC](#).

What is the Windsor Framework and how does it relate to the Northern Ireland/Ireland Protocol?

The Windsor Framework is the title given to a package of measures agreed between the UK and the EU in February 2023 regarding the Protocol on Ireland/Northern Ireland. Among the changes introduced at this time was an agreement to rename what had been known as the Protocol on Ireland / Northern Ireland to 'the Windsor Framework'. This means that the Windsor Framework now refers to the arrangements for Northern Ireland that were agreed in the UK-EU Withdrawal Agreement which are designed to maintain necessary conditions for North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions, including as they have subsequently been amended after the February 2023 agreement.

The Windsor Framework differs from the original Protocol on Ireland/Northern Ireland in a number of ways. Changes have been made to enable certain goods moving from Great Britain to Northern Ireland for use or consumption in Northern Ireland to do so more easily. Changes have also been made to allow more opportunities for representatives and stakeholders in Northern Ireland to input into the implementation of the Windsor Framework and those EU laws it makes applicable to the UK in respect of Northern Ireland.

Does the Windsor Framework ensure that cooperation on shared environmental challenges can continue post-Brexit?

The relevant impact of the Windsor Framework, and Brexit more generally, falls into three categories.

1. First, the Windsor Framework requires a small portion of EU environmental rules to continue to apply to Northern Ireland, continued cooperation in these areas is therefore unlikely to be directly impacted.
2. Second, the Windsor Framework is to be 'implemented and applied' in such a way as to enable wider (pre-existing) North-South environmental cooperation to continue; this commitment is however difficult to uphold because many EU rules that previously facilitated North-South environmental cooperation no longer apply in Northern Ireland as EU law.

3. Third, the indirect and more widespread effects of Brexit which enable and result in increased divergence between environmental laws and practices in the UK and in the EU are likely to make continued environmental cooperation on the island of Ireland more challenging.

Does EU law still apply in Northern Ireland?

The Windsor Framework includes a list of over 300 pieces of EU legislation which continue to apply in Northern Ireland, including legislation on goods, animal and plant health rules, rules on agricultural production, VAT and excise on goods, state aid rules, and legislation related to electricity markets. The EU's Customs Code also applies to goods entering Northern Ireland. In the environmental context, only a limited amount of EU environmental law continues to apply in Northern Ireland. This includes some EU rules on waste, energy efficiency, pesticides, energy markets as well as sanitary and phytosanitary rules concerning animal and plant health. Other areas of relevant to environmental cooperation are partially covered (e.g. some environmental protection reporting and research). As mentioned above, the Windsor Framework also contains a commitment in principle to continued North-South cooperation in respect to the environment, broadly understood, despite many EU rules that previously facilitated crossborder environmental cooperation ceasing to apply.

Many important EU environmental directives no longer apply in Northern Ireland post-Brexit, but domestic regulations ensure that environmental protections did not cease to exist after the UK left the EU. It is useful to look at the complexities around this through a practical example, such as the Water Framework Directive (WFD):

- The EU's Water Framework Directive (2000/60/EC) was transposed into Northern Ireland law through The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017.
- The Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 ensure that the Water Framework Directive (as transposed) and the various supporting pieces of water legislation continue to operate here after 1 January 2021.
- This means that the WFD NI Regulations continue to apply in Northern Ireland and that post-Brexit they acquired the status of 'retained EU law' under the European Union (Withdrawal) Act 2018.
- The Retained EU Law (Revocation and Reform) Act 2023 then renamed 'retained EU law' as 'assimilated law', however as the OEP point out in their [recent report into the implementation of the WFD NI Regulations](#), *'this renaming does not change the legal effect of the WFD NI Regulations. It does, however, mean that, until 23 June 2026, DAERA has the power under the Retained EU Law Act to modify, revoke or replace the WFD NI Regulations through new legislation with minimal scrutiny by the Northern Ireland Assembly.'*

A [similar approach](#) has been taken with the 'nature directives' (the Wild Birds and Habitats Directives). However the [lack of scrutiny](#) mentioned above has been raised in this context, and

beyond the technical updates to the legislation it remains to be seen how any alterations to pre-Brexit rules play out in practice.

What happens in Northern Ireland when EU environmental law changes?

The concept of 'dynamic alignment' means that when EU laws covered by the Windsor Framework are amended or replaced, these changes automatically apply in Northern Ireland. When the EU adopts a new EU law which they deem to be in the scope of the Windsor Framework (and therefore should be added to the list of law applying in Northern Ireland), this must be discussed in a body established in the post-brexit negotiations called the EU-UK Joint Committee. The EU and UK both have to agree before a new EU law can apply in Northern Ireland.

Changes introduced by the Windsor Framework allow for a potential 'Stormont Brake' to be put on some EU law changes that would otherwise automatically apply in Northern Ireland. The Stormont Brake allows 30 MLAs in the NI Assembly to elect for an amendment or replacement to EU rules concerning trade in goods not to apply in Northern Ireland. A series of criteria must be met before this brake can be successfully applied and it is up to the UK Government to decide if this has been achieved. Additionally, before a new EU act can be added to the lists of those that already apply under the Windsor Framework, the UK Government have committed to (ordinarily) allow for an 'Applicability Motion' vote in the NI Assembly to be held which must achieve cross-community consent to pass. Unless exceptional circumstances apply, the UK Government will not agree to the addition of a new EU act without cross-community consent in the NI Assembly in favour of doing so.

Is there a requirement for cross-border/transboundary consultation on environmental matters?

Yes. This right is supported by several different intersecting EU and domestic provisions that arise both under and independent of the EU law framework. EU and international law have separate provisions/frameworks for the right to participate in plans, programs and policy making at the 'strategic' or higher level of decision making, and the right to participate in project permitting decisions or environmental emissions/pollution licencing decisions.

The combination of these instruments means that there exists a comprehensive framework supporting the right to public participation in environmental decision making on a transboundary/cross-border basis. This means that people in Ireland have a right to have a say in decisions made by public authorities in Northern Ireland that have a significant impact on the environment, and people in Northern Ireland have reciprocal rights in relation to decision making in Ireland. Despite this, the level and quality of actual transboundary consultations being carried out in either direction on eligible projects or plans remains lower than it should be. An example

of this was the [high profile collapse of a public inquiry](#) into gold-mining in the Sperrin mountains in 2025 due to the failure to carry out proper transboundary consultation and impact assessment.

Has regulatory divergence occurred since Brexit?

Yes. Since the UK left the EU legislative changes in environmental law have resulted in divergence between the EU, including Ireland, and the UK, including Northern Ireland. While examples include divergence due to UK-initiated developments, the most significant changes so far have been due to EU-initiated changes, primarily the adoption of new EU environmental laws. While this means there are now areas of regulatory divergence in environmental laws that apply in the UK and the EU respectively, because most new EU laws have lengthy implementation timelines many of the changes associated with this divergence have not yet taken effect on the ground. It is possible, therefore, that the UK as a whole or the UK in respect of Northern Ireland could elect to mirror changes in EU environmental laws before they take full effect; this would mitigate the practical effects of divergence between the two jurisdictions on the island of Ireland.

A detailed exploration of environmental regulatory divergence on the island of Ireland has been commissioned by NIEL and IEN and is available [here](#). The OEP has also commissioned a study on regulatory divergence in the context of nutrient management which is available [here](#).

What are the needs of environmental actors in the context of ensuring all-island and cross-border cooperation?

Key needs for environmental actors are explored in detail in the 2023 [Linking the Irish Environment](#) report. These needs are evolving over time but include:

- Guidance and coordination on cross-border and all-island matters;
- Access to information (including data sharing), 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 and include sustained funding for core and existing staff).

What steps could be taken to protect and enhance all-island cooperation on the environment?

Practical steps that could be taken to ensure sustained and meaningful all-island cooperation on the environment can be grouped into seven key areas:

- 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.

A detailed series of recommendations designed to deliver these primary objectives is set out in the Linking the Irish Environment Report [Executive Summary](#).

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5. Useful web resources

British Irish Council: <https://www.britishirishcouncil.org/>

North-South Ministerial Council: www.northsouthministerialcouncil.org

Special EU Programmes Body <https://www.seupb.eu>

Office for Environmental Protection <https://www.theoep.org.uk/office-environmental-protection>

Department of Agriculture, Environment and Rural Affairs <https://www.daera-ni.gov.uk/topics>

Institute for European Environmental Policy <https://ieep.eu/>