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Peter, a chara,

COMMITTEE FOR INFRASTRUCTURE: FOLLOW-UP FROM MEETING ON 18 FEBRUARY 2026 – SUDS BILL

The Committee have asked for further details in relation to the SuDS Bill, I have listed Members' questions and my responses below.

General Provisions of the Bill

1. What assessment has the Department undertaken of the long-term costs associated with SuDS, including ongoing maintenance, inspection, adoption, and lifecycle replacement costs? How does the Department intend to ensure that sustainable funding mechanisms are in place to meet these long-term costs?

A public consultation seeking views on the development of policy relating to the future regulation and use of Sustainable Drainage Systems (SuDS) in new housing developments in the North was launched by my Department on the 22 September and closed on 19 December 2025. The consultation will inform policy development by gathering essential information and opinions on key policy areas, potential implementation challenges, and opportunities to promote the wider uptake of SuDS.

The long-term costs associated with SuDS are not yet known as the detailed regulatory arrangements have not yet been agreed. Options for the new regulatory arrangements will be costed and assessed in a business case which will be informed by further public consultation. However, it should be noted that it is likely that some of the anticipated functions of any new public body created under Clause 2 may replace existing functions and therefore may not all involve additional costs. These issues will be examined in depth as part of the policy development process that my Department will be progressing over the coming months.

Water Use Bans (Clause 1)

2. What steps has the Department taken to ensure that the provisions in Clause 1 are aligned and fully consistent with existing legislation, as well as current regulatory and enforcement frameworks governing water resource management?

Clause 1 allows for the expansion of the list of activities which NI Water may prohibit or restrict as part of a temporary hosepipe ban or temporary use ban. NI Water will be able to select from this comprehensive list of activities and may prohibit all, or any, as necessity dictates. The powers which will be made available to NI Water under the proposed legislation are comparable to those in other jurisdictions.

In England and Wales, Flood and Water Management Act 2010 included additional areas in a temporary use ban, which have been broadly replicated into this Bill.

As part of the policy development for the current Bill, my Department examined current hosepipe ban legislation across England, Scotland, Wales and the South, and adopted the most suitable elements of each hosepipe ban policy to formulate this Bill.

The regulatory and enforcement frameworks governing water resource management are unaffected by this Bill and remain the same. This Clause is only amending Article 116 of the 2006 Order to expand on the list of activities which NI Water may temporarily prohibit (typically during periods of high demand or drought) in order to conserve vital water supplies.

Sustainable Drainage Systems (Clauses 2–5)

3. Clause 2(3) provides that the Department “may” make regulations in respect of SuDS. Why has a discretionary power been chosen rather than a duty? Did the Department consider using “must” to require regulations governing the design, construction, and operation of SuDS, and if so, why was this approach not adopted?

A discretionary power has been chosen because my Department is continuing to shape its policy on SuDS and is actively gathering the evidence and stakeholder views needed to determine the appropriate scope, structure, and regulatory framework for their future implementation. Given this ongoing work, introducing a mandatory requirement at this stage would be premature, and risk committing my Department to a fixed timeline and policy direction that may ultimately prove inappropriate once the full range of complex considerations has been assessed and consulted upon.

The Department did not consider using “must” to require regulations because the Water, Sustainable Drainage and Flood Management Bill has been deliberately designed to support a phased, step by step implementation approach. This enables my Department to bring forward detailed regulations only when the underlying policy, technical standards, operational requirements, long-term governance arrangements and costs have been fully developed and understood. Such an approach should ensure that future regulations will be robust, evidence based, and capable of supporting the effective delivery, and maintenance of SuDS.

4. What specific environmental considerations informed the drafting of Clause 2, and how were these reflected in the policy intent behind the provision?

The environmental considerations that informed the drafting of Clause 2 are flood risk management, water quality in our waterways and the provision of enhanced amenity and biodiversity.

The policy intent behind the provision is that rainwater should be managed as close to source as possible, with the aim of slowing its flow rather than allowing surface water to rapidly accumulate and overwhelm traditional piped drainage systems. This approach reduces pressure on existing drainage networks, enhances resilience during heavy rainfall events, and supports more sustainable long-term management of stormwater.

While the precise benefits delivered by a nature-based SuDS scheme will depend on the characteristics and constraints of each individual site, the recognised outcomes fall broadly into four key categories:

- Water quantity – controlling the volume and rate of runoff to support effective flood-risk management while helping to maintain and protect the natural water cycle.
- Water quality – improving the quality of surface-water runoff by reducing pollution and preventing contaminants from entering receiving water bodies.
- Amenity – contributing to the creation and long-term stewardship of high-quality places that offer social, recreational, and visual benefits for communities.
- Biodiversity – enhancing ecological value by creating and sustaining habitats that support wildlife and contribute to wider nature-recovery objectives.

Together, these four pillars reflect the multi-functional aspects of nature-based SuDS and the wider environmental, social, and resilience benefits that these approaches can achieve when integrated effectively within new development.

5. Has the Department considered including a regulatory requirement for developers to justify any decision not to use nature-based SuDS approaches? If so, what was the outcome of that consideration?

The Bill provides the enabling powers necessary to support the use of nature-based SuDS, where site conditions allow. A public consultation on this matter has recently been completed, and its findings, alongside findings from further planned consultations, will inform the development of detailed policy, by gathering essential evidence and views on key implementation challenges.

It is anticipated that future regulations made under the Bill will establish a comprehensive regulatory regime governing the design, construction, operation, approval, adoption, and long-term maintenance of SuDS. This framework will facilitate the integration of nature-based drainage techniques into new developments wherever feasible, helping to reduce pressure on existing drainage systems, support climate-change resilience, and potentially contribute to reduced pollution.

However, it is recognised that nature-based SuDS will not be feasible in all locations or circumstances, nor will they always provide the most appropriate technical solution. It is therefore expected that future policy and associated design guidance will include clearly defined exceptions to the use of nature-based SuDS. The detailed criteria for such exceptions, and the justification required where a nature-based approach is not pursued, have not yet been finalised and will be worked through as policy development progresses.

6. Has the Department considered explicitly linking the use of SuDS for flood management purposes with wider environmental objectives, including water quality targets, nature recovery strategies, and climate change commitments? If so, how does the Bill give effect to those linkages?

My Department recognises that SuDS provides benefits not only as a drainage and flood management tool, but also as an important mechanism for delivering wider environmental outcomes.

While the Bill's primary purpose in this area is to establish the enabling primary powers and framework necessary to enable the use of SuDS, replacing traditional piped systems where feasible, it will also support the achievement of broader environmental objectives. In developing the associated regulations, in consultation with environmental stakeholders, my Department will continue to shape future SuDS policy, design, and practice in ways that advance nature recovery, improve water quality, and strengthen climate resilience.

Future design guidance issued under the Bill will be able to specify a range of nature-based features, such as basins, swales, and raingardens. These elements allow drainage functions to be aligned directly with improved ecological and environmental outcomes, supporting greener, more sustainable places.

Although the Bill does not set explicit environmental targets (as water quality and climate change targets are already set in a range of environmental legislation which underpins the regulatory function of the Environment Agency), it provides the statutory framework required to embed more sustainable, nature-based drainage approaches. This will ensure that future SuDS implementation is both robust and consistent with my Department's wider environmental ambitions. The wider benefits that the implementation of SuDS can bring, are well documented in various plans and strategies including Sustainable Water - A Long-Term Water Strategy for Northern Ireland, the Northern Ireland Climate Change Adaptation Programme and Local Development Plans.

7. Clause 4(1) defines SuDS in a manner that appears to focus primarily on water quantity. Why does the definition not explicitly reflect the other recognised pillars of SuDS — namely water quality, amenity and biodiversity?

Clause 4(1) provides a minimum legal definition needed to progress regulatory powers in relation to SuDS. Its purpose is to define the type of system my Department may regulate for, and not to prescribe every objective that any new system should meet. It therefore does not attempt to define the full breadth of SuDS benefits.

My Department understands the wider water quality, amenity and biodiversity benefits that nature-based SuDS can deliver, but the primary driver for this change is surface

water drainage and managing rainwater at source in a more sustainable manner. In doing so, this will help to minimise the future loading that new development might place on existing drainage systems.

While the Bill does not embed these objectives as statutory duties, it provides the regulatory powers and guidance mechanisms necessary to integrate water quality improvements, biodiversity gains, and climate change adaptation into the future SuDS regime.

8. Witnesses suggested that the Bill would benefit from greater statutory clarity, particularly under Clause 2, regarding approval processes, funding arrangements, adoption, and long-term maintenance responsibilities. They recommended clear allocation of responsibilities and explicit provision for secure, long-term funding. How does the Department respond to these concerns?

The Bill provides the enabling powers necessary to regulate for nature-based SuDS. My Department is actively gathering the evidence and stakeholder views needed to inform the development of this new regulatory framework. Given this ongoing work, including further detail on the regulatory arrangement in the Bill at this stage would be premature, and risk committing my Department to a policy direction that may ultimately prove inappropriate once the full range of complex considerations has been assessed and consulted upon.

9. What specific arrangements does the Department propose in respect of long-term maintenance of SuDS? Has consideration been given to placing explicit statutory maintenance duties within the Bill?

The Bill will provide enabling powers to allow my Department to make future regulations governing the design, approval, operation, and maintenance of SuDS, with the objective of establishing SuDS as the preferred means of managing surface water. The recently completed public consultation, together with further consultations planned as policy development progresses, will provide essential evidence and stakeholder insight on key policy areas, potential implementation challenges, and opportunities to promote the wider uptake of SuDS.

This approach will ensure that the regulatory framework is informed, robust, and workable. Once this policy development and consultation process is complete, my Department will be in a position to bring forward detailed regulations setting out the finer operational and technical requirements. This will include provisions for long-term maintenance, thereby formalising a sustainable and resilient drainage regime for new development.

10. The panel proposed a hybrid governance and approval model whereby local authorities would hold statutory responsibility for approving SuDS design and construction, with technical sign-off from NI Water where systems connect to, or form part of, the public drainage or wastewater network. What consideration has the Department given to such a model, and what are its views on its feasibility?

The question of which organisation should be responsible for approving the design and construction of nature-based SuDS proposals was included in the recent public consultation, and a range of responses were received, including potential hybrid arrangements. These responses, along with the wider set of points raised through the

consultation, will be examined in depth as part of the policy development process that my Department is currently progressing and will be addressed in future secondary regulations that the Committee will be able to scrutinise.

11. The panel also proposed a blended funding model combining public funding for core policy, oversight, and enforcement functions, with developer contributions covering transactional costs such as application processing and inspection. Has the Department assessed this approach, and what conclusions has it reached?

A recently completed public consultation, designed to inform various aspects of policy development for nature-based SuDS, included a specific question on funding arrangements. Alongside the information gathered through this exercise, my Department intends to undertake further detailed analysis in parallel with the development of the policy framework enabled by the Water, Sustainable Drainage and Flood Management Bill. As this work progresses, the Department will engage with key stakeholders to ensure that any eventual funding model is practicable, equitable and capable of supporting an efficient and timely approvals process.

12. In relation to adoption and maintenance, witnesses proposed a hybrid model under which NI Water would adopt sewer-like or below-ground components, while local authorities would adopt accessible above-ground features where capacity permits. They further suggested that private management arrangements should only be permitted where robust legal safeguards are in place. What consideration has the Department given to this model, particularly in relation to avoiding poorly maintained or “orphaned” assets?

Various options for the future maintenance of SuDS features are actively being considered by my Department, this work is being informed by the evidence gathered through the recently completed public consultation. Ongoing engagement with NI Water, local councils, developers, environmental stakeholders, and an assessment of models operating in other jurisdictions will also form a key part of this process. No decisions have yet been taken. Ensuring that SuDS assets are consistently and effectively maintained, and that responsibility is clearly assigned and enforceable, will remain a central consideration in the Department’s continuing considerations and analysis.

13. Clauses 2(3)(a) and 2(4)(a) provide for the removal of SuDS. In what circumstances does the Department envisage that removal would be appropriate or necessary?

These clauses are intended to protect the integrity of SuDS features, similar to any other drainage assets, by ensuring that no SuDS component can be removed without prior approval. This safeguard is an important part of establishing a regulated SuDS regime and helps to prevent the unauthorised alteration or loss of drainage features that are essential to managing surface water.

In addition, the clauses would also apply in circumstances where a SuDS feature fails to function safely or effectively, a system has been installed without the necessary approval, or a SuDS installation is not compliant with regulations or approved designs.

In such cases, the removal, and subsequent reinstatement or replacement, of the SuDS feature may be required to ensure public safety, maintain system performance, and uphold regulatory compliance.

14. What mechanisms will be put in place to ensure that appropriate planting schemes — including selection of suitable tree species and vegetation — are secured and maintained as part of SuDS design and implementation?

My Department acknowledges that the long-term effectiveness of nature-based SuDS depends on ensuring that planting schemes, including the careful selection, establishment, and ongoing maintenance of appropriate vegetation, are properly designed and managed. While the Bill provides the overarching enabling powers, future SuDS regulations and associated design and maintenance guidance will incorporate the necessary technical standards to support this. These standards will include requirements for appropriate planting, species selection, site-specific vegetative design, and long-term vegetation management, ensuring that SuDS components function effectively throughout their lifespan.

15. Evidence to the Committee suggested there may be a legislative gap in relation to runoff standards. In particular, the Bill does not appear to require that runoff from new developments should not exceed existing greenfield rates, nor that developments follow natural flow pathways across a site. Does the Department accept that such a gap exists? If so, how does it intend to address it?

The purpose of the Bill is to establish a statutory framework within which SuDS can be taken forward. The relevant provisions primarily create enabling powers, allowing my Department to regulate the use, design, construction, operation, approval, adoption, and maintenance of SuDS through future secondary legislation. The Bill does not set out technical runoff standards within the primary legislation, as these detailed requirements are more appropriately addressed through existing legislation, the Drainage (NI) Order 1973 and the Water and Sewerage Services (NI) Order 2006, to manage the rate of discharge. As a result, there is no need to duplicate these provisions within the new Bill.

Specific runoff restrictions, including limitations to greenfield runoff rates, where these are currently required, will continue to apply alongside this Bill and any subsequent SuDS regulations, where appropriate.

16. What steps is the Department taking to address potential skills and capacity gaps in the design, approval, inspection, and maintenance of SuDS across relevant authorities?

As policy and the associated regulations are progressed and finalised, my Department will be in a position to develop the detailed training, staffing, and capability programmes that may be needed across all relevant authorities to support full and effective SuDS implementation.

Flood Protection and Remediation (Clauses 6–9)

17. Witnesses suggested that Clause 8 could more explicitly recognise risks to high-value receiving waters, including those within protected areas or supporting sensitive fisheries, where even minor changes in sediment load, nutrient levels,

or flow may cause disproportionate harm. They proposed that enhanced requirements — particularly for nature-based SuDS — could apply within such catchments. Has the Department considered adopting a catchment-based approach? If so, how could such an approach interact with the provisions of the Bill?

Clauses 6 to 9 are not relevant to SuDS, moreover they are concerned with my Department's powers to update or amend certain regulations in the face of future developments. Following on from the exit from the EU, there is a need for my Department to have a power to make amendments to two existing sets of regulations. Section 2(2) of the European Communities Act 1972 gave Departments powers to amend, update or revoke regulations made under that section, in line with changes to EU legislation. Section 2(2) powers were repealed by the European Union Withdrawal Act 2018.

Although action has been taken to ensure that all relevant existing statutes were protected and that the statute book remained fit for purpose, departments are unable to make further amendments to certain regulations without new primary legislation powers. The specific regulations are the Drainage (Environmental Impact Assessment) Regulations (NI) 2017 and the Water Environment (Floods Directive) Regulations (NI) 2009. I am therefore including regulation-making powers for these two sets of regulations in this Bill to enable future amendments to be made via secondary legislation rather than primary legislation, so as to make best use of Assembly time. Any proposals for amendments made via secondary legislation will be subject to the normal Assembly scrutiny process.

Currently, flood risk management and the environmental impact assessment of drainage works are regulated by regulations made by my Department under section 2(2) of the European Communities Act 1972. The repeal of that provision means that my Department's ability to regulate these areas by way of subordinate legislation has been lost. Clause 9 therefore replicates what the 1972 Act allowed. This will allow my Department - within the scope - to amend or revoke existing provision contained in the current regulations or to add new material to those Regulations. In the future, if policy alters over time, the power will be capable of being exercised to deliver it (always subject to the overall constraints of the power).

18. In relation to Environmental Impact Assessments (EIAs), what safeguards has the Department considered to ensure that SuDS infrastructure is not designed or located in ways that could adversely affect protected areas, ancient woodland, or other environmentally sensitive sites?

A SuDS approach with a strong emphasis on nature-based solutions, is not simply about improving drainage. It is about creating climate resilient, healthy, attractive, and sustainable communities. It represents a practical, forward-looking investment in people, places, and the environment.

These new powers will sit alongside, and not override, existing legislation relating to the protection of irreplaceable habitats, sensitive sites, and designated protected areas. All current environmental protections will continue to apply in full.

19. Witnesses expressed concern that Clause 8 appears primarily focused on engineering works and may not adequately capture the natural or environmental

components of SuDS. They suggested either broadening the relevant definitions to reflect these elements or revisiting the EIA provisions to ensure that significant SuDS developments are subject to appropriate environmental assessment. How does the Department respond to these concerns? And

20. The panel queried whether Clause 8 applies solely to the SuDS component of a wider development. They noted that, in practice, a single EIA would normally assess the full development, with separate chapters addressing individual elements. How does the Department intend the Bill's EIA provisions to interact with existing development-level assessments, and what steps will be taken to avoid duplication or inconsistency?

Clause 8 is not concerned with SuDS. The Drainage EIA regulations relate solely to drainage works and schemes carried out under the Drainage Order. The purpose of Clause 8 is simply to allow my Department to amend the Drainage EIA regulations in future, if required. The current Drainage EIA Regulations transposed European Council Directive 2014/52/EU for dealing with the assessment of the effects of certain public and private projects on the environment.

Development proposals which include SuDS, will be subject to the normal EIA requirements under the existing development-level assessments.

Miscellaneous (Clauses 10–12)

21. Witnesses indicated that Clause 11 lacks clarity. They emphasised that, as a matter of principle, water should not be discharged from SuDS into a watercourse unless it has passed through the full SuDS management train and been appropriately treated. They cautioned against systems that simply convey untreated surface water via pipes directly into receiving waters. Can the Department clarify the intended purpose, scope, and practical effect of Clause 11?

Clause 10 is not relevant to SuDS.

Clause 11 is not particularly relevant to SuDS. It concerns drainage misconnections, also known as miscommunications whereby a foul sewer discharges to a watercourse or surface water sewer. This can be where a washing machine has been erroneously plumbed to the surface water sewer instead of the foul sewer.

Untreated discharge from miscommunications can pollute local rivers and waterways, potentially ending up on beaches. NI Water removes drainage miscommunications from its public infrastructure on a priority basis and will continue to investigate and address these as and when they are identified, and it is cost effective to do so.

Article 166 of the Order gives NI Water the powers to prosecute a property owner for an unlawful drainage connection (i.e. a drainage miscommunication), to close the unlawful drainage connection and to recover the cost of the closure. However, the legislation does not currently permit NI Water to repair a drainage miscommunication and recover the associated costs of the repair work.

Enhanced powers are, therefore, required to provide NI Water with the capacity to both repair drainage miscommunications, and recover costs associated with the work, if the

property owner refuses to do the work. Leaving the situation as it currently stands could result in parties with drainage miscommunications continuing to pollute watercourses.

This new proposal would enable NI Water to proactively stop the source of the pollution, and to protect our shared waterways, when the property owner refuses to repair the miscommunication.

Clause 12 is not relevant to SuDS.

22. The panel noted that the Department of Agriculture, Environment and Rural Affairs is considering increased financial penalties under separate fisheries and water environment legislation. They suggested that penalties under this Bill should be aligned with, and not lower than, those proposed under DAERA legislation, to avoid inconsistencies or enforcement gaps in relation to water pollution incidents. What engagement has taken place with DAERA to ensure consistency and coherence across the respective legislative frameworks?

The Fisheries and Environment Bill is intended to align NI Fisheries Regulations with the rest of Britain and strengthen protections for water environments. It does not propose to create additional offences; rather it proposes amendments to maximum penalties for existing offences.

I have been liaising with Minister Muir on the Fisheries and Water Environment Bill and any potential impact that this will have on NI Water. This is ongoing and we are continuing to work together to get the best outcomes.

Section 2 Clause 3 provides that the Department may make provision through regulations regarding, among other things, enforcement, offences and penalties related to sustainable drainage systems. The level of financial penalties would therefore be set out in future secondary regulations which would be subject to consultation and Assembly scrutiny.

My Department will continue to work with colleagues in other Departments on any cross-cutting matters.

Additional Considerations Raised by the Panel

23. Witnesses stressed that SuDS should not be considered in isolation but as part of wider catchment management, including the condition and management of habitats beyond urban areas. They suggested that the Bill could better reflect the role of natural features — such as peatlands, wetlands and woodlands — in flood mitigation, noting that the current provisions address only part of the wider flood risk management system. What consideration has the Department given to embedding a broader catchment-based and nature-based approach within the legislation?

The Bill's primary function in this area is to establish the necessary regulatory powers and framework to enable SuDS to be considered as the first-choice drainage solution, providing an alternative to traditional piped drainage systems where appropriate.

The suggestion to broaden the legislative scope to include wider landscape scale measures such as peatlands, wetlands, and woodlands for flood mitigation purposes is

not considered suitable for inclusion within this Bill. These features fall within the wider category of natural flood management, which sits outside the intended purpose of this legislation. Such measures involve broader land use change, environmental planning, and multi-agency coordination, and therefore require separate and more comprehensive policy development.

My Department will continue to consider these natural flood management techniques as part of its wider policy work in this area. However, they are not appropriate for incorporation within the specific statutory framework being created for SuDS under this Bill.

24. The panel also highlighted the importance of retrofitting SuDS within existing developments as part of a comprehensive flood management strategy. Has the Department considered legislative or policy measures to support or require SuDS retrofitting?

The Bill provides enabling powers to make Regulations on the future design, construction, operation, approval, adoption and maintenance of SuDS. It does not cover retrofitting SuDS to existing developments as it aims to ensure that SuDS are incorporated into the early design stages of new developments.

Separately, however, my Department has secured £15m for the four-year period from 2025/26 to 2028/29 to take forward an Urban Drainage Transformation Pilot Project to test the retrofitting of SuDS. The aim is to retrofit 10,000 m³ of surface water storage through a range of different SuDS and Natural Flood Management (NFM) measures within urban areas to slow the flow of rainwater and where possible stop it from entering the combined sewers. The learnings from the design, construction and maintenance of the different SuDS and NFM interventions will inform long-term investment and policy decisions for my Department, NI Water and other delivery partners.

I hope this information is helpful.

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A handwritten signature in dark ink, appearing to read 'Liz Kimmins', with a stylized flourish at the end.

LIZ KIMMINS MLA
Minister for Infrastructure