

WATER AND SEWERAGE SERVICES BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department for Regional Development (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Department is responsible for setting the policy for the delivery of water and sewerage services in Northern Ireland by the sole licensed water and sewerage undertaker, Northern Ireland Water (“NI Water”). The Bill extends existing arrangements to allow the Department to pay subsidy to NI Water in view of the Executive’s commitment not to apply household charges to domestic customers during the current Assembly mandate. It also gives the Department the power to make subordinate legislation to extend the period for which subsidy is paid in the future if necessary.
4. The Bill also introduces measures to streamline current obligations on NI Water to produce Water Resources Management Plans and Drought Plans.
5. The Bill gives the Department power to remove the requirement on NI Water to install meters at domestic properties connecting for the first time to the public water supply.
6. The Bill seeks to promote more sustainable means of managing surface water and reduce the volume of surface water being carried and treated by NI Water’s sewerage system.
7. Following recommendations made by the Committee for Regional Development in its Inquiry into Unadopted Roads in 2012, the Bill includes powers to require new sewerage, which will be connected to the public sewerage network, to be constructed to standards which NI Water can then adopt (that is, take responsibility for) in order to protect householders.
8. The measures proposed in the Bill support the aims of the Executive’s draft Long Term Water Strategy (2014-39), which seeks to deliver a sustainable water sector in Northern Ireland.

CONSULTATION

9. The Department undertook a 12-week public consultation on the policy proposals being considered for inclusion in the Bill from June to August 2014. In total 61 consultation responses were received: 59 from organisations, companies, and individuals, and two from internal stakeholders. The Department also held a series of meetings with representatives of the construction industry, which had concerns about the impact of private sewerage and surface water proposals, in August and September 2014 and briefed the Committee for Regional Development on the proposals and, subsequently, the consultation outcome. All views were considered when formulating the final policy proposals, prior to obtaining the agreement of the Minister for Regional Development and the Executive and publishing the final consultation report.

OPTIONS CONSIDERED

10. The Department initially considered three options for primary legislation: (1) progressing the critical policy only, that is, taking a power to extend the facility to pay subsidy to NI Water; (2) extending the subsidy-paying powers and introducing new governance arrangements (to consolidate requirements on NI Water to produce various plans and to require the Northern Ireland Authority for Utility Regulation (“the Regulator”) to abide by Ministerial strategic directions when carrying out its duties to regulate NI Water); and (3), extending the subsidy-paying power, introducing the new governance arrangements identified at (2) and progressing environmental measures to (i) require the construction of private sewerage infrastructure to standards capable of adoption by NI Water, (ii) reduce surface water connections to the existing, largely combined, foul and surface water public sewerage system and promote the use of sustainable drainage systems, and (iii) introduce measures to address water quality and leakage issues from customers’ private water supply pipes.
11. The Minister asked officials to proceed with option (3) and, following consultation and the refinement of the policy proposals, the departmental Committee, Minister and Executive agreed that a Bill should be drafted to extend the subsidy-paying powers, consolidate requirements on NI Water to produce various plans, require private sewerage to be constructed to adoptable standards, reverse the current presumption in favour of allowing surface water sewer connections, promote sustainable drainage solutions and take powers to address leakage and water quality issues from private supply pipes, and to include an additional power to cease the requirement on NI Water to install water meters at domestic properties connecting for the first time to the public supply. Ultimately given the time pressures, it was not possible to progress all aspects and private supply pipe proposals and broad enabling powers in respect of sustainable drainage have not been included in the final Bill. Measures have, however, been included which promote the use of some sustainable drainage systems and their adoption. The Department will work with stakeholders to consider the policy implications and to identify options for further progress towards sustainable drainage.

COMMENTARY ON CLAUSES

Clause 1: Extension of period for which grants to water and sewerage undertakers can be paid

Clause 1 amends Article 213 (grants by the Department to relevant undertakers) of the Water and Sewerage Services (Northern Ireland) Order 2006 (“the 2006 Order”) to allow the Department to continue to pay subsidy to NI Water on behalf of domestic customers up to 31 March 2017. This aligns with the Executive’s commitment not to introduce household charges during the current mandate. The clause also enables the 2006 Order to be further amended by order, with the approval of the Assembly, so that the subsidy can be paid until such other date as the Department decides.

Clause 2: Combining water resources management plans and drought plans

Clause 2 gives effect to Schedule 1 of the Bill. The Schedule aligns the existing requirements on NI Water to prepare, review and revise water resources management plans and drought plans under Articles 70 to 73 of the 2006 Order so that NI Water may prepare a single plan instead of two, which may be known as a water resource and supply resilience plan. If made, the single plan shall be reviewed every two years and revised at least every six years, unless the Department permits a longer period of up to eight years.

Clause 3: Cessation or relaxation of duty to install water meters when making domestic connections

Clause 3 enables the Department to make regulations to remove or amend the requirement within Article 81 of the 2006 Order (conditions of connection concerning metering) for NI Water to install water meters at domestic properties connecting for the first time to the public water supply. It also allows the requirement to be reinstated or any amendments to it to be reversed. It provides that the Department must consult certain stakeholders before making the regulations, and requires the regulations to be subject to draft affirmative resolution.

Clause 4: Sustainable drainage systems

Clause 4 amends Article 2 (interpretation), Article 159 (adoption of sewers and waste water treatment works) and Article 161 (agreements to adopt sewer, drain or waste water treatment works at a future date) of the 2006 Order. The clause defines “sustainable drainage system” for the purposes of the Order and extends NI Water’s power to adopt infrastructure, and to enter into agreements about adoption, so as to include such systems. It also confers a power for NI Water to require the construction of sustainable drainage systems as a condition of agreeing to adopt a drain or sewer. Clause 4 also applies Schedule 2 of the Bill, which sets out other necessary amendments to the Order to take account of the inclusion of sustainable drainage systems within Articles 159 and 161. Finally, the clause confers a power to make other consequential amendments. This may be needed to make other necessary amendments in other legislation.

Clause 5: Refusal of surface water connection

Clause 5 introduces new restrictions to the right to connect surface water sewers to the public sewer network. At present NI Water has power under Article 163 of the 2006 Order to refuse to allow a surface water connection on the grounds of unsatisfactory construction of the drain

or sewer proposed for connection or that making the connection would be prejudicial to the existing public sewerage system. The clause extends this power so as to enable NI Water to take account of any upstream sustainable drainage system which is connected to the drain or sewer which is it is proposed to connect to the public sewer. Clause 5 also sets out a further ground for refusal, on the basis that there is a suitable alternative means of dealing with the surface water or that such a means could reasonably be provided. The clause also makes clear that suitable alternative means of dealing with the surface water (which can be a ground for refusal) include natural features and other arrangements that are commonly known as “soft sustainable drainage systems”.

Clause 6: Connection of drains and private sewers to public sewers: adoption agreements

Clause 6 limits the right, conferred by Article 163 of the 2006 Order, to connect to a sewer. The clause introduces a requirement to enter into a sewer adoption agreement within the meaning of Article 161 of the 2006 Order (agreements to adopt sewer, drain or waste water treatment works at future date) as a condition of that right. This is in order to enable NI Water (i) to set the standards to which the private sewerage, including any necessary sustainable drainage system, must be constructed and (ii) to require an appropriate security (such as a bond). Provided the agreed construction standards are met, connection may not then be refused by NI Water. A mechanism for appeals to the Regulator about any issue regarding the sewer adoption agreement is also included.

FINANCIAL EFFECTS OF THE BILL

12. The Department may incur additional administrative costs in terms of staff resources as a result of exercising the subordinate legislation-making powers within the Bill. The extension of the subsidy-paying power to NI Water on behalf of domestic customers will represent an ongoing cost of approximately £280M for the additional year.

HUMAN RIGHTS ISSUES

13. The proposals are not considered to raise any issues in terms of human rights impact.

EQUALITY IMPACT ASSESSMENT

14. Equality issues have been considered and the legislative proposals screened out for equality impact assessment.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

15. A summary of the regulatory impact of the Bill was included with each of the policy proposals consulted on, except for the amendment to Article 81 (conditions of connection concerning metering). It is anticipated that removing the requirement on NI Water to install meters at domestic properties making first-time connections to the

public water supply would represent a saving to the company in excess of £135,000 annually.

16. Consolidated requirements to prepare water resources and supply resilience plans are anticipated to represent savings to NI Water as set out in the summary regulatory impact assessment. The assessment also anticipated that some additional costs could fall to the construction industry in terms of standards of construction of private sewerage connecting to the public sewerage system and the requirement to enter into bonds. Whilst some types of sustainable drainage systems may cost less than traditional piped methods, indications are that some engineered solutions may prove more costly.

LEGISLATIVE COMPETENCE

17. The Minister for Regional Development had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Water and Sewerage Services Bill would be within the legislative competence of the Northern Ireland Assembly.”