

## TECHNICAL EXPLANATORY NOTE: NORTH-SOUTH COOPERATION MAPPING EXERCISE

*This technical note provides a UK commentary on the North-South cooperation mapping exercise carried out during Phase 1 of the negotiations on the UK's withdrawal from the EU. The list of areas of cooperation attached at Annex A reflects discussions between the UK, EU and Ireland, but this explanatory note is a UK, rather than a jointly produced, document.*

1. A series of detailed discussions took place between the United Kingdom (UK), supported by the Northern Ireland Civil Service, and the European Commission and Ireland in late 2017 in order to map current North-South cooperation between Northern Ireland and Ireland (the mapping exercise). The objective of the mapping exercise was to chart the range of formal and informal cooperation that currently exists between Northern Ireland and Ireland, noting the role of EU regulatory frameworks, where applicable, in its operation and development, with a view to maintaining North-South cooperation following the UK's withdrawal from the EU. All areas of cooperation reflect policies or practical cooperation that has been supported on a cross-community basis in Northern Ireland.
2. The Government has been clear in its commitment to uphold the Belfast (Good Friday) Agreement (the Agreement) in all its parts throughout the process of the UK's withdrawal from the EU. This includes formal North-South cooperation between the Northern Ireland Executive and Government of Ireland, which forms Strand Two of the well-established three-stranded approach set out in the Agreement.
3. The December Joint Report, which is referred to in Section 10(1) of the Withdrawal Act 2018<sup>1</sup>, recognised that North-South cooperation relies to a significant extent on a common European Union legal and policy framework. The United Kingdom reiterated a commitment to *"protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South implementation bodies."*
4. The UK and EU have delivered on our commitment to North-South cooperation in the legal text of the Protocol on Northern Ireland and Ireland. A core objective (Article 1(3)) of the Protocol is to *"maintain the necessary conditions for continued North-South cooperation."* Article 13, on 'Other areas of North-South cooperation', requires the Protocol to be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.

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<sup>1</sup> (1) In exercising any of the powers under this Act, a Minister of the Crown or devolved authority must—  
(a) act in a way that is compatible with the terms of the Northern Ireland Act 1998, and  
(b) have due regard to the joint report from the negotiators of the EU and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 of the Treaty on European Union

5. Article 13 does not alter the remit or functions of the NSMC or the North-South Implementation bodies, nor does it alter Strand II of the Agreement in any way. The Protocol acknowledges that, in full respect of Union law, the UK and Ireland may continue to make new arrangements that build on the provisions of the Agreement in other areas of North-South cooperation on the island of Ireland. In accordance with the position set out in the recitals, the functions and safeguards of the Assembly and the NSMC (including cross-community provisions) will be respected in full. This means that arrangements for North-South cooperation remain a matter for the Northern Ireland Executive and the Government of Ireland to determine. It is also important to note that Article 13 does not require any application of EU law in Northern Ireland. It is therefore exempt from the specific EU supervision and enforcement provisions set out for some elements of the Protocol. Cooperation will remain a matter for two sovereign jurisdictions on the island of Ireland to decide in accordance with their respective legal regimes.
6. The Joint Committee is tasked with keeping under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation. There is no provision for the Joint Committee or Specialised Committee to decide on, or recommend, the expansion of those areas, nor to alter the functions, scope and remit of the North-South Ministerial Council or the North-South Implementation Bodies.

### **The Belfast Agreement**

7. The Agreement - signed by the UK Government, Government of Ireland, and eight of the Northern Ireland political parties on 10 April 1998; endorsed by a treaty between the UK Government and the Government of Ireland signed on the same date; and endorsed in parallel referendums in Northern Ireland and Ireland - represents the bedrock of the peace process. In our *Northern Ireland and Ireland position paper*, published August 2017, the UK Government put upholding the Agreement in all its parts at the heart of our negotiations with the European Commission - reflecting the importance of the Agreement.
8. The Agreement is structured on the well-established three-stranded approach to relationships relating to Northern Ireland:
  - i. Strand 1 deals with the internal governance of Northern Ireland, including the arrangements for power-sharing within the Executive and the structure of the Northern Ireland devolved institutions - these are matters for UK Government and Northern Ireland parties; and
  - ii. Strand 2 deals with relations between Northern Ireland and Ireland (“North-South cooperation”), including arrangements for cross-border and all-island cooperation; and
  - iii. Strand 3 addresses East-West relations, reflecting the connections between the

UK and Ireland. The Agreement provides for a British-Irish Council “to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands.” The Agreement also provides for a British-Irish Intergovernmental Conference to “promote bilateral cooperation at all level on all matters of mutual interest within the competence of both Governments”. The Agreement also states “there will be no derogation from the sovereignty of either Government.”

## **Strand Two: North-South cooperation**

9. Strand 2 of the Agreement focused on cooperation between Northern Ireland and Ireland. It provided for the establishment of the North South Ministerial Council (NSMC), which brings together representatives from the Government of Ireland and the Northern Ireland Executive on matters of mutual interest within the respective competences of those administrations. The NSMC, which was established by treaty between the UK and Ireland<sup>2</sup>, was required to agree at least six areas of cooperation, where common approaches are agreed but implemented separately in each jurisdiction. The six areas of cooperation that the NSMC has agreed are: agriculture; education; environment; health; tourism; and transport.
10. It also required the establishment of at least six cross-border implementation bodies. The bodies agreed by the NSMC and established by treaty between the UK and Ireland are: Waterways Ireland; the Food Safety Promotion Board; the Special EU Programmes Body; the North/South Language Body; the Trade and Business Development Body; and the Foyle, Carlingford, and Irish Lights Commission.
11. The Agreement envisaged the possibility of further development of the NSMC arrangements. Any further development is subject to agreement by both sides within the NSMC - “*any further development of these arrangements [is] to be by agreement in the Council and with the specific endorsement of the Northern Ireland Assembly and Oireachtas, subject to the extent of the competences and responsibility of the two Administrations*”. Additionally, there are clear and unequivocal safeguards in the Northern Ireland Act 1998 to ensure cross-community representation of the Northern Ireland Ministers in the NSMC. Those safeguards are fully acknowledged in the Protocol.
12. Beyond this, as the UK Government set out in the *Northern Ireland and Ireland position paper* in August<sup>3</sup>, since the Agreement other forums of collaboration have developed in line with the principles of North-South cooperation laid down in the agreement but in parallel

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<sup>2</sup> The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing implementation bodies done at Dublin on the 8th day of March 1999.

<sup>3</sup> Underpinned by a treaty between the UK and Ireland: Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on Police Cooperation, done at Belfast on 29th April 2002.

to, rather than, under the auspices of, the NSMC. These include the joint hosting of sporting events and the creation of the Single Electricity Market.

13. North-South cooperation is important across all the formal areas, through the Implementation Bodies and in the other areas of cooperation. This cooperation has provided a clear benefits to the people of Northern Ireland. For example, in addition to the provisions of Strand 2, the section of the Agreement that dealt with policing and justice recommended independent reviews of policing and criminal justice that would look, among other things, at strengthening North-South cooperation on these issues. Following these reviews, international agreements between the UK Government and the Government of Ireland provided a framework for North-South cooperation on a range of issues, including the cross-border policing strategy, justice cooperation on public protection, support for victims, youth justice and criminal justice. Much of this cooperation currently benefits from a common EU environment and with EU measures underpinning much of the operational police cooperation, including in terms of combating the threats posed by terrorist groups, organised crime gangs, and cross-border illicit activity. Close and effective operational cooperation between PSNI and An Garda Síochána has been critical to tackling shared challenges and threats, and the relationship has led to excellent disruptive and criminal justice outcomes in both jurisdictions.
  
14. In the field of healthcare, the All Island Congenital Heart Disease Network facilitates collaboration between healthcare providers in both jurisdictions to ensure that vulnerable children receive treatment on the island of Ireland. The Network has a single surgical centre in Dublin and a specialist children's cardiology centre in Belfast, supported by cardiology expertise in local hospitals and an all-island academic programme which is under development. The Network was established following an agreement between Northern Ireland and Ireland Health Ministers. A Framework Document outlines the model for the implementation and operation of the Network by a Network Board which is overseen by the two health departments. Cooperation is underpinned by a Service Level Agreement (SLA) between commissioner and provider organisations in Northern Ireland and Ireland. While the cooperation is underpinned by a SLA, there is also EU law linked to the operation of the All-island Congenital Heart Disease Network. For example, the directive on the recognition of professional qualifications provides the framework for recognising professional qualifications across Member States.

### **The mapping exercise**

15. As outlined above, a series of detailed discussions took place between the UK, supported by the Northern Ireland Civil Service, and the European Commission and Ireland in late 2017 in order to map current North-South cooperation between Northern Ireland and Ireland. For the purposes of the mapping exercise, North-South cooperation was understood to refer to:

- i. The six areas of cooperation agreed by the NSMC, which are currently: **agriculture, environment, transport, health, tourism, and education**. Common policies and approaches in these areas are agreed in the NSMC, but implemented separately in each jurisdiction, in line with Strand Two of the Agreement. Each of these areas has a number of subcategories that significantly contribute to the total areas of cooperation.
  - ii. The work and operation of the other six agreed areas of cooperation under the NSMC - Inland Waterways; Food Safety; Trade and Business Development; Special EU Programmes; Language; and Aquaculture and Marine matters - in which cooperation is taken forward by means of six North-South Implementation Bodies operating on an all-island basis in line with Strand II of the Agreement. The North-South implementation bodies are: **The Foyle, Carlingford and Irish Lights Commission (The Loughs Agency), Waterways Ireland, the Special EU Programmes Body, The Food Safety Promotion Board (*safeFood*), the Trade and Business Development Body (InterTradeIreland), and The North-South Language Body (The Ulster Scots Agency and Foras na Gaeilge)**.
  - iii. Broader North-South cooperation that takes place outside of the formal structures of the NSMC, which has developed in line with the principles of North-South cooperation laid down in the Agreement but in parallel to, rather than under the auspices of, the NSMC. This solely reflects agreed areas of current cooperation. **These currently include energy; telecommunications and broadcasting; justice and security; higher and further education; arts, culture and sport; and inland fisheries.**
16. The full list of cooperation that was discussed (Annex A) includes areas of cooperation that come under all three of the categories set out above. The categories of cooperation included in the list are not exhaustive; they capture current cooperation as discussed when the mapping exercise took place in 2017. Further areas of informal, local and community level cooperation may not have been captured by this exercise. Additionally, it was fully recognised that cooperation must be seen in the context of the commitments made in the Agreement.
17. The list reflects the range of formal and informal cooperation that currently occurs between Northern Ireland and Ireland, and in some cases cooperation pre-dates the Agreement. The mapping exercise considered specific areas of cooperation identified by the EU and the UK in advance of the exercise but also included additional elements which were identified during the course of the discussions. The mapping exercise highlighted that there were varying different levels of legal and policy links between North-South cooperation and EU policy and legal frameworks. Broadly speaking, cooperation falls into areas not at all underpinned by EU policy and legal frameworks (for example, the all-island free travel scheme for senior citizens); partially underpinned by EU legal and policy frameworks (for

example, the All Island Congenital Heart Disease Network, where although the Network is underpinned by a local Service Level Agreement, it relies on the continued supply of medicines and medical devices across the border); as well as areas directly underpinned by EU legal and policy frameworks (for example, Enterprise rail service from Belfast to Dublin). It is important to note that there are no commitments in Article 13 of the Protocol to align with EU law in relation to North-South cooperation.

18. Examination of all areas of cooperation in the mapping exercise was based on a factual analysis of the current position and, consequently, the exercise did not consider new or future areas of North-South cooperation. It was recognised that any development of new areas of cooperation would be a matter for the Northern Ireland Executive and Government of Ireland, in areas within their competence, as well as other forums of collaboration developed in line with the principles of North-South cooperation laid down in the Belfast Agreement.
19. There were a number of cross-cutting areas identified by the mapping exercise that impact North-South cooperation and will be affected by the UK's exit from the EU. These include, but are not restricted to: data protection, including personal data, and information sharing; public procurement; state aid rules; health and safety and employment frameworks in relation to personnel issues in the Implementation Bodies; access to EU funding; the provision of and access to services; the mutual recognition of professional qualifications; and the Common Travel Area.

## **Annex A: List of North-South cooperation covered in the mapping exercise**

	<b>Implementation bodies</b>
1	Special EU Programmes Body
2	Foyle, Carlingford and Irish Lights Commission (Loughs Agency)
3	Food Safety Promotion Board (SafeFood)
4	Waterways Ireland
5	North-South Language Body (The Ulster Scots Agency and Foras na Gaeilge)
6	Trade and Business Development Body (InterTradeIreland)
7	North South Implementation Bodies - Cross cutting operational Issues
	<b>Agriculture</b>
8	Discussion on CAP issues
9	Safe use and disposal of animal by-products/ TSE management / rendering capacity
10	Cooperation on disease eradication programmes e.g. Tuberculosis (TB), Aujeszky's disease
11	Animal Health including Epizootic diseases
12	Equines
13	Plant Health and quarantine pests
14	Forest management and development
15	Rural development
16	Dairy international trade working group
17	Invasive Alien Species
18	Farm Safety
19	Agricultural Education
20	Movement of companion and farm animals
21	Cooperation on Products of animal origin
22	Exchange of Information on veterinary medicines
23	Pesticides
24	Timber
25	Veterinary public health and trade meetings
26	Informal cooperation on agri-food policy issues
27	Cooperation on the safety of the animal feed chain

<b>Environment</b>	
28	Environmental protection reporting and research
29	Water quality management in a cross-border context
30	Waste management in a cross-border context
31	Work Programme agreed by Ministers in September 2016: sustainable development; waste/water management; cooperation and exchange of information on marine/bathing/shellfish waters and water sewage services; circular economy; and tackling environmental crime
32	Nature/biodiversity, including habitats and birds
33	All-island pollinator plan
34	All-island marsh fritillary group
35	Flood risk management
36	Lough Erne water level agreement
37	Strategic environmental assessments; environmental impact assessments; appropriate assessments
38	Northern Ireland Water/ Irish Water knowledge sharing
39	Mapping data
40	Geodetic network
41	Radiation
42	Wildfire initiatives
43	All-island fracking
44	All-island air quality research: Residential Solid Fuel and Air Pollution
45	River basin management
46	Wildlife trade including CITES
47	Fluorinated gases
<b>Transport</b>	
48	Strategic Transport Planning: national road network
49	Strategic Transport Planning: rail network
50	Cross-border bus services
51	Sustainable transport
52	Alternative fuels infrastructure, including electric vehicle charge point network
53	Coordination of transport aspects of EU cross-border programmes, including those funded through INTERREG and/or TEN-T

54	Strategic Transport Planning: cross-border projects
55	Road and rail safety
56	Road and rail safety reporting and information systems, including mutual recognition of driving disqualifications, penalty points
57	Rail standards, certification and licensing
58	Road and rail safety: Cooperation between the railway inspectorates North and South
59	Road haulage operator, licensing and qualifications
60	Operation of cross-border taxis
61	All Ireland free travel scheme for senior citizens
62	Recognition of driving licences and disqualifications
63	Motor insurance
64	Vehicle registration
65	Ferries
66	Blue badges
	<b>Health</b>
67	Cross-border service provision, including hospital services such as primary percutaneous coronary intervention services in Altnagelvin, Derry
68	North West Cancer Centre
69	All-island congenital heart disease network
70	Cooperation and Working Together (CAWT)
71	Workstreams on child protection
72	Health protection and promotion (including addressing alcohol misuse, tobacco control, ECDC, and public health alerts)
73	Major emergencies and emergency services cooperation, including Cross Border Emergency Management Group
74	Organs for transplantation
75	Blood
76	Tissues and cells
77	The Institute of Public Health in Ireland
78	Controlled drugs licensing group
79	All Ireland Institute of Hospice and Palliative Care (AIHPC)
80	Human Milk Bank
81	Cross-border GP out of hours service

82	Mutual recognition of prescriptions
83	Continuity of supply of medicines (including radiopharmaceuticals) and devices
84	Serious cross border threats to health (health security)
85	Disease surveillance and ERNs pertaining to the diagnosis and management of rare diseases
86	ENT Cooperation
87	Clinical trials and Joint Health research
88	Disability Services (aids, appliances, training, cross-border residential placements)
	<b>Tourism</b>
89	Tourism Ireland Limited
90	Hosting major cross-border events
	<b>Education</b>
91	Education for children with special needs, including Middletown Centre for Autism
92	Educational underachievement
93	School, youth, and teaching exchanges
94	Cross-border movement and cooperation for pupils and school staff
95	Cooperation between the Inspectorates
96	Psychological services
97	North-South Teacher Qualifications working group (NSTQWG)
98	School planning and development
99	North-South Education and Training Standards Committee for Youth Work (NSETS)
100	North-South youth exchanges, including the Causeway programme
101	Recognition of school-based/state-accredited examinations
	<b>Energy</b>
102	Wholesale Electricity Market (Single Electricity Market)
103	Gas security of supply
104	Oil resilience planning
	<b>Higher and further education</b>
105	Cross-border provision of apprenticeships
106	Cross-border movement of students
107	Staff mobility
108	Skills provision and FE/HE link to the local economy

109	Cross-border partnerships between Higher and Further Education Institutions, including SFI investigators programme and SFI partnerships
110	Research and development, including through Horizon 2020
111	Higher and further education in agriculture, equine, and horticulture disciplines
	<b>Telecommunications and broadcasting</b>
112	Irish language broadcasting
113	Mobile roaming
114	Spectrum
115	Subsea cables
	<b>Sport, art, and culture</b>
116	Sport governance
117	Major events
118	Horse racing
119	Greyhound and pigeon racing
120	Motorsport road safety promotion
121	Health promotion
122	National museums
123	Libraries
124	Development and promotion of the Arts (in Northern Ireland, Ireland and abroad)
125	NI Screen
	<b>Justice and security</b>
126	Intergovernmental agreement on criminal justice cooperation, including public protection project advisory group; victims and survivors services project advisory group; forensic science project advisory group; youth justice project advisory group; and criminal justice and social diversity project advisory group
127	Mutual legal assistance in criminal matters
128	Intergovernmental agreement on police cooperation, including protocols for police cooperation and cross-border secondments and eligibility for posts in policing
129	Northern Ireland Related Terrorism threat
130	Multi-agency cooperation on fuel fraud
131	Multi-agency cooperation on organised crime and drugs
132	Extradition/Surrender, including the European Arrest Warrant
133	Access to shared law enforcement information systems

134	Criminal asset seizure
135	Transfer of prisoners
136	Civil judicial cooperation
137	Other aspects of criminal justice cooperation
138	Joint investigation teams
	<b>Inland Fisheries</b>
139	Fisheries liaison group
140	Salmon stocks
141	Eel stocks on the Erne
142	Fish health and aquaculture
143	Voisinage Agreement
	<b>Other areas</b>
144	EURES Cross Border Partnership
145	Benefit fraud cross-border cooperation
146	Spatial Planning
147	Enterprise Ireland, InterTradeIreland, INI and other enterprise development agencies cooperation to promote enterprise development and job creation through enhanced innovation, competitiveness and trade
148	National Traveller Accommodation Consultative Committee
149	Public Service Reform
150	All Island Public Procurement Steering Group
151	Obstacles to Cross Border Mobility (Border People Project)
152	All-Island Local Authority Forum
153	Local authority led cross-border engagement
154	North West Gateway Initiative / North West Development Fund
155	North-South Senior Officials Group on implementation of Section E infrastructure
156	Cooperation between the CSO and the NI Statistics and Research Agency