

# **WATER, SUSTAINABLE DRAINAGE AND FLOOD MANAGEMENT BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

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

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Department is responsible for setting the policy and providing the funding for the delivery of water and sewerage services in Northern Ireland by the sole licensed water and sewerage undertaker, Northern Ireland Water (“NI Water”). The Department is also responsible for the drainage of land, drainage schemes, the maintenance of watercourses and sea defences, and the financing of certain works. The Bill updates the legislation on water, flooding and drainage to help to reduce pollution in watercourses, strengthen resilience against extreme weather events, such as drought and flooding, and introduce more sustainable, environmentally friendly solutions to managing water resources.
4. The main pieces of legislation governing water and sewerage services in Northern Ireland are the Water and Sewerage Services (Northern Ireland) Order 2006 (“the Water and Sewerage Services Order”) and the Water and Sewerage Services Act (Northern Ireland) 2016. The Drainage (Northern Ireland) Order 1973 is the main piece of legislation used by the Department in relation to drainage schemes, the maintenance of watercourses and sea defences.
5. There are two sets of regulations which may be replaced or revoked in future using powers in the Bill, if required: these are the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009 which the Department can no longer update, amend

or revoke since the UK exited the EU. The Bill will also amend Schedule 11 to the Land Registration Act (Northern Ireland) 1970.

6. The Bill provides improvements in processes for NI Water, and for new and improved ways to reduce and mitigate flood risk. The areas included in the Bill are:
- (a) Powers for NI Water to implement wider water shortage measures within the context of a temporary use ban,
  - (b) Provision of an enabling power for the Department to introduce arrangements to establish the use of sustainable drainage systems as the preferred drainage solution in new developments,
  - (c) Powers for the Department to provide grants in relation to measures to protect domestic buildings against flooding,
  - (d) Powers for the Department to make regulations with regards to flood risk management and regulations about the assessment of the environmental impact of drainage works,
  - (e) Power for NI Water to register Article 161 Agreements in the Statutory Charges Register (Article 161 agreements are agreements between the developer and NI Water which set out the requirements and standards that must be met to enable NI Water to adopt the sewerage infrastructure),
  - (f) Powers to correct certain unlawful communications (miscommunications) with a public sewer; and
  - (g) Powers for NI Water to adopt certain drainage infrastructure, which is in private ownership and was constructed prior to 1<sup>st</sup> October 1973, and any lateral drain the construction of which was completed before the transfer date mentioned in Article 159(7) of the Water and Sewerage Services Order, on which assets transferred to NI Water (1<sup>st</sup> April 2007).

## **CONSULTATION**

7. The Department for Infrastructure undertook a 12-week public consultation on nine policy proposals being considered for inclusion in the Bill from 11<sup>th</sup> March 2022 to 3<sup>rd</sup> June 2022. The Department considered the 30 responses received to the consultation and took them into consideration when formulating the final policy proposals. The Department also met with representatives of the Drainage Council, NI Water and discussed relevant policy proposals with the Registrar of Titles. On 6<sup>th</sup> July 2023 the Permanent Secretary for the Department for Infrastructure, in the absence of Ministers, decided to publish the Department's consultation report under the Northern Ireland (Executive Formation etc) Act 2022. The Department issued the Consultation Report to the Committee for Infrastructure on 20<sup>th</sup> March 2024 and subsequently briefed the Committee in person on 24<sup>th</sup> April 2024.

## **OPTIONS CONSIDERED**

8. With climate change contributing to an increased likelihood of warmer drier summers, milder wetter winters and a greater frequency of impactful storms, there are new challenges for how we manage, use, and treat water resources. Extreme weather conditions that come with climate change pose risks to people's homes, businesses, safety, and health.
9. In order to tackle these threats the then Minister for Infrastructure asked officials to revise, improve and update the legislation on water, flooding and drainage. In light of this, the Department considered that the current policy could benefit from change to provide NI Water with additional powers, rectify loopholes and strengthen existing powers.
10. The Department initially consulted on a power to update, amend or revoke the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009 and the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017, however it transpired at drafting stage that this would not be feasible. The policy is therefore being taken forward as a power to make regulations with regards to flood risk management and regulations about the assessment of the environmental impact of drainage works. This will enable the current regulations to be replaced to align with any new policy developments, should that be required.
11. Following consultation and the refinement of the policy proposals, the departmental Committee, Minister and Executive agreed that a Bill should be drafted to implement wider water shortage measures for a temporary use ban; an enabling power to introduce arrangements to establish the use of sustainable drainage systems as the preferred drainage solution in new developments; powers to provide grants in relation to measures to protect domestic buildings against flooding, and to make regulations with regards to flood risk management and the assessment of the environmental impact of drainage works, a power for NI Water to register Article 161 Agreements in the Statutory Charges Register, a power to correct miscommunications with a public sewer; and powers for NI Water to adopt certain drainage infrastructure, which is in private ownership and was constructed prior to 1<sup>st</sup> October 1973, and any lateral drain the construction of which was completed before the transfer date, on which assets transferred to NI Water, of 1<sup>st</sup> April 2007.

## **OVERVIEW**

12. The overall effect of the legislation will be to reduce pollution in watercourses, strengthen resilience against extreme weather events, such as drought and flooding and introduce more sustainable, environmentally friendly solutions to managing water resources.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Water use: temporary bans**

Clause 1 replaces Article 116 (Temporary hosepipe bans) of the Water and Sewerage Services Order, to provide NI Water with powers to implement wider water shortage measures. It expands the powers of the water undertaker to implement temporary hosepipe bans under Article 116 of the Water and Sewerage Services Order across a wider number of activities and makes provision for a water undertaker to temporarily prohibit or restrict the use of hosepipes for certain activities when the water undertaker is of the opinion that a serious deficiency of water available for distribution exists or is threatened. The activities listed in Clause 1 include watering a garden on domestic premises using a hosepipe, cleaning a private motor vehicle using a hosepipe, watering plants on domestic or other non-commercial premises using a hosepipe, cleaning a private leisure boat using a hosepipe, filling or maintaining a pool on domestic premises designed or adapted to be used for a recreational purpose, drawing water using a hosepipe for domestic recreational use, filling or maintaining an ornamental fountain on domestic premises, cleaning walls, or windows, of domestic premises using a hosepipe, cleaning paths or patios on domestic premises using a hosepipe, and cleaning other artificial surfaces of domestic premises using a hosepipe.

The clause requires the water undertaker to give notice on the water undertaker's website as well as in at least two local newspapers before a temporary ban can take effect.

The water undertaker is required to give notice in a similar way each time the scope of a temporary use ban is varied in any way. Similarly, the lifting of a temporary use ban may take effect as soon as notice has been given.

The notice of the temporary use ban must set out clearly the terms and extent of the hosepipe ban. It must specify the date on which the hosepipe ban will apply and give details of how to make representations about the proposed prohibition.

The categories of restriction which the Department for Infrastructure wishes to provide for the water undertaker are listed in paragraph (2) of the new Article 116 inserted by clause 1. The Department may also make regulations to remove a purpose from the list; these regulations will need to be made by resolution of the Assembly.

When bringing in a prohibition the water undertaker must specify the date from which it applies, and the area to which it applies. This may be for all or a specific part of the undertaker's area.

It will be an offence for anyone to contravene the prohibition, and a person convicted of the offence will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The water undertaker which issues a prohibition must make arrangements, if appropriate, for a reasonable reduction of charges which are made in respect of prohibited uses.

The prohibition can apply to one or more of the specified uses of water generally or only in specified cases or circumstances.

The Department may make regulations to make exceptions in various contexts such as how water is drawn or by reference to ownership of land by a specified person(s). Regulations may also expand the meanings of terms used in the regulations to provide for reference to a thing to include something associated with it. Representations may be made by people who object to the prohibition, and the notice issued by the water undertaker must give details of how to make representations about the proposed prohibition.

As a consequence of the new Article 116, subsections (3) and (4) make amendments to the Water and Sewerage Services Order which are consequential upon these changes.

### **Clause 2: Sustainable drainage systems: regulations**

Clause 2 provides powers for the Department to issue future arrangements and guidance on the design, approval, and maintenance of sustainable drainage systems. The Department may make regulations about sustainable drainage systems including requiring the use of sustainable drainage systems or specified categories of them, and the design, construction, modification, removal or the operation of sustainable drainage systems. Clause 2 provides for regulations to be made with regards to fees, circumstances for approval, obligations and conditions to be set by the approver, and cases where approval is not sought, commenced without approval or does not conform to approval.

This provision will give the Department the power to make regulations to set out procedural guidance on the appropriate design standards for sustainable drainage systems and require those standards to be adhered to. The Department will also have the power to empower a person to grant or refuse approval for sustainable drainage systems schemes, and to provide advice and guidance to the Department or other public authorities. The clause will also permit provision to be made for the adoption and long-term maintenance of the proposed sustainable drainage system.

The Department is given the power to make regulations regarding the entitlement of a person to have a drain or sewer comprised within a drainage system communicate with a public sewer or a watercourse.

### **Clause 3: Section 2: supplementary**

Clause 3 allows the Department to make regulations regarding the appeals process, inspection and enforcement, and offences and penalties. The clause also empowers the Department to issue guidance on sustainable drainage systems and public authorities and any approver must have regard to the guidance. Regulations may include reference to a document published by the Department or by another person on behalf of the Department.

### **Clause 4: Meaning of “sustainable drainage system”**

Clause 4 sets out the definition of a Sustainable Drainage System for the purposes of the Bill.

### **Clause 5: Structural sustainable drainage systems (consequential amendment)**

Clause 5 amends the definition of a “sustainable drainage system” in the Water and Sewerage Services Order to “structural sustainable drainage system” to differentiate between various types of sustainable drainage systems. A structural sustainable drainage system will mean any structure or part of a structure that is designed to receive surface water from premises and to discharge that water at a rate which is (whether in all circumstances or only in some circumstances) less than the rate at which the water enters the structure, or to reduce the volume of surface water entering public sewers or watercourses. A sustainable drainage system will mean a drainage system that functions with an aim of reducing the volume of water entering public sewers or watercourses or slowing the rate of water entering public sewers or watercourses. Therefore, the definition in the Water and Sewerage Services Order will now refer to a certain type of sustainable drainage system, that is structural in nature, while the new definition in the Act will encompass all types of sustainable drainage systems. A Schedule of Minor and Consequential Amendments is included in the Bill which details all the instances in the Water and Sewerage Services Order which are amended as a result of Clause 5.

### **Clause 6: Flood protection grants: domestic buildings**

Clause 6 provides the Department with powers to introduce grants to assist homeowners in high-risk flood areas to protect their homes, including those that are likely to benefit from publicly funded, community-level flood mitigations solutions in the future.

### **Clause 7: Flood risk: assessment and management**

Clause 7 provides the Department with the power to make regulations in order to provide for the carrying out of flood risk assessment and management and sets out definitions of “flood” and “flood risk” for the purposes of such regulations. These regulations may only be made by affirmative resolution of the Assembly.

### **Clause 8: Drainage works: environmental impact assessment**

Clause 8 allows the Department to make regulations for Environmental Impact Assessments for drainage purposes and defines “drainage works” for this purpose. Any regulations made under this power will be subject to affirmative resolution by the Assembly.

### **Clause 9: Scope of regulations under sections 7 and 8**

Clause 9 states that Clauses 7 and 8 may not impose or increase taxation, make any retrospective provision, or create a relevant criminal offence, which is defined as an offence for which an individual who has reached the age of 21 years and has no previous convictions is capable of being sentenced to imprisonment for a term of more than 2 years.

### **Clause 10: Registration of Article 161 agreements**

Clause 10 provides for agreements made under Article 161 of the Water and Sewerage Services Order to be registered in the Statutory Charges Register. This is achieved by adding Article 161 Agreements to Schedule 11 to the Land Registration Act (Northern Ireland) 1970.

The clause also provides for the removal of the Article 161 Agreement from the Register once the sewers have been adopted. It enables the registration of all extant Article 161 agreements made under the Water and Sewerage Services Order, including those which have accumulated since 1<sup>st</sup> April 2007.

#### **Clause 11: Unlawful sewer communication: remedies**

Clause 11 provides powers for the sewerage undertaker to correct certain unlawful communications with a public sewer (also known as “miscommunications”). The clause will provide the undertaker with the power to enter private premises to fix drainage miscommunications and recover costs from the landowner in situations when the landowner refuses entry and refuses to fix the miscommunication. A drainage miscommunication is a pipe carrying wastewater (e.g. sewage or contaminated water) wrongly connected to a surface water drain, or a surface water drain that is wrongly connected to a foul sewer where separate foul sewerage and surface water drainage systems exist.

#### **Clause 12: Adoption by sewerage undertaker: removal of restrictions**

Clause 12 will provide powers for the sewerage undertaker to adopt and maintain certain sections of privately-owned drainage infrastructure which were constructed prior to 1<sup>st</sup> October 1973, and any lateral drain the construction of which was completed before the transfer date of 1<sup>st</sup> April 2007. The sewerage undertaker will not be required to adopt all pre-1973 private drainage infrastructure, but only that which NI Water considers to be critical to the functioning of its sewerage network.

#### **Clause 13: Supplementary, incidental, consequential, transitional provision etc**

Clause 13 allows the Department to make provision by order generally for the purposes of the Act. An order may amend, repeal, revoke or modify any statutory provision including the Act itself.

#### **Clause 14: Interpretation**

Clause 14 sets out various general definitions for the purposes of the Act, for instance, “the Department” means the Department for Infrastructure.

#### **Clause 15: Commencement**

Clause 15 stipulates that Clauses 13 to 16 (Supplementary, incidental, consequential, transitional provision etc, Interpretation, Commencement and Short Title) will come into operation on the day after Royal Assent, whereas all other clauses of the Bill will be commenced by order of the Department on a day which the Department will decide on. This is so that transitional arrangements may be provided for.

## **Clause 16: Short title**

Clause 16 denotes the title of the Act as being the Water, Sustainable Drainage and Flood Management Act (Northern Ireland) 2025.

## **FINANCIAL EFFECTS OF THE BILL**

13. The cost of the current pilot Homeowner Flood Protection Grant Scheme to the Department was £165k in 2023-2024 and is in region of £300k for 2024-2025.
14. The Bill also provides the Department with the ability to set up a sustainable drainage system approval body, however, further research, including costs estimates and a consultation, will be required before this would be progressed. The Department may therefore incur additional administrative costs in terms of staff resources as a result of exercising the subordinate legislation-making powers within the Bill.
15. In relation to powers for NI Water to adopt certain private drainage infrastructure (“PDI”), pre-1973, NI Water may share some costs with landowners. The exact costs are unknown at this point as the condition of PDI is often unknown until it is professionally examined by a contractor, however, NI Water would need to manage this within its agreed budget allocations.

## **HUMAN RIGHTS ISSUES**

16. Human Rights Impact Assessments have been carried out on all seven policy areas and no adverse impact on human rights has been identified.

## **EQUALITY IMPACT ASSESSMENT**

17. Equality Impact Assessments under section 75 of the Northern Ireland Act 1998 were considered for each of the seven policy areas and no adverse impact on any section 75 group has been identified.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

18. The regulatory impact has been considered for each of the seven policy areas and a full Regulatory Impact Assessment was deemed unnecessary as there has been no significant change in the impacts of the policies on business.

## **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

19. Each of the seven policies were checked for data protection issues. No data protection issues were identified.



## **RURAL NEEDS IMPACT ASSESSMENT**

20. The rural impact of each of the seven policies was considered during policy development and no negative impacts were identified on people living in rural areas.

## **LEGISLATIVE COMPETENCE**

21. At Introduction the Minister for Infrastructure had made the following statement under section 9 of the Northern Ireland Act 1998:

| *“In my view the Water, Sustainable Drainage and Flood Management Bill would be within the legislative competence of the Northern Ireland Assembly.”*







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Assembly**

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For more information please contact:

Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 521137  
Textphone: 028 90 521209

E-mail: [info@niassembly.gov.uk](mailto:info@niassembly.gov.uk)

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