



Northern Ireland  
Assembly

## Research and Information Service Bill Paper

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17 September 2025

**Des McKibbin**

# Water, Sustainable Drainage and Flood Management Bill

**NIAR 199-25**

This Bill paper provides an overview of the Water, Sustainable Drainage and Flood Management Bill as introduced to the Assembly on Monday 23 June 2025. The paper also identifies those areas within the Bill which may merit further consideration and, where relevant, compares similar provisions within GB and Ireland.

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## Key Points

The Water Sustainable Drainage Bill aims to improve water management and flood resilience in Northern Ireland through legislative reform. It introduces new powers for NI Water and the Department for Infrastructure (DfI), particularly around hosepipe bans and Sustainable Drainage Systems (SuDS).

NI Water will gain expanded powers to impose hosepipe bans during droughts or high demand.

DfI will be empowered to regulate SuDS use, design, construction, and operation. A SuDS approval body may be established to oversee implementation, fees, and compliance. SuDS will be promoted as the preferred drainage solution in new developments.

The operation of SuDS is briefly explained in the paper including how SuDS mimic natural drainage by slowing and filtering rainwater runoff and the fact there are two broad categories of SuDS, hard and soft.

Comparative jurisdictions examined in the paper include England, Wales Scotland and Ireland:

- In England, updated planning guidance promotes SuDS for flood risk and water quality.
- In Wales, SuDS are mandatory in new developments.
- Scotland encourages SuDS through planning and environmental policy.

NI Water supports the wider use of SuDS but seeks clarity on the structure and remit of the proposed SuDS approval body before legislative changes are made.

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# 1 Introduction

The [Water, Sustainable Drainage and Flood Management Bill](#) was introduced to the Northern Ireland Assembly on 23 June 2025.<sup>1</sup> This Bill aims to enhance the management of water resources and reduce flood risk across the region. Key provisions include:

1. Expanded hosepipe ban powers for NI Water beyond watering private gardens and washing private cars;
2. Provision of an enabling power for the Department for Infrastructure (DfI) to issue future guidance on the design, approval, and maintenance of SuDS and to encourage their use as the preferred means of managing surface water;
3. Powers for the DfI to introduce flood protection grants similar to the those available under the current Homeowner Flood Protection Grant Scheme (HFPGS);
4. Powers for the DfI to make certain regulations on Flood Management and Environmental Impact Assessments for drainage purposes;
5. Powers for NI Water to register Article 161 Agreements in the Statutory Charges Register, which set out the requirements and standards for adopting sewerage infrastructure; and
6. Powers to correct certain unlawful communications with a public sewer and to adopt certain drainage infrastructure in private ownership.

The paper provides an overview of each provision, identifies areas within the Bill which may merit further consideration and, where relevant, compares similar provisions within GB and Ireland.

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<sup>1</sup> Northern Ireland Assembly, [Water, Sustainable Drainage and Flood Management Bill: First Stage](#), Official Report: Monday 23 June 2025

## 2 Provision 1: Expanded hosepipe ban powers

Clause 1 amends [Article 116](#) of [The Water and Sewerage Services \(Northern Ireland\) Order 2006](#), to provide NI Water with powers to implement wider water shortage measures, namely hosepipe bans.

### 2.1 Current provision

Under Article 116, NI Water has the power to issue temporary hosepipe bans when water availability is threatened. Restrictions are limited to two specific activities – watering private gardens; or washing private motor cars.

NI Water is currently required to give notice of the date on which a hosepipe ban will come into force, in two or more newspapers, circulating in the locality affected by the prohibition or restriction.

Any person who contravenes the provisions of the ban shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, currently £1000.

### 2.2 Proposal

Provision one expands the current powers of NI Water to implement temporary hosepipe bans across a wider number of activities. This proposal will, largely, bring NI Water's water use restriction powers in line with water companies in England and Wales.

NI Water has exercised its powers under Article 116 once, when it imposed a three week hosepipe ban beginning on 29 June 2018. NI Water was criticised at that time as its ban included a number of hose-related activities such as washing walls, windows, paths, patios and private boats that exceeded its powers under Article 116.<sup>2</sup> NI Water noted in a statement on its website that “bringing the ban in was about seeking the public's help in reducing demand; it was not about prosecutions.”<sup>3</sup> According to press reports “hundreds of people were contacted by NI Water over alleged breaches of the hosepipe ban, but it's

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<sup>2</sup> Belfast Telegraph, [NI Water exceeded its powers with hosepipe ban](#), 29 October 2018

<sup>3</sup> NI Water, [NI Water Update on Hosepipe Ban Legislation](#), July 2018

understood no fines were issued or prosecutions undertaken”.<sup>4</sup> Later that year NI Water acknowledged its interpretation of Article 116 had been too broad, but was clear that, in its opinion, the legislation was outdated and they would seek to have it “changed to ensure it is appropriate for Northern Ireland’s needs”.<sup>5</sup>

The activities listed under Clause 1 include watering a garden on domestic premises using a hosepipe, cleaning a private motor vehicle using a hosepipe that were permitted under Article 116. The additional activities added are:

- 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 Bill empowers the Department for Infrastructure to add or subtract to this list via secondary legislation. The committee may wish to consider if this power is necessary, and may want to enquire from NI Water what its views are on the activities that could or should be included.

The committee may wish to consider alternatives to this power. For example, it may wish to explore the appropriateness of amending the bill to include a direction such as “or any activity deemed necessary by the undertaker (NI Water)”; or a simplification of the list to “drawing water using a hosepipe at

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<sup>4</sup> Belfast Telegraph, [NI Water exceeded its powers with hosepipe ban](#), 29 October 2018

<sup>5</sup> NI Water, [NI Water’s Response to Legal Powers](#), October 2018



domestic property for purposes of recreation, irrigation and cleaning.”

The clause extends areas of notification to include the company’s website in addition to at least two local newspapers before a temporary ban can take effect. In the consultation NI Water welcomed the proposal but suggested wider measures to improve customer and stakeholder messaging through social media may be more effective than advertising in local print media.<sup>6</sup>

While not mandated by legislation elsewhere, social media is widely used by water companies in Great Britain and Ireland as a supplementary communication tool. **Members may wish to consider if it is appropriate to include social media as a method of public notification in this Bill.** This could be in addition to those described or perhaps in place of print media as suggested by NI Water. Legislation in other jurisdictions could be said to pre-date widespread adoption of social media as a public messaging platform.

## 2.3 Hosepipe bans in other jurisdictions

Hosepipe bans are widely used in England and Wales to restrict water use due to a lack of rain and increased demand for water during extended spells of warm weather. During the summer of 2025 Yorkshire Water, South East Water, Southern Water, Thames Water and Welsh Water (Dŵr Cymru) all imposed hosepipe bans, impacting an estimated 8.5 million households.<sup>7</sup>

Water companies in England and Wales derive their powers to impose Temporary Use Bans (TUBs) under [Section 36 of the Flood and Water Management Act 2010](#). As is the case in Article 116, water companies in English and Wales are empowered to determine the need for a TUB, on the

<sup>6</sup> NI Water, Water Flooding and Sustainable Drainage Consultation, June 2022

<sup>7</sup> BBC, [Is there a hosepipe ban in my area? What you need to know](#) [online] 3 September 2025, accessed 5 September 2025

basis they anticipate or experience a serious shortage of water. What constitutes a serious shortage of water is not defined in the legislation.

The activities that can be restricted or prohibited align with the extended list proposed in the Bill, including:

- Watering gardens or plants.
- Cleaning cars, boats, windows, patios, or walls.
- Filling or maintaining swimming pools, paddling pools, ponds, or fountains.

The notification process is also aligned. Before a TUB is imposed, water companies must give notice in at least two local newspapers and on their company website.

Breaching a TUB is an offence in England and Wales and offenders may be fined up to £1,000 if prosecuted in a magistrates' court. Major water companies (e.g. Thames Water, Yorkshire Water, Southern Water) have not issued any fines for hosepipe ban violations in the past five years.<sup>8</sup> Trade body Water UK said it was not aware of anyone having ever been fined for using a hosepipe, though it did not hold data.<sup>9</sup> Enforcement has relied almost entirely on public goodwill and voluntary compliance. Companies typically start with warning letters and do not actively patrol for violations.<sup>10</sup>

In drought conditions, water companies in England and Wales can impose a non-essential use ban (NEUB). A non-essential use ban (NEUB) is a more serious step that water companies can take if dry conditions continue after a hosepipe ban has been introduced. While hosepipe bans mainly affect households, NEUBs specifically target businesses and may prohibit them from using water for a range of non-essential activities similar to those imposed on

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<sup>8</sup> John Ahmed, [No households fined for breaking hosepipe bans during recent droughts, water firms admit](#), 22 July 2025

<sup>9</sup> Ian Aikman & Maia Davies, [How are hosepipe bans enforced?](#) 22 July 2025

<sup>10</sup> Alex Nelson, [Hosepipe ban UK: the harsh penalties for breaking 2025 water bans in your area - how much are fines?](#) 15 July 2025

domestic households such as watering plants and lawns or cleaning (buildings/grounds/vehicles/machinery).<sup>11</sup>

NEUBs require a drought order issued by the Secretary of State upon application by a water company. The order must specify:

- The area affected.
- The duration.
- The types of non-essential use to be restricted.

The Bill is not currently proposing to extend NI Water's hosepipe ban powers to businesses (non-domestic purposes). However, it was noted in the consultation that consideration was being given to providing a power which would enable the Minister for Infrastructure to include limited non-domestic purposes, similar to provisions included in the legislation in England and Wales.

There was no question seeking views on the issue of non-domestic bans in the consultation. Members may wish to enquire with the Department for Infrastructure to what extent it explored the possibility of including powers for non-domestic hosepipe bans, what its findings were, and what its position is on including scope for non-domestic hosepipe bans in the current Bill or in future legislation.

### 2.3.1 Scotland

Under [section 7 of the Water Resources \(Scotland\) Act 2013](#) Scottish Water can propose to Scottish Ministers that they make a water shortage order. A water shortage order may permit Scottish Water to carry out various actions including imposing water saving measures on organisations or individuals if deemed necessary, including hosepipe bans. Scottish Water is responsible for enforcing hosepipe bans.

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<sup>11</sup> Ofwat, [Hosepipe bans and non-essential use bans: what they mean for you](#), July 2025

The last hosepipe ban in Scotland was in 1995. This was before the Scottish Parliament was reconvened and before Scottish Water was set up, so the legal and operational framework for water resource management was not the same as it is today.<sup>12</sup>

The current legal framework has never been used to impose hosepipe bans in Scotland. The process is lengthy,

- Scottish Water publishes a public notice of the proposal.
- A 14-day period follows for public representations.
- Scottish Ministers review feedback and advice from SEPA (Scottish Environment Protection Agency).
- If approved, the order takes effect three days after publication.<sup>13</sup>

According to SPICe (The Scottish Parliament Research Service) the whole process could take more than a month when considering the time required to review any public representations, advice from SEPA, and the preparation of advice to Ministers. By the time a hosepipe ban is introduced, it may not be effective in reducing demand on the network at the right time or water resources may have returned to normal conditions following a period of rainfall.<sup>14</sup>

According to Scottish Water it would only consider introducing hosepipe bans as a last resort. It favours the approach of voluntary conservation rather than legal restrictions. An example of this came in a news release published on 22 August, Scottish Water urged its customers to use water as efficiently as possible in homes and gardens to help protect water resources.<sup>15</sup>

### 2.3.2 Ireland

[Section 56 \(subsection 16\) of the Water Services Act 2007](#) empowers Irish Water (Uisce Éireann) to impose hosepipe bans, known as water conservation orders. This power also extends to both domestic and commercial activities. For

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<sup>12</sup> SPICe, [Why no hosepipe bans in Scotland](#), September 2025

<sup>13</sup> SPICe, [Why no hosepipe bans in Scotland](#), September 2025

<sup>14</sup> SPICe, [Why no hosepipe bans in Scotland](#), September 2025

<sup>15</sup> Scottish Water, [Customers Urged to Save Water as Dry August Reduces Reservoir Levels](#), 22 August 2025

example, watering a garden is specified but so too is irrigating or spraying crops. It can also ban or restrict water use for commercial washing services including car washes.

Before making an order, Irish Water must notify the public in a newspaper; via radio/TV, or by “such other means as the Minister may direct.”

It is an offence not to comply with a hosepipe ban in Ireland. However, the way in which non-compliance is dealt with is slightly different than in the UK. In the first instance warnings can be issued, alternatively where an authorised person or a member of the Garda Síochána has reasonable grounds for believing an offence has taken place, they can issue a type of fixed penalty notice requiring payment to Irish Water of €125 within 21 days. If the payment isn't made a prosecution in respect of the alleged offence can be instituted, which could result in fine of up to €5000.<sup>16</sup>

Irish Water imposed hosepipe bans across several counties in 2025:

- From July 26 to September 16, 2025, bans were in place in: Tipperary, Waterford, Wexford, Cork (excluding Cork City);
- Earlier bans, extended until August 4, 2025, in: Mullingar, Co. Westmeath, Milford, Co. Donegal, Kells-Oldcastle, Co. Meath.

These bans prohibited watering gardens or sports grounds with a hose, washing cars or trailers, irrigating crops, filling pools, ponds, or lakes or using water for non-essential commercial activities like car washes.

While the bans are legally enforceable, Irish Water has focused on public awareness and voluntary compliance, using public messaging to urge people to conserve water rather than emphasising enforcement. There is no mention of fines or enforcement actions in the official documents or recent news coverage.

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<sup>16</sup> Irish Statute Book, Water Service Act 2007, [Section 56, subsection 22\(b\)](#)

### 3 Provision 2: Sustainable Drainage Systems

Clause 2 of the Bill introduces a statutory enabling power for the Department for Infrastructure (DfI) to promote the use of Sustainable Drainage Systems (SuDS) as the preferred method for managing surface water in new developments.

#### 3.1 What are SuDS?

Sustainable Drainage Systems (SuDS) are a suite of water management practices designed to replicate natural drainage processes in developed environments.<sup>17</sup> Their primary function is to manage surface water runoff by controlling flow rates, improving water quality, and enhancing biodiversity and amenity. Unlike traditional piped drainage systems, SuDS aim to retain water on the surface, allowing for infiltration, filtration, storage, and controlled release.<sup>18</sup>

SuDS are typically categorised into hard and soft systems. Hard SuDS include engineered features such as permeable paving, which allows water to infiltrate through voids in the surface, and attenuation tanks, which store runoff underground. Soft SuDS incorporate natural elements, such as swales (vegetated channels that convey and filter water), green roofs (vegetated surfaces that absorb rainfall), and attenuation ponds or wetlands, which store water and promote biodiversity.<sup>19</sup>

SuDS bring a number of benefits. They reduce flood risk by slowing and storing runoff, improve water quality through natural filtration, and support ecological networks by creating habitats. SuDS also offer aesthetic and recreational value, contributing to urban greening and public wellbeing. Maintenance is often simpler and more cost-effective than conventional systems.<sup>20</sup>

SuDS also present challenges. Their effectiveness can be limited by site constraints such as soil permeability, space availability, and contamination risks. Long-term maintenance responsibilities must be clearly defined, and

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<sup>17</sup> Susdrain, [SuDS Principles](#) [online] accessed 14 August 2025

<sup>18</sup> CIRIA, [The SuDS Manual](#), March 2015

<sup>19</sup> As above

<sup>20</sup> DEFRA, [National Standards for Sustainable Drainage Systems](#), June 2025

adoption by public bodies can be inconsistent. Retrofitting SuDS into existing developments may also be complex and costly.<sup>21</sup>

### 3.1.1 SuDS in action: Case study

Lamb Drove is a residential development of 35 affordable homes on a one-hectare site in Cambridgeshire, England. A range of SuDS components were used to demonstrate different available techniques and the application of management train from prevention to site control and regional control components. The measures include water butts, permeable paving, a green roof, swales, filter strips, detention and wetland basins and retention ponds. Cambridgeshire County Council ran a 3-year monitoring of the system. The key findings of the monitoring project are:

- the Lamb Drove site has attenuated surface water flows and significantly reduced peak flows;
- Lamb Drove has observed reductions in concentrations of a variety of pollutants and other water quality indicators including heavy metal concentrations;
- the number of species increased at the Lamb Drove site. Lamb Drove shows more diversity, which is primarily due to the SuDS components and the associated management regime;
- the infiltration capacity of the permeable pavement coped with the highest recorded rainfall intensity.<sup>22 23</sup>

## 3.2 Existing legislation and policy

[The Water and Sewerage Services Act \(Northern Ireland\) 2016](#) introduced three key provisions relevant to SuDS: adoption powers, connection restrictions, and developer agreements.

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<sup>21</sup> As above

<sup>22</sup> DAERA, [The review for implementation of Schedule 3 to The Flood and Water Management Act 2010](#), January 2023

<sup>23</sup> Susdrain, [Lamb Drove, Residential SuDS scheme, Cambourne](#) [online] accessed 17 August 2025

- Section 4 formally defined SuDS and extends the powers of NI Water to adopt SuDS infrastructure, specifically “hard” SuDS such as underground tanks and flow control devices. Adoption is contingent on the systems being constructed to appropriate standards. This provision ensures that SuDS can be maintained by NI Water, providing long-term operational assurance and encouraging developers to build to adoptable standards. Clause 4 of the Bill expands the definition of SuDS, to incorporate one or more soft SuDS elements.
- Section 5 granted NI Water the authority to refuse connection of new surface water sewers to the public network if suitable alternatives, such as SuDS, are available. This provision is designed to reduce pressure on the public sewer system and incentivise the use of SuDS in new developments.
- Section 6 ensures that SuDS and associated drainage infrastructure are built to standard and formally adopted, protecting both homeowners and developers from future liabilities.

### 3.2.1 Planning policy

Northern Ireland’s planning policy framework provides strong support for Sustainable Drainage Systems (SuDS). The key provisions are found in the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 15 (PPS15), both of which guide planning authorities and developers in managing flood risk and promoting sustainable development.<sup>24</sup>

#### **Strategic Planning Policy Statement (SPPS)**

The SPPS (2015) sets out regional planning policies and is a material consideration in all planning decisions. It promotes SuDS as the preferred approach to surface water management, especially in areas prone to flooding. The SPPS encourages planning authorities to work with natural environmental processes and explicitly supports SuDS for their role in:

- Reducing flood risk
- Improving water quality

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<sup>24</sup> Susdrain, [Northern Ireland legislation and regulation](#) [online] accessed 1 September 2025



- Supporting biodiversity and amenity.<sup>25</sup>

### **Planning Policy Statement 15 (PPS15)**

PPS15: Planning and Flood Risk adopts a precautionary approach to development in flood-prone areas. It highlights the importance of SuDS in mitigating downstream flooding and ecological damage. Annex C of PPS15 specifically addresses SuDS, recognising that development alters natural drainage regimes and that amenity, ecology, and water resource issues must be considered in drainage design.<sup>26</sup>

### **Local Development Plans and Supplementary Guidance**

Local councils, such as Belfast City Council, have incorporated SuDS into their Local Development Plans (LDPs). For example, Policy ENV5 in Belfast's LDP requires SuDS in all new developments where appropriate, and mandates a two-stage treatment process to improve water quality. Supplementary Planning Guidance (SPG) provides detailed design expectations and maintenance requirements.<sup>27</sup>

## **3.3 Provisions within the Bill**

Clause 2 will not make SuDS mandatory, but it does create the framework that could lead to their mandatory use in the future. According to the Explanatory and Financial Memorandum accompanying the Bill:

“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”.<sup>28</sup>

This means the DfI can, through secondary legislation, introduce rules that require SuDS in certain types of developments. However, this requirement

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<sup>25</sup> Department of the Environment, [Strategic Planning Policy Statement](#), September 2015

<sup>26</sup> Department for the Environment, [PPS 15: Planning and Flood risk](#), September 2014

<sup>27</sup> Belfast City Council, [Supplementary Planning Guidance: Sustainable Drainage Systems](#), May 2023

<sup>28</sup> The Water, Sustainable Drainage and Flood Management Bill, [Explanatory and Financial Memorandum](#)

would only come into effect once those regulations are drafted, approved, and enacted.

The Royal Society of Ulster Architects welcomed the proposal to promote SuDS.<sup>29</sup> It commented that architects have been incorporating sustainable drainage solutions into plans for some time, so this requirement will not pose a difficulty for the built environment sector. It did highlight increased costs for developers but suggested developers will adjust prices accordingly and that it is perhaps the effect on land prices and land use in residential developments that requires further consideration.

Although they didn't respond to the consultation, member's may wish to invite Construction Industry Representative Bodies in Northern Ireland to submit evidence during the Bills Committee Stage.

Again through regulation, Clause 2(3) will enable DfI to publish statutory guidance (or National Standards as they are known in GB) on the design, construction operation and maintenance of sustainable drainage systems.

Clause 2(4) gives the department powers to make regulations to empower a person (which could be an individual, agency, or organisation) to grant or refuse approval for SuDS schemes. This would constitute what is known as a SuDS approval body in GB. DfI could assign this role to an existing entity (e.g. NI Water or a local planning authority), or establish a new statutory body or unit specifically tasked with SuDS approvals.

In its consultation response, NI Water was supportive of the increased application of SuDS and welcomed an open and progressive discussion for the purpose of establishing their preferential use. It did, however, comment that it was premature to promote legislative change without confirmation of DfI's position on the nature and remit of a SuDS approval body.

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<sup>29</sup> The Royal Society of Ulster Architects, Response to consultation on Infrastructure, Flooding and Sustainable Drainage

On the same issue, Ards and North Down Borough Council commented that further work is required on the SuDS approval body, around the ownership of assets and ongoing maintenance of “soft SuDS” going forward. It stated “all parties require clarity around the ongoing maintenance of soft SuDS infrastructure.” Belfast City Council were clear however that responsibility for resourcing the advisory system for the different forms of SuDS (hard and soft) alongside commitments to adoption and maintenance would lie with NIW, noting “this is not the responsibility of local authorities through their Planning and Building Control systems.”

The consultation document indicated that by providing such an enabling power, as set out above, the Department will be able to prepare regulations and/or guidance to set out clearly all requirements, policies and procedures in relation to SuDS, without the need for time-consuming and costly primary legislation. However, it may be the case that more detail on certain issues could have been provided in advance of this Bill being introduced.

The three main provisions DfI would seek to develop through secondary legislation are by no means straightforward and may ultimately prove controversial. It would appear that the development of statutory SuDS guidance and the establishment of a SuDS approval body will need to be concluded before any regulation to require SuDS in new developments can be enacted. This will require significant consultation with stakeholders.

Members may want to explore these issues further with DfI. In particular members might want to establish a timeframe for the enactment of these provisions, what the cost implications will be (for example, consultancy fees and/or establishing a new body), and what consideration has been given to the nature and remit of the SuDS approval body, as highlighted by NI Water.

The issue of a SuDS approval body may warrant further discussion with key stakeholders, particularly local planning authorities and NI Water.

### 3.4 SuDS policy in GB and Ireland

In England and Wales, the legislative basis for SuDS is primarily established through [the Flood and Water Management Act 2010](#). [Schedule 3](#) of the Act was intended to make SuDS mandatory for new developments by removing the automatic right to connect surface water to public sewers and establishing SuDS Approving Bodies (SABs) at the unitary and county council level.

#### 3.4.1 England

Schedule 3 was not enacted in England due to concerns that it would:

- Create additional administrative burdens for local authorities.
- Require the establishment of SuDS Approving Bodies (SABs).
- Introduce new costs for developers and councils related to design approval and maintenance.<sup>30</sup>

The government opted to strengthen planning policy through the National Planning Policy Framework (NPPF). The NPPF requires that SuDS be included in all major developments (defined as 10 or more dwellings or equivalent non-residential schemes), unless demonstrated to be inappropriate.<sup>31</sup> Local Planning Authorities (LPAs), in consultation with Lead Local Flood Authorities (LLFAs), are responsible for assessing drainage proposals. Although this approach lacks the statutory enforcement of Schedule 3, it has led to increased uptake of SuDS, particularly where local policies reinforce national guidance.<sup>32</sup>

A review of the application and effectiveness of planning policy for Sustainable Drainage Systems (SuDS), published by the Ministry of Housing, Communities and Local Government in 2018 found that under NPPF requirements, almost 90% of all approved planning applications sampled, featured SuDS. There was no evidence to suggest that adoption by maintenance companies is

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<sup>30</sup> CIWEM, [Schedule 3 – why we can't afford to wait for legislation to catch its tail](#), January 2025

<sup>31</sup> Ministry of Housing, Communities and Local Government, [NPPF: Meeting the challenge of climate change, flooding and coastal change](#), March 2012

<sup>32</sup> Ministry of Housing, Communities and Local Government, [A review of the application and effectiveness of planning policy for Sustainable Drainage Systems \(SuDS\)](#),

problematic. However, only 33% of adopted local plans specified clear arrangements for SuDS maintenance over the lifetime of developments. While 70% of local planning authorities (LPAs) lacked a monitoring or reporting regime for SuDS implementation. These gaps suggest that while SuDS are often included in planning applications, their quality, long-term functionality, and oversight are not consistently assured.

### **3.4.2 The review for implementation of Schedule 3 to The Flood and Water Management Act 2010**

In October 2019, Defra commissioned [an independent review](#) of the arrangements for determining responsibility for surface water and drainage assets. The review was carried out by David Jenkins and he set out clearly why the UK Government should reconsider implementing Schedule 3 to the Flood and Water Management Act 2010.

The review responds to growing concerns about surface water flooding, climate change, urbanisation, and the environmental impact of overwhelmed drainage infrastructure, including storm overflows.

The Jenkins review found that the planning-led approach in England is insufficient, citing inconsistent implementation, lack of enforcement, and poor maintenance of SuDS post-construction. It highlighted the absence of statutory technical standards and a formal approval process, which undermines the effectiveness and accountability of SuDS delivery.

The review recommends that the government fully implement Schedule 3, establishing a SuDS Approving Body (SAB) within unitary authorities or county councils. This body would oversee the design, approval, and adoption of SuDS, ensuring compliance with national standards.

The review explored alternative options for SAB designation, including local planning authorities, sewerage undertakers, and internal drainage boards, but concluded that local government is best placed to fulfil this role. Key to this conclusion was that local authorities act as lead local flood authorities (LLFAs) in England and are responsible for managing local flood risk which includes that from surface water. Northern Ireland does not have LLFAs with the

responsibility for flood risk shared across several government bodies, including DfI Rivers and DAERA.

Although its recommendation for locating the SAB in local government may not work within the Northern Ireland context, the report had a number of findings that would appear to support many of the SuDS provisions in the Bill. The report highlights the need for:

- Clear national standards for SuDS design, construction, and maintenance.
- Funding mechanisms for SAB setup to cover the net additional cost of all new burdens placed.
- Skills and capacity building within local authorities (or SAB) to support effective implementation.
- Public engagement and consultation.

### **Government response**

The UK Government responded positively to the Review for Implementation of Schedule 3 to the Flood and Water Management Act 2010, indicating its intention to implement Schedule 3 and make Sustainable Drainage Systems (SuDS) mandatory for new developments in England. A public consultation was scheduled for 2023 to gather views on: National SuDS standards; Statutory instruments and the role and structure of SABs. However, this did not take place.<sup>33</sup>

A question to the Secretary of State for Housing, Communities and Local Government, tabled in April 2025, asked “what plans were in place to require developers to use sustainable urban drainage systems in new developments.” His response indicated that the Government is content to continue to promote SUDS through the National Planning Policy Framework.<sup>34</sup>

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<sup>33</sup> DEFRA, [Surface Water Management: A Government Update](#), July 2021

<sup>34</sup> House of Commons, Question for Ministry of Housing, Communities and Local Government, [UIN 44742](#), tabled on 7 April 2025

### 3.4.3 Wales

Following consultation through 2017, the Welsh Government commenced Schedule 3 with effect from 7 January 2019. This made SuDS mandatory for most new developments over 100m<sup>2</sup> in Wales, introduced national standards for SuDS systems and established a formal approval process overseen by SuDS approval bodies.<sup>35</sup>

#### **Statutory national standards for sustainable drainage systems**

The Welsh Government published interim national standards on an advisory basis in January 2016. The aim was to enable designers; property developers; local authorities and other interested parties to both demonstrate that they have taken account of the Welsh Government's planning advice on Development and Flood Risk, Nature Conservation and Planning and to test the standards, so that if necessary they could be revised before being placed on a statutory footing. The Statutory national standards were published in October 2018.<sup>36</sup>

#### **SuDS Approval Bodies**

Each local authority in Wales became a SuDS Approval Body (SAB). Developers must submit drainage plans to the SAB for approval before construction begins. SABs are responsible for ensuring systems meet technical standards and are adoptable for long-term maintenance,

There are currently 19 SuDS Approval Bodies (SABs) in Wales compared with the 22 unitary Local Authorities, as some have joined to deliver the SAB function through a regional approach. Local Authorities typically opted for the SAB to form part of the Lead Local Flood Authority team. However, there are other approaches being taken, for example there is one example of the SAB role being delivered by the highways team within a local authority.<sup>37</sup>

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<sup>35</sup> Senedd Research, New mandatory requirements for sustainable drainage systems (SuDS), November 2018

<sup>36</sup> Welsh Government, [Statutory standards for sustainable drainage systems – designing, constructing, operating and maintaining surface water drainage systems](#), October 2018

<sup>37</sup> ARUP, [Sustainable Drainage Systems \(SuDS\) Schedule 3 Post Implementation Review](#), May 2023

In March 2022 the Welsh Government commissioned Arup to undertake a Post-Implementation Review. The review, aimed to assess implementation, gather stakeholder feedback, and provide recommendations. After four years of working under this legislation, comprehensive feedback has been obtained from a sample of impacted stakeholders representing many sectors.

Feedback has mixed responses. Many highlight examples that demonstrate the value and benefit of the intent of the legislation, draining development in a more sustainable way. However, as to be expected with a new process and requirements, there have been several challenges experienced by all parties.

The report highlights a number of challenges facing SABs:<sup>38</sup>

### **1. Resourcing and Capacity**

- Many SABs struggle with limited staff, funding, and technical expertise.
- Recruitment and retention of skilled personnel is a major issue, especially in smaller authorities.
- Some SABs rely heavily on external consultants, which can be costly and inconsistent.

### **2. Inconsistent Practices**

- There's significant variation in how SABs operate across Wales.
- Pre-application advice, application processing times, and enforcement approaches differ widely.
- This inconsistency creates uncertainty for developers and undermines confidence in the system.

### **3. Data and Monitoring Gaps**

- SABs do not consistently collect or report performance data.
- Lack of standardised metrics makes it difficult to evaluate the effectiveness of SuDS or SAB operations.
- Without clear data, it's hard to justify changes to fees or staffing levels.

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<sup>38</sup> ARUP, [Sustainable Drainage Systems \(SuDS\) Schedule 3 Post Implementation Review](#), May 2023



#### 4. Legal and Procedural Complexity

- Legal forms and adoption agreements are often unclear or inconsistent.
- Long defects periods and unclear maintenance responsibilities delay adoption of SuDS.
- Enforcement powers are underused, with few inspections or appeals recorded.

The review calls for stronger leadership, clearer guidance, and better data to support SABs and ensure the long-term success of Schedule.

#### 3.4.4 Scotland

Scotland is considered a frontrunner in the implementation of SUDS in the UK with a legal requirement for SuDS in new developments being in place over a decade sooner than elsewhere in the UK.<sup>39</sup> Under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, surface water drainage systems in new developments (unless single dwellings) must pass through SuDS before discharging into the water environment. This is enforced by the Scottish Environment Protection Agency (SEPA).<sup>40</sup>

##### SuDS Approval Body

In Scotland, there is no single SuDS Approval Body (SAB) like in Wales or proposed in England under Schedule 3. Instead, SuDS approval and adoption responsibilities are shared among several key organisations, depending on the type and location of the drainage system and developers must coordinate with SEPA, Scottish Water, and local authorities to ensure SuDS are approved and maintained appropriately.<sup>41</sup>

- The Scottish Environment Protection Agency (SEPA) Acts as the statutory regulator for protecting the water environment. SEPA requires SuDS in new developments and assesses whether the treatment train is

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<sup>39</sup> Centre of expertise for waters, [Source control SUDS delivery on a global scale and in Scotland](#), September 2013

<sup>40</sup> SEPA, [Diffuse pollution in the urban environment \(SUDS\)](#), accessed 7 July 2025

<sup>41</sup> Susdrain, [SuDS adoption in Scotland](#), accessed 28 August 2025

adequate to protect water quality. SEPA Provides guidance but does not adopt SuDS.

- Scottish Water can adopt certain SuDS features (e.g. detention basins, ponds, swales) if they are built to the standards in Sewers for Scotland 4th Edition. Adoption is at the developer's discretion, and Scottish Water becomes responsible for maintenance if adopted.
- Local Authorities may adopt SuDS as part of their role as roads authorities or under surface water management plans. Particularly relevant for SuDS associated with public roads or communal areas. Local Authorities (LA) in Scotland also promote the use of SUDS, as detailed in Planning Advice Notes (PANs) and the Building (Scotland) Regulations 2004.
- Landowners/Occupiers are responsible for SuDS located within the boundaries of private property, such as driveways or a car park.

### 3.4.5 Ireland

The Greater Dublin Strategic Drainage Study (GDSDS) was published in 2005 and included a statement that mandated SuDS on new developments across Ireland.<sup>42</sup> More broadly, SuDS requirements are based on a number EU Directives, national policy frameworks, planning legislation, and local authority development plans.

Local Authorities act as statutory approving bodies (SABs) for drainage plans. National guidance stems from the Greater Dublin Strategic Drainage Study (2005) and subsequent planning policies.<sup>43</sup> Local councils refer to this to produce their own SuDS policy and guidance documents outlining planning, design, construction, and maintenance requirements, for example, see [Wicklow County Council](#) and [South Dublin County Council](#).

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<sup>42</sup> South Dublin County Council, [Sustainable Drainage Explanatory Design & Evaluation Guide](#), May 2022

<sup>43</sup> The Dublin Drainage Consultancy, [Greater Dublin Strategic Drainage Study](#), 2005

## 4 Provision 3: Powers for the DfI to introduce flood protection grants

Clause 6 provides DfI 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.

It will effectively give a statutory footing to the Homeowner Flood Protection Grant Scheme (although this name may be subject to change) which was developed to assess in real terms the value for money, public interest, and the appropriate process and delivery mechanism for grant funding of individual property protection measures.

The Grant Scheme is specifically aimed at residential properties that have flooded internally in the past and continue to be exposed to frequent flooding. The scheme will cover 90% of the costs, up to a maximum of £13,700 of the total survey and estimated installation.<sup>44</sup>

The UK Government has, in the past, provided support to local authorities to design locally tailored support packages for householders and businesses impacted by floods. As part of this, grants of up to £5k per property, to fund measures which improve a property's resilience or resistance to damage from flooding, were available.<sup>45</sup> However,

There is no similar statutory scheme (targeted at homeowners) elsewhere in GB or Ireland.

This scheme has clear cost implications. Members may wish to enquire about what projections have been made regarding the future costs associated with this scheme.

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<sup>44</sup> DfI, [Homeowner Flood Protection Grant Scheme](#) [online] accessed 11 August 2025

<sup>45</sup> Local Government Association, [Flood Resilience Scheme](#), January 2016

## 5 Provision 4: Flood Management and Environmental Impact Assessments

Clause 7 provides an enabling power that will allow the Department for Infrastructure to make regulations concerning the assessment and management of flood risk in Northern Ireland. It sets out definitions for both “flood” and “flood risk” for the purposes of such regulations. Regulations under Clause 7 must be approved by resolution of the Assembly before coming into force (affirmative procedure).

## 6 Drainage works: Environmental Impact Assessment

Clause 8 gives the Department for Infrastructure the power to make regulations concerning the environmental impact assessment (EIA) of drainage works. This is intended to replace or update existing regulations that the Department can no longer amend due to the UK's exit from the EU.

## 7 Provision 5: Powers to register 161 agreements

Clause 10 provides Northern Ireland Water (NI Water) with the power to register Article 161 agreements in the Statutory Charges Register. These agreements are made between developers and NI Water regarding the adoption of sewerage infrastructure.

### 7.1 Article 161 Agreements

These are legal agreements under Article 161 of the Water and Sewerage Services (Northern Ireland) Order 2006. They set out the requirements and standards that developers must meet for NI Water to adopt sewerage infrastructure (e.g. pipes, drains, pumping stations).

Clause 10 allows NI Water to formally register these agreements in the Statutory Charges Register maintained by the Land Registry. This ensures that the obligations under the agreement are visible to future property owners.

Once registered, the agreement becomes a statutory charge on the land. This means it will bind successors in title, ensuring long-term compliance with infrastructure standards.

## 8 Provision 6: Powers to correct unlawful communications

Clause 11 provides powers for the NI Water to correct certain unlawful communications with a public sewer (also known as “miscommunications”). 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.

At present NI Water is empowered to serve notice on a person responsible for miscommunication, requiring them to remove or alter the connection within a specified time. If the person fails to comply, NI Water may carry out the remedial work itself and may recover the costs of doing so from the person responsible.

Clause 11 will provide the NI Water 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.

## 9 Supplementary

Clause 13 of the Water, Sustainable Drainage and Flood Management Bill deals with supplementary, incidental, consequential, and transitional provisions.

It sets out that DfI is granted power to make regulations that are:

- Supplementary: To support or clarify the main provisions of the Bill.
- Incidental: To address minor or related matters that arise from the Bill.
- Consequential: To amend or repeal other legislation affected by this Bill.
- Transitional or Saving: To ensure a smooth transition from old to new legal frameworks.

Any regulations made under Clause 13 that amend or repeal primary legislation must be approved by the Assembly using the affirmative resolution procedure. This ensures democratic oversight and transparency.