



Northern Ireland  
Assembly

Committee for Regional Development

# OFFICIAL REPORT (Hansard)

Water and Sewerage Services Bill: DRD  
Officials

14 October 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Regional Development

### Water and Sewerage Services Bill: DRD Officials

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**Members present for all or part of the proceedings:**

Mr Trevor Clarke (Chairperson)

Mr Seán Lynch (Deputy Chairperson)

Mr John Dallat

Ms Claire Hanna

Mr Chris Lyttle

Mr David McNarry

Mr Stephen Moutray

Mr Cathal Ó hOisín

**Witnesses:**

Mr Paddy Brow

Department for Regional Development

Ms Julie Ann Dutton

Department for Regional Development

Ms Jackie King

Department for Regional Development

Ms Linda MacHugh

Department for Regional Development

**The Chairperson (Mr Clarke):** I welcome Linda MacHugh, Julie Ann Dutton, Jackie King and Paddy Brow.

**Ms Linda MacHugh (Department for Regional Development):** I welcome the opportunity to brief the Committee on the proposed Water and Sewerage Services Bill. For those of you who have not met me before, I am the director of water policy and shareholder division.

Members will be aware that the Department has presented to the Committee on a number of occasions throughout the Bill process, including at pre-consultation stage in June 2014 and on the outcome of the public consultation in November 2014. A meeting was also held with the Chair and Deputy Chair on 27 April 2015 to explain the rationale behind omitting from the Bill certain policy areas that had been included in the consultation paper, particularly the detail of how soft sustainable drainage systems (SuDS) are to be approved, constructed and maintained. At that time, the Chair and Deputy Chair were advised that the matter of soft SuDS needed a lot of further consideration before it would be practical to legislate for it, if, indeed, legislation is the right route for soft SuDS at all. At the time, we noted that, in England and Wales, difficulties have been experienced with implementing legislation that would have set up a consent process quite separate from the planning process. Quite recently, the Department for Environment, Food and Rural Affairs (DEFRA) and the Department for Communities and Local Government (DCLG) jointly announced that the responsibility for approving and maintaining SuDS in England and Wales would fall into the planning system and to local planning authorities.

Officials also met the Chair and the Deputy Chair to discuss sustainable drainage, separate to the Bill. At that meeting, we provided details of how separate types of SuDS have already been implemented in Northern Ireland without the requirement for legislation. The Department last briefed the Committee on 3 June 2015, when we detailed the final content of the Bill, just prior to its introduction to the Assembly, and its content has remained unchanged since. The recently appointed Minister has indicated that she supports the Bill as introduced, as it has Executive approval.

I will now summarise what each clause is about to remind you of what the Bill does. First and foremost, clause 1 is the extension of the period for which the Department may pay subsidy to Northern Ireland Water. This is in keeping with the Executive's commitment not to introduce household water and sewerage charges in this Assembly mandate. The Bill also includes the power to make further extensions by subordinate legislation should they be required.

Clause 2 introduces powers for Northern Ireland Water to amalgamate its water resource management plans and drought plans into one water resource and supply resilience plan. That will reduce the administrative burden and cost, and help to ensure that the actions in the combined plan are cohesive.

Clause 3 includes the power to make regulations to amend the existing legal requirement on Northern Ireland Water to install water meters at new domestic properties.

Clauses 4, 5 and 6 will facilitate the consideration by developers of a range of SuDS solutions. We note that this was welcomed by many during the consultation on the Bill as a significant step forward.

Clause 4 introduces a definition of sustainable drainage system —SuDS, as we call it— that can be adopted by Northern Ireland Water. That will ensure that hard SuDS, which are normally large pipes or tanks, usually with a flow-control valve, will be constructed to the appropriate standards and adopted and maintained by Northern Ireland Water as part of the sewerage system.

Clause 5 is about reducing surface water connections to the public sewer network. It encourages developers to consider other drainage solutions, such as SuDS, as Northern Ireland Water will be able to refuse connections if there are suitable alternative drainage options available. It is important to note that this is not solely focused on hard SuDS. Northern Ireland Water will take the provision of soft SuDS options into account in determining whether proper consideration has been given to the drainage for new developments. That will include hard SuDS, soft SuDS or a hybrid of the two, which could very well be the best local solution for the area. Developers will, therefore, be able to propose schemes that include soft SuDS, which will discharge into the Northern Ireland Water network, as long as they have been well designed and arrangements are in place for the long-term maintenance of other parts of the soft SuDS solutions.

Clause 6 addresses concerns previously highlighted by the Committee in its inquiry into unadopted roads. It will ensure that developers will be assured of a connection to the public sewer network only if they have entered into an article 161 agreement with Northern Ireland Water and the sewers have been constructed to the correct standard. Importantly, it will also place a duty on Northern Ireland Water to permit a connection if the conditions of the article 161 agreement are met and the sewers are built to standard. This will provide greater assurance to homeowners that they will not be faced with footing the bill should unadopted substandard sewers fail. It will also provide greater assurance to developers that Northern Ireland Water must permit a connection if the structures are built to standard.

Clauses 7 and 8 are technical and deal with the interpretation and the commencement. Clause 9 is the short title.

The Department is aware that the Committee has heard evidence from a number of stakeholders, and I am pleased that they have been largely supportive of the aims of the Bill. However, some concerns have also been expressed to the Committee, and it has asked for the departmental view on two specific amendments proposed to you by third-party stakeholders. Any amendments need to be considered by the Minister. During her recent periods in office, she has engaged with officials on the contents of the Bill, and, last Wednesday, was made aware of the amendments that you have asked for her view on. She has expressed the view that she does not wish to consider these amendments in isolation. She wants to take full account of all views expressed during the scrutiny of the Bill before determining whether she is willing to support any proposed amendments.

I know that the Committee is well aware that, if the Bill is to receive Royal Assent before the expiry of the legislative authority to provide subsidy to Northern Ireland Water in lieu of domestic charges, the

timescale is extremely tight. If Royal Assent is not received before the Assembly is dissolved at the end of March next year, the Bill will fall and the legislative process will have to restart under the new Assembly mandate in May 2016. That would create an unprecedented situation in which Northern Ireland Water would not have sufficient funds to continue to pay its operating costs, including salaries, contractor costs, rates and energy bills. I appreciate all your help in progressing Committee Stage of the Assembly process, and my colleagues and I will endeavour to assist you in any way that we can to complete the stage as quickly as possible. We are happy to take any questions that you might have about the Bill and its contents.

**The Chairperson (Mr Clarke):** Thank you, Linda and the rest of your team. I have said that the Committee will do everything that it can to assist in order to try to get the Bill through. I cannot speak for everyone — they can speak for themselves — but even during the meeting earlier this week, the opinion was that soft SuDS should be in the Bill. In what circumstances would the Department look favourably on a Committee amendment on the adoption of soft SuDS, or might it even amend the Bill itself?

**Ms MacHugh:** All that I can do is explain why soft SuDS were specifically excluded from adoption. When the Bill was being drafted, there was no clear line of sight on what we wanted to achieve at the end of it. There were an awful lot of unanswered questions about the ownership of SuDS and what kinds of SuDS we were talking about. A sustainable drainage system is not just one thing; it can be a pond, a swell, some sort of trench or soakaway. It can be in a public area, such as a school or park, or in a private development. An awful lot of questions need be answered on the ongoing ownership of soft SuDS and who would approve them. Who has the knowledge and skills to approve what is, essentially, an environmental feature in a development? There were also issues of liability and of who would undertake and bear the cost of ongoing maintenance. At the time, local government had just taken over responsibility for planning, and there is clearly a role for planning in all of this. Councils will look at drainage when considering their local development plans and at individual planning permissions and the drainage solutions for new developments.

Quite honestly, none of that groundwork had been done when we were drafting the Bill. An awful lot of discussion needs to take place collectively so that not only the Department is clear but the Northern Ireland Environment Agency (NIEA), the Department of the Environment (DOE), including planning, Roads Service — there is a lot of potential for soft SuDS there — and local government are clear. We need to work through it in a collective way to figure out the best way forward. All that said, when our new Minister is back in office, it will be her decision, and she will have to consider any amendments. Her view on that will largely be dependent on the amendments tabled.

**The Chairperson (Mr Clarke):** Thank you for that. Just to let you know, your Minister has been back in office since about 9.50 am.

**Ms MacHugh:** Oh, good.

**The Chairperson (Mr Clarke):** Maybe you could talk to her this afternoon.

**Ms MacHugh:** I plan to talk to her this afternoon.

**The Chairperson (Mr Clarke):** I have listened to your explanation, and I am trying to be as polite as I can. You know the direction in which the Committee wants to go. Once you start those conversations, how long do you anticipate it will take to get the answers to all the questions that you have just outlined?

**Ms MacHugh:** We see it taking longer than we have to get the Bill sorted. It is not that we are not —

**The Chairperson (Mr Clarke):** Sorry, but, when we met you this week, we said that we would give you a length of time to introduce an amendment on soft SuDS. We were quite open about the length of time that we could suggest.

Before you go too far — I do not want you to dig a hole for yourself — you mentioned all the people whom you need to speak to. As we all know, soft SuDS can exist. We are talking about their adoption, and it is primarily about surface water or roof water. Those are already considered in planning terms anyway, so that expertise must be there.

In your explanation a few minutes ago, you said that you needed to have conversations with planners and all these people. However, the planners are already having that conversation, and the Rivers Agency is already having that conversation because, obviously, the water from soft SuDS needs to make its way to other watercourses. I do not think that you were being generous to us by giving that answer, given that those conversations have taken place and soft SuDS are already getting approval, as are the developments.

The purpose of the Bill is to adopt hard SuDS, but the Committee does not want to have a situation in which developments are in limbo. People have bought houses in good faith, planning permission has been sought and approved, but the soft SuDS will not be adopted because NI Water simply does not want to adopt them. That is what it looks like.

**Ms MacHugb:** You are quite right: the strategic planning policy statement (SPPS) was recently approved and is now out there. That makes specific reference to SuDS and the need to consider drainage issues. You are absolutely right: that is already there. In addition, the NIEA website has guidance on the production of SuDS. What is missing is any clear view on how soft SuDS should be approved: is there a need for a separate approval body to look at standards, to look at how they were constructed and say whether they were constructed to standard? Also, who would have ongoing responsibility? In jurisdictions where legislation has been put in place, such as England and Wales, it has not been enacted. They realised that they were proposing one route to approve SuDS schemes through an approvals body that was separate from the planning process. They realised that a dual process would confuse things for everybody and elongate the time taken by developers to get the necessary approvals: planning approval and SuDS approval. That is why they are trying to push the two together. That is the bit that we are missing here: how we formalise it. In the interim, there is absolutely nothing to stop people producing soft SuDS.

**The Chairperson (Mr Clarke):** That is the contradiction in all of this. There is nothing to prevent people putting in soft SuDS to sell houses, but NI Water just does not want to adopt them. We need to be clear on something that we have not been clear on or honest about: if a soft SuDS scheme is part of an approved development, it has met the requirements for the release of water. As an outsider looking in at NI Water — I welcome the fact that its officials are before the Committee next — it seems that it simply does not want soft SuDS because, as you touched on, it is about responsibility for the maintenance.

**Ms MacHugb:** Well —

**The Chairperson (Mr Clarke):** Let me finish my point.

**Ms MacHugb:** Sorry.

**The Chairperson (Mr Clarke):** We do not have water rates today, but we might have them in the distant future. Will we have a situation in which people who have soft SuDS and are expected to maintain them themselves will pay the same rates as those with hard SuDS? We hear that criticism from people who pay rates currently. If you go down the route of not adopting soft SuDS and water rates come in, we will have a system in which someone in a house in one development will pay the same water charge to NI Water as someone in exactly the same type of house in a neighbouring development. Yet and all, on top of that, they would be responsible for their drainage system. For that reason, and that reason alone, I believe that NI Water should be adopting soft SuDS. That, I think, is the direction that the Committee is going in, and that is the vision that we have. We are trying to future-proof this, as opposed to looking behind us. You referred to England, but England is not the same as here — we do things differently. Our planning is different as well. These developments have been approved; soft SuDS have been approved; Rivers Agency and all the agencies have been consulted; and the technology and flow rates have been tested. It is time that NI Water stepped up to the mark.

**Mr Paddy Brow (Department for Regional Development):** We are enthusiastic supporters of the work done by the storm water management group and have done a lot of research as part of that. This time last year, a cross-departmental delegation of about 17 people from Northern Ireland went to Wales. In June of this year, a further cross-departmental delegation of about 12 went to Glasgow to look at street drainage. We talked to Scottish Water and learned about its experience. The water companies there are not adopting soft SuDS, because their experience is in operating water systems that are quite different from soft SuDS. What we are all agreed on in Northern Ireland — all members

of the storm water management group — is that the optimum design of a SuDS solution is highly dependent on the specific site and needs to take into consideration the many different drivers.

Northern Ireland Water does not have a remit to run environmental improvement schemes or to provide recreational facilities and amenities, but we know that good SuDS can provide those benefits, which are attractive to councils and to developers, as they help them to sell houses. In Northern Ireland, some say that the balancing lakes — a large SuDS — are a really nice feature in Craigavon, but are we saying that, in future, that feature, which was put in with the support of the community and is a great community resource, should be operated by the water company? That would be at odds with what happens in Wales, Scotland and England.

Our recommendation is that the water company focus on doing what it does and looking after its core assets and that those who benefit from soft SuDS should be the ones who, collectively, look at the design, determine the optimum solution and then agree how it will be maintained and taken forward. We think that a way through the planning process can be found, as is now recommended by DEFRA and the Department for Communities and Local Government in England. We think that the approach that we are trying to take forward, or that we recommend be taken forward in Northern Ireland, very strongly aligns with all the lessons learned in Wales and Scotland. We have to work through this, and at least three Departments are involved. As you mentioned, as well as DRD, Rivers Agency from the Department of Agriculture and Rural Development (DARD) and planning policy from DOE are involved. We can make recommendations to those Ministers. Clearly, a lot of engagement needs to happen, and we think that we can find a way through this, but it will take at least a year.

**The Chairperson (Mr Clarke):** Earlier this week, we told Linda that we would allow longer for the amendment that we suggest be made. We do not want to miss this opportunity. It was interesting that the Institution of Civil Engineers (ICE), which should be battling for its industry, said in its evidence last week that hard SuDS are not always the solution. Although it represents the civil engineering industry, it feels that hard SuDS are not always the be-all and end-all — soft SuDS work as well.

**Mr Brow:** We are all saying the same thing. No one is arguing that the optimum design does not often include soft SuDS, which are cheaper. Very close to here, at Dundonald, Northern Ireland Water needed to build a SuDS solution because the river was in danger of flooding as it flows through Comber. It could have put in a big concrete tank, but it did not. It piloted an innovative tank — a geocellular tank — and saved between £230,000 and £250,000. It is working, it is fine and it has been a great success. That is a type of SuDS that is on the boundary between hard and soft. Other solutions provide much greater environmental benefits. The tank could have been designed to allow water to flow into the aquifer. It could have been an open structure, providing a pond in that area. That would have been nice. However, there needs to be a way of engaging more widely when we are looking at designs and then put in place something that serves everyone's needs. Those who benefit from that are then responsible for maintenance.

Dundonald has a housing development at which the developer said that he would prefer to put in a soft SuDS. We understand that, because that would enable the SuDS to be provided more cheaply. It would also make the houses cheaper. That attractive feature would possibly help sell the houses. Therefore, we understand why the developer would want to do that. We also understand why the council would want that to happen. However, at the moment, the developer has gone for hard SuDS because there was not clarity on how to engage with the council on the design and on who would maintain the public feature. We think that we can find a way through that, and we want to. Very few people in Northern Ireland would argue that they do not want to see SuDS promoted here. We all want the same thing, but it is about how we get there.

**The Chairperson (Mr Clarke):** I do not think that any of us is saying that you do not want to promote it, and it would be wrong of us to imply that. Obviously, the Committee's primary concern is that the Bill is encouraging hard SuDS only. That is how it reads to most of us around the table. It reads that we are dismissing soft SuDS and leaving those who want to look at them in limbo. No one wants to take responsibility, so it is a case of, "If you want us to adopt this, you have to take the hard SuDS route", which even civil engineers are saying is not always the best option.

**Mr Lynch:** The Construction Employers Federation (CEF) is opposed to clause 5. How would you convince it otherwise?

**Ms Julie Ann Dutton (Department for Regional Development):** Clause 5 relates to the refusal of surface water connection. I think that the CEF's complaint is that Northern Ireland Water would be

able to refuse connections. The CEF feels that that is its right and that NI Water could be holding developers to ransom. However, that is not the case. The provision already exists in the Water and Sewerage Services (Northern Ireland) Order 2006. The only amendment to the 2006 order in the Bill regarding surface water connection is the option to include suitable alternatives, which would be a SuDS.

**Mr Lynch:** Are you saying that the CEF is misinterpreting the clause?

**Ms Dutton:** Possibly. The right to refuse a connection is already there, but we are now saying that we can also refuse one on the basis that a suitable alternative exists and should be explored first.

**Mr Lynch:** Have you met some of the stakeholders to clarify some things?

**Ms Dutton:** Not since the issue was raised last week, but we propose to do that.

**Mr Dallat:** I am not sure when it was, but some time fairly recently I woke up one morning and was introduced to the terms "hard SuDS" and "soft SuDS". What on earth were we doing before that?

**Ms MacHugh:** They were always there. Paddy mentioned balancing lakes, which have been there since I can remember, and they are probably the biggest and best example of a soft SuDS that we have. For the purpose of the Bill, though, and for the purposes of adoption, I suppose that we have to differentiate, because, on legal advice and the advice of the legislative draftsman, we really had to focus on what we knew the outcome would be rather than make legislation when we did not know what we were trying to achieve by it.

Hard SuDS are anything that would extend the sewerage system's hard kit. They are quite often just enlarged pipes. They could be attenuation tanks or something that will store more water than a normal sewerage pipe would. There is usually a valve at the end to control the level of flow so that it does not take the water away but holds it in position and releases it more slowly in a way that does not overwhelm the sewerage system and cause out-of-sewer flooding. That is the definition of a hard SuDS. In the legislation, we are trying to extend what are essentially sewers for adoption, which have been around for a long time, and introduce the hard SuDS element so that Northern Ireland Water, as we have said, can establish standards for those. However, NI Water will also be required to adopt them if they meet the standard, in which case it will not have a choice.

**Mr Dallat:** That is very helpful for a slow learner, I suppose, but it still does not explain why we are in the situation of having this wonderful debate on hard SuDS versus soft SuDS and why the most splendid buildings existed for hundreds of years, most of the time with no problems at all, until some clown came along and poured concrete, or whatever else, all around them.

**Mr Brow:** May I give you some background on the drainage industry? It used to be a case of, "How do we get water as quickly as possible from hard areas to the sea?" For instance, let us look at the area around this Building. It would have just gone into a river, and so on. Everything would have gone into the river, including everything from the foul drains. We then had to build combined sewers, but all the surface water from the roof ended up in those sewers as well. Development has now extended to the point at which, at the bottom of the catchment during heavy rainfall, there is not adequate capacity, and it comes out and causes out-of-sewer flooding. We are now at a point at which allowing new connections into the network will be detrimental for people, because it will increase the instances of out-of-sewer flooding and pollution.

Northern Ireland Water, like every other water company, has a choice. It either seeks huge amounts of money to upgrade the capacity of the combined sewer network or it gets some of that water into surface water systems. Studies in the UK have shown that getting it into surface water culverts and rivers is about a third of the cost of putting it into more sewers. For instance, if there is a massive downpour, the water from the roof of this Building and the roads here will cause flooding in east Belfast. We know that from the modelling. Northern Ireland Water is looking to see how it can get that water out, and part of the solution will be putting it into watercourses. However, the watercourses are at capacity. We know that we can solve drainage problems cheaper if we attenuate that water and hold it back. If we were able to use part of the grounds here, instead of the water from the roof causing flooding in east Belfast, it could be used to recharge the aquifer. The aquifer is fully licensed out. There is no more capacity in it. That would provide an amenity value. Some of it would be lost

through evaporation and transpiration. It would go back up into the air, which is great, but some of it would provide a balancing flow into the rivers, improving their amenity value.

The way in which the UK approaches drainage has fundamentally changed, and it has been pushed that way by lots of good legislation such as the water framework directive and the floods directive, which requires the preparation of flood risk management plans. The water companies have responded, because, even in water companies in England and Wales, where they are allowed to have customer bills and to borrow, there is an affordability issue for customers. Water companies do not want to keep building bigger assets. They are trying to solve issues through alternative approaches, and SuDS are part of that. That is why Northern Ireland Water and DRD are fully behind trying to implement SuDS.

**Ms MacHugh:** The other issue is the changing climate patterns. We are now finding that rainfalls that would have been deemed to be one-in-30-year events or one-in-50-year events are happening every couple of years. Every time that there is heavy rainfall, it is that sort of heavy convectional rain that dumps very quickly. If that happens in Belfast, we are gripped to see what part of Belfast may or may not flood and what we need to do to try to prevent it. It is increasingly an issue. You see decking in people's back gardens and front drives concreted over because people cannot get parked outside their house. That is fine, but it is increasing the concreted area — the hard area — and there is then less likelihood of the rainfall naturally seeping into the ground, as was the case previously. Therefore, the need for SuDS will only grow.

**Mr Dallat:** When did the need begin?

**Ms MacHugh:** That is a very difficult question to answer.

**Mr Dallat:** I am just wondering. Were people sitting on their hands for decades and generations, when it was obvious that better design features, and so on, were needed? Who was on the balcony looking down on the crisis that is now looming? Paddy, you referred to this Building. I would never do that, but you did. A few years ago, there was too much water on the roof here, and that resulted in Dundonald House's basement being entirely flooded and the electricity to the whole place being cut off, not to mention those poor people in east Belfast who suffered as well. Who was managing this down through the years?

**The Chairperson (Mr Clarke):** We are starting to stray from the purpose of the Bill. Past or not, we are trying to look at the present. My only criticism here is that we are not looking totally to the future, because we are not looking at soft SuDS as a viable option and encouraging people to go down that route. I think that those things need to be done.

**Mr Dallat:** Chair, I agree entirely with you. I hope that this is not drifting from the issue, but 70 or 80 villages in the North cannot have any additional connections to their normal sewerage system. How will they be affected by the Bill?

**Mr Brow:** That is a separate issue, John. It is related, but it relates more to the capacity of waste water treatment works to meet their compliance standard. This is about storm water. If storm water gets into Northern Ireland Water's combined sewers, it causes out-of-sewer flooding and environmental pollution, and that means that there are compliance issues with European legislation.

**Mr Dallat:** I know. If you ask a few people at the bottom of the hill in Kilrea, they will tell you all about it. It is an annual event.

**Mr Brow:** In summary, to answer your question, when the rest of the UK water industry was privatised in 1989, there was a thought at that stage that the industry could invest out of this and build bigger infrastructure. With hundreds of billions of pounds having been spent since then, there is a realisation that alternative means have to be found. A lot of lights have been going on through some very good work and studies. A key one was done in Ofwat, which is the regulator for water companies in England and Wales. In 2011, it released a report titled 'Future Impacts on Sewer Systems in England'. It states that the combined effects of climate change are growth, which is new development, and urban creep, which, as Linda referred to, is where people build conservatories or garages and park their car on their front drive rather than somewhere else. The report states that the median increase in a one-in-10-year sewer flood will be 51% by 2040. That is a really big issue. We are going to see a



lot more out-of-sewer flooding. Therefore, we all need to retrofit SuDS, and we need to make sure that new developments that proceed have SuDS so that the situation does not get any worse.

**The Chairperson (Mr Clarke):** Paddy, a few minutes ago, you gave us a history lesson about when sewage went straight into the rivers. Whoever in their wisdom came up with the system for a combined sewer is responsible for part of today's problem. Rather than us coming back in 40 years and saying, "Paddy got it wrong 40 years ago because he wouldn't listen to us about soft SuDS either", we are trying to get you to fit two solutions in one today. No one around this table is against SuDS. What we are saying is, "Open your eyes and look at what you have done wrong in the past". It was before your time, of course, but all the sewage was being put into the rivers, and some smart alec that day came along and said, "We will do a combined sewer. We will take the sewage and mix it with the water, and that will be the solution for ever". We all know now that that does not work, because the surface water is causing the problem in the sewerage system.

NI Water is treating surface water, which it should not be treating. That is why we need SuDS. I was impressed the first time that I met your team. I got time privately to look at the scheme that you are referring to, and it all made sense. We are not resisting this. We are just asking you to go that wee bit further and encourage people to look at the other SuDS options. When we get flash floods and the manhole lids blow off, it is not because of too much sewage going down combined sewers but because of too much water going down them. We are blinkered here. We are looking at one solution. We are saying to the developers, "Unless you go down this particular path, we do not want your other one. We will take this on board. We will legislate so that NI Water must adopt it, but do not do the other one, which will give us amenity space or nice areas, because we will not adopt that". You have that responsibility. You look after that now and forever, but NI Water does not want to do it because it is too much bother for it.

**Ms MacHugh:** The Bill is not saying that we do not want to consider soft SuDS.

**The Chairperson (Mr Clarke):** It is Linda. It is saying that we will not adopt soft SuDS.

**Ms MacHugh:** Adoption is the issue.

**The Chairperson (Mr Clarke):** Yes, that is the issue here.

**Ms MacHugh:** Another clause states that you must consider a drainage system, and that can be soft, hard or a hybrid of the two. Depending on the ground conditions and the nature of the development, a mix of hard and soft SuDS might be the ultimate solution. As I have said already, I think that it will perhaps be a challenge for legislation to cover both a soft SuDS solution in a development and a soft SuDS solution that might be part of a roads scheme, which would be maintained by Transport NI as opposed to Northern Ireland Water. In those circumstances, if soft SuDS were the solution, I am not sure that it would be appropriate for Northern Ireland Water to take on that responsibility. Therefore, there are horses for courses and SuDS for different situations. Some will be in the public domain, some will be attached to roads, or potentially part of the river system, while others will be in private developments. I suppose that what we are saying is that it will take a cross-departmental and cross-governmental push to work out a system that will work for all scenarios.

As I have said before, it is important that we engage with local government on this as well, because with councils' new regeneration powers, which they will hopefully get in April, and with their planning powers, they will also have to be part of the solution.

**Ms Dutton:** The main problem that we faced with the Bill was timing. We were all in favour, and still are all in favour, of soft SuDS, and we did try to include soft SuDS at the outset, but, because the Department was not far enough down the road with the policy issues, the draftsman had difficulty preparing the clauses. Really for that reason, we had to take them out. Other than that, if we had had more time, we probably would have been able to get into more detail.

**The Chairperson (Mr Clarke):** What you are saying is that if we attempted to get a clause into the Bill, you would not be averse to it.

**Ms MacHugh:** We would have to look at it, and the Minister would have to consider it.

**The Chairperson (Mr Clarke):** That is welcome.

**Mr McNarry:** I apologise for my lateness and thank you for being here.

I have studied the Bill quite a lot, and I have no doubt that you mean well in what you are saying to the Committee and are doing your job to fit in your criteria. There are other criteria, however, not least the need for the construction industry to build more homes, and more affordable homes. Soft SuDS can assist developers in building cheaper homes and providing more homes, and we as politicians have to listen to that and take it on board. That is important to the people as well, because, without soft SuDS, the Bill may be an impediment to affordable housing. I want you to take that on board: it may be an impediment to affordable housing.

Someone needs to decide whether the Bill without soft SuDS is safe legislation; because you do have enough information about soft SuDS, irrespective of the timing. I hope that the Bill is not just being pressed in haste and being pushed forward because of timing. I hope that you take that into consideration. The Chairman has spoken very eloquently for the Committee in what I have heard him say so far. The Committee understands that expertise is available, and has been available, yet we have been told that you have not talked to many of those experts.

We have taken evidence that soft SuDS can be beneficial, as I have outlined, yet you tell us that you really had no groundwork done before issuing the Bill. That is what you have said to the Committee. You have said that there is a deficiency of knowledge and skills in NI Water — your words. You have also said that local government planning is not, because it is a new construction, fully competent. You will undoubtedly stand over those statements. Are you standing over rushing through an incompetent and incomplete Bill? Is the Bill as it stands, and based on the evidence that you have given, inadequate because it leaves out soft SuDS? That is what this Committee really needs to find out. If this Committee is going to put forward an amendment or amendments, we need to know that our work, before we start it, will be listened to and have a chance. It is all about timing, you tell me, which is totally unacceptable. From what you tell us, there is no point in us tabling any amendments, because they will be timed out. Where do we stand with the work that we would like to do? We would clearly like to help and provide you with the evidence that we have received so far, if you have not already got it, with more to be received. How can we work together to see that soft SuDS can be accommodated in the Bill? Is it no go? Tell us now.

**Ms MacHugh:** There are a few things to say first. I said that there were not enough skills in Northern Ireland Water to know how to manage soft SuDS and, indeed, to approve how a soft SuDS environment might be created. In effect, soft SuDS are an environmental feature. It is not a water drainage feature. I have no doubt that there is expertise in Northern Ireland, probably in the private sector, in some landscape architect companies and construction companies, and we are aware of that expertise.

**Mr McNarry:** You have not talked to them.

**Mr Brow:** We have done a lot of extended consultation with them. The ICE organises a very —

**Mr McNarry:** I would like to have some information, some knowledge and some notes of minutes of meetings with the type of people whom I am talking about. You have just said that you have done a lot, so let us see the paperwork that represents a "lot", please.

**Mr Brow:** The storm water management group went to Wales. In January —

**Mr McNarry:** I am talking about experts in Northern Ireland.

**Mr Brow:** In January, we fully supported the ICE and Climate Northern Ireland. I am member of both organisations —

**Mr McNarry:** I know that you are.

**Mr Brow:** They had a conference at which a local expert in SuDS in Northern Ireland came and spoke. I met that consultant yesterday, who was telling me about the great work that he is doing in London. There are a lot of large-to-medium consultancies based in Northern Ireland that do work for various people, and they have experts in SuDS, so there is experience in Northern Ireland. There is lots of experience, and we have had that engagement. The Chartered Institution of Water and

Environmental Management (CIWEM) has done an awful lot to try to promote SuDS, and so has the ICE.

**Mr McNarry:** You have had that engagement. You now recognise that there are those skills, yet, if you are saying that there is a deficiency of knowledge and skills in NI Water, it does not appear that NI Water is reaching out to those with the skills.

**Mr Brow:** It is a case of asking what the skills are that are needed for the various stages in the process. Very few of the councils have any experts in drainage or soft SuDS. If we listen to the recommendations made by Scottish Water and the recommendations from England and Wales that SuDS should be considered as soon as possible in a planning process — right at the front, not at the back — that clearly involves planning, so there needs to be capability there. How do we build that capability in the councils?

**Mr McNarry:** You are telling me that, if this Bill were enacted tomorrow, there are very few people, if any, in local councils who could handle a planning application with a SuDS involvement in it. There are even fewer people in Northern Ireland Water, and it appears to me that there is no level of expertise in your Department.

**Mr Brow:** There is limited detailed technical knowledge in councils on SuDS. We had a good engagement with Northern Ireland Water, which has fully played its part. It says that it is standing by and has been working to date with councils on a large number of SuDS schemes. It is not just looking at the hard elements. If Northern Ireland Water is asked for a connection that would include hard SuDS, it does not say that it does not want to know anything about the soft part. It already looks at those plans. It helps developers —

**Mr McNarry:** If I may interrupt you, that is contrary to what we have been told. We have been told that one of the greatest difficulties that developers have is with Northern Ireland Water and its monopoly on connections.

**The Chairperson (Mr Clarke):** David, going forward, the purpose of the Bill is to prevent that so that Northern Ireland Water could not refuse a connection.

**Mr McNarry:** That is a good thing.

**Ms MacHugh:** You have a point: we have no internal expertise in DRD about soft SuDS. Part of the reason for that is that there is clearly an environmental element, so that is why it is important that we speak to our colleagues in DOE, because they have some environmental expertise. As I said earlier, NIEA has guidance on how to develop soft SuDS.

**Mr McNarry:** They told us that they had no expertise either. The girl sat here and, boy, was she honest with us. It is worth reading her contribution in Hansard, if you have not already read it.

**Ms MacHugh:** They would certainly know an awful lot more about the environmental impact of soft SuDS than we would. Equally, we are not planners in DRD, and that is also why we are talking to planning policy in DOE.

**Mr McNarry:** You are sponsors of the Bill.

**Ms MacHugh:** We are, yes.

**Mr McNarry:** All that I am saying is this: you have got it this far, and I think that there could be a very good case for the Bill to include soft SuDS; otherwise, we are in great difficulty, because you are leaving out something that is a development — a premier development — that can make a difference to affordable homes.

**Ms MacHugh:** Nobody here is arguing that they are not a good thing. We still have a lot of work to do to understand exactly how soft SuDS can best be legislated for.

**Mr McNarry:** I think that, together, we can help you on that.

**Ms MacHugh:** Good.

**Mr McNarry:** All I really want to ask you is this: are we wasting our time looking at an amendment that might include soft SuDS? Are you, where you are, doing the normal departmental stuff? I appreciate what you are doing; I have no problem with that whatsoever. You are doing your job. Really, at the end of the day, you are back to the timing, and you will say to the Committee, "That is all very well. That sounds very good, but I am sorry". You will come to the Assembly with a Bill, and your Minister will stand up and, for some reason, because she has been advised by her great and good, say that there is no time for this.

**Ms MacHugh:** As officials, all that we can do is to look at the amendment, consider it and seek our legal advice and then advise the Minister. It will be for the Minister to decide what she does with any amendments that are put forward.

**Mr McNarry:** We have heard all that before from the Department, so I hope that we are not starting off with a new Minister on the same blooming track.

**Ms MacHugh:** As officials, we cannot make decisions about amendments.

**Mr McNarry:** I understand. I appreciate that.

**Ms MacHugh:** That is a ministerial decision.

**Mr Dallat:** You advise.

**Ms MacHugh:** We advise, yes. We have to advise a Minister on the basis —

**Mr McNarry:** Will you advise the Minister that you think that it is good policy — good all round and beneficial to Northern Ireland society and the housebuilding and construction industry — and good advice that consideration should be given to either put in or receive an amendment worthy of inclusion in the Bill?

**Ms MacHugh:** Again, that would depend on how the amendment is drafted, because it beat our draftsmen. So, it is maybe over to what the amendment will look like.

**Mr McNarry:** I think that that is good.

**The Chairperson (Mr Clarke):** You said that it beat your draftsmen. I am picking up on what Julie-Ann said a few moments ago when she said that you had looked at soft SuDS. Had you got to the stage where you had some form of clause drawn up?

**Ms Dutton:** We had a first draft prepared, which was very similar to the English legislation — schedule 3 to the Flood and Water Management Act, I think it is called. However, the legislative draftsmen came back with lots of questions, such as, "I have prepared you a draft. How do you expect this to work? What are your policies that would work behind this?", and it became very clear that it was not thought through.

**The Chairperson (Mr Clarke):** Would it be possible to furnish us with a copy of what the clause would look like?

**Ms Dutton:** Yes.

**Mr McNarry:** Can I just ask one further question? When the legislative draftsmen come back — obviously, I have been there before with them, so I know what they are like — did they point out that there was an inadequacy or a gap in the Bill because it did not include soft SuDS?

**Ms Dutton:** Not that I recall.

**Ms MacHugh:** No. The advice was that it would not be advisable to even try to legislate at this stage in primary legislation, even if something were going to be implemented by regulation and subordinate

legislation, without actually knowing what the end goal was, what we were trying to achieve and who would be responsible. You could find that, in drafting a very vague piece of primary legislation, you might end up with the wrong primary powers.

**Mr McNarry:** I understand.

**Ms MacHugh:** So, it was for that reason. It is true to say that we are up against a very tight time frame. At one point, I thought that, if we do not have enough time to get the full Bill through the Assembly procedure, the only other option would be to take out the one clause that would provide us with the powers to extend the payment and try to rush that through with some urgent procedure. That is not ideal either. Then we would take more time on the main body of the Bill. However, we felt that there was enough in the rest of the Bill to want to push forward with what we could legislate for in the time frame. We have not lost sight of the soft SuDS elements, by any means. We are not trying to create a situation in which, for whatever reason, developers feel that they do not want to take on the responsibility of soft SuDS themselves and that, therefore, hard SuDS is the only route for them, because, as was said already, in some situations, soft SuDS could absolutely be the best solution. We will then have to look at ways of supporting the construction industry to look at different ways of implementing soft SuDS.

**Mr McNarry:** Have you met the construction industry representatives recently?

**Ms MacHugh:** I have not in my time in the Department, but we will meet them on a number of issues, including bonds, next week, hopefully.

**Mr McNarry:** That sounds like reasonable progress.

**The Chairperson (Mr Clarke):** I think that it is work in progress. We need to keep working at it, rather than missing any part of it.

**Ms MacHugh:** Absolutely.

**Mr Ó hOisín:** One of the purposes of the five tenets of the Bill is to promote sustainable drainage. The evidence that we have had so far from the likes of NIEA, the Construction Employers Federation and the Institution of Civil Engineers has suggested that there is an engineering solution and an environmental solution. I know, Linda, that you said that it is more of an environmental issue than a water drainage issue. However, the bottom line is — David McNarry has touched on it — that it is preventing housing development in particular in many areas, because they do not have the connection. The waste water treatment plants are working at capacity or near capacity, and it will not be connected. That has real, long-term effects on the ground, where some 60 or 70 developments are not going ahead. I think of my constituency. In the last five years, 100 social housing units have been built across the entire constituency. Under the housing development plan, there are fewer than 300 planned in the 2015-18 scheme. That is the reality of it.

We are not reinventing the wheel. Richard from the ICE, who was here last week, said that, in the centre of London, soft SuDS schemes are up and running, serving huge developments, so, for the life of me, I cannot see why we cannot have that solution looked at and included. It just does not make sense. The combined system does not make sense, as the Chair already said.

**Mr Brow:** Can I clarify a few things in relation to connections? There are two completely separate issues. The issue about waste water treatment works having inadequate capacity does not relate to storm water. That is a separate issue. That is due to their biological lack of capacity because they do not have the money to invest. Ideally, a water company in England or Wales would borrow the money and build ahead of the need, so there would not be that connection issue; but in Northern Ireland, as we know, they have to live within the public expenditure (PE) constraints. So, that is a direct implication of that issue.

The SuDS issue is separate. There are no developments that have not been able to proceed because of the SuDS. It is completely separate. The issue with the SuDS is because the Rivers Agency, in relation to the EU floods directive, is now restricting run-off from brownfield sites and greenfield sites where, if it is developed, it could cause flooding or make existing flooding worse. They are restricting that to 10 litres per second per hectare. Also, Northern Ireland Water, mindful of its responsibilities to not allow out-of-sewer flooding, is restricting connections to the combined sewer network that might

cause flooding. That is not related to the waste water treatment works capacity. They are completely separate issues. It is the prevention of flooding that is driving SuDS. In the scheme that you talk about in London, there is some great work being done. McCloy Consulting is a small firm of 10 people based in Northern Ireland. They are doing design work right in the centre of London. The capability is in Northern Ireland. It comes down to the role of Northern Ireland Water. Is Northern Ireland Water a drainage and waste water services provider or a body that the Northern Ireland Executive will ask to have a role in amenity and environmental improvement schemes? That is what it comes down to.

I would encourage us to focus on the recommendations and make them part of the planning process. The best SuDS schemes allow houses to be built as we all want at reduced cost and to be attractive developments. The best schemes come when there is engagement by all parties right at the front as part of the planning process. Everyone who will be benefiting from them and operating them is then involved in the design acceptance process.

This is complex. The Environment Agency has done some good work to fund guidance on SuDS. The document, when printed out, will be about 1ft wide. You can access it now. It is on the CIRIA website. It is a complex area. We need to instil that and help people in the Planning Service, in Northern Ireland Water, in the Department and in the Rivers Agency. We all need to work together to understand how we work through that and provide clarity to developers.

**Mr Ó hOisín:** As I said, this is not reinventing the wheel. The people from the ICE said that there is an engineering and environmental solution to this.

**Mr Brow:** Absolutely, we agree.

**Ms MacHugh:** There is, and we are not stopping that.

**The Chairperson (Mr Clarke):** You are not encouraging it.

**Ms MacHugh:** We are not making it mandatory. You can encourage things without legislating for it. That is one of the issues we have.

**Mr McNarry:** Do not tell us that. We are politicians. We hear that all the time. We try to do that, and we never get away with it.

**Ms MacHugh:** Sometimes legislating and putting mandatory requirements onto people is not the way to encourage. It may require legislation —

**The Chairperson (Mr Clarke):** Let us play devil's advocate. We will encourage everybody to do everything, but if you are a developer and go with a soft SuDS scheme, and there is a problem with the flow, in the application process NI Water will say, "No, you are not building houses there because you are adding too much water to our system. We do not want to know."

**Mr Brow:** No, I think —

**The Chairperson (Mr Clarke):** But Paddy, that is the reality here. This is the difficulty we have with this piece of work. I appreciate what Linda said a few minutes ago, but you have not even spoken to the construction industry yet. We are at a late stage with all this, but that is what the construction industry is telling us. It is "no" or "no, we can't tell you the price" or it is bland answers. They are being treated abysmally. I do appreciate Linda saying that she is going to meet them, but bear in mind that we are at a late stage of the Bill to try to get it through.

There is not one person around this table who does not want to see this Bill going through, but we want it to help everybody. That is the difficulty, and you have not spoken to the construction people. Linda said about talking about bonds. They talked about everything here, and they will tell you the experience they have with other parts of your Department, whether it be DRD or NIW.

**Ms Dutton:** Colleagues did speak to the construction industry at the consultation stage, prior to the Bill being drafted, so we did seek all their views at that stage. It was only afterwards that it became apparent that we could not legislate for soft SuDS. We have not spoken to them since then.

**The Chairperson (Mr Clarke):** It is just about encouraging. We are all encouraged. We are encouraged to see this Bill here. We will be encouraged to see it over the line, but we want it to help everyone, not necessarily just NI Water, because NI Water's track record on working with developers has not been good.

**Mr Ó hOisín:** You just said what I was thinking. I know of a development in my constituency that did not go ahead because it could not connect, and others as well.

**Ms MacHugh:** That issue about headroom capacity is something that Northern Ireland Water is looking at. Within the constrained budget that it has, it is doing what it can to help with capacity issues. You will be aware that, in this financial year, it could not afford the full price control settlement, so it is already £50 million short this year.

**Mr McNarry:** Maybe we need to make sure that this Bill is for the people and not for Northern Ireland Water. If you are designing it for Northern Ireland Water, you will be clobbered. It is for the people and the advantages of the people. Too often, we have seen Departments working with Northern Ireland Water and other people. The Bill is for the people, not for those companies.

**Ms MacHugh:** Absolutely. In my fairly short time in the Department, I have seen more pictures of raw sewage in people's back gardens. It is not a pretty sight. People are left in developments that are not adopted and Northern Ireland Water does not have the vires to go in. Maybe people have not been given enough advice before purchasing a house that they are purchasing an unadopted sewerage system. It really is terrible. Developers have the right to build houses in areas where there are drainage issues — that is fine; new houses are needed — but we need to bear in mind the rights of those who have bought houses and need protection from being flooded with out-of-sewer flooding, which is not pleasant for anybody.

**The Chairperson (Mr Clarke):** OK, members. We have given that a good hearing. Thank you, Linda, and thanks to your team. We will keep working together to find a solution.

**Ms MacHugh:** Absolutely. Thank you.