



Northern Ireland
Assembly

Committee for Regional Development

OFFICIAL REPORT (Hansard)

Water and Sewerage Services Bill:
Northern Ireland Local Government
Association

30 September 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Trevor Clarke (Chairperson)
Mr John Dallat
Mr Alex Easton
Ms Claire Hanna
Mr Chris Lyttle
Mr David McNarry
Mr Stephen Moutray
Mr Cathal Ó hOisín

Witnesses:

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| Councillor Seán McPeake | Northern Ireland Local Government Association |
| Ms Karen Smyth | Northern Ireland Local Government Association |

The Chairperson (Mr Clarke): Who is leading?

Councillor Seán McPeake (Northern Ireland Local Government Association): Thank you, Chairperson, for the opportunity to discuss the Bill with the Regional Development Committee. I hope you have the Northern Ireland Local Government Association (NILGA) evidence to hand. We do not intend to add too much to what we have already submitted; I just hope that we can use the time for a productive discussion.

NILGA is in the process of consulting the 11 councils on the proposed content of the programme for local government, which we will share with you when it is finished. We firmly believe that local government should have an active part to play in the delivery of the Programme for Government priorities and objectives, including growing a sustainable economy and investing in the future. NILGA is very supportive of the Executive's drive to better regulation here in the North and is therefore supportive of the move to ensure that the financial and governance arrangements for NI Water are improved, where practical, and to streamline planning activity. However, it is vital that any change to the current regime that will impact on council provision must be subject to prior discussion with the councils in a time frame that allows for appropriate business planning. Councils are willing partners in collaborative efforts to improve public services but within resource constraints and provided that liabilities are not conferred. That is particularly important when considering the proposals in clauses 2, 3 and 4, which Karen will give detail on in the clause-by-clause consideration. Thank you, Chair, and I will hand over to Karen Smyth, who is the policy officer in NILGA.

Ms Karen Smyth (Northern Ireland Local Government Association): Thank you. NILGA is supportive of the intent of clause 1 and can see that providing additional flexibility to the Department in relation to subsidy extension is likely to be a pragmatic solution to what could be a recurring issue.

In relation to clause 2, we are keen to see the Department and Northern Ireland Water working collaboratively with councils as part of the community planning process and eventually in the preparation of development plans. Clearly, given the region's experience in recent years, it is also vital that close working is geared towards ensuring resilience during periods of severe weather. Those relationships had reached a degree of maturity prior to local government reform, and it is vital that pragmatic collaboration is restored at an early stage with the new councils, in relation to both our existing and new functions. NILGA has confidence that work is under way on that issue.

We have no substantive comment to make on clause 3 aside from requesting the inclusion of district councils on the list of organisations outlined at subsection (7).

We have given a relatively detailed view on clause 4 in our written response, so I will use this opportunity to reinforce the need for engagement with key stakeholders as this policy area is taken forward.

We welcome the proposal to reduce the amount of surface water entering the sewerage system and the introduction of powers to ensure that the new sewers are constructed to an adoptable standard as outlined in clause 5.

NILGA is supportive of clause 6 but would supplement our comments with the caveat that Northern Ireland Water should liaise closely with council building control officers and DFP on the setting of construction standards for private sewerage to ensure that no duplication or confusion arises from an overlap of this Bill with existing building control regulations, namely Part N of the Building Regulations (Northern Ireland) 2012.

Thank you for listening. We are happy to take questions.

The Chairperson (Mr Clarke): Thank you. That was just the way we like it: nice and short.

You referred to clause 3. The Committee has looked at the need — no need, in this case — for meters. Your comments about the costs of retrofitting are interesting. I did some enquiries on that because I wondered whether we are wise — please, Chris, do not smile when I say this — to continually refuse to introduce water charging and whether it is cheaper to do it now, leave those in the ground and come back at a later date to revisit that. That is why I am interested in your analysis. I spoke to some of the officials, and they said that, if we are not going to do it for the foreseeable future, it is cheaper to leave those out. They said that retrofitting is not an option because the meters have only a short lifespan anyway. We need to nail that down with some people who are against the removal of the clause. I am starting to wonder whether we are being wise about this. Will this cost more in the future if we introduce water charges? I am told by officials that the meters have a fairly short lifespan. Even the meters that are being fitted today and not being used will have to be replaced anyway if water charges are introduced.

Ms Smyth: Chair, your query is the same as ours. We do not have the cost-benefit figures to look at the cost of retrofitting versus the cost of putting meters in now and not using them. If the Committee has already looked at that, we would accept that.

The Chairperson (Mr Clarke): It came up during a conversation in an evidence session that the Deputy Chair and I had with the Northern Ireland Water chief executive and finance director.

Ms Smyth: Generally, councils are aware of how tight finances are at the moment for all government, and the intent is to make sure that we do not waste money unnecessarily.

Mr Ó hOisín: Karen, you mentioned that clause 3(7) omitted councils. Given the new role of councils in planning management, building control and all the rest of it, do you think that that is a major omission?

Ms Smyth: I would like to see councils being included in that subsection. It would be harsh to say that they were deliberately not put in there. It is potentially more of a timing issue because of how local government reform has come at around the same time as this legislation was drafted. I notice that the Bill was introduced in June, so it may have been sitting for a while before that happened. It has just been one of those things. Certainly, I would like to see that addressed.

Mr Ó hOisín: On the new development stuff, that figure of 5% is incredibly low. How can NILGA or the 11 new councils improve the uptake of sustainable drainage systems (SUDS)?

Ms Smyth: There are a number of opportunities in relation to this policy area at the moment. Obviously, from a council standpoint, we have a council-led community planning process. We have a council-led planning process. Development management activity is already under way, and we are already in councils engaging with local developers and local architects to look at what the intentions are for new developments through the pre-application dialogue process, which is much fuller and more extensive than it would have been in the past.

Obviously, the Minister of the Environment published the strategic planning policy statement on Monday. That has pressed the button for the development planning process in councils. Part of that development planning process underneath that strategic planning policy will enable councils to formulate local plans policies. It may be that councils, provided that they have the training that Mr McNarry referred to, will include issues such as SUDS in those local plans policies to make sure that development in their area goes forward in the way that it should. I cannot really comment on percentages.

Mr Dallat: SUDS relates to sustainable urban development. Is this issue not far greater than just urban areas?

Ms Smyth: I am aware that, through the long-term water strategy, the river basin management activities and the water management plans that have been put in place, we are looking across government at how we manage water more effectively. In relation to the SUDS policy, Ms Hanna will be only too aware of flooding in urban areas and the damage that it can cause. We have experience of more soft SUDS projects, for example the balancing lakes in Craigavon. That is a good example of a soft SUDS arrangement. Yes, it is in an urban area, but the way that Craigavon is designed is very green, and it has very soft landscaping. As we look towards more greenfield development, there are greater opportunities for sustainable urban drainage solutions.

In more rural areas, there is more of an issue with effluent from farms coming into watercourses and that kind of thing, which needs to be dealt with in a slightly different way. I know that the Department is looking at that issue. It is my understanding that it is looking at the issue in the round. Particularly with sustainable urban drainage and particularly with dealing the development of business, development of industry and housing development, there is a need to make sure that those developments will not cause flooding. Part of that will be making sure that, in development plans, development is not allowed on floodplains. We know that councillors and councils will come under pressure if there is a need for economic development in their area, if there is a need for housing in their area and a piece of land is there. It may not be suitable for development, and we need to make sure that a strong position is taken to prevent building on floodplains, where that is possible.

The Chairperson (Mr Clarke): Surely the council is making that decision now, so why — I am wondering how —

Ms Smyth: It is making the decision, but my point is that the councils, from the outset, will need to make sure that the local plans policies are that overarching policy that John was talking about earlier, where it is not a one-off decision —

The Chairperson (Mr Clarke): Karen, there is a difficulty with overarching policies, and Seán will probably know that — I do not know whether you were a councillor for many years. Many of us have seen where overarching plans have indicated areas that flood and for 40 years none of us has seen water in those areas. I am working on a case at the moment where the Rivers Agency says that it is a floodplain. It is the woman's hay field for this last 30 years, and they are saying that it is susceptible to flooding. In other cases, then, they are saying, "Build houses here where we do know that it has flooded", and it is actually not on their map. I do not put an awful lot of faith in some of their strategic documents. I think that is actually one of the good things: we have devolved planning to the local council, where councillors on the ground know the history of an area. In the past, from my perspective, they have failed and failed miserably, so I do not put an awful lot of weight on a lot of the documents that they have had for years.

Ms Smyth: I actually agree with you, Chair. We have got this strategic planning policy, which is much more general, much higher-level than the previous suite of planning policies that we have had. It allows councils to create local policy, so councillors will have that local knowledge of where it does

actually flood and where development should not go. That local knowledge will be invaluable as we go forward. But really the key issue with all this work will be timing and making sure that, if there is legislation on the way in relation to SUDS, it comes at a time to inform those council development plans. As I said, the button has already been pressed on those, so there is a need to make sure that legislation on that comes forward.

The Chairperson (Mr Clarke): Given that I am the Chair, I will stray off a wee bit further again. Obviously, you are in policy, and Seán is a councillor. There is a danger also, but we have devolved this, and there is an opportunity now. We still have a case where a lot of the officials have transferred from DOE into councils, and it is still very much a case of the tail wagging the dog. I think that, in many of the councils, I would really like to see — I know that this is probably not the place to say it, but I am going to say it when I have NILGA in front of me. Councils need to step up to the mark as well and put the officers back in their box and remind them that it is now the councillors making decisions. For many years, DOE made the wrong decisions. That is why we have developments like those I was trying to talk about when I was speaking to Jim earlier. There are the opportunities now for councils to actually put them back in their cage and tell them, "We are making the decisions now." It might fit how they frame the policy, but policies are open to interpretation. I know that some of the councils have not stood up to the mark yet.

Councillor McPeake: Chair, just a brief comment on it. I should declare an interest as someone who sits on a planning committee in a council. I have already seen a couple of instances where members have taken on, for want of a better word, the decisions of council officers and actually have reversed them. Those were brave decisions on the night, but it was felt that it had to be done because of the very stuff you are talking about there; that the members on the committee should not just be nodding dogs. They are there to scrutinise and make their own points. It is a learning curve for the members on it, absolutely. There is a huge piece of work that happens within each and every planning committee. I talk to colleagues right across the board, and the planning committees are lasting five and six hours every night, and there is an intense level of scrutiny there on that. So, I think that all that will evolve through time.

The Chairperson (Mr Clarke): Seán, some of them are doing it better than others. In some councils, the council officers are not even letting the councillors make the decisions. They have been given delegated powers that are that big. If there is a refusal in the Causeway Coast and Glens, it can be out the door, and the councillors do not even get a say in it. It is the same with approval, and that really worries me. To take Karen's evidence today — I am really trying to bring us back to where we should be here — if there is a case where some council officials, particularly in the Causeway Coast and Glens, believe that it is justified and that they can push it out, without the local knowledge of the people on the ground, we are going to have situations where, regardless of what this legislation looks like in the future, they are making the decisions. That really worries me.

Councillor McPeake: You are right. It will take time for it all to work out. A planning committee would normally deal with maybe 16 to 20 applications a night. There are maybe another 40 sitting there in the background that have been delegated at that particular monthly meeting to the officers. We spent an hour and 10 minutes on one application last week. As time goes on, the delegated powers will all be reviewed; they are not set in stone. It will be up to local areas to decide what works and what does not. A lot of the councils are now having what was going to be a monthly development plan meeting fortnightly merely because of the amount of work. That is all evolving. We, through NILGA, maybe need to bring in the members of the planning committee collectively and just learn from experiences so that we can —

The Chairperson (Mr Clarke): There is a degree of nervousness, Seán, among some of the members because they have been thrown in at the deep end from where we were at to where we are at now. Some of the councils have grabbed the ball and are running with it and doing it, but some are not. It does not matter how this legislation looks; it is back to the interpretation of a few individual officers. There are safeguards in this, if you take what Karen said round some of that, and they can be local safeguards. I am not talking about your council; I am particularly focused on the Causeway Coast and Glens Borough Council. The experience coming from it is not good.

Ms Smyth: Let me reassure you, Chair, that the NILGA planning and regeneration working group is meeting on Tuesday. The first action was to write out to the councils to form a councillor planning network to discuss the differences in approaches in the councils to make sure that we have a regional approach in NILGA to look at areas where training is required, where things are working, where things are not working, sharing good practice and sharing bad practice to make sure that it does not happen

elsewhere. We anticipate that that will be quite a strong message going forward that we will be able to —

The Chairperson (Mr Clarke): If we try to get back on to this again —

Ms Smyth: Yes, please.

The Chairperson (Mr Clarke): Clause 5. I welcome the fact that you are in tune with the Committee in relation to private connections on private streets. There is ambiguity there, of course, as well. I am trying to push you back to planning again. DRD has a role to play in private streets as well as unadopted roads. Whilst you are welcoming the sewers, will you make any representation to DRD about trying to draw a parallel between that and the resurfacing of those roads? There was always that problem in the past because of the private streets. The planning policy said that, if there are more than four units, it is no longer a private street. Many of the developers have built the streets in such a way as to mean that the sewer — I am trying to tie it to this document as much as I can — was not adopted in the past, whereas, now, we are saying that it should be. That is what we are trying to do in the clause. At the same time, under the same planning policy, it meant that the streets did not have to be surfaced if a bond was called in because they actually came under a private street. Will NILGA make any representation about that? Karen, will you look at that? That would help all local elected representatives, whether we be councillors or Assembly Members. It is good that you are on the same page as us on this.

Ms Smyth: It is certainly something that we can look into. One of our key messages over time has been that Departments and councils need to work well together at local level to overcome the issues that are being faced. I look forward to the potential creation of the Department of infrastructure that is being talked about to bring the issues together so that there is more joined-up thinking.

The Chairperson (Mr Clarke): Absolutely.

Mr Dallat: Following on from that, I am not sure of the exact number, but there are at least 80 small towns and villages across the North where sewage and water disposals have reached their maximum. In other words, you cannot get planning permission in those towns or villages for any additional dwellings. Should there be something in the legislation to compel the Department to ensure that adequate provision is available for sewage and water?

Ms Smyth: Again, Chair, I think that, in the discussions that have to take place prior to the publication of development plans, there will be a lot of negotiation between the Departments and the councils to discuss issues like that. Obviously, you are looking at issues bringing in housing development, which will bring in the opinions of DSD and the Housing Executive potentially. Councils will have their housing growth indicators and what they need to put in different areas and will have their own views locally about which villages should be developed and in what way. The Department will be required to discuss those issues with the councils, and it would be highly unlikely, if not impossible, for a development to take place without the adequate sewerage and water supply being put in. That would be discussed prior to the development being approved.

The Chairperson (Mr Clarke): Karen, can I frame that in a different way? John is talking about that, and that is the case: developments will not be approved because the infrastructure is not in place. In cases now, developers are being asked to put in infrastructure — so-called — for their development, but it is actually for every other development that comes thereafter. The newest developer in one of those 80 villages will have a prerequisite: subject to his planning permission, he will have to put in the infrastructure. The infrastructure is not just for him but for everybody who comes behind him, which makes it prohibitive for developers, in some cases, to do that. John is really asking whether you see an opportunity for us to tie in the fact that NI Water should provide the infrastructure to let those 80 villages grow. Is that what you are saying, John?

Mr Dallat: Yes.

Councillor McPeake: I agree with that. Whether it would be carried through or not is another thing. That is notwithstanding Karen's proposal that there will be discussions thereafter. There may be greater pressures in some towns than others, but, if the will of the council and the locals in that area was that it was strategically important to grow that village and other factors supported that, it would be beneficial if that were written in.

The Chairperson (Mr Clarke): But the infrastructure costs should fall back on NIW, not on developers.

Ms Smyth: We need to go back and discuss that with NILGA. It is not something that we have any particular policy on. We need to bear in mind the fact that developers build because they are profit-making enterprises; they are not public service organisations.

The Chairperson (Mr Clarke): They are becoming a public service organisation if they are putting in infrastructure for developments that will follow. The other thing is that there are developments that are occupied at the minute, with people living in them and paying rates, but they still have unadopted roads and sewers. NI Water is already getting its cut of the cake, and so is DRD and the local council. However, the people who have invested in those properties have nothing.

Ms Smyth: What I was going to say was this: in other areas, there are aspects of development that require community benefit to be thought about, and that has not really been clear in Northern Ireland in relation to housing, wind turbines or anything. There has not been an overall approach in relation to community benefit or developer contributions. It is something that will require further discussion, and I could not give you a solid answer now.

The Chairperson (Mr Clarke): John, sorry to cut in on you.

Mr Dallat: That is fine. Just to follow on from your point, and I will deliberately not mention the Causeway Coast and Glens Borough Council —

Ms Smyth: It seems that it has got quite a mention this morning.

Mr Dallat: Prior to the new councils coming into being, I suppose that, if you are feeling romantic, you could say that it was a two-tier cake — you had the planners and the council — and now it seems that we have a three-tier cake. How will NILGA ensure that the real influence of planning does not mean that there will be another tier of bureaucracy created in the middle between the planners, who are still in their county halls, and the council, which is somewhere more accessible to the public?

Ms Smyth: From that question, I assume that the planners have remained in the government building in the Causeway coast and glens area.

Mr Dallat: You would not want to give them up.

Ms Smyth: A number of councils have co-located. Planners have gone into council buildings —

Mr Dallat: That certainly sounds good.

Ms Smyth: It has not happened in all places, and that may be a resources issue or a space issue.

Mr Dallat: I would not worry too much about the building. I just worry that, for all the reasons that you gave earlier —

Ms Smyth: Publicly accessible, a mindset and cultural change,

Mr Dallat: — it is difficult to find out what planning applications are in the system, which ones have been rejected and which have been just passed out with no discussion at all. It seems to me that it is the exact opposite of what was intended. It is certainly a lot more difficult now to find out about planning applications than prior to this.

Ms Smyth: That is a concern.

Mr Dallat: I will get into trouble over this, I am sure.

Ms Smyth: The information should be freely available on the planning portal —

Mr Dallat: I know: the computer.

Ms Smyth: It is about accessing the planning portal and knowing how to access the planning portal, which I am not too sure of myself.

Mr Dallat: We will all end up talking to computers.

Councillor McPeake: The search system in the new portal leaves a lot to be desired. It is not sharp enough.

Ms Smyth: It needs work.

The Chairperson (Mr Clarke): I think that John and I are hinting at a particular council where an awful lot of control is left to two individuals who are not councillors, and the council is not informed at all. That is maybe what we are hinting at.

Mr McNarry: Name them.

The Chairperson (Mr Clarke): I would not do that.

Are there any other questions from members to NILGA on what we are supposed to be talking about?
No.

Thank you. Karen, if you could, it might be worth having a conversation with your members about the issue that John raised about the infrastructure problems and whether, if there was a place to put in additions to the Water and Sewerage Services Bill, you would support it. John sort of sprang that on us, but it sounds like a reasonably good idea.

Ms Smyth: I will do.

Mr Dallat: I am full of good ideas.

The Chairperson (Mr Clarke): Thank you.