

From the office of the Minister for Infrastructure
LIZ KIMMINS MLA

Peter Martin MLA
Chairperson, Committee for Infrastructure
Room 416, Parliament Buildings,
Stormont,
BELFAST
BT4 3XX

Private Office, 3rd Floor,
James House, Gasworks Site,
2 - 4 Cromac Avenue,
Belfast, BT7 2JA
Telephone: (028) 9054 0540
Email: Private.office@infrastructure-ni.gov.uk

Your reference:
Our reference: SUB-0316-2026
15 May 2026

committee.infrastructure@niassembly.gov.uk

Peter, a chara,

WATER, SUSTAINABLE DRAINAGE AND FLOOD MANAGEMENT BILL

Thank you for the Committee's letters of 20th and 27th April in relation to the Water, Sustainable Drainage and Flood Management Bill. I am grateful to the Committee for its detailed scrutiny of the draft Bill to date and welcome the opportunity to respond directly to the points raised.

In the letter of 20th April, the Committee noted that during the evidence session on 15th April, officials agreed to provide further examples of primary legislation in which powers have been conferred to establish an approval-type body without explicit detail on its composition, functions, responsibilities, or associated costs, as well as examples of offences created without a clearly stated maximum penalty. These examples are provided in the **Annex** to this letter.

Officials also agreed to provide an explanation as to why the provisions for establishing a "specified person" (SuDS Approval Body) are not set out on the face of the Bill, and what potential alternatives might exist. I note that the Committee's letter of 27th April raised similar concerns in that regard and I will deal with both together.

Your letter of 27 April asked if the Department is willing to bring forward amendments to allay the concerns that the Committee has with the current wording in the Bill. The Committee's two primary concerns are:

- i. The Committee is not content with the level of detail currently provided in relation to the SuDS approval body to be established under Clause 2 and that the Bill does not identify the nature of the body to be established or sufficiently constrain the scope of what is envisaged.

- ii. The Committee is also concerned about the lack of clarity surrounding the scope of the offences that would be considered by the Department under Clause 3(3); that the Bill does not sufficiently outline the boundaries of the proposed offences; and that a clear statutory ceiling is necessary to provide legal certainty and ensure appropriate limits are placed on the exercise of these powers.

Clause 2: Approval of Sustainable Drainage Systems

The Committee has queried the absence of an expressly named person or body to act as the approver for sustainable drainage systems under clause 2. The Bill was originally drafted to deliberately retain flexibility and allow my department to continue to develop its policy in this area. In practice, statutory functions are always exercised by individuals operating within organisations whose structures, responsibilities, and personnel evolve over time. Naming a specific body in primary legislation does not guarantee enduring certainty and may risk locking the system into an arrangement that proves inadequate or unworkable as policy and operational needs develop.

There are many other examples of legislation which include provisions where the identity of the person or body responsible for exercising particular functions is not exhaustively prescribed in primary law. The approach taken in the Bill is, therefore, not without precedent.

For example, In England and Wales, the Flood and Water Management Act 2010 (the 2010 Act) Schedule 3, details an approving body as being normally the local authority for the area in which the system is, or is to be, constructed. The 2010 Act also includes a power, by order, to appoint a different body as the approving authority for drainage systems, either nationally or in specified areas, and for all or particular purposes. Such an order may transfer relevant powers to the appointed body and, where it makes more substantive provision, is subject to approval by the appropriate legislature under the affirmative procedure. This is a similar provision to that provided in the current draft of clause 2 in the Bill.

However, I remain keen to work constructively with the Committee to bring forward a viable solution that addresses the concerns raised. Having considered the outcome of the recent Public Consultation on Sustainable Drainage Systems (SuDS) in New Housing Developments, it is now clear that the most realistic and deliverable option is for the approval function to be assigned to an existing organisation. In particular, this would likely be an organisation that already engages extensively with the public across related areas, including drainage, planning, and building control. Initial legal and drafting advice on these points, indicates that an amendment could be made to qualify clause 2(5)(a) while preserving the original intent. Initial consideration suggests that the term “a person” in 2(5) could be removed and instead refer to the Department, or if deemed appropriate by the Department, a local authority or water undertaker. Should the Committee consider this approach to be appropriate, officials will arrange for a suitable amendment along those lines to be drafted.

Clause 3: Power to Impose Penalties

The Committee has also raised concerns regarding the absence of an express cap on penalties that may be imposed under clause 3(3)(c). While it is possible to specify a maximum penalty, imposing such a fixed cap at this stage would be premature. The range and seriousness of potential offences that may arise under the regulatory regime cannot yet be fully anticipated, and an inflexible cap could unduly constrain enforcement.

I wish to emphasise that the existence of a power to provide for significant penalties does not imply that such penalties would be imposed as a matter of course. Any use of these powers would be exercised responsibly by my Department. Moreover, where criminal proceedings are involved, it is ultimately for the courts to determine the appropriate penalty in each individual case, taking account of all relevant circumstances.

Legal advice concurs with the Department's policy approach concerning the power to impose penalties and that, while fixed penalties work well within the existing parking, noise and litter areas, they are not appropriate here.

The situation with the Bill is similar to the need for appropriate environment penalties enforced by NIEA/DAERA. The safeguards are grounded with the discretion of the District Judge (Magistrates' Court) to impose a penalty having regard to the merits of the case before them and the requirement of draft affirmative procedure to ensure that any penalty levels are subject to the democratic scrutiny of the Assembly.

Section 55(1) of the Welfare of Animals Act (NI) 2011 typifies this type of safeguard. Also, DAERA, under the Climate Change Act (NI) 2022, has a mandatory duty to set up the Just Transition Fund for Agriculture and to make regulations for grant support out of the Fund to promote climate change in agricultural activities.

This approach is also consistent with the usual secondary legislation drafting style that the imposition of criminal offences and penalties is normally done by affirmative procedure.

I would suggest that further definition of the type of offences could be included in the Bill, in particular specifying cases where —

- construction is commenced without approval,
- conditions of approval are breached,
- construction does not conform to the approved proposals, or
- drainage features are removed or otherwise altered without approval.

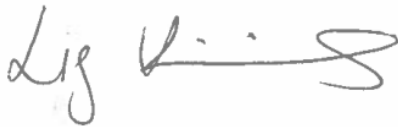
Initial legal advice has confirmed that such an amendment to Clause 3(3)(b) would be appropriate, and it links neatly with clause 2(4)(e). Again, if you are content with this, officials will arrange an amendment along those lines to be drafted.

Assembly Scrutiny

Finally, I would underline that regulations made under both of these provisions will be subject to the **draft affirmative procedure**. This ensures that the Assembly retains full control, with regulations requiring prior approval before they can come into force. The Committee will be consulted in developing the finer detail of the policy for inclusion in the future regulations and the wider Assembly will have a further opportunity to scrutinise and, if necessary, withhold consent for the detailed proposals.

I trust that this response addresses the Committee's concerns and reassures Members as to the rationale for the Bill's approach and the safeguards that are in place.

Is mise le meas,

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

LIZ KIMMINS MLA
Minister for Infrastructure

TABLE 1: NI primary legislation conferring power to establish or approve bodies
(without detailed specification)

Primary legislation	Enabling power in primary legislation	Nature of the “approval-type body”	What is not specified in the primary legislation
Planning Act (NI) 2011	Powers allowing the Department / councils to rely on <i>persons appointed</i> or arrangements approved by the Department for planning consents, determinations and related functions	A person or body approved or appointed to exercise planning-related approval or consent functions	No statutory description of membership, governance, functions beyond headline role, or costs
Education Act (NI) 2014	Powers enabling the Department to approve or designate bodies to support delivery, intervention or assessment functions in education	Approved bodies supporting statutory educational functions	No specification of composition, internal structure, operational responsibilities, or funding model
Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003	Power for the Department to recognise, approve or make arrangements with bodies for regulation, inspection or improvement of health and social care services	Approved or recognised bodies performing regulatory or improvement roles	No detail on board structure, staffing, governance standards, or cost implications
Justice (Northern Ireland) Act 2002	Powers allowing the Department to approve arrangements or bodies for administrative or support functions within the justice system	Approved bodies or arrangements supporting justice-related functions	No express statutory detail on composition, duties beyond general purpose, or financial arrangements
Local Government Act (Northern Ireland) 2014	Powers enabling councils and Departments to operate through approved schemes, persons or arrangements	Approved persons or bodies exercising delegated local government functions	No statutory prescription of membership, governance, accountability mechanisms, or costs

TABLE 2: Offences in NI primary legislation with maximum penalty set by regulations

Primary legislation	Offence created by primary legislation	Delegated power relating to penalties	Where the maximum penalty is set
Clean Neighbourhoods and Environment Act (Northern Ireland) 2011	Environmental offences (e.g. littering, nuisance, dog control, noise-related breaches)	Act empowers the Department to prescribe amounts and ranges of penalties for fixed-penalty offences by regulations	<i>Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations (NI) 2012</i> (as amended)
Noise Act 1996	Noise nuisance offences	Act enables penalties (including fixed penalties) to be prescribed in subordinate legislation	Included within the <i>Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations (NI) 2012</i>
Welfare of Animals Act (Northern Ireland) 2011	Breach of licences, registrations or welfare regulations made under the Act	Act empowers regulations to create offences and to prescribe applicable penalties	Penalty maxima set in regulations made under sections 11–13 and section 55 of the Act