

MAY 2025

# MONITORING POST-BREXIT ENVIRONMENTAL DIVERGENCE ON THE ISLAND OF IRELAND: THE ROLE OF CIVIL SOCIETY

Ciara Brennan, Lisa Claire Whitten and Alison Hough

Copyright © 2025 Environmental Justice Network Ireland (EJNI). EJNI encourages reproduction and communication of its copyrighted materials to the public, with proper credit (bibliographical reference and/or corresponding URL), for personal, corporate, or public policy research, or educational purposes. However, EJNI's copyrighted materials are not for commercial use or dissemination (print or electronic). Unless otherwise stated, the opinions, interpretations and conclusions expressed are those of the authors and do not necessarily reflect the views of EJNI as an institution or the individuals or organisations consulted as part of this study.

Please cite this document as:

Ciara Brennan, Alison Hough and Lisa Claire Whitten (2025) 'Monitoring post-Brexit environmental divergence on the island of Ireland: The role of civil society' Environmental Justice Network Ireland Research Report, June 2025.

This report was commissioned by the [Irish Environmental Network](#). It is part of the '[Linking the Irish Environment Project](#)' coordinated by the Irish Environmental Network and [Northern Ireland Environment Link](#). The report has been produced by Ciara Brennan, Lisa Claire Whitten and Alison Hough for [Environmental Justice Network Ireland](#), an all-island platform designed to deliver leading edge research, advocacy and action to address the root causes of environmental injustice on the island of Ireland and beyond.

Thanks to our interview participants: Oonagh Duggan (BirdWatch Ireland), Professor David Phinnemore (QUB), Dr Viviane Gravey (QUB), Jill Montgomery and Bróna McNeill (NIEL), Paul Armstrong (Woodland Trust), Robert Walsh (NIMT), Joanne Sherwood (RSPB) and Donal Griffin (Fair Seas).

# Monitoring post-Brexit environmental divergence on the island of Ireland: The role of civil society

Dr Ciara Brennan, Alison Hough BL and Dr Lisa-Claire Whitten

## Contents

<b>Executive Summary</b> .....	5
<b>1. Introduction</b> .....	7
<b>1.1 Background</b> .....	7
<b>1.2 Rationale</b> .....	8
<b>1.3 Objective</b> .....	9
<b>1.4 Approach</b> .....	9
<b>1.5 Report structure</b> .....	10
<b>2. What is 'divergence' in the context of the environment?</b> .....	11
<b>2.1 Introduction</b> .....	11
<b>2.2 What do we mean by 'divergence'?</b> .....	12
<b>2.3 Environmental divergence</b> .....	13
<b>2.4 Potential risks of divergence</b> .....	14
<b>2.5 Conclusion</b> .....	14
<b>3. Arrangements for monitoring post-Brexit divergence</b> .....	16
<b>3.1 Introduction</b> .....	16
<b>3.2 Have the UK/Ireland/EU established any mechanisms to monitor and respond to divergence?</b> .....	16
<b>3.3 Mechanisms to Monitor Divergence in WF-Applicable EU Law</b> .....	17
3.3.1 <i>The scope of EU laws applicable under the Windsor Framework</i> .....	17
3.3.2 <i>EU-UK Mechanisms</i> .....	19
3.3.3 <i>UK Mechanisms</i> .....	19
3.3.4 <i>NI Mechanisms</i> .....	20
3.3.5 <i>EU Mechanisms</i> .....	20
3.3.6 <i>Unofficial Sources</i> .....	20
<b>3.4 Mechanisms to Monitor Divergence beyond WF-Applicable EU Law</b> .....	21
3.4.1 <i>EU-UK Mechanisms</i> .....	21
3.4.2 <i>Ireland Mechanisms</i> .....	21
3.4.3 <i>Unofficial Sources</i> .....	22
<b>3.5 What are the gaps in current monitoring of divergence across the island?</b> .....	22
<b>3.6 Conclusion</b> .....	26

<b>4. Dealing with divergence ‘on the ground’</b> .....	27
<b>4.1 Introduction</b> .....	27
<b>4.2 Why should environmental civil society be concerned about divergence?</b> .....	27
<b>4.3 Is divergence actually happening?</b> .....	28
<b>4.4 Have any civil society organisations developed a capacity to monitor divergence?</b> 30	
<b>4.5 Conclusion</b> .....	33
<b>5. Recommendations: Mechanisms to help respond to divergence</b> .....	34
<b>5.1 Introduction</b> .....	34
<b>5.2 Options for enhanced monitoring of divergence</b> .....	34
<b>5.3 Ways of mitigating the impact of divergence</b> .....	35
<b>5.4 Lessons from other jurisdictions and other sectors</b> .....	36
5.4.1 <i>Establishment of an all-island agreement or initiative on the environment</i> .....	36
5.4.2 <i>Dedicated funding to assist civil society in navigating post-Brexit regulatory divergence</i> .....	37
5.4.3 <i>Enhanced data sharing and transparency bolstered by better transboundary consultation</i> .....	39
5.4.4 <i>Enhanced roles for the 1998 Agreement bodies and improved routes for civil society engagement with these bodies</i> .....	39
<b>5.5 Conclusion</b> .....	40
<b>6. Glossary of key terms</b> .....	41
<b>7. References</b> .....	43

# Executive Summary

1. A key threat posed by Brexit for environmental governance on the island of Ireland is divergence in environmental regulation.<sup>1</sup>
2. In this context, divergence can be defined as the process by which legal rules, regulatory standards, policies and implementation of these between Northern Ireland (part of the UK) and Ireland (an EU member state) begin to differ. The complexities of the different ways in which divergence is emerging has been highlighted in recent research.<sup>2</sup>
3. Post-Brexit divergence in the context of the environment carries with it a number of key risks. These risks include the creation of regulatory gaps, enforcement challenges, loss of funding, disruption to the economic level playing field between Ireland and Northern Ireland, conservation problems, difficulties maintaining or enhancing cross-border environmental cooperation and transboundary pollution.
4. In the post-Brexit context, three categories of divergence have been identified: areas covered by the Protocol/Windsor Framework, areas not covered by the Protocol/Windsor Framework and areas relevant to established North-South cooperation. The degree to which these categories are being monitored in the context of the environment varies, but most formal monitoring of divergence occurs in the context of areas of law which fall under the Windsor Framework.
5. Many areas of law relevant to environmental protection are not covered by the Windsor Framework. This means that formal monitoring of divergence as it pertains to environmental law is extremely piecemeal. This is a significant gap in the post-Brexit governance and monitoring arrangements on the island of Ireland.
6. Environmental focused civil society organisations on the island of Ireland should be concerned about regulatory divergence in the context of all-island and cross border cooperation because it impacts on their work in a number of ways, including: inhibiting cooperation, raising new legal issues to contend with, increasing complexity and reducing coherency of regulatory systems, creation of new risks but also new opportunities for collaboration and placing new resource-intensive demands on already stretched civil society.
7. Civil society organisations do not have the capacity to monitor divergence in a sustained and systematic way. This has led to the development of significant gaps in knowledge and is placing all-island cooperation on shared environmental challenges at risk.

---

<sup>1</sup> Ciara Brennan, Finbarr Brereton, Mary Dobbs, Viviane Gravey, Hannah Gould, Alison Hough, Lisa Whitten, Linking the Irish Environment (2023) <https://ejni.net/linking-the-irish-environment>.

<sup>2</sup> Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).

- 8.** To address the existing and emerging gaps with regards to post-Brexit regulatory divergence on the island of Ireland, dedicated monitoring mechanisms are required and these must be supported by a range of other initiatives in order to protect and enhance all-island/cooperation on the environment.
- 9.** Dedicated mechanisms should include: the establishment of a civil society led all-island divergence observatory, expansion of the monitoring undertaken by formal bodies monitoring areas that fall under the Windsor Framework to the environment and inclusion of the question on environmental divergence in the remit of existing or newly developed intergovernmental bodies (e.g. those established under the 1998 Agreement, or those designed to promote peace and reconciliation on the island of Ireland such as the Shared Island Initiative).
- 10.** Supporting initiatives could include: establishment of an all-island agreement or initiative regarding the environment; dedicated funding to enhance the capacity of civil society to monitor divergence (e.g. to produce regular, accessible bulletins or reports on divergence and relevant EU developments through application of the tracking tool developed for the Northern Ireland Department of the Economy); enhanced data sharing and transparency bolstered by better transboundary consultation; and enhanced roles for the 1998 Agreement bodies regarding the environment and improved routes for civil society engagement with these bodies.
- 11.** Civil society has a vital role to play in delivering crossborder/all-island cooperation on shared environmental challenges. This is being inhibited by complexity and a lack of capacity to monitor and respond to the risk of post-Brexit regulatory divergence in important areas of environmental law.
- 12.** Steps should be taken as a matter of urgency to equip civil society with the tools and funding it needs to ensure the maintenance and enhancement of cooperation to deliver much-needed positive environmental outcomes on the island of Ireland.

# 1. Introduction

## 1.1 Background

Recent studies have clearly articulated that a key threat posed by Brexit for environmental governance on the island of Ireland is divergence in environmental regulation.<sup>3</sup> This divergence can occur across a range of axes such as legal rules or technical divergence on paper, implementation divergence in practice, policy divergence, social divergence resulting in different outcomes, and political divergence affecting the willingness of political actors to act to remedy the different forms of divergence.

While there have been extensive analysis of the implications in particular of legal divergence in general, and some studies have highlighted particular examples of practical divergence, there has been no comprehensive capture of *environmental* divergence actually occurring by any research study, or of the potential practical implications should divergence occur. No one body or group is currently tasked with monitoring ongoing divergence across the different axes between the two jurisdictions, and there has been no mapping or coordination of the bodies and groups engaging with the divergent outcomes which are arising.

The absence of a systematic and regular approach to monitoring divergence in the context of the environment stands in sharp contrast to other areas such as human rights. In this area, organisations such as the Northern Ireland Human Rights Commission, Equality Commission and the Irish Human Rights and Equality Commission are actively monitoring EU developments in equality and human rights with a view to identifying potential divergence well in advance and scoping the practical impact of these developments on the human rights of citizens on the island.<sup>4</sup> It is worth noting that while this involves the monitoring of human rights and equality law, it does not extend to changes to EU areas of law (such as the environment) that will impact the rights of citizens in other areas (i.e. environmental rights). It is also worth noting that enhanced government monitoring of divergence does occur in areas which fall under the Windsor Framework, but this only applies to a limited array of environmental rules (explained in detail in Chapter 3).

In addition, the Northern Ireland Department for the Economy (DfE) have commissioned research on post EU-Exit regulatory divergence in Northern Ireland, with the aim of assisting businesses and stakeholders in navigating the complex regulatory environment that now exists

---

<sup>3</sup> Alison Hough, 'Brexit, the Good Friday Agreement, and the Environment: Issues arising and possible solutions' (2018) IEN-NIEL joint funded research report. [Brexit, the Good Friday/Belfast Agreement and the environment: issues arising and possible solutions. \(thea.ie\)](https://thea.ie); Alison Hough, 'Finding Common Ground Synthesis Report: All-island implementation of the Aarhus Convention' (2023) IRC Funded research report, [www.findingcommonground.ie](http://www.findingcommonground.ie); and Ciara Brennan, Finbarr Brereton, Mary Dobbs, Viviane Gravey, Hannah Gould, Alison Hough, Lisa Whitten, Linking the Irish Environment (2023) <https://ejni.net/linking-the-irish-environment>.

<sup>4</sup> Sarah Craig et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (2022) available [here](#). In addition, NIHRC, the Equality Commission and IHREC public an annual joint report on the implementation of Art 2 of the Windsor Framework, the most recent report is available [here](#).

and to 'maximise the opportunities provided by dual market access by distilling that complexity'.<sup>5</sup> This resource also includes a guide for monitoring divergence and a tracking tool. These resources are valuable and have relevance in the context of the environment, but do not provide the ongoing systematic monitoring of environmental law developments that civil society on the island of Ireland requires in order to facilitate continued cooperation on shared environmental challenges.

The risks created by this scenario were recognised in the 2023 [Linking the Irish Environment Report](#), which (amongst other pathways to promote better all-island cooperation on the environment) made the following recommendations:

*'2. The impact of environmental aspects of the NI Protocol/Windsor Framework should be monitored closely by both the UK and Irish Governments.'* (Executive Summary, p. 6)

*'14. NIEL and IEN could consider a joint and dedicated workstream to monitor and highlight issues regarding implementation of the NI Protocol/Windsor Framework.'* (Executive Summary, p. 12)

## 1.2 Rationale

It is important to note that despite some similarities mainly derived from the previously common requirements to implement EU Directives, significant differences in environmental regulation existed between Ireland and Northern Ireland even before Brexit. Examples included differing national approaches in areas such as pollution permits, hunting licences, controls on nature conservation sites and fees for waste disposal. This pre-existing divergence has created a challenging context for cross-border and all-island cooperation and engagement, compounded by problematic experiences of environmental governance within each jurisdiction. These issues have been explored in detail elsewhere.<sup>6</sup>

What is also clear from existing analyses is that the potential for cross-border and all-island cooperation on shared environmental challenges on the island of Ireland has not to date been fulfilled. Brexit raised valid concerns over declining environmental standards, policy/governance uncertainty and regulatory divergence. Understanding the extent and implications of regulatory divergence on the island of Ireland is therefore important from a civil society perspective because:

- Existing cooperation on all-island environmental challenges may be made more difficult;

---

<sup>5</sup> Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).

<sup>6</sup> Ciara Brennan, Ray Purdy and Peter Hjerp, 'Political, Economic and Environmental Crisis in Northern Ireland: The True Cost of Environmental Governance Failures and Opportunities for Reform' (2017) Northern Ireland Legal Quarterly 68(2) 123-157, available [here](#).

- Coherency between regulatory systems north and south may be reduced, making it harder for civil society to understand governance arrangements and implementation approaches;
- New legal issues may emerge because of the divergence, especially if the divergence impacts on rights; and
- New cooperation may be required or advantageous in light of divergence or the risk of divergence.
- Divergence may simultaneously create new demands on civil society resources (as protections are threatened), undermine resources (loss of funding opportunities), and increase costs and barriers (through the increasing uncertainties).

There is therefore a need to build understanding specifically around:

- The extent and impacts of existing divergence;
- The risk and potential impact of newly introduced, or 'in progress' divergence;
- The extent and impact of potential future divergence;
- Responsibilities for monitoring divergence;
- Gaps in the current arrangements for monitoring divergence; and
- How civil society can plan for and mitigate any risks that may emerge round the issue of divergence.

Some of these issues are being explored in ongoing research (e.g. in work commissioned by the UK Office of Environmental Protection, and the UK Office of Environmental Protection), catalogued in section 3.5 of this report. However, there is a significant research gap in the context of considering divergence from a civil society perspective - particularly in the context of the environment on the island of Ireland.

### **1.3 Objective**

The objective of this scoping report is to explore the extent to which post-Brexit environmental divergence across the island of Ireland is being monitored and to propose solutions that may enhance the ability of civil society to (i) monitor and (ii) mitigate the impact of divergence which may result in negative consequences for the environment and for environmental cooperation across the island.

### **1.4 Approach**

This report will draw on desk based and empirical research (semi-structured interviews with civil society and researchers identified by the commissioning organisations) to inform a set of practical recommendations.<sup>7</sup>

---

<sup>7</sup> The project received formal ethical approval via the Technological University of the Shannon, the host organisation of one of the report authors, Alison Hough BL.

## **1.5 Report structure**

This short introductory Chapter 1 has outlined the background, rationale, objective and approach adopted in this project. Chapter 2 will explore what divergence means in the context of the environment. Chapter 3 will consider the current arrangements which have been established to monitor divergence. Chapter 4 explores how civil society is experiencing and responding to divergence in practice. Chapter 5 will outline key recommendations including mechanisms which may assist civil society in monitoring and responding to divergence across the island of Ireland. Chapter 6 includes a glossary of key terms relevant to this complex regulatory arena. Chapter 8 contains a bibliography of resources consulted in the preparation of this report.

## 2. What is 'divergence' in the context of the environment?

### 2.1 Introduction

Brexit presented significant regulatory and governance challenges for Northern Ireland across all areas of governance but in particular in the area of the environment.<sup>8</sup> Environmental law was particularly affected by Brexit a large proportion of environmental rules were EU in origin.<sup>9</sup> Environmental governance of shared legal and political environmental spaces represents a particular challenge because of the complexity and the incompatibility of effective shared governance with the nature of the modern nation state, borders and sovereignty.

These problems are not new, nor are they confined to Ireland-Northern Ireland relations. They were prominent features of pre-EU membership relations between Northern Ireland and Ireland since the Government of Ireland Act 1921 created Northern Ireland as a distinct legal jurisdiction on the island.<sup>10</sup> Many of these issues were elided by EU membership, which provided a supra-national framework of incentives and obligations for shared management of environmental governance<sup>11</sup> which had the effect of rendering the border invisible and physical manifestation of it unnecessary.

EU membership therefore resulted in weak development and utilisation of the mechanisms for intergovernmental relations between the devolved jurisdictions in the UK<sup>12</sup> and between the UK and Ireland.<sup>13</sup> The Good Friday/Belfast Agreement 1998 had created a set of intergovernmental and North-South institutions and mechanisms for cooperation on joint and crossborder governance of the island of Ireland, but these remained underutilised as result of EU membership.<sup>14</sup> Brexit undid this shared legal/regulatory, political, economic and symbolic backdrop. It also re-problematised joint governance of what is a dual jurisdiction shared island. In this context, one of the most prominent issues is the question of what happens when a rule change on one side of the border in Ireland creates divergence in approach between the two jurisdictions on the island. This is particularly significant with regards to the environment,

---

<sup>8</sup> E.g. see Fn 1. See also Nigel Haigh (2023) Motives for and against divergence by the UK from EU environmental law, IEEP, available at [https://ieep.eu/wp-content/uploads/2023/02/Discussion-paper-Motives-for-divergence\\_final-1.pdf](https://ieep.eu/wp-content/uploads/2023/02/Discussion-paper-Motives-for-divergence_final-1.pdf).

<sup>9</sup> This is visible in the large share of retained EU law that fell within the competence of DEFRA, which represented almost a quarter of all retained EU law: <https://www.gov.uk/government/publications/retained-eu-law-dashboard>. See also Kingston, S., Heyvaert, V., and Čavoški, A. (2017) *European Environmental Law*, (CUP, 2017); Macrory, R. (2018, September 24). Environmental law in the United Kingdom post Brexit. ERA Forum. doi:<https://doi.org/10.1007/s12027-018-0531-6>.

<sup>10</sup> Hamill, S. E., & Hackett, C. (2023). Law of obligations (North-South Mapping Project). *Irish Studies in International Affairs*, 34(2), 439-479. <https://muse.jhu.edu/pub/423/article/916345>

<sup>11</sup> Ciara Brennan, Finbarr Brereton, Mary Dobbs, Viviane Gravey, Hannah Gould, Alison Hough, Lisa Whitten, *Linking the Irish Environment* (2023) <https://ejni.net/linking-the-irish-environment>; Colin T. Reid (2021) Mapping post-Brexit environmental law. ERA Forum 21, 655-665. <https://doi.org/10.1007/s12027-020-00627-5>

<sup>12</sup> Colin T. Reid (2021) Mapping post-Brexit environmental law. ERA Forum 21, 655-665. <https://doi.org/10.1007/s12027-020-00627-5>

<sup>13</sup> Alison Hough (2019). The potential of the Good Friday Agreement post-Brexit environmental governance on the island of Ireland. *Irish Planning and Environmental Law* (2) 55-65.

<sup>14</sup> Etain Tannam (2019) *Intergovernmental and Cross-Border Civil Service Cooperation: The Good Friday Agreement and Brexit in 'Beyond the Good Friday Agreement'* Routledge, eBook ISBN9780429426001, available at <https://www.taylorfrancis.com/chapters/edit/10.4324/9780429426001-2/intergovernmental-cross-border-civil-service-cooperation-good-friday-agreement-brexit-etain-tannam>.

because environmental challenges are generally shared challenges, requiring a cooperative approach to management across the border.

## 2.2 What do we mean by 'divergence'?

In the context of the island of Ireland, 'divergence' refers to the process by which legal rules, regulatory standards, policies and implementation of these between Northern Ireland (part of the UK) and Ireland (an EU member state) begin to differ. This divergence can occur due to changes in legislation, enforcement practices, policy or political priorities that arise after or from the UK's departure from the EU. It is important to note however that there has always been divergence between the UK and Ireland, which predates Brexit but also even independence and partition, as historically separate legislatures existed from time to time in Ireland and UK, and separate legislative rules were often passed for each jurisdictions, leading to differences between the law in each jurisdiction.<sup>15</sup>

Divergence can be measured by changes in legal rules that represent gaps in standards of substantive protection (such as health or environmental standards) or in protection of rights like public participation in decision making, access to justice in environmental matters. Divergence can also be measured by monitoring information about actual on the ground conditions of environmental integrity or the exercise of environmental rights. Divergence is not fully captured by monitoring changes in legal rules, because the interpretation of these rules by implementing bodies and by courts is almost as significant as the wording of the rules themselves. This can be influenced by the underlying legal and political framework.

In the post-Brexit context there are a number of important distinctions to be made about the type of divergence being discussed. In research produced for the Northern Ireland Department for the Economy, three categories of divergence have been identified:<sup>16</sup>

1. **For areas covered by the Protocol/Windsor Framework**, GB-NI divergence is deemed to occur where one or more of the following circumstances apply: either the EU law that continues to apply in Northern Ireland has been updated since the end of the UK transition period or where the 'assimilated law' version of the EU act, or the directly related domestic law, applying in GB has been changed.
2. **For areas not covered by the Protocol/Windsor Framework** but within devolved competence, divergence occurs where one or more constituent part of the UK has changed – revised or revoked – the relevant 'assimilated law' version of the EU act or directly related domestic law.
3. **For areas relevant to established North-South cooperation**, divergence occurs either where changes have been made to relevant law or policy in the EU context since the end

---

<sup>15</sup> Oran Doyle, David Kenny, Chris McCrudden and Fionnuala Ní Aoláin (2022) Legal Convergence and Divergence on the Island of Ireland, A Report of the North-South Legal Mapping Project to the Shared Island Unit, available at <https://www.tcd.ie/law/2020.21/NSLMap%20Final%20Report.pdf>.

<sup>16</sup> Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).

of the UK transition period and these changes have taken or are due to take effect in Ireland, or where changes have been made in relevant assimilated law or directly related domestic UK law and these changes have taken or are due to take effect in Northern Ireland with implications for North-South cooperation on the island of Ireland.

In this report we consider our focus is on divergence within all of these categories, but in particular divergence relating to environmental cooperation and shared environmental challenges on the island of Ireland (rather than, for example, intra-UK divergence). It is also important to note the additional possibility of 'trivergence' – where e.g. Northern Ireland moves away from alignment with both the UK and the EU. Unstable government in Northern Ireland (and thus delays in implementing updates to important environmental rules) enhances the risk of this occurring.

### **2.3 Environmental divergence**

Environmental divergence specifically pertains to differences in environmental regulations and standards. Prior to Brexit, both Northern Ireland and the Republic of Ireland adhered to EU environmental directives, ensuring a cohesive approach to issues such as pollution control, wildlife protection, and waste management. Post-Brexit, Northern Ireland (as part of the UK) may adopt different standards or approaches from the EU. Equally, the EU (and by extension Ireland) could also make changes which would result in different approaches on either side of the border in Ireland. Both scenarios could lead to inconsistencies in environmental protection across the island of Ireland and complicate cooperation across the border or on an all-island basis.

It was evident during the Brexit process that divergence would occur as a feature of Brexit, and a huge proportion of the Brexit debate was dedicated to exactly how much divergence was permissible while still maintaining a trade relationship with the EU. Environmental divergence was usually discussed with a deregulatory slant, although sometimes the opposite was proposed.<sup>17</sup> Environmental divergence was evident almost immediately. The passing of the UK's Environment Act 2021 moved many principles of EU law such as the precautionary principle and the polluter pays principle from fundamental, legally binding EU Treaty provisions to "statements of principle" which weakened their effect.<sup>18</sup> Divergence in environmental rules and regulatory effects continues on an ongoing basis in the area of the environment<sup>19</sup> and other key areas.<sup>20</sup> Divergence in general is not currently being monitored by any State body in either

---

<sup>17</sup> Nigel Haigh (2023) Motives for and against divergence by the UK from EU environmental law, IEEP, available at [https://ieep.eu/wp-content/uploads/2023/02/Discussion-paper-Motives-for-divergence\\_final-1.pdf](https://ieep.eu/wp-content/uploads/2023/02/Discussion-paper-Motives-for-divergence_final-1.pdf).

<sup>18</sup> Hussein Kassim, Cleo Davies, Sean Ennis, Andrew Jordan (2022) UK Regulation After Brexit Revisited, Brexit and Environment, available at <https://www.brexitenvironment.co.uk/policy-briefs/>.

<sup>19</sup> E.g. see Helen Horton (19 January 2024) Brexit Divergence from the EU Destroying Vital Environmental Protections, The Guardian, available at <https://www.theguardian.com/environment/2024/jan/19/brexit-divergence-from-eu-destroying-vital-environmental-protections>

<sup>20</sup> IHREC (26 June 2023) Rights at Risk of Divergence on the Island of Ireland post-Brexit, Equality and Human Rights Commissions warn Oireachtas, available at <https://www.ihrec.ie/rights-at-risk-of-divergence-on-the-island-of-ireland-post-brexit-equality-and-human-rights-commissions-warn-oireachtas/>.

the UK or Ireland,<sup>21</sup> although Chapter 3 of this report maps out a range of government and other initiatives that are, at least to some extent, keeping up with developments which may lead to divergence in some legal and policy areas.

## 2.4 Potential risks of divergence

The risks associated with environmental divergence are multifaceted:

- **Regulatory Gaps:** Divergent regulations can create gaps in environmental protection, leading to issues such as cross-border pollution and habitat degradation.
- **Enforcement Challenges:** Different enforcement practices may result in uneven application of environmental laws, undermining efforts to protect shared ecosystems.
- **Loss of Funding:** Brexit may lead to a reduction in EU funding for cross-border environmental projects, impacting initiatives aimed at preserving biodiversity and promoting sustainable development.
- **Economic Disadvantage/Advantage:** Lower regulatory standards and resource constraints may promote inflows of investment into the jurisdiction with lower regulatory burden, while causing investment to leave the jurisdiction with high standards. However, in some circumstances the opposite can be true, with strong regulatory frameworks and guarantees proving attractive to businesses where they wish to sell products to other jurisdictions. Producing in a jurisdiction with a reputation for strong, trustworthy regulation can be more attractive allowing premium prices to be charged which can compensate for the added regulatory burden.
- **Conservation problems:** When habitats and species cross jurisdictional boundaries, the integrity of conservation efforts may be undermined if regulatory standards are lower or less well enforced on one side of the border.
- **Cross-border environmental cooperation:** Regulatory incoherence makes cross-border environmental cooperation more challenging and expensive. This may inhibit cross-border conservation or co-operation on shared environmental challenges. In addition, cross border/all-island cooperation is a pre-cursor to an effective response to regulatory divergence because it a key avenue through which divergence could be exposed.
- **Transboundary Pollution:** Lower standards may lead to lowered environmental integrity/increased pollution levels. This will not stay in the jurisdiction of origin but will migrate via various media like transboundary river water courses, ground water and surface water bodies, air and soil etc. Effective environmental pollution control and mitigation may be undermined by lower standards in contiguous jurisdictions.

## 2.5 Conclusion

In conclusion, Brexit poses significant challenges to environmental governance on the island of Ireland. Divergence in regulatory standards and enforcement practices can undermine efforts

---

<sup>21</sup> John Campbell (15 November 2023) 'UK-EU Divergence Not Being Tracked by Government', available at <https://www.bbc.com/news/uk-northern-ireland-67433925>.

to protect shared ecosystems and maintain environmental integrity. Divergence can occur in a number of areas and only some of these areas are covered by the Windsor Framework. Addressing these challenges requires continued cooperation and innovative solutions to ensure that both Northern Ireland and the Republic of Ireland can effectively manage their environmental responsibilities in a post-Brexit landscape.

## 3. Arrangements for monitoring post-Brexit divergence

### 3.1 Introduction

This Chapter provides an overview of established mechanisms to monitor and respond to divergence between the UK (including Northern Ireland) and the EU (including Ireland) after the withdrawal of the former from the latter. This chapter outlines monitoring/scrutiny mechanisms applicable to areas which fall under the Windsor Framework (which as mentioned is only a limited number of environmental rules) and areas which fall outside of the Windsor Framework (most environmental law). It is worth noting that in addition to the initiatives mapped in this chapter, that one of the primary bodies dealing with environmental divergence in a practical sense is the Northern Ireland Department for the Agriculture, the Environment and Rural Affairs (DAERA), informed by the Office of the Northern Ireland Executive in Brussels.<sup>22</sup> The extent to which this is occurring in a systematic way is not currently a matter of public record.

While it notes the utility of the monitoring resources available it also underlines the very substantial gaps in current arrangements for monitoring divergence in general and in areas of environmental policy in particular. Findings from this Chapter therefore form an important part of the backdrop for the recommendations for enhancing divergence monitoring mechanisms set out in Chapters 5 and 6 of this Report.

### 3.2 Have the UK/Ireland/EU established any mechanisms to monitor and respond to divergence?

Despite repeated calls on the UK government to develop an official, comprehensive and public dashboard of divergence and/or alignment between EU law and UK law, no such resource exists.<sup>23</sup> Instead, a small number of separate tracking resources are available which can assist efforts to monitor and respond to divergence after EU Exit but none of these are comprehensive. Moreover, the majority of the resources available and which address divergence effecting Northern Ireland focus exclusively on monitoring changes in areas of EU law that apply to Northern Ireland under the Windsor Framework. While useful as far as it goes, regarding environmental policy, the scope of WF-applicable EU laws is narrow. By implication, so too are the currently available resources for monitoring and responding to divergence.

The following sections provide a brief overview of established mechanisms for monitoring divergence, it focuses first on those resources that intended to monitor changes in WF-

---

<sup>22</sup> Highlighted via interview.

<sup>23</sup> The House of Lords Sub-Committee on the Protocol on Ireland / Northern Ireland (and subsequently on the Windsor Framework) in particular led this initiative with repeatedly asking UKG Ministers to consider and provide a "central portal of divergence" the government did not however commit to doing so; see 'Letter to the Rt Hon Lord Cameron of Chipping Norton, Secretary of State for Foreign, Commonwealth and Development Affairs, FCDO on Regulatory Divergence, 19 December 2023' para. 98. Available: <https://committees.parliament.uk/publications/42662/documents/212033/default/>

applicable EU law and secondly on those resources that address UK-EU divergence more broadly.

### **3.3 Mechanisms to Monitor Divergence in WF-Applicable EU Law**

#### *3.3.1 The scope of EU laws applicable under the Windsor Framework*

For reference, the scope of EU laws made applicable under the Protocol/WF, and which concern environmental regulation (broadly understood) are set out below in **Table 1**. Most of these provisions fall under Article 5 and Annex II of the Protocol/WF concerning movement of goods; a smaller number fall under Article 9 and Annex IV concerning the Single Electricity Market on the island of Ireland.

Although changes brought in under the Windsor Framework introduce the possibility of *some* divergence between Northern Ireland and the EU (including IRE) in these areas in future, overall, the prospect for significant divergence on a N-S axis in areas covered by WF-applicable EU law, is limited.<sup>24</sup> Whereas Northern Ireland remains subject to the EU environmental laws listed in Table 1, the rest of the UK does not; there is therefore potential for intra-UK divergence (particularly between Great Britain and Northern Ireland) in these same areas. Several bodies, initiatives and resources exist for tracking divergence in WF-applicable EU law.

---

<sup>24</sup> The possibility for N-S divergence in Protocol/WF applicable EU laws follows from and is in accordance with the potential for the two forms of the Stormont Brake to be exercised. In regard to amendments and replacements of the majority of EU acts made applicable under Protocol/WF Article 5 and Annex 2, exercise of the Stormont Brake (via 30 MLAs successfully triggering the mechanism in accordance with Article 13(3)(a)) could be expected to result in N-S divergence as the relevant update or amendment would apply in Ireland but not in Northern Ireland; similarly, in the event of a proposed addition of a new EU act to those already applicable under the Protocol/WF, in accordance with domestic UK law concerning Protocol/WF Article 13(4), if the NI Assembly do not pass an 'Applicability Motion' with cross-community consent, then the UKG will normally not agree to the addition of the new EU act to the Protocol/WF; again, in this scenario the new EU act would apply in Ireland but not in Northern Ireland.

**Table 1: Summary of EU Laws Applicable Under the Protocol/Windsor Framework and Relevant to the Environment or Environmental Management**

<b>Applies Under</b>	<b>Subject Area*</b>	<b>No. of Relevant EU Acts</b>
Article 5 Annex II	Motor Vehicles, including Agricultural and Forestry Tractors	1
	Gas Appliances	2
	Pressure Vessels	2
	Construction Products, Machinery, Cableways, Personal Protective Equipment	1
	Medicinal Products	1
	Chemicals and Related	8
	Pesticides and Biocides	3
	Waste	5
	Environment, Energy Efficiency	20
	Marine Equipment	1
	Food - General	4
	Food - Hygiene	3
	Food - Ingredients, Traces, Residues, Marketing Standards	22
	Food Contact Material	2
	Food - Other	7
	Feed - Products and Hygiene	5
	GMOs	4
	Live Animals, Germinal Products and Products of Animal Origin	4
	Animal Disease Control, Zoonosis Control	5
	Animal Identification	1
	Animal Breeding	1
	Animal Welfare	2
	Plant Health	1
Plant Reproductive Material	12	
Official Controls, Veterinary Checks	1	
Sanitary and Phytosanitary	2	
Fisheries and Aquaculture	12	
Article 9 Annex IV	Single Electricity Market	7

*\*Subheadings as used in the official Protocol/WF text to indicate subject area.*

### 3.3.2 EU-UK Mechanisms

To oversee the implementation of the UK-EU Withdrawal Agreement, a three-tiered architecture of joint UK and EU bodies were established. These provide the primary locus for monitoring and reporting on the evolution of EU laws in scope of the Windsor Framework, however, their operation is mostly carried out by officials and the relevant information exchanged is not publicly available.

Of the three-tiered structure, the work of the **Joint Consultative Working Group** and that of the **Special Body on Goods** are particularly relevant for monitoring divergence. One of the purposes of the JCWG is to provide a forum in which the EU can “inform the United Kingdom about planned Union acts within the scope of the Protocol [or Windsor Framework], including Union acts that amend or replace the Union acts listed in the Annexes” of the Windsor Framework. Tracking the evolution of EU laws in scope of the Windsor Framework is therefore a core function of the JCWG; doing so provides the basis for monitoring any divergence that will or may arise between Northern Ireland and the rest of the UK due to the continued application of WF-applicable EU laws. While the focus of JCWG is EU-initiated change, the focus of the SBG is UK-initiated change. The SBG is a particular formulation of the Specialised Committee on the Implementation of the Windsor Framework intended to serve as a forum for “exchanges of views on any future United Kingdom legislation regarding goods of relevance to the operation of the Windsor Framework” thereby allowing the UK and EU to “assess the potential impact of that future legislation in Northern Ireland” and to “anticipate and discuss any practical difficulties at stake”.<sup>25</sup> The SBG therefore gives the UK an opportunity to inform the EU about the evolution of UK laws relevant to the operation of WF-applicable EU law albeit more narrowly focused on rules related to the regulation of goods.

In both instances, the substance of JCWG and SBG meetings are not made public, their utility for tracking and reporting on divergence to stakeholders outside the UK government and EU is therefore limited.

### 3.3.3 UK Mechanisms

The **Office for the Internal Market** established by the United Kingdom Internal Market Act 2020 is tasked with monitoring “any impacts for Northern Ireland arising from relevant future regulatory changes”<sup>26</sup> as part of its duties.<sup>27</sup> In this context, however, the ‘future regulatory changes’ referred to are limited to those (i) initiated by changes in UK law or policy and (ii) relevant to areas in scope of WF-applicable EU law. This does not therefore incorporate monitoring of many areas of environmental policy relevant to north-south cooperation.

---

<sup>25</sup> *Joint Declaration No. 2/2023* Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2023.102.01.0091.01.ENG&toc=OJ%3AL%3A2023%3A102%3ATOC>

<sup>26</sup> UKG 2024 *Safeguarding the Union* Available: [https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command\\_Paper\\_1\\_.pdf](https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper_1_.pdf) (Accessed 20 February 2025) para. 154

<sup>27</sup> Latterly introduced as part of the commitments made by the UKG in its *Safeguarding the Union* Command Paper.

The **Northern Ireland Scrutiny Committee** in the House of Lords is a newly established committee intended to continue the work of the Sub-Committee on the Windsor Framework that operated during the Conservative-led UK Government. The remit of the new NISC is to “scrutinise EU legislation within the scope of the Protocol/Windsor Framework, and relevant UK legislation and policy, and to examine related matters,”<sup>28</sup> it will therefore provide an important aid and resource for the monitoring of divergence in Northern Ireland going forward. While the NISC scrutiny function has a specific focus on WF-applicable EU law it is not limited to considering only those acts listed in the Annexes of the WF; this is particularly beneficial given the absence of other official efforts to monitor divergence in a comprehensive manner. The extent to which the NISC takes up the task of monitoring divergence in areas beyond WF-applicable law will however depend on the discretion of Committee members.

### 3.3.4 NI Mechanisms

The **Windsor Framework Democratic Scrutiny Committee (WFDSC)** in the Northern Ireland Assembly was established as part of the package of amendments and adjustments to arrangements for implementation of the original Protocol (now WF) agreed between the UK and EU in 2023.<sup>29</sup> Its purpose is to assist in the observation and implementation of those provisions in the Windsor Framework that allow for ‘dynamic regulatory alignment’ of NI with those EU laws listed in the Annexes of the Windsor Framework and any new EU acts agreed to be added to them. The WFDSC has the capability to carry out inquiries and publish reports on EU acts proposed to replace those already applicable under the Windsor Framework and new EU acts which may be added to those already applicable. Its work can therefore provide a helpful aid to monitoring divergence but again the scope is mainly focused on WF-applicable EU laws and is therefore only of limited relevance to environmental policy monitoring.

### 3.3.5 EU Mechanisms

The EU maintains a dedicated **EUR Lex Windsor Framework** sub-site which provides a comprehensive list of all acts of (secondary and tertiary) EU law that apply to Northern Ireland under the Windsor Framework. The WF EUR Lex site also provides a roster of key EU documents related to the Windsor Framework and summaries of some of the significant pieces of EU legislation that apply under its terms. The WF EUR Lex site is a very useful resource for tracking the evolution of EU law under the WF, in particular because there is no equivalent resource recording updates to WF-applicable EU law available in the UK.

### 3.3.6 Unofficial Sources

For a period of three years after the end of the UK Transition Period and with it the entry into force of the Protocol/Windsor Framework, the ‘Post-Brexit Governance NI’ research project based at

---

<sup>28</sup> UK Parliament (2025) ‘New Northern Ireland Scrutiny Committee Established’ *committees.parliament.uk* Available: <https://committees.parliament.uk/committee/769/northern-ireland-scrutiny-committee/news/205024/new-northern-ireland-scrutiny-committee-established/> (Accessed 20 February 2025)

<sup>29</sup> Established by *The Windsor Framework (Democratic Scrutiny) Regulations 2024* UKSI 2024/118 Available: <https://www.legislation.gov.uk/uksi/2024/118/contents/made>

Queen's University Belfast monitored the evolution of WF-applicable EU law and published biannual 'explainers' setting out the nature and scope of changes that had taken place. Unfortunately, these publications are only available up until January 2024.<sup>30</sup>

### 3.4 Mechanisms to Monitor Divergence beyond WF-Applicable EU Law

#### 3.4.1 EU-UK Mechanisms

Article 11 of the Windsor Framework requires its provisions to be "implemented and applied so as to maintain the necessary conditions for continued North-South cooperation" including in a named list of areas incorporating environment, agriculture, inland fisheries and energy.<sup>31</sup> The UK-EU Joint Committee is obliged to "keep under constant review" the extent to which "this provision is being upheld and necessary conditions for north-south cooperation continue."<sup>32</sup> Based on publicly available information regarding meetings of the **Joint Committee** and **Specialised Committee**, as well as annual reports on the overall operation of the Withdrawal Agreement oversight architecture, the 'constant review' obligation under Article 11 appears to be a minority focus of the Committees' work, if it features at all.<sup>33</sup>

The Specialised Committee can receive representations and proposals from 1998 Agreement Strand Two bodies including the **North-South Ministerial Council** and **North-South Implementation Bodies**. If challenges were arising due to north-south divergence, particularly in the field of environmental governance, the Strand Two bodies could therefore play an important role in highlighting this to the Specialised Committee which could then forward concerns to the (decision-making) Joint Committee. No such use of this potential path for responding to north-south divergence has yet been made.

#### 3.4.2 Ireland Mechanisms

The **IBEC 'Divergence Watch'** initiative provides quarterly publications on UK and EU divergence in specific sectors.<sup>34</sup> These resources have offered in-depth insights in areas such as energy policy, carbon emissions, transport and mobility and financial services. They are not however monitoring divergence in a sustained or comprehensive manner.

---

<sup>30</sup> Whitten, L C (2024) 'Dynamic Regulatory Alignment And The Protocol on Ireland / Northern Ireland' *Post-Brexit Governance NI* Available: <https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/Explainers/DynamicRegulatoryAlignmentandtheProtocolonIrelandNorthernIreland-ThreeYearReview/> (Accessed 20 February 2025)

<sup>31</sup> WF Article 11(1).

<sup>32</sup> WF Article 11(2).

<sup>33</sup> European Commission 'Meetings of the EU-UK Joint and Specialised Committees under the Withdrawal Agreement' *commission.europa.eu* Available: [https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement\\_en](https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en) (Accessed 20 February 2025)

<sup>34</sup> IBEC 'Divergence Watch' *ibec.ie* Available: <https://www.ibec.ie/ibec-global/insights-and-analysis/divergence-watch> (Accessed 20 February 2025)

The Irish Research Council funded research in 2022 into **‘Legal Convergence and Divergence on the island of Ireland’** – the report produced is an important reference point for understanding the similarities, differences and overall relationship between the two jurisdictions on the island of Ireland.<sup>35</sup> Again, this is not a resource for monitoring divergence on an ongoing basis.

### 3.4.3 Unofficial Sources

The UK in a Changing Europe initiative have periodically published **‘UK-EU Divergence Trackers’** which document examples of actual and potential divergence between the UK and EU.<sup>36</sup> While these trackers provide helpful and informative overviews of instances of divergence (and alignment) between the two parties, there is no specific focus on Northern Ireland and Ireland rendering them of primarily contextual relevance to analysis of divergence on the island of Ireland.

The sustainability think tank Institute for European Environmental Policy (UK) have also published a range of reports examining UK-EU divergence in a number of areas including environmental crime,<sup>37</sup> wastewater<sup>38</sup> and general environmental policy<sup>39</sup> – however these are not specific to Northern Ireland and are therefore also (in the main) of general contextual value given that most of these areas are devolved matters.

## 3.5 What are the gaps in current monitoring of divergence across the island?

There is no comprehensive and publicly available resource that monitors north-south divergence. This data gap presents a significant challenge for stakeholders involved in implementing and shaping environmental policy on the island of Ireland.

To give an indication of the potential policy scope of the challenge created by this data gap it is useful to look at the areas of north-south environmental cooperation which, pre-EU Exit, were underpinned by EU law and policy but which are not in scope of WF-applicable EU laws. For reference **Table 2** sets these out.

As Table 2 indicates, there are 16 areas of N-S environmental cooperation which pre-Brexit relied on shared EU law and policy frameworks, but which, post-Brexit, are not fully covered by WF-applicable EU laws. If Article 11 was to be used in future as mentioned above (see 3.1.1), the areas listed would likely be candidates for consideration of the Specialised Committee and Joint Committee, potentially on recommendation from one of the 1998 Agreement Strand Two bodies. It is also the case that, as EU environmental law and UK environmental law continue to

---

<sup>35</sup> Oran Doyle, David Kenny, Christopher McCrudden, Fionnuala Ní Aoláin 2022 ‘Legal Convergence and Divergence on the Island of Ireland’ *tcd.ie* Available: <https://www.tcd.ie/law/2020.21/NSLMap%20Final%20Report.pdf> (Accessed 20 February 2025)

<sup>36</sup> Joël Reland (2024) ‘UK-EU Divergence Tracker Q2-Q3’ *ukandeu.ac.uk* Available: <https://ukandeu.ac.uk/reports/uk-eu-divergence-tracker-q2-q3-2024/> (Accessed 20 February 2025)

<sup>37</sup> <https://ieep.uk/publications/the-new-eu-environmental-crime-directive-a-diverging-approach-with-the-uk/>

<sup>38</sup> <https://ieep.uk/publications/diverging-wastewater-policy-the-implications-of-changes-to-eu-policy-for-the-uk/>

<sup>39</sup> <https://ieep.uk/publications/divergence-in-uk-eu-environmental-policy-the-state-of-play-february-2024/>

develop separately, new initiatives in the field of environmental policy will arise which would, but for Brexit, have been relevant for and facilitative of N-S cooperation thus adding to the 16 areas listed in Table 2.

**TABLE 2: Areas of N-S Cooperation Previously Reliant on Shared EU Law and Policy Frameworks and *not Fully Covered* by Protocol/WF Applicable EU Laws**

Area of N-S Cooperation	Pre-Brexit Underpinning EU Acts*	
Areas of N-S Cooperation <i>not fully covered</i> by Protocol/WF Applicable EU Laws		
<b>Common Agricultural Policy</b>	NI does not continue to participate in the CAP; however, one of three EU laws that implement the CAP in EU Member States partially applies under the Protocol/WF	
<b>Natural Gas</b>	<b>Applies:</b> Regulation (EC) No 713/2009 (Agency Regulation)	<b>Does Not Apply:</b> Directive 2009/73/EC (Gas Directive); Regulation (EC) No 715/2009 (Gas Regulation); Regulation (EU) 2017/459 (Gas Transmission Systems Regulation); Regulation (EU) No 994/2010 (Gas Security of Supply Regulation)
<b>Waste Management</b>	<b>Applies:</b> Directive 1994/62/EC (Packaging Waste Directive) and Directive 2006/66/EC (Batteries and Accumulators Directive)	<b>Does Not Apply:</b> Directive 2008/98/EC (Waste Framework Directive) and Directive 2012/19/EU (Waste and Electrical Equipment Directive)
<b>Plant Health and Regulatory Checks</b>	<b>Applies:</b> Directive 2000/29 (Plant Health Directive)	<b>Does Not Apply:</b> Directive 2004/103 on checks other than point of entry; Directive 98/22/EC on minimum conditions for plant health checks
<b>Checks on Third Country Products of Animal Origin</b>	<b>Applies:</b> Regulation 882/2004/EC and Council Directive 97/78/EC	<b>Does Not Apply:</b> Commission Decision 94/360/EC
<b>Transmissible Spongiform Encephalopathies (TSE) and Animal By-Products (ABP)</b>	<b>Applies:</b> Regulation (EU) 2001/999 and Regulation (EU) 1069/2009	<b>Does Not Apply:</b> Commission Regulation 142/2011
<b>Animal Health and Welfare Working Groups</b>	<b>Applies:</b> Directives (EC) 1/2005, (EC) 1790/2000, (EC) 21/2004, and 2008/71/EC and Regulation (EU) 2016/429	<b>Does Not Apply:</b> Directives (EC) 494/98, (EC) 1082/2003, (EC) 911/2004, (EC) 1505/2006 and Regulation (EU) 2017/949

<b>Checks on Food Not of Animal Origin</b>	<b>Applies:</b> Council Regulation (EU) 1236/2005, Directive 2009/43/EC and Council Regulation (EC) 428/2009	<b>Does Not Apply:</b> Regulations (EU) 884/2014, (EU) 885/2014, (EU) 2016/166, (EU) 2015/175; Commission Decision 2010/381/EU, 2013/287/EU and 2004/407/EC; Council Regulations (EC) Nos 787/2004, 2073/2005 and 2075/2005.
<b>Checks on Live Animals</b>	<b>Applies:</b> Council Directives, 89/556/EEC, 90/429/EEC, 2009/158/EC, 92/65/EEC, 92/118/EEC, 97/78/EC, 2006/88/EC and Council Regulations (EC) Nos 2406/96, 999/2001, 1069/2009, 2160/2003, 852/2004, 853/2004, 854/2004, 882/2004.	<b>Does Not Apply:</b> Commission Decision 2004/407/EC and Council Regulations (EC) 2065/2001, 878/2004, 2073/2005 and 2075/2005.
<b>Areas of N-S Cooperation <u>not covered at all</u> by Protocol/WF Applicable EU Laws</b>		
<b>Loughs Agency   Waterways Ireland</b>	Directive 2000/06/EC (Water Framework Directive)	
<b>Water Pollution and Water Catchment   Water Quality   Water Regulation   River Basin Management</b>	Directive 2000/06/EC (Water Framework Directive)	
<b>Habitats and Birds Directive   All-Island Pollinator Plan   All-Island Marsh Fritillary Group</b>	Directive 2009/147/EC (Habitats Directive) and Directive 92/43/EEC (Birds Directive)	
<b>Flood Risk Management</b>	Directive 2007/60/EC (Floods Directive) and Directive 2011/92 (Environmental Impact Assessment)	
<b>Air Quality Issues</b>	Directive (EU) 2016/2284 (National Emissions Ceilings) and Directive 2008/50/EC (Ambient Air Quality)	
<b>Strategic Environmental Assessment</b>	Directive 2001/42/EC (SEA Directive)	
<b>Landscape Monitoring</b>	UK/Ireland Interagency Landscape Monitoring Group was founded the European Landscape Convention which was implemented by EU law.	

*\*Terminology used to refer to EU law instrument reflects the language used in a UKG 2017 Scoping Document on N-S cooperation; it does not always reflect citation conventions.*

### **3.6 Conclusion**

In the post-Brexit context three categories of divergence have been identified: areas covered by the Protocol/Windsor Framework, areas not covered by the Protocol/Windsor Framework and areas relevant to established North-South cooperation. The degree to which these categories are being monitored in the context of the environment varies, but most formal monitoring of divergence occurs in the context of areas of law which fall under the Windsor Framework. This is predominantly focused on the movement of goods rather than other concerns.

Many areas of law relevant to environmental protection are not covered by the Windsor Framework. This means that formal monitoring of divergence as it pertains to environmental law is extremely piecemeal.

## 4. Dealing with divergence 'on the ground'

### 4.1 Introduction

Divergence in environmental controls on either side of the border in Ireland is not new, and existed before Brexit. Although common frameworks arose in Northern Ireland and Ireland, primarily due to a need to transpose and implement EU law, differences in implementation, failure to implement (and in some cases transpose) EU law and general differences in governance approaches meant that complete alignment in any particular area of environmental concern has been rare. Despite this, in general environmental law and regulation on both sides of the border maintained a significant degree of commonality and Brexit has created a risk that existing commonality may be eroded.

There are some important caveats to the idea that divergence is something to be avoided at all costs. Not all divergence will result in negative impacts. It is also important to avoid any presumption that the EU and Ireland will always 'lead the way' in the context of environmental protection with Northern Ireland and the UK lagging behind. This presumption has some grounding in what was (at least in the immediate wake of Brexit) perceived as a post-brexit deregulatory agenda in the UK, with realworld examples in the declining standards regarding, for example, water pollution. It has also been bolstered by Northern Ireland's particularly fraught history of environmental governance and the presumption that with the removal of the oversight functions of the EU that further decline in governance standards may occur.<sup>40</sup> However, it is important to note that there is also an ongoing 'simplification' (and to some extent a deregulatory) agenda within the EU, and serious concerns regarding planning rules (and other environmental issues) in Ireland. This means that the risks of lowering environmental standards, 'race to the bottom' backwards reforms or roll-back from environmental commitments goes two-ways.

This chapter will explore the reasons why civil society should be concerned about post-brexit regulatory divergence on the island of Ireland, whether divergence is actually happening, and whether (and to what extent) civil society on the island has developed a capacity to monitor divergence and its impacts.

### 4.2 Why should environmental civil society be concerned about divergence?

Environmental focused civil society organisations on the island of Ireland should be concerned about regulatory divergence in the context of all-island and cross border cooperation for five main reasons:

---

<sup>40</sup> Gravey, V., Dobbs, M., & Brennan, C. (2019). Out of the frying pan, into the fire? Environmental governance vulnerabilities in post-Brexit Northern Ireland. *Environmental Law Review*, 21(2), 84-110.

- **Pathways to cooperation:** Modes of all-island/cross border cooperation on shared environmental challenges become more difficult to identify and areas where cooperation is under-developed remain so due to capacity issues.
- **Legal issues:** Policy initiatives on one side of the border become frustrated or undermined by reducing standards (or stasis) on the other side of the border and new legal issues may emerge because of the divergence, especially if the divergence impacts on rights.
- **Complexity and coherency:** Engagement with shared environmental challenges becomes more complicated, technically/legally complex. Coherency between regulatory systems north and south may be reduced, making it harder for civil society to understand governance arrangements and implementation approaches. It is difficult for civil society to access information about who is doing what if divergence occurs but hasn't been identified.
- **Risks and Opportunities:** New cooperation may be required or advantageous in light of divergence or the risk of divergence but positive impacts of cooperation become harder to identify and quantify.
- **Costs and capacity:** Divergence may simultaneously create new demands on civil society resources (as protections are threatened), undermine resources (loss of funding opportunities), and increase costs and barriers (through the increasing uncertainties).

### 4.3 Is divergence actually happening?

Yes. We know that divergence in an environmental context has already occurred. This has been identified through existing and ongoing research.<sup>41</sup> Concrete examples relating to the environment include ambient air pollution and drinking water controls, where EU rules have been updated.<sup>42</sup> There are however significant issues of transparency about when and how (and how quickly) divergence is occurring, information is not available in a public/accessible manner and there is a lack of clarity about exactly how stakeholders can engage in these processes. Interviewees reported examples where there was concern that divergence in practice might be happening but it was unclear how to assess this or accurately pinpoint the consequences.

One example was in the context of **marine spatial planning and conservation law**. Here, a lack of clarity about the extent to which important nature directives such as the Birds Directive and the Habitat Directive are still being applied through domestic legislation in Northern Ireland and also in areas such as the Irish and Celtic Seas reportedly makes responding to transboundary consultations on (for example) offshore renewable developments in these areas very challenging. This is particularly complex because there are a number of jurisdictions (not just

---

<sup>41</sup> See for example, Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#) and the attached comprehensive inventory of divergence and alignment - including north-south divergence, a forthcoming report on nutrient divergence commissioned by the UK Office of Environmental Protection (OEP) and a forthcoming report commissioned by the Northern Ireland Human Rights Commission on the Windsor Framework and the Environment - covering divergence in air pollution controls, nature conservation and environmental procedural human rights.

<sup>42</sup> Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).

Ireland and Northern Ireland) involved and because environment is a devolved matter in the UK the scope for individual UK jurisdictions to make changes complicates the issue further.

*'It is unclear what the UK is doing and what the requirements are beyond international law such as the Espoo Convention when it comes to transboundary environmental issues. It is also unclear what weight our submissions will have in transboundary consultations.'*<sup>43</sup>

Another example which has been repeatedly cited in political debates are the challenges relating to the **movement of trees and plants** between jurisdictions post-Brexit, and in particular the supply of trees into Northern Ireland. Best practice dictates that trees are sourced from the island of Ireland for conservation and biosecurity reasons. This was occurring prior to Brexit in important tree planting and conservation work done via the Woodland Trust's free native tree pack programme. However, because the programme was administered (and the trees, although sourced from the island of Ireland) dispatched from England, the tree pack programme has not been able to continue in the same way post-Brexit in Northern Ireland under the terms of the Windsor Framework.<sup>44</sup> The example of the prohibition on bringing trees into Northern Ireland from England, Wales or Scotland was used on multiple occasions by anti-Windsor Framework politicians during the post-Brexit negotiations in an attempt to highlight the problems with the new arrangements,<sup>45</sup> missing the point that trees would always have been sourced from the island of Ireland anyway and that this had been occurring for years prior to Brexit to ensure local provenance of species. However, although the ban on importing trees from other parts of the UK actually aligns with best-practice in the context of biosecurity, the Windsor Framework does not prohibit import of trees from the EU, which also clearly comes with biosecurity risks. This creates a disjunct between ecological imperatives and the new arrangements, and creates the potential perverse outcome of weakening biosecurity. It also clearly illustrates the challenges for conservation NGOs who are required to adjust supply chains, administrative processes and procurement in the face of the divergence in rules. Information on how to contend with these challenges and the constantly changing rules is hard to access and the subject is controversial and highly politicised:

*'We are operating in an information vacuum which is being filled with politics.'*<sup>46</sup>

Finally, divergence in the context of **freshwater management** has been the subject of recent attention, not least because of the high publicised ecological crisis at Lough Neagh (a transboundary river basin) but also of other lakes and rivers on the island of Ireland. A key risk here is different approaches re nitrates derogation on the island of Ireland. 'Nitrates derogation' is a licence to spread more organic nitrogen per hectare on land than is allowed under the EU Nitrates Directive.<sup>47</sup> Both Ireland and Northern Ireland are whole-territory 'nitrate vulnerable zones' with significant issues with agricultural pollution. Ireland is seeking to renew its nitrates

---

<sup>43</sup> Interview participant, NGO Ireland.

<sup>44</sup> The Woodland Trust is working to establish a new supplier based on the island of Ireland with the administrative capacity to supply and distribute trees. Interview participant, Northern Ireland.

<sup>45</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/dups-donaldson-blasts-offensive-protocol-madness-over-queen-jubilee-tree-ban/41038152.html>

<sup>46</sup> Interview participant, NGO Northern Ireland.

<sup>47</sup> <https://www.antisce.org/blog/red-map-explainer>

derogation, but ultimately this may be prevented by the tightening of EU regulations to address water pollution. In theory, Northern Ireland's devolved government could diverge from this approach. Consultation on the [proposed Nutrients Action Programme for 2026 – 2029](#) for Northern Ireland is currently underway, and has already proven [highly contentious](#).

#### **4.4 Have any civil society organisations developed a capacity to monitor divergence?**

As discussed in Chapter 3, there is no government-led coherent or systematic monitoring of environmental divergence either on the island of Ireland or in a broader sense between the UK and the EU. From a civil society perspective, our investigation indicated that although several environmental organisations are monitoring (to at least some degree) divergence in areas within their interest field or mission, that there was a low level of understanding about the extent to which divergence was occurring and any monitoring was limited and piecemeal in its extent. A number of themes emerged from discussions about the extent to which civil society is following developments in the divergence arena:

- **Capacity:** A recurrent theme was that organisations did not have the capacity or technical skills to follow and monitor complex legal developments. In practice, checking for divergence would require organisations to be 'up to speed' on the relevant legislation in their field of interest not only in their own jurisdiction (whether that is Ireland or Northern Ireland), but also in the context of EU developments. This would not only require a detailed technical knowledge of the legislation before Brexit, but of how it was implemented in practice in addition to any changes made in recent years. This is beyond the capacity of most environmental NGOs, and even NGOs with in-house expertise would also require knowledge of wider legal and governance developments.

For example, environmental NGOs working on nature conservation would need, on the face of it, to consider any differences in new domestic regulations in Northern Ireland which replaced those previously implementing the EU Birds and Habitats Directives and the impact of EU developments on the conservation system in Ireland (e.g. the impact of the EU Nature Restoration Law). However, they may also need to consider developments in planning, environmental impact assessment, marine spatial planning (e.g. for migratory birds), invasive species (which is covered by the Windsor Framework), water management and a whole plethora of other complex legal areas. Post-brexite governance has made understanding these issues far more complex and therefore far more resource intensive.

- **Knowledge gaps re divergence:** There was also a sense that organisations did not know what to monitor in order to identify divergence or the risk of divergence:

*'It is a black hole as to what we should even be looking out for.'*<sup>48</sup>

---

<sup>48</sup> Interview participant, NGO Ireland.

The research on divergence produced for the Northern Ireland Department of the Economy<sup>49</sup> in 2024 provides a useful step-by-step guide for how to monitor divergence. However, this is complex and highly technical legal analysis and would be challenging for civil society organisations without dedicated, in-house legal capacity to undertake.

Concerns were also raised about the difficulties associated with measuring, assessing or evaluating divergence:

*'If you can't measure, you can't manage'.<sup>50</sup>*

The need to establish a baseline and agree SMART targets in the context of alignment and divergence was considered a way of mitigating these issues. This also connected to issues around classification and metrics used in managing, for example, water quality.

- **Knowledge gaps re general post-Brexit arrangements:** In addition to an absence of any systematic monitoring of divergence as it pertains to environmental concerns, been a drop-off in general understanding about post-Brexit arrangements in recent years, especially in Ireland but across the island as a whole since initiatives established during the immediate post-Brexit transition period ended.<sup>51</sup> With a reduction of Brexit-focused work in recent years, the Shared Island Initiative has funded cross-border/all-island projects and has included a number of dialogues – but these have not to date addressed post-Brexit regulatory divergence or explored the new regulatory landscape in any depth. The collapse of the government in Northern Ireland between 2022 and 2024 also delayed the development and implementation of key environmental policies and plans (e.g. the Environmental Improvement Plan in Northern Ireland) and this has stalled the evolution of new post-Brexit arrangements.
- **Difficulties navigating the complex governance landscape:** The proliferation of new initiatives, working groups, task forces, intergovernmental groups, committees as well as new agreements and commitments to cooperation (either between the EU and UK or between Ireland and the UK or between Ireland and Northern Ireland) means that it is inherently difficult to actually understand the new governance arrangements and latest policy developments. For example, the UK and Ireland have [recently committed](#) to closer collaboration on energy security, and in particular to cutting red tape for offshore energy developers in the Irish and Celtic Seas. What remains unclear however is what this

---

<sup>49</sup> Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).

<sup>50</sup> Interview participant, NGO Northern Ireland.

<sup>51</sup> Some organisations participated in the '[Brexit Stakeholder Forum](#)', an initiative led by Ireland's Department of Foreign Affairs and Trade which was established in 2017. According to its terms of reference, this forum was designed with the goals of 'regularly updating/informing members on the progress of the Brexit negotiations; facilitating the sharing of different sectoral concerns, enabling a wider understanding within the Forum of Ireland's overall priorities for the negotiations; and providing a platform for the interaction of sectoral and EU expertise so as to underpin the Government's comprehensive and cohesive response to Brexit'. The forum met every 4-6 weeks and was part of a suite of post-Brexit initiatives led by the Irish government or state agencies, also including the All-Island Civic Dialogue (involving 5 plenary sessions as well as sectoral dialogues), the 'Getting Ireland Brexit Ready' initiative, the Brexit Loan Scheme, and the Brexit Call Centre for Agriculture. See also <https://www.psa.ac.uk/psa/news/invidious-impact-brexit-irelands-policy-landscapes>

cooperation extends to – and in particular whether it include any environmental (and in this particular context nature conservation) considerations. This will clearly have very significant ramifications for transboundary consultation, protection of wild birds and other marine spatial planing considrations but yet little information on the scope of the new agreement has been made publically available.

There is also a sense that existing bodies designed to help ensure that all island cooperation (on the environment but also in general) are not accessible to civil society. For example, the NSMC meets to discuss environmental issues but there is little or no information provided to the public or stakeholders in advance of these meetings about the content and no clear avenues for civil society to engage with these meetings,<sup>52</sup> and the NSMC was described by one interview participant as '*absolutely impenetrable*'.<sup>53</sup>

- **Knowledge gaps re 'who is doing what':** A recurring theme was that organisations did not know either what other civil society organisations were working on issues around divergence, or what formal bodies might have the answers to any questions they had about divergence. This has created confusion but also the risk of duplication of efforts.

There is also concern about the lack of transparency about whether, and the extent to which EU decision-making and developments are influencing decisions being made by Northern Ireland government departments, in particular the Department of Agriculture, Environment and Rural Affairs. The stalling of deveolved government between 2022 and 2024 means that the actual impact of divergence is only now beginning to become clear:

*'Because we have had no government in Northern Ireland for almost two years, we are only now beginning to see legislation being brought forward on key issues.'*<sup>54</sup>

- **Consultation fatigue:** The extensive developments in the field of environmental governance in recent years, especially in the wake of Brexit have led to a huge number of consultation exercises in the context of the environment. These consultation exerices are required by law (both domestic and international law as discussed above), but are time consuming and it is also unclear as to the degree of impact that responding to consultations actually has. This means that it can sometimes be hard for civil society working in this area to justify spending scarce resources on the completion of consultations in often complex and technical areas of law, but areas of law which are of vital importance in their field of work.

A recent example is 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. A consultation was subsequently carried out, but the complexity of the issues and sheer volume of material to consider means that in practice it would be very

---

<sup>52</sup> Interview, NGO Northern Ireland.

<sup>53</sup> Interview, NGO Ireland.

<sup>54</sup> Interview, NGO Northern Ireland.

challenging for an a civil society organisation (nevermind a citizen) to respond in a meaningful way.

#### **4.5 Conclusion**

There are now important knowledge and capacity gaps regarding post-Brexit regulatory divergence as it pertains to environmental concerns. Knowledge gaps exist in the context of: post-brexit governance arrangements in Northern Ireland, in particular about 'who is doing what'; the extent to which EU law applies in Northern Ireland and to what extent domestic legislation which implemented EU law in Northern Ireland previously has been changed; the nature and extent of rights and protections in the new regulatory landscape, in particular about the protections afforded to citizens by the Windsor Framework and about the right to engage in transboundary consultations; how to monitor divergence; the potential impact/risks of divergence; and about what to do if divergence is identified, and in particular if this divergence has a negative impact. All of these knowledge deficits have capacity, resource and costs implications for civil society.

## **5. Recommendations: Mechanisms to help respond to divergence**

### **5.1 Introduction**

Given the absence of any coherent or systematic monitoring of post-Brexit regulatory divergence by either the EU, UK or Irish governments and the capacity and knowledge gaps inhibiting civil society from identifying and responding to divergence, there is now an urgent need for enhanced monitoring of divergence in order to ensure good environmental outcomes and protect all-island cooperation on shared environmental challenges. There are two sets of mechanisms that could help fill the current gaps in monitoring divergence: mechanisms that are designed with the explicit function of monitoring divergence and more general steps which could be taken to protect all-island cooperation on the environment and boost civil society capacity to respond to divergence. This chapter will explore both, and it should be noted that an ideal scenario would entail all of the initiatives from both categories in order to address current deficits in divergence monitoring.

### **5.2 Options for enhanced monitoring of divergence**

#### **Option A - Establishment of a civil society led All-Island Environmental Divergence Observatory**

Based on publicly available information, a civil society led All-Island Environmental Divergence Observatory could be established with the aim of tracking respective developments in EU and UK law in the field of environmental policy, broadly understood.

The Observatory could produce regular reports or bulletins (quarterly or bi-annually) documenting changes and proposed changes in environmental laws of relevance to north-south cooperation on the island of Ireland. This analysis should include both technical detail but also a narrative description of how changes might impact civil society and the environment in practice. Regular reports could also translate the analysis emerging from other official bodies into accessible and practice-oriented language.

These reports/bulletins would help equip civil society stakeholders with the knowledge required to input to the development of environmental policy on the island and also to prepare for legislative changes once these have been agreed. This observatory structure could also play a key role in responding to consultations where divergence is an issue environmental divergence, providing guidance to others for the purposes of responding to consultations (via briefings and seminars/webinars on specific policy areas or issues), providing expert evidence at government committees (in Ireland, NI, the UK and existing post-Brexit structures) and undertaking advocacy regarding legal reforms to minimise any negative impact of post-Brexit regulatory divergence.

## **Option B - Inclusion of environmental divergence monitoring in existing government structures, with formal input roles for environmental NGOs**

Option A + additional monitoring of environmental divergence by existing governance structures. Subject to the consent of the UK government established mechanisms for the monitoring of changes in WF-applicable EU law (see section 3.3.3) could be expanded to include EU environmental laws of relevance to N-S cooperation. Initial agreement on the scope would need to be reached but could reasonably use areas of pre-Brexit N-S cooperation not covered by WF-applicable EU law as a starting point (see Table 2 in section 3.5). Option B would also feed into the work of a mechanism established as suggested in Option A.

## **Option C - Establishment of a dedicated government or intergovernmental monitoring body**

Option A + establishment of new government/intergovernmental structures. Under the auspices of the North-South Ministerial Council a new strand of work could focus on monitoring divergence in areas relevant to cross-border cooperation on the island of Ireland. To this end a new N-S Body could be established by agreement between the Irish Government and the Northern Ireland Executive. While the parameters of such a N-S Body would need to be decided, it could include both areas directly in scope of the NSMC and areas not in scope of the NSMC but which are relevant for its work - the former is limited to those areas of policy that are devolved to Northern Ireland.

Additionally or alternatively, an Irish Government initiative could be launched with the purpose of monitoring areas of divergence relevant to N-S cooperation either in the field of the environment specifically or more broadly in areas that are or could be relevant for N-S cooperation in general. Such a pursuit would be in keeping with the current Irish Government's commitments concerning the Shared Island initiative.

To address UK-EU divergence of relevance to the relationship between Ireland and the whole of the UK, a new intergovernmental monitoring body could be established under the auspices of the British Irish Intergovernmental Conference and/or the British Irish Council. Although this would be an innovative initiative, it would enable monitoring of developments in a potentially wide range of areas given the shared interests of the UK and Ireland in North-South cooperation and East-West cooperation as guarantors of the 1998 Agreement as well as in the continuation of the Common Travel Area as joint participants in it.

## **5.3 Ways of mitigating the impact of divergence**

In addition to the establishment of more systematic and robust arrangements for monitoring divergence, there are a number of other potential initiatives or actions that could help mitigate the impact of divergence if it does occur. These actions also play the dual role of protecting or maintaining existing all-island/cross-border cooperation on environmental matters, or maintaining alignment between NI, Ireland (the EU) and the UK. Such initiatives could include:

- **Establishment of an all-island framework agreement or initiative regarding the environment** in general – a function of this agreement could be to ensure alignment (where possible) to reduce the instances of divergence and any negative consequences flowing from it. This would also re-balance focus on other policy areas aside from a focus on the movement of goods.
- **Dedicated funding to assist civil society in navigating post-Brexit regulatory divergence.** This funding could facilitate civil society leading on:
  - Investment in mapping and understanding the nature, extent and practical implications of divergence on the island of Ireland. This could lead to the preparation of an annual joint report or bulletin on divergence in the context of the environment.
  - Developing capacity to engage in the work of the cross sectoral, cross-border ad-hoc stakeholder working group led by the Centre for Cross Border Studies to engage/inform the work of NI Protocol oversight bodies: the UK-EU Joint Committee, Specialised Committee and Joint Consultative Working Group.
  - Utilising the Tracking Tool and divergence guide produced for by researchers for the Department of the Economy in the context of the environment.
- **Enhanced data sharing and transparency bolstered by better transboundary consultation**
- **Enhanced roles for the 1998 Agreement bodies regarding the environment and improved routes for civil society engagement with these bodies**

These potential actions are explored in more detail below with reference to experiences in other jurisdictions and from other sectors on the island of Ireland.

## **5.4 Lessons from other jurisdictions and other sectors**

### *5.4.1 Establishment of an all-island agreement or initiative on the environment*

This could play a role in mitigating divergence, where beneficial achieving integrated approaches/alignment (e.g. in minimum size limits in Fisheries Management, or replicating recycling schemes so there is a common approach and waste management flows across the island) and ultimately in delivering the cooperation envisaged in the 1998 Agreement. However, the success of a framework agreement which extended to all policy areas relevant to the environment would ultimately depend on the willingness of governments on both sides of the border to actually implement it.

A cautionary example can be found in the latest of many attempts to resolve environmental disputes in the Nile delta.

*The Nile and its tributaries are shared by 11 countries, and more than 300 million people live by, or depend on, the river, a figure that is expected to rise to 500 million by 2030. The Nile catchment area is an example of a mismatch between borders which affects water supply,*

*pollution, and freshwater biodiversity.....There is a long history of disagreement regarding how freshwater from the Nile should be equitably distributed, which various treaties over the course of more than a century have tried to ameliorate.....A recent attempt to facilitate cooperation was the establishment of the Nile Basin Initiative (NBI) in 1999. Its main objective was to establish a framework agreement that is inclusive of all the Nile riparian nation-states. The NBI establishes the principle that each Nile Basin state has the right to use, within its territory, the waters of the Nile River Basin, and lays down several factors for determining equitable and reasonable use. However, Egypt and Sudan did not ratify the NBI and insisted on their original user rights. In 2011 another dispute occurred when Ethiopia initiated plans to build the Grand Ethiopian Renaissance Dam. Currently this dispute is unresolved.<sup>55</sup>*

The Dinaric Arc in the Western Balkans<sup>56</sup> represents a more positive example.

*'Since the launch of the Dinaric Arc Initiative in 2004, numerous cooperation and development programmes, initiatives and site-specific projects have been implemented, many of which have been aimed at creating regional cooperation platforms and strengthening transboundary cooperation.'*

An additional example is [MEDRC](#), an international organisation, based in the Sultanate of Oman that utilises the environment as an entry point for peace. MEDRC was established out of the Middle East Peace Process in 1996. According to the Center's Director, Ciarán Ó Cuinn:

*'With a mandate to be a model organization for states seeking to use transboundary environmental issues for peace, we conduct research, development cooperation, training and peacebuilding activities. All countries today face a growing threat from climate and conflict. In response, we need new approaches to resolve these cross border pressures. That means not just narrow technical environmental solutions, but new multilateral models based on fairness and equality.'*

Both of these initiatives could act as a model for better all-island cooperation on the environment - especially with regard to water management and the management of water pollution, which already require significant transboundary cooperation, for example in the preparation of river basin management plans.

There are [multiple other international examples](#) of bi-lateral environmental agreements which could provide a template for Northern Ireland (or the UK) and Ireland which extend beyond the environmental cooperation envisaged in the 1998 Agreement, however such an agreement would be most effective if it was an overarching environmental agreement rather than relating to one specific medium (e.g. water or air pollution).

#### *5.4.2 Dedicated funding to assist civil society in navigating post-Brexit regulatory divergence*

---

<sup>55</sup> [http://macroecointern.dk/pdf-reprints/Dallimer\\_TREE\\_2015.pdf](http://macroecointern.dk/pdf-reprints/Dallimer_TREE_2015.pdf)

<sup>56</sup> [https://iucn.org/sites/default/files/import/downloads/initiating\\_effective\\_transboundary\\_conservation.pdf](https://iucn.org/sites/default/files/import/downloads/initiating_effective_transboundary_conservation.pdf)

Funding should not be limited to new projects and should be made available for existing staff, to engage dedicated staff or for core funding for environmental umbrella bodies and NGOs to level-up their capacity to contend with regulatory divergence. This is essential to maintaining and enhancing the conditions for sustained and successful all-island cooperation on the environment. Significant funding has already been assigned to academic projects working on all-island environmental research, and while these research initiatives will play an important role in filling knowledge gaps relating to the environment on the island it is vital that civil society (NGOs and grassroots/campaigning communities) is also equipped with the capacity to use and feed into this research in order to fulfil their vital advocacy role. This would create a robust and sustainable civil society sector which would undertake cooperation 'on the ground', and have the capacity to engage with and complement the research work being done by universities across the island. Dedicated funding would enable civil society to engage in a number of activities which would form part of the work of, or supplement the establishment of a civil society led all island divergence monitoring observatory suggested above (see 5.2):

- **Investment in mapping and understanding the nature, extent and practical implications of divergence on the island of Ireland. This could lead to the preparation of an annual joint report or bulletin on divergence in the context of the environment:** The Northern Ireland Human Rights Commission, Equality Commission and the Irish Human Rights and Equality Commission are actively monitoring EU developments in equality and human rights with a view to identifying potential divergence well in advance and scoping the practical impact of these developments on the human rights of citizens on the island.<sup>57</sup> In addition, NIHRC, the Equality Commission and IHREC public an annual joint report on the implementation of Art 2 of the Windsor Framework, the most recent report is available [here](#). IEN and NIEL could jointly produce/commission a similar report but with a focus on the environment. Mapping undertaken by UK think tanks [IEEP UK](#) and [Green Alliance](#) for EU-UK divergence could also provide a useful template.
- **Utilising the Tracking Tool and divergence guide produced for by researchers for the Department of the Economy:** As highlighted at the outset of this report, the Northern Ireland Department for the Economy (DfE) have commissioned research on post EU-Exit regulatory divergence in Northern Ireland, with the aim of assisting businesses and stakeholders in navigating the complex regulatory environment that now exists and to 'maximise the opportunities provided by dual market access by distilling that complexity'.<sup>58</sup> One of the key innovations of this research is that in addition to a technical register of known divergence and alignment, the researchers produced a 'Tracking Tool' and guide for monitoring divergence. This tool could be applied in any of the options for monitoring set out above, or by individual NGOs or IEN and NIEL as the environmental NGO umbrella bodies (properly resourced) who are interested in

---

<sup>57</sup> Sarah Craig et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (2022) available [here](#).

<sup>58</sup> Lisa Claire Whitten and David Phinnemore, 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).

divergence in a specific area but need some support to understand how to engage in monitoring.

- **Engaging with academic and existing civil society initiatives working on connected areas**

The [Centre for Cross Border Cooperation](#) convenes and coordinates the [Ad-Hoc Group for North-South and East-West Cooperation](#), 'established as the prime contact point for purposes of meaningful consultation between cross-border civil society and regional, national and EU bodies on matters relevant to cooperation between Northern Ireland and Ireland, and between the island of Ireland and Great Britain'. This provides an important avenue for civil society to provide feedback to the Specialised Committee on the Implementation of the Windsor Framework, especially in areas requiring cross-border cooperation. This avenue exists because of efforts of civil society to ensure voices can be heard, but funding is essential to ensure a wide range of organisations have the capacity to engage in providing feedback/developing analysis of developments as they occur.

#### *5.4.3 Enhanced data sharing and transparency bolstered by better transboundary consultation*

A recurring theme throughout interviews were difficulties engaging in transboundary consultation. Transboundary consultation is a right to participate in the planning or decision-making processes of a neighbouring jurisdiction where these decisions may impact across a political border. On the island of Ireland transboundary consultation is required in a broad range of circumstances because (amongst other reasons) the island is considered as one single biogeographic unit. This means that the public in Ireland is entitled to make submissions commenting on or objecting to developments in Northern Ireland that may have a transboundary impact and vice versa.<sup>59</sup> However, not only have there been instances when proper transboundary consultation has not occurred (e.g. in the proposals for goldmining in the Sperrin Mountains) but it is very challenging for organisations to try and understand the issues at play in a neighbouring jurisdiction, or appreciate the full range of potential transboundary issues. Capacity and resources to engage in these consultations is again an issue of primary concern.

#### *5.4.4 Enhanced roles for the 1998 Agreement bodies and improved routes for civil society engagement with these bodies*

The NSMC should review and develop its work programme further to cover a wider range of issues/regimes and add greater detail on how cooperation will occur; there should be improved routes for stakeholder engagement with the NSMC Environment Sector meetings; there should be enhanced roles for Treaty bodies - including the NSMC, BIIC and BIC - including expanded scope/focus points, but also more regular meetings and for adequate funding of each body; and research should be undertaken into the feasibility of establishing a

---

<sup>59</sup> Amy Strecker, V'cenza Cirefice, Alison Hough and Ciara Brennan, 'Transboundary environmental justice: Gold mining in the Sperrin Mountains' EJNI Research Report, April 2025, available [here](#).

Treaty oversight body for monitoring and promoting full implementation of the 1998 Agreement, and possibly resolving disputes regarding interpretation and application. These issues are explored in more detail elsewhere.<sup>60</sup>

## **5.5 Conclusion**

Based on the analysis in this report, there are key steps that could be taken to fill the existing gaps in divergence monitoring and enhance the capacity of civil society on the island to respond to divergence when it occurs, while maintaining the enabling conditions for sustained and successful all-island cooperation on shared environmental challenges. These steps include establishing mechanisms that are designed with the explicit function of monitoring divergence and more general steps which could be taken to protect all-island cooperation on the environment and boost civil society capacity to respond to divergence. Established in conjunction, these initiatives could deliver the much-needed enhanced monitoring of divergence in order to ensure good environmental outcomes and protect all-island cooperation on shared environmental challenges.

---

<sup>60</sup> E.g. Ciara Brennan, Finbarr Brereton, Mary Dobbs, Viviane Gravey, Hannah Gould, Alison Hough, Lisa Whitten, Linking the Irish Environment (2023) <https://ejni.net/linking-the-irish-environment>.

## 6. Glossary of key terms

<p><b>The 1998 Agreement/Belfast Agreement/Good Friday Agreement</b></p>	<p>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.</p>
<p><b>The Northern Ireland Protocol/The Windsor Framework</b></p>	<p>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.</p>
<p><b>UK-EU Joint Committee</b></p>	<p>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.</p>
<p><b>Specialised Committee</b></p>	<p>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.</p>
<p><b>Joint Consultative Working Group</b></p>	<p>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.</p>
<p><b>North South Ministerial Council</b></p>	<p>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.</p>
<p><b>Trade and Cooperation Agreement</b></p>	<p>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.</p>
<p><b>Regulatory divergence</b></p>	<p>Regulatory divergence refers to a scenario in which two or more governments pursue different policy objectives or legal mechanisms to achieve them.</p>

<b>Retained EU Law</b>	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.
<b>Assimilated EU law</b>	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.
<b>The 'Stormont Brake'</b>	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.
<b>Dynamic alignment</b>	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.

## 7. References

Brennan, C. Purdy, R. and Hjerp, P. (2017) 'Political, Economic and Environmental Crisis in Northern Ireland: The True Cost of Environmental Governance Failures and Opportunities for Reform' *Northern Ireland Legal Quarterly* 68(2) 123-157, available [here](#).

Brennan, C., Brereton, F., Dobbs, M., Gravey, V., Gould, H., Hough, A., and Whitten, L., 'Linking the Irish Environment' (2023) <https://ejni.net/linking-the-irish-environment>.

Brennan, C., Dobbs, M., & Gravey, V. (2019). Out of the frying pan, into the fire? Environmental governance vulnerabilities in post-Brexit Northern Ireland. *Environmental Law Review*, 21(2), 84-110. <https://doi.org/10.1177/1461452919843646>.

Campbell, J. (15 November 2023) 'UK-EU Divergence Not Being Tracked by Government', available at <https://www.bbc.com/news/uk-northern-ireland-67433925>.

Craig, S. et al, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (2022) available [here](#).

Dallimer, M. and Strange, N. 'Why socio-political borders and boundaries matter in conservation', *Trends in Ecology & Evolution*, Volume 30, Issue 3, 2015, Pages 132-139 <https://www.sciencedirect.com/science/article/pii/S0169534714002651>

Doyle, O., Kenny, D., McCrudden, C. and Ní Aoláin, F. (2022) *Legal Convergence and Divergence on the Island of Ireland, A Report of the North-South Legal Mapping Project to the Shared Island Unit*, available at <https://www.tcd.ie/law/2020.21/NSLMap%20Final%20Report.pdf>

Erg, B., Vasiljević, M., McKinney, M. (eds.). (2012) *Initiating effective transboundary conservation: A practitioner's guideline based on the experience from the Dinaric Arc. Gland, Switzerland and Belgrade, Serbia: IUCN Programme Office for South-Eastern Europe.* [https://iucn.org/sites/default/files/import/downloads/initiating\\_effective\\_transboundary\\_conservation.pdf](https://iucn.org/sites/default/files/import/downloads/initiating_effective_transboundary_conservation.pdf)

European Commission 'Meetings of the EU-UK Joint and Specialised Committees under the Withdrawal Agreement' [commission.europa.eu https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement\\_en](https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en).

Haigh, N. (2023) *Motives for and against divergence by the UK from EU environmental law, IEEP*, available at [https://ieep.eu/wp-content/uploads/2023/02/Discussion-paper-Motives-for-divergence\\_final-1.pdf](https://ieep.eu/wp-content/uploads/2023/02/Discussion-paper-Motives-for-divergence_final-1.pdf).

- Hamill, S. E., & Hackett, C. (2023). Law of obligations (North-South Mapping Project). *Irish Studies in International Affairs*, 34(2), 439-479. <https://muse.jhu.edu/pub/423/article/916345>.
- Horton, H. (19 January 2024) Brexit Divergence from the EU Destroying Vital Environmental Protections *The Guardian*, available at <https://www.theguardian.com/environment/2024/jan/19/brexit-divergence-from-eu-destroying-vital-environmental-protections>.
- Hough, A. (2019). The potential of the Good Friday Agreement post-Brexit environmental governance on the island of Ireland. *Irish Planning and Environmental Law* (2) 55-65.
- Hough, A. 'Brexit, the Good Friday Agreement, and the Environment: Issues arising and possible solutions' (2018) IEN-NIEL joint funded research report. [Brexit, the Good Friday/Belfast Agreement and the environment: issues arising and possible solutions. \(thea.ie\)](https://www.thea.ie/research/Brexit%20the%20Good%20Friday%20Agreement%20and%20the%20environment%20issues%20arising%20and%20possible%20solutions.pdf).
- Hough, A. 'Finding Common Ground Synthesis Report: All-island implementation of the Aarhus Convention' (2023) IRC Funded research report, [www.findingcommonground.ie](https://www.findingcommonground.ie).
- IHREC (26 June 2023) Rights at Risk of Divergence on the Island of Ireland post-Brexit, Equality and Human Rights Commissions warn Oireachtas, available at <https://www.ihrec.ie/rights-at-risk-of-divergence-on-the-island-of-ireland-post-brexit-equality-and-human-rights-commissions-warn-oireachtas/>.
- Kassim, H. Davies, C. Ennis, S. Jordan, A. (2022) UK Regulation After Brexit Revisited, Brexit and Environment, available at <https://www.brexitenvironment.co.uk/policy-briefs/>.
- Kingston, S., Heyvaert, V., and Čavoški, A, (2017) *European Environmental Law*, (CUP, 2017).
- Macrory, R. (2018, September 24). Environmental law in the United Kingdom post Brexit. *ERA Forum*. doi:<https://doi.org/10.1007/s12027-018-0531-6>.
- Murphy, Mary C. (2019) 'The Invidious Impact of Brexit on Ireland's Policy Landscape', PSA/PSAI, <https://www.psa.ac.uk/psa/news/invidious-impact-brexit-irelands-policy-landscapes>.
- Reid, C. (2021) Mapping post-Brexit environmental law. *ERA Forum* 21, 655-665. <https://doi.org/10.1007/s12027-020-00627-5>.
- Reland, J. (2024) 'UK-EU Divergence Tracker Q2-Q3' [ukandeu.ac.uk](https://ukandeu.ac.uk) Available: <https://ukandeu.ac.uk/reports/uk-eu-divergence-tracker-q2-q3-2024/>.
- Tannam, E. (2019) *Intergovernmental and Cross-Border Civil Service Cooperation: The Good Friday Agreement and Brexit in 'Beyond the Good Friday Agreement'* Routledge, eBook ISBN9780429426001, available at

<https://www.taylorfrancis.com/chapters/edit/10.4324/9780429426001-2/intergovernmental-cross-border-civil-service-cooperation-good-friday-agreement-brexit-etain-tannam>.

UK Parliament (2025) 'New Northern Ireland Scrutiny Committee Established' *committees.parliament.uk* Available:

<https://committees.parliament.uk/committee/769/northern-ireland-scrutiny-committee/news/205024/new-northern-ireland-scrutiny-committee-established/>.

UKG 2024 *Safeguarding the Union*

[https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command\\_Paper\\_1.pdf](https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper_1.pdf).

Whitten, L. C. (2024) 'Dynamic Regulatory Alignment And The Protocol on Ireland / Northern Ireland' *Post-Brexit Governance NI* Available: <https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/Explainers/DynamicRegulatoryAlignmentandtheProtocolonIrelandNorthernIreland-ThreeYearReview/>.

Whitten, L. C. and Phinnemore, D. 'Mapping Post-EU Exit Regulatory Divergence in Northern Ireland' (2024), available [here](#).