



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

Water, Flooding and Sustainable Drainage: Improving how we manage water

Consultation on a range of policy options being considered for inclusion in future primary legislation relating to water, flooding and sustainable drainage.





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Updating our legislation will help to reduce pollution in our watercourses, strengthen our resilience against extreme weather events, such as drought and flooding and introduce more sustainable, environmentally friendly and green solutions to managing our precious water resources.

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Ministerial Foreword

Climate change has contributed to an increased likelihood of warmer drier summers, milder wetter winters and a greater frequency of impactful storms. Both of these pose new challenges for how we manage, use, and treat our precious water resources. Extreme weather conditions that come with climate change pose risks to peoples' homes, businesses, safety, and health. In order to tackle these threats we must revise, improve and update our legislation on water, flooding and drainage.

Updating our legislation will help to reduce pollution in our watercourses, strengthen our resilience against extreme weather events, such as drought and flooding and introduce more sustainable, environmentally friendly and green solutions to managing our precious water resources.

It is important that we gather the views of members of the public and stakeholders to ensure that our policies and legislation reflect everyone's needs.

I am, therefore, delighted to publish this consultation on potential improvements to our water, flooding, and drainage legislation. Your responses will help to guide how we manage the consequences of extreme weather events, how we improve our drainage infrastructure and how we can better protect our environment and biodiversity for years to come.

The wider use of sustainable drainage systems (SuDS), the ability to store stormwater in green/open areas during heavy rainfall, and enabling NI Water to adopt and maintain certain private drainage infrastructure constructed pre-1973 offer opportunities for reducing flooding in areas at risk. The planning and creation of more SuDS in development areas and as part of general drainage infrastructure will slow the flow of water entering our sewers during times of heavy rainfall and will reduce out-of-sewer flooding. The Department is also consulting on continuing the Homeowner Flood Protection Grant Scheme beyond the initial scheme which was carried out for research purposes.

In addition to offering protection to those in flood-risk areas, a reduction of water in our sewerage system will help prevent discharges from combined sewer overflows, which can pollute our watercourses, and this consultation is also examining other ways to better protect our environment from pollution.

Water is a precious resource which we should all conserve and use responsibly. We are blessed with significant rainfall to keep our rivers full most of the time, but during times of drought we have to be careful how much water we draw from some sources or they may become depleted, which could harm the environment or cause interruptions to the water supply. Enhanced powers to limit water-use during times of drought or high demand will help us to protect our supplies when they are under threat.

As Minister for Infrastructure, I am excited to hear your views on these important topics so that we can better manage how we handle flooding, how we protect our rivers and the sea from pollution, and how we can conserve and responsibly use the precious water resources that we all share.

NICHOLA MALLON

Minister for Infrastructure

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Executive Summary

This consultation focuses on nine key policy areas where the Department for Infrastructure (“the Department”) considers that current policy could benefit from change. These include providing additional powers, rectifying loopholes and strengthening existing powers. They are as follows:

- **Powers for NI Water to implement wider water shortage measures:** During times of water shortage NI Water’s ability to take preventative action is limited to imposing a temporary hosepipe ban. This is done under Article 116 of the 2006 Order. A hosepipe ban only applies to the watering of private gardens and washing of private motor vehicles with a hosepipe. The focus of the powers can be ineffective as NI Water can ban the washing of cars and watering of gardens, but may not put a similar restriction on power washing surfaces or filling swimming pools with hosepipes. Such practices put excessive pressure on the network during periods of high demand for treated water, for example during periods of unusually hot weather, as we have seen in recent years. NI Water feels constricted on an operational level by its inability to restrict water usage for certain purposes, which puts the supply of water to the public at risk.
- **Powers for NI Water to enter onto private land to carry out works for flood risk management purposes including construction of sustainable drainage systems (SuDS):** NI Water can enter onto private land for various purposes, for example, to lay pipes or to investigate potential breaches of water quality or contamination, but it currently has no powers to enter land to construct sustainable drainage and flooding remedial schemes beyond the laying of pipes. This means that if there was a group of houses susceptible to flooding which could be prevented by the construction of a sustainable drainage system (SuDS) or some other form of natural flood risk management on nearby land, NI Water could not act without the landowner’s permission. New powers in this area would enable NI Water to carry out those types of works, other than traditional pipes, on private land to improve the resilience of the wider drainage network.
- **Provision of an enabling power for the Department to introduce arrangements to encourage developers to use Sustainable Drainage Systems (SuDS) as the preferred drainage solution in new developments:** This is to provide a power to enable the Department, in the future, to issue guidance on the use of SuDS, in order to ensure that SuDS become the preferred means of dealing with surface water. Guidance could specify design requirements, as well as set out how SuDS could be approved. The Department may also wish to set out maintenance requirements for SuDS. Consideration is being given as to whether any guidance should be by regulation i.e. set out in legislation, or non-statutory guidance.

- **Powers for NI Water to adopt certain drainage infrastructure, which is in private ownership and was constructed prior to 1st October 1973:** Drainage infrastructure is either adopted for maintenance purposes or in private ownership. Whoever owns the drainage infrastructure is responsible for maintaining it. The 2006 Order specifically excluded NI Water from making a declaration to take responsibility for, often referred to as “adopting”, privately-owned drainage infrastructure which was constructed prior to 1st October 1973. It is the Department’s opinion that in certain circumstances, there will be benefit in NI Water being able to adopt and maintain sections of privately-owned drainage infrastructure in cases, for example, where NI Water considers that its adoption would lead to a more efficient drainage system or the private drainage infrastructure is already being utilised by NI Water for drainage purposes.
- **Enhanced powers for NI Water to deal with drain and sewer misconnections:** A misconnection is when a source of foul water, like a washing machine, is incorrectly connected to a stormwater drain. This can lead to polluted water contaminating rivers and beaches. NI Water currently has powers to disconnect and prosecute the owner of the property where this has occurred, but it cannot repair the misconnection and recover the cost unless the owner consents. It is considered that an option for NI Water to repair the misconnection and recover the costs should be available. This would enable quicker remedial action to be taken and to prevent pollution and environmental damage. It is also considered that such environmentally critical work should not be dependent on the owner’s permission.
- **Powers for NI Water to register Article 161 agreements in the Statutory Charges Register:** The Statutory Charges Register provides purchasers of land, and their solicitors, with an easy method of checking whether a property is affected by certain statutory restrictions which could not easily be discovered otherwise. For example, matters relating to planning permission, burdens or easements, bonds and tree preservation orders. In the 2006 Order, a power was not included for NI Water to add Article 161 agreements and bonds to the 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. This was a power that NI Water’s predecessor, Water Service had. NI Water receives numerous enquiries and requests for information about Article 161 agreements and the adoption status of developments, many of which could be avoided if the information was available on the Statutory Charges Register. The Department therefore proposes that NI Water should have the power to add Article 161 agreements and bonds to the register.

- **Powers for the Department to grant fund Homeowner Flood Protection measures:** The Department has trialled an initial scheme for research purposes on providing grant funding to homeowners in flood risk areas to enable them to protect their homes against flooding. The Department does not have the power to provide grant funding beyond the end of the initial research scheme. The opinions of the public are, therefore, welcomed in helping the Department to decide whether to implement a substantive grant scheme and, if so, how it should be implemented.
- **Powers to provide for easements and additional compensation arrangements for affected landowners to facilitate flood storage:** In certain parts of Northern Ireland, towns and cities in downstream areas would significantly benefit if, during periods of significant rainfall, flood waters could be stored on a temporary basis, in green/open areas. New powers would enable the Department to provide compensation arrangements for affected landowners whose land is required to store flood waters.
- **Technical amendments to enable future amendment of subordinate legislation - Powers for the Department to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009:** This is to address gaps in the Department's regulation-making powers as a result of EU exit, specifically section 2(2) of the European Communities Act 1972, which was repealed by the European Union Withdrawal Act 2018.

Consultation aims

The consultation aims to give those who have an interest in the specific policies under consideration and those who have an interest in the water sector, in general, an opportunity to provide comments on the Department's proposals. It aims to outline the Department's approach and to seek views on the proposals for legislative change.

Your views will help to shape the final policy and legislative proposals to be brought to the Northern Ireland Executive for decisions.

Information on how to respond to the consultation is available below. A separate list of the consultation questions is provided in **SECTION 12**.

The closing date for responses is Friday 3rd June 2022. All responses received by the closing date will be considered by the Department.

SECTION 1: Consultation Arrangements.

1. Consultation Arrangements

Timetable

- 1.1 This consultation document will be available for comment and response for a period of 12 weeks from 11th March 2022 to 3rd June 2022. The document can be viewed, downloaded and responded to from the consultation section of the Department's website: <https://www.infrastructure-ni.gov.uk/consultations/water-flooding-and-sustainable-drainage-consultation>.
- 1.2 Following the consideration of consultation responses, a consultation report will be prepared.

How to respond

- 1.3 We would welcome your views on the proposals for future legislation. Responses to the questions at SECTION 12: List of Consultation Questions, should be made via the link at 1.1 above. Alternatively, responses can be e-mailed to waterpolicy@infrastructure-ni.gov.uk or posted to the address below:

Water, flooding and sustainable drainage consultation
Water and Drainage Policy Division
Department for Infrastructure, Room 122, Clarence Court,
10-18 Adelaide Street, BELFAST BT2 8GB

We will acknowledge receipt of your correspondence.

Alternative Formats

- 1.4 For audio impaired users, telephone: (028) 9054 0822 (text relay prefix 18001).

Additional, or paper, copies of this document can be obtained, free of charge, upon request using the e-mail address above or downloaded from the consultation section of the Department's website: <https://www.infrastructure-ni.gov.uk/consultations/water-flooding-and-sustainable-drainage-consultation>. The consultation document can also be made available in alternative formats or languages on request.

Please note that responses to the consultation must be received by Friday 3rd June 2022. All responses received by this date will be considered.

Regulatory Impact Assessment

- 1.5 Regulatory Impact Assessment (RIA) screening exercises have been carried out for each of the policy options which identified no direct or indirect impact upon businesses.
- 1.6 The RIA screening identified no direct or indirect impact upon the community or voluntary sectors.
- 1.7 Therefore, the RIA screenings carried out found that full RIAs were not required.

Rural Needs Impact Assessment

- 1.8 Rural Needs Impact Assessments have been completed for the relevant policy options and no barriers to the delivery of these policies were identified for rural areas. Nor were any additional costs identified for delivering these policies to rural areas. No additional steps were identified which need to be taken to ensure a fair rural outcome.
- 1.9 No need for an alternate rural delivery mechanism was identified for these policies.
- 1.10 With respect to preparing for the delivery of these prospective changes in legislation, no necessary changes were identified for rural communities. In particular, affording residential properties additional protection against flooding will benefit both urban and rural communities in flood-risk zones.

Equality Impact Assessment

- 1.11 Equality Impact Assessment (EQIA) screening exercises were carried out for each of the proposed policy changes. No impacts were identified on any S75 groups.
- 1.12 Therefore, the EQIA screenings carried out found that full EQIAs were not required.
- 1.13 Copies of the screening forms can be viewed on the Equality Section of the Department's website.

Human Rights Impact Assessment

- 1.14 Human Rights screening was carried out for all the proposed policies and it was established that the policies do not engage any Convention rights.

Data Protection Impact Assessment

- 1.15 Data Protection screening was carried out for all the proposed policies and it was established that the policies do not engage GDPR rules for the Department.

Confidentiality of Consultation Responses

- 1.16 A summary of responses will be published following completion of the consultation process. If you would prefer your comments not to be published, please indicate this when responding.

- 1.17 Requests for non-publication of responses will be respected but, in accordance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, cannot be guaranteed. For further information about the confidentiality of responses please contact the Information Commissioner's Office.

Next Steps

- 1.18 After consideration of all the responses received by the deadline, a Consultation Report will be prepared.

SECTION 2: Background.

2. Background

2.1 The Department is seeking views on a number of policy proposals to improve how water, sewerage, and flooding services are delivered in Northern Ireland. The proposals being consulted on will need to be implemented by introducing new legislation. The public's views will play a key part in this process and we welcome your comments on the policy proposals contained within this consultation paper.

2.2 The policy areas under consideration largely relate to improvements in processes for NI Water and for new and improved ways to reduce flood risk. The following sections set out the reasons for the proposed changes and also provide more details on what the Department would like to achieve.

Legislation

2.3 The main pieces of legislation governing water and sewerage services here are the Water and Sewerage Services (Northern Ireland) Order 2006 ("the 2006 Order") and the Water and Sewerage Services Act (Northern Ireland) 2016.

2.4 The Drainage (Northern Ireland) Order 1973 ("the Drainage Order") is the main piece of legislation used by the Department in relation to drainage schemes, the maintenance of watercourses and sea defences, and the financing of certain works.

SECTION 3: Powers for NI Water to implement wider water shortage measures.

3. Powers for NI Water to implement wider water shortage measures

Introduction

- 3.1 NI Water is responsible for managing the water supply in Northern Ireland. NI Water takes raw water from reservoirs, lakes, and rivers which it then treats to make it safe for the public to use. During times of water shortage, NI Water may introduce restrictions on water use. Water shortages, as a result of drought or high demand, can lead to public health issues, damage to the environment and negative impacts on businesses. Drought occurs as a result of a shortage of rainfall and leads to a drop in reservoir, lake and river levels. This can cause environmental damage and a reduction in raw water available for NI Water to treat and supply to the public. High demand for treated water can be caused by increased customer use; as occurred during the unusually high temperatures of the summers of 2018, 2020, and 2021. It can also be caused through leakage from pipes both underground and in customers' property due to rapid freezing and thawing causing them to burst.
- 3.2 NI Water has taken steps to ensure incidents like these do not immediately lead to water shortages and can implement measures to alleviate pressures in areas of shortage, but in extreme situations, restrictions on usage may be necessary. If NI Water is of the opinion that there is a serious deficiency of water available for distribution, or the threat of a serious deficiency exists, it can prohibit or restrict the use of hosepipes for watering private gardens and washing private cars. However, NI Water does not have the power to restrict the use of hosepipes for other purposes. NI Water cannot currently stop people from power washing surfaces or filling paddling, swimming pools or garden fountains. The current powers may not be sufficient to manage high demand events, putting at risk the supply of water for the population.

The Issue

- 3.3 Climate change is contributing to forecasts of hotter, drier summers with more frequent droughts and increasingly extreme weather incidents. These changes could put a severe strain on existing water resources, which would require NI Water to implement restrictions to conserve water supplies and protect the environment.

3.4 Any changes to NI Water's powers need to be sufficiently wide-ranging and flexible to meet future challenges. They also need to be reasonable and appropriate to the circumstances. There also needs to be sufficient oversight to instil public confidence in the measures being taken. The Department would like to avoid situations where water restrictions are seen to be applied unfairly and unreasonably. For example, filling a private swimming pool with a garden hose uses far more water than watering a private garden or washing a car.

Proposal

3.5 The Department wishes to gather the public's views on extending NI Water's powers to temporarily ban the use of hosepipes during periods of water shortage, depending on the circumstances. Certain uses could be chosen, as appropriate, to be included in any hosepipe ban and could be added to or removed, as the need dictates.

3.6 The Department is not currently proposing to extend NI Water's hosepipe ban powers to businesses (non-domestic purposes). However, consideration is being given to providing a power which would enable the Minister to include limited non-domestic purposes, similar to provisions included in the legislation in England and Wales, as explained below.

Rationale

3.7 In England, Scotland, Wales, and the Republic of Ireland, various domestic and non-domestic restrictions are available to water undertakers and government ministers.

3.8 In the Republic of Ireland all responsibility to impose restrictions rests with the water undertaker. Under the Water Services Act 2007, the water services authority may make an order, after giving notice to the public, to restrict or prohibit the use of water drawn through a hosepipe for:

- watering a garden
- watering recreational parks or sports grounds, either generally or any particular type of such park or ground
- irrigating or spraying crops, either generally or any particular type of crop
- washing a mechanically propelled vehicle or a trailer.

- 3.9 The water services authority may also, by order, restrict or prohibit the use of water used for the provision of a commercial washing service for a vehicle or trailer; or for filling or replenishing a swimming pool, artificial pond, lake or similar application.
- 3.10 In Scotland full responsibility rests with the Minister. Under the Water Resources (Scotland) Act 2013, Scottish Water may propose to the Scottish Ministers that they make a water shortage order. The water saving measures which may be included in an order, after giving notice to the public, include:
- refraining from using a hosepipe or sprinkler to water a garden or plants.
 - refraining from using a hosepipe or pressure washer to clean a private motor vehicle; private leisure boat; domestic path, patio or other artificial outdoor surface.
 - refraining from using a hosepipe to draw water for domestic recreational use to fill or maintain a domestic pond and to clean the exterior of domestic premises.
 - refraining from filling or maintaining a swimming pool; paddling pool; ornamental fountain; and non-domestic pond.
 - refraining from watering outdoor plants on commercial premises; and from watering a fairway on a golf course.
 - refraining from using water to clean a vehicle or boat (other than a private motor vehicle or private leisure boat); an aircraft or railway rolling stock; non-domestic premises; and industrial plant.
 - refraining from operating a mechanical vehicle washer and operating a cistern in an unoccupied or closed non-domestic building.
 - refraining from using water to suppress dust at non-domestic premises.
 - such other measures as Scottish Water or the Scottish Ministers consider to be necessary or expedient.
- 3.11 In England and Wales, under the Water Industry Act 1991, powers to implement domestic water restrictions reside with the water undertaker. The water undertaker may, after giving notice to the public, implement temporary use bans, to prohibit the use of water

for watering gardens and cleaning private motor-vehicles using hosepipes but may also include:

- watering plants on domestic or other non-commercial premises using a hosepipe;
- cleaning a private leisure boat using a hosepipe;
- filling or maintaining a domestic swimming or paddling pool;
- drawing water, using a hosepipe, for domestic recreational use;
- filling or maintaining a domestic pond using a hosepipe;
- filling or maintaining an ornamental fountain;
- cleaning walls, or windows, of domestic premises using a hosepipe;
- cleaning paths or patios using a hosepipe; and
- cleaning other artificial outdoor surfaces using a hosepipe.
- Additionally, in England and Wales, the Minister may make legislation to add non-domestic restrictions to the above list of restrictions available to the water undertaker, as well as remove specific restrictions from the list.

3.12 The Department believes that the expansion of NI Water's current powers with a more comprehensive list of domestic purposes would be more effective in managing high demand events that put at risk the supply of water to the population.

3.13 Consideration is also being given to providing a power for the Minister to make legislation to add non-domestic restrictions or remove domestic purposes, if the Minister deems it necessary. This would increase the flexibility of prohibitions available to NI Water, whilst providing ministerial oversight.

3.14 In England and Wales, public notice must be given of restrictions, as well as a means for the public to make representations about such restrictions. This gives the public, and businesses; if any non-domestic uses are to be included, an opportunity to object to the restrictions. The period of notice is not specified, only that the period should reflect the level of restrictions being proposed.

3.15 In Scotland, 14 days' notice must be given to allow the public to make representations about any proposed restrictions.

- 3.16 In the Republic of Ireland, any proposed restriction may come into force as soon as it is published in a newspaper and broadcast on a radio or television channel available in the area.
- 3.17 In Northern Ireland, a hosepipe ban must be advertised in two local newspapers to give the public prior notice, before it comes in to operation.
- 3.18 NI Water has raised concerns that a period for representations, for any proposed restrictions, may delay their implementation for up to 2-3 weeks, leaving it powerless to act quickly in a time of emergency.
- 3.19 It has been suggested that domestic restrictions could be expanded, similar to the list of restrictions available in England and Wales, but without the period for representations.

Your views:

- 3.20 It is proposed to add the following activities to the list of uses that NI Water may include in a hosepipe ban, in addition to its current ability to prohibit or restrict watering private gardens and washing private motor cars:
- watering plants on domestic or other non-commercial premises using a hosepipe;
 - cleaning a private leisure boat using a hosepipe;
 - filling or maintaining a domestic swimming or paddling pool;
 - drawing water, using a hosepipe, for domestic recreational use;
 - filling or maintaining a domestic pond using a hosepipe;
 - filling or maintaining an ornamental fountain;
 - cleaning walls, or windows, of domestic premises using a hosepipe;
 - cleaning paths or patios using a hosepipe; and
 - cleaning other artificial outdoor surfaces using a hosepipe.

Consultation Question 1

Do you agree that the following list of activities should be included in the list of uses that NI Water may temporarily prohibit or restrict as part of a hosepipe ban, in addition to its current ability to prohibit or restrict watering private gardens and washing private motor cars?

- watering plants on domestic or other non-commercial premises using a hosepipe;
- cleaning a private leisure boat using a hosepipe;
- filling or maintaining a domestic swimming or paddling pool;
- drawing water, using a hosepipe, for domestic recreational use;
- filling or maintaining a domestic pond using a hosepipe;
- filling or maintaining an ornamental fountain;
- cleaning walls, or windows, of domestic premises using a hosepipe;
- cleaning paths or patios using a hosepipe; and
- cleaning other artificial outdoor surfaces using a hosepipe.

**SECTION 4:
Powers for NI Water to enter
onto private land to carry out
works for flood management
purposes including construction
of sustainable drainage
systems (SuDS).**

4. Powers for NI Water to enter onto private land to carry out works for flood management purposes including construction of sustainable drainage systems (SuDS)

Introduction

- 4.1 NI Water has powers to enter premises for various purposes, with or without the permission of the landowner. This includes surveying, sampling and testing, for both water and sewerage purposes; it also includes entering land to search for water sources and to lay pipes for water and sewerage purposes on private land.
- 4.2 In addition, NI Water may also enter land for other purposes, with the permission of the landowner.
- 4.3 However, NI Water does not have the right to enter private land for the purposes of carrying out flood management works and/or sustainable drainage works, beyond laying pipes.
- 4.4 Natural Flood Management (NFM) measures such as flood storage seek to sustainably manage land within river catchments to provide flood storage during storm events, in order to lower peak river flows and reduce the risk of flood damage. They seek to store or slow down floodwaters to allow the flood event to be discharged in a controlled manner over a longer duration.
- 4.5 Natural flood management schemes may take the form of ponds, dams, and sustainable drainage systems, often referred to as SuDS. These natural features bring additional benefits of reducing pollution, improving the landscape and encouraging wildlife.
- 4.6 Natural flood management or SuDS may not be feasible in every case but, in certain circumstances, it may be an effective solution to alleviate flooding. At present, such solutions can only be progressed with the permission of the landowner. In considering natural flood management and SuDS, a key area will be the responsibility for ongoing maintenance and liability.

4.7 England and Wales amended their legislation and introduced Article 114A as an amendment to the Water Industry Act 1991 by way of the Water Act 2014, stating that:

“Sewerage undertakers may construct, on their own or on another’s land, drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.”

“A sewerage undertaker may maintain and operate a drainage system constructed by it.”

4.8 Additionally, the legislation in England and Wales gives the sewerage undertaker the option to maintain the constructed drainage system but does not require the undertaker to maintain the system.

The Issue

4.9 To alleviate flooding and drainage problems it is important that NI Water carries out work in a sustainable way, simply moving the flood water further downstream may only transfer the problem to another area. This need to manage our water and flood water in a more sustainable manner is being considered through the Department’s Living With Water Programme, which proposes to sustainably manage flood risk in the Greater Belfast area. Natural flood risk management and SuDS can help to resolve the problem, as during exceptionally heavy rainfall that leads to flood conditions, these natural solutions can retain excess water and release it in a controlled way after the event. This reduces the rate at which water drains from one area to the next and helps to prevent the capacity of drainage systems being exceeded by excess flows.

Proposal

4.10 The Department wishes to gather the public’s views on providing NI Water with new powers to enter onto private land for flood management purposes, including sustainable drainage works.

Rationale

4.11 Providing NI Water with such powers will enable it to carry out works on private land beyond laying pipes and to construct schemes to relieve flooding.

4.12 The option to maintain the constructed drainage system would allow NI Water to adopt SuDS or other flood management works,

to ensure that the drainage systems continue to operate efficiently and are appropriately maintained. However, NI Water would not be required to maintain all those works at public expense, if it were preferable to have the works maintained by another party.

Your views:

- 4.13 It is proposed to provide NI Water with new powers to enter onto private land for the purposes of carrying out sustainable drainage works with or without the permission of the landowner; and for NI Water to have the option to maintain the constructed drainage system.

Consultation Question 2

Do you agree that NI Water should be given a new power of entry onto land to enable it to carry out works beyond the laying of pipes, such as flood management or sustainable drainage schemes?

SECTION 5:

Provision of an enabling power for the Department to introduce arrangements to encourage developers to use sustainable drainage systems (SuDS) as the preferred drainage solution in new developments.

5. Provision of an enabling power for the Department to introduce arrangements to encourage developers to use sustainable drainage systems (SuDS) as the preferred drainage solution in new developments

Introduction

- 5.1 Sustainable Drainage Systems (SuDS) are designed to manage flood and pollution risks from water, and are often used in urban areas. They offer benefits to water quality, biodiversity and public amenity.
- 5.2 There are two main varieties of SuDS - hard and soft. Hard SuDS include things such as oversized pipes and large storage tanks which hold floodwaters and release them slowly into the sewerage infrastructure or watercourse to avoid overwhelming the system during periods of heavy rain. These types of SuDS are already catered for in legislation and, if constructed in accordance with agreed standards, may be adopted and maintained by NI Water. As a result, they are becoming more popular. Therefore, any future guidance would not focus on those types of SuDS.
- 5.3 However, soft SuDS, as they are often referred to, include natural drainage solutions such as ponds, swales and rainwater gardens, etc. and are less common due to the uncertainty around their construction standards, approval and maintenance. These operate in a similar manner to those mentioned above, with the pond or swale, etc. filling with rainwater and then slowly soaking into the ground, over a period of time, or slowly being released by a control mechanism into a watercourse or the sewerage infrastructure.
- 5.4 As drainage technology continues to develop, the Department is seeking to promote the use of soft SuDS. This will help to relieve pressure on the stormwater sewerage system, reducing the need to expand existing infrastructure, or lay new, pipes. It will also help protect properties from flooding during heavy rainfall events. Soft SuDS can also offer a focal point to an outdoor space for residents to enjoy green space, exercise and relax. These types of SuDS will be the focus of any future guidance.

The Issue

- 5.5 The Department wishes to have a power to enable it, in the future, to introduce new arrangements on the use of SuDS, in order to ensure that SuDS become the preferred means of dealing with surface water in new developments, without the need to make or amend primary legislation. These new arrangements could specify the design requirements approval procedures. The Department may also wish to set out maintenance requirements for SuDS. The current lack of SuDS guidance is seen by some developers as a deterrent to the use of SuDS and may be hindering their use. The Department is considering whether future guidance, when developed, should be non-statutory guidance or set out in legislation. Other places, such as Wales, have created both guidance and SuDS approval bodies in order to facilitate and increase their use.

Proposal

- 5.6 The Department wishes to amend the Water and Sewerage Services (Northern Ireland) Order 2006 to provide a power for the Department to introduce arrangements to encourage developers to use sustainable drainage systems (SuDS) as the preferred drainage solution in new developments. This may be by regulation or by non-statutory means, once all the necessary research and policy development has been carried out. The new arrangements may include issues such as the design and approval of SuDS, as well as maintenance requirements.

Rationale

- 5.7 By providing such an enabling power, 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. It would ensure that SuDS become the preferred means of dealing with surface water and remove the current confusion around the use of SuDS that exists due to the lack of clear guidance, which is hindering the widespread use of SuDS - especially soft SuDS options like ponds, lakes, swales and rainwater gardens.

Your views:

- 5.8 It is proposed to provide the Department with a power to introduce arrangements to make sustainable drainage systems (SuDS) the preferred drainage solution in new developments, by regulation or by non-statutory means.

Consultation Question 3

Do you agree that the Department for Infrastructure should be given a power to issue future arrangements and guidance on the design, approval, and maintenance of sustainable drainage systems to make SuDS the preferred means of dealing with surface water?

**SECTION 6:
Powers for NI Water to adopt
certain drainage infrastructure,
which is in private ownership
and was constructed prior to
1st October 1973.**

6. Powers for NI Water to adopt certain drainage infrastructure, which is in private ownership and was constructed prior to 1st October 1973

Introduction

- 6.1 The majority of drainage infrastructure in Northern Ireland is either designated or adopted. This means it is maintained by either DfI Rivers, DfI Roads, or NI Water. However, significant elements of the drainage infrastructure have not been designated or adopted and are held in private ownership. In many cases, these elements of the drainage infrastructure are piped or culverted and already communicate with, or connect to, publicly maintained drainage infrastructure.
- 6.2 On occasions, sections of privately-owned drainage infrastructure can form an important element of the drainage infrastructure network. Circumstances can arise where adopting specific sections of private drainage represents value for money and is of benefit e.g. in helping to prevent internal flooding of properties. In instances where NI Water adopted sections of private drainage infrastructure important to its network, responsibility and maintenance costs would then rest with NI Water, rather than the landowner.
- 6.3 While NI Water has powers to make a declaration and adopt drainage infrastructure which was constructed post 1st October 1973, the 2006 Order specifically excludes any sewer or works which was completed before 1st October 1973, from being adopted.

The Issue

- 6.4 In some circumstances, NI Water would seek to take responsibility for sections of privately-owned drainage infrastructure which are important to the effective operation of its network.

Proposal

- 6.5 The Department wishes to gather the public's views on providing a power for NI Water to adopt, where required and where it represents value for money, critical sections of privately-owned drainage infrastructure which were constructed prior to 1st October 1973.

Rationale

- 6.6 By providing these powers, NI Water would be able to adopt and maintain drainage infrastructure, where a need has been identified which represents value for money.

Your views:

- 6.7 It is proposed to provide NI Water with a power to adopt critical components of existing privately-owned drainage infrastructure which was constructed prior to 1st October 1973.

Consultation Question 4

Do you agree that NI Water should be permitted to adopt and maintain sections of privately-owned drainage infrastructure constructed prior to 1st October 1973, which are critical to the effective operation of its network?

SECTION 7: Enhanced powers for NI Water to deal with drain and sewer misconnections.

7. Enhanced powers for NI Water to deal with drain and sewer misconnections

Introduction

- 7.1 Any water from households and businesses that has become contaminated must be connected to a sewerage pipe leading to the local wastewater treatment works to be treated. Contamination can occur for many reasons but in domestic situations this is usually through toilets, washing machines, showers and sinks.
- 7.2 Rainwater from roofs and other surfaces drains into stormwater drainage systems; many of which run parallel to sewerage pipes, and ideally then flow to a local watercourse and eventually to the sea, bypassing the wastewater treatment works.
- 7.3 A misconnection occurs when a source of contaminated water is incorrectly connected to the stormwater drainage system which can lead to the pollution of local rivers and beaches. For example, a washing machine being plumbed into a stormwater drain.
- 7.4 When NI Water becomes aware of a misconnection, it has a number of powers available to rectify it. In the majority of cases, the landowner will correct the problem once they are made aware of it. Alternatively, NI Water has the power to correct the error and recover the costs from the landowner, with the landowner's permission.
- 7.5 Problems arise if the landowner refuses to rectify the misconnection themselves and also refuses to give NI Water permission to correct the error. In such instances, NI Water's only recourse is to disconnect the pipe and prosecute the landowner.

The Issue

- 7.6 NI Water believes it would benefit from a power to fix the misconnection and to recover the cost of the work from the landowner in circumstances where the landowner refuses entry. There are two main reasons behind this thinking. Firstly, it avoids the need to disconnect the appliance, rendering it unusable and potentially leaving the owner without a washing machine or other facilities. Secondly, it allows misconnections to be rectified more quickly before they can do further environmental damage.

Proposal

- 7.7 The Department wishes to gather the public's views on providing a power for NI Water to fix misconnections and recover costs in cases where the landowner refuses permission.

Rationale

- 7.8 NI Water will be able to stop the misconnection quickly, remove the source of the pollution and, therefore prevent further environmental damage. It will also be able to seek recovery of the costs for doing so.

Your views:

- 7.9 It is proposed to provide a power to NI Water to fix misconnections and recover costs in cases where the landowner refuses permission.

Consultation Question 5

Do you agree that NI Water should be given the power to enter private premises to fix drainage misconnections and recover the costs from the landowner, when the landowner refuses entry and also refuses to fix the misconnection themselves?

**SECTION 8:
Power for NI Water to register
Article 161 agreements in the
Statutory Charges Register.**

8. Power for NI Water to register Article 161 agreements in the Statutory Charges Register

Introduction

- 8.1 Developers of two or more properties must enter into an agreement, with an associated bond, with NI Water guaranteeing that the water and sewerage infrastructure, relating to their development, will be constructed to an agreed standard and that it will subsequently be adopted into public ownership. This provides reassurance to the public and their representatives that a property owner will not be burdened with ongoing maintenance and costs involved with the drains, sewers and other features such as pumping stations, within the development.
- 8.2 The Statutory Charges Register contains various charges, burdens, agreements and bonds, enabling the public and their representatives to check if there are any charges on the property or any issues that may need to be resolved prior to purchase.

The Issue

- 8.3 At present, NI Water is not entitled to register Article 161 agreements in the Statutory Charges Register. When NI Water was first established in 2007, the power to register such agreements was not provided for in legislation. NI Water's predecessor, Water Service, had that power prior to 2007, when it was a public service.
- 8.4 As a result, NI Water receives numerous enquiries and requests for information about Article 161 agreements and the adoption status of developments, many of which could be avoided if the information was available on the Statutory Charges Register. This has created a significant administrative cost to NI Water.
- 8.5 It is proposed that NI Water should have the power to add Article 161 Agreements, and the associated bond documents, to the Register.

Proposal

- 8.6 The Department wishes to gather the public's views on providing NI Water with a power to register Article 161 Agreements and bonds in the Statutory Charges Register.

Rationale

- 8.7 This proposal to amend the legislation would greatly reduce the need for direct enquiries, reduce the administrative burden on NI Water, and also prevent the accumulation of statutory charges applications which cannot be registered.

Your views:

- 8.8 It is proposed to provide a power to NI Water to register Article 161 agreements in the Statutory Charges Register.

Consultation Question 6

Do you agree that NI Water should be provided with a power to enable it to register Article 161 adoption agreements and bonds in the Statutory Charges Register?

SECTION 9: Powers for the Department to grant fund Homeowner Flood Protection measures.

9. Powers for the Department to grant fund Homeowner Flood Protection measures

Introduction

- 9.1 The Homeowner Flood Protection Grant Scheme (HFPGS) 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.
- 9.2 The HFPGS is designed to encourage the owners of residential properties that have flooded before and/or are located within known flood prone areas, to modify their properties to make them more resistant to flooding.
- 9.3 The scheme is specifically aimed at residential properties that have flooded internally in the past, continue to be exposed to frequent flooding, and cannot benefit from a separate Flood Alleviation Scheme in the medium term.

The Issue

- 9.4 The Department is responsible for the HFPGS. However, the Department does not have powers under legislation to provide grants beyond initial schemes for research purposes. The Department has completed its evaluation of the initial scheme and has concluded that the HFPGS has demonstrated both a need for, and benefit from, a property level protection grant scheme.

Proposal

- 9.5 The Department wishes to determine if there is a public interest in continuing a HFPGS and, if so, what it should focus on. To develop a substantive scheme will require legislation to provide the power for the Department to provide grant funding for this purpose.

Rationale

- 9.6 An analysis of the Post Project Evaluation, alongside responses to this consultation, will help the Department determine whether legislation should be provided to enable it to introduce a substantive Homeowner Flood Protection Grant Scheme to residents of properties susceptible to flooding, and who meet defined eligibility criteria.

Your views:

- 9.7 It is proposed to provide powers to enable the Department for Infrastructure to grant fund Homeowner Flood Protection measures.

Consultation Question 7

Do you agree that legislation should be provided to enable the Department for Infrastructure to introduce a substantive Homeowner Flood Protection Grant Scheme to residents whose properties are susceptible to flooding, and who meet defined eligibility criteria?

**SECTION 10:
Powers to provide for
easements and additional
compensation arrangements
for affected landowners to
facilitate flood storage.**

10. Powers to provide for easements and additional compensation arrangements for affected landowners to facilitate flood storage

Introduction

- 10.1 DfI provides infrastructure schemes to protect towns and cities from storm flows from rivers in order to mitigate flood risk. However, to continue to provide hard engineered solutions on their own, in some circumstances may be very expensive to the point of making some schemes unaffordable on a cost versus benefit analysis. And in some cases they may become aesthetically unacceptable, given their required height and location. Other solutions, such as flood storage works, may also be required, to complement hard engineered solutions. These greener solutions are often dependent on the use of private land, such as farmland, and where private land is required for flood storage, additional compensation arrangements to facilitate agreements with affected landowners will be required.
- 10.2 The Executive's Sustainable Water - A Long Term Water Strategy (LTWS) for Northern Ireland (2015-2040), sets a clear framework for action which will facilitate the implementation of a range of initiatives aimed at delivering a sustainable water sector in Northern Ireland. This includes Natural Flood Management (NFM) measures which seek to store or slow down floodwaters through measures such as flood storage.
- 10.3 Flood storage, as a flood risk management option, is designed to attenuate flood flows to restrict peak flows downstream by storing the flood volume so that the floodwaters are discharged in a controlled manner over a longer duration. It is a measure that is particularly appropriate where hard defences are inappropriate or as a complement to such defences, making them more resilient to climate change.

The Issue

- 10.4 Northern Ireland does not have specific flood management legislation similar to other parts of the UK. For example, the Flood Risk Management (Scotland) Act 2009 makes provision for

the assessment and sustainable management of flood risks. This legislation provides specific powers to enter into agreements or arrangements with landowners for the purposes of managing land in a way which can assist in the retention of flood water or slowing the flow of such water.

- 10.5 The Drainage Order provides powers for works to be carried out to allow for land to be periodically flooded as part of flood storage measures. It also provides powers to acquire land (by agreement or compulsorily) or to lease land or dispose of any land vested in the Department. However, it does not provide powers to create easements, an option that would allow land to be periodically flooded as part of flood storage measures. A drainage easement agreement between the Department and a landowner would provide the Department with certain rights over a specific area of land for flood storage purposes without the need to purchase it. The landowner would retain ownership of the land and the easement would stipulate any restrictions on the landowner's use of the lands well as setting out the responsibilities of each party.
- 10.6 The Drainage Order also does not include powers to provide for compensation arrangements that would allow for payments to affected landowners for flood storage purposes, over a long period of time. Such payments would compensate landowners who have agreed to their lands being used for flood storage during periods of heavy rain.

Proposal

- 10.7 The Department wishes to obtain the public's views on the provision of powers to create easements and additional compensation arrangements that would help facilitate agreement with landowners for use of their land for flood storage purposes.
- 10.8 The Department would propose to enter into long-term agreements with landowners to allow for works to be carried out to enable their land to be used for flood storage purposes during periods of heavy rain. The proposal would be restricted to areas where schemes have been identified as beneficial in mitigating flood risk and which represent value for money.
- 10.9 In allowing their land to be used for flood storage purposes, the landowner would be paid compensation. For example, an amount per year for allowing land to be periodically flooded.

10.10 The periods that land would be required for flood storage purposes are likely to be variable, for example, a need might arise once a year, numerous times a year or not at all, depending on the weather. The landowner would be able to continue to use the land, when it is not being utilised for flood storage purposes, subject to certain restrictions.

Rationale

10.11 There is a pressing need for solutions, such as flood storage works, to complement hard engineered solutions and provide further protection to properties and people in communities subject to flooding. In order to implement flood storage measures, the Department will need to access privately owned land belonging to private landowners and establish compensation agreements.

10.12 In areas such as Belfast, Derry, Newry and Omagh, the need for flood storage has been identified as a possible element of the overall flood solution. Flood storage, in various guises, will be integral to the Department's plans for future flood protection. This includes the recently published "Living with Water in Belfast" a £1.4 billion 12 year investment plan for drainage and wastewater management within the Greater Belfast area. Work is also underway to develop a strategic drainage infrastructure plan for Derry. Proposed measures in these plans include greener drainage solutions including flood storage.

10.13 It is recognised that to progress work in this area, additional powers will be required to provide for easements and compensation arrangements for affected landowners who have agreed to long term adjustments to their land that will enable the storage of flood waters and mitigate the risk of flooding.

Your views:

10.14 It is proposed to provide powers to enable the Department to provide for easements and additional compensation arrangements for affected landowners for agreeing to their land being used for flood storage purposes.

Consultation Question 8

Do you agree that powers should be provided to enable the Department for Infrastructure to provide for easements and additional compensation arrangements for affected landowners, who have agreed to long term adjustments to their land to facilitate storage of flood waters and help mitigate the risk of flooding?

**SECTION 11:
Technical amendments to
enable future amendment of
subordinate legislation - Powers
for the Department to amend,
update or revoke the Drainage
(Environmental Impact
Assessment) Regulations
(Northern Ireland) 2017
and the Water Environment
(Floods Directive) Regulations
(Northern Ireland) 2009.**

11. Technical amendments to enable future amendment of subordinate legislation - Powers for the Department to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009

Introduction

- 11.1 Two technical amendments are also proposed. These would address gaps in the Department's regulation-making powers as a result of EU exit, specifically section 2(2) of the European Communities Act 1972.

The Issue

- 11.2 Section 2(2) gave powers to the Department to amend, update or revoke regulations in line with changes to EU legislation.
- 11.3 Much of the Department's subordinate legislation was made using Section 2(2) powers which were repealed by the European Union Withdrawal Act 2018. Action was taken to ensure all relevant existing statute was protected and this has meant that the statute book remains fit for purpose but the Department is unable to make further amendments without new Primary legislation powers.

Proposal

- 11.4 The proposal is to include a power to amend, update or revoke specific regulations which were made using section 2(2) powers. Those regulations are the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009.

Rationale

- 11.5 Without the power for the Department to amend, update or revoke specific regulations which were made using section 2(2) powers it would be necessary to make any changes by way of primary legislation.
- 11.6 The use of primary legislation to make changes to these specific regulations would be time-consuming, expensive and an inefficient use of NI Assembly time and resources.

Your views:

- 11.7 It is proposed to provide a power to enable the Department to amend, revoke or replace the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009.

Consultation Question 9

Do you agree with the proposal to provide a power for the Department to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009?

SECTION 12: List of Consultation Questions.

12. List of Consultation Questions

SECTION 3:

Powers for NI Water to implement wider water shortage measures

Consultation Question 1

Do you agree that the following list of activities should be included in the list of uses that NI Water may temporarily prohibit or restrict as part of a hosepipe ban, in addition to its current ability to prohibit or restrict watering private gardens and washing private motor cars?

- watering plants on domestic or other non-commercial premises using a hosepipe;
- cleaning a private leisure boat using a hosepipe;
- filling or maintaining a domestic swimming or paddling pool;
- drawing water, using a hosepipe, for domestic recreational use;
- filling or maintaining a domestic pond using a hosepipe;
- filling or maintaining an ornamental fountain;
- cleaning walls, or windows, of domestic premises using a hosepipe;
- cleaning paths or patios using a hosepipe; and
- cleaning other artificial outdoor surfaces using a hosepipe.

SECTION 4:

Powers for NI Water to enter onto private land to carry out works for flood management purposes including construction of sustainable drainage systems (SuDS).

Consultation Question 2

Do you agree that NI Water should be given a new power of entry onto land to enable it to carry out works beyond the laying of pipes, such as flood management or sustainable drainage schemes?

SECTION 5:

Provision of an enabling power for the Department to introduce arrangements to encourage developers to use sustainable drainage systems (SuDS) as the preferred drainage solution in new developments

Consultation Question 3

Do you agree that the Department for Infrastructure should be given a power to issue future arrangements and guidance on the design, approval, and maintenance of sustainable drainage systems to make SuDS the preferred means of dealing with surface water?

SECTION 6:

Powers for NI Water to adopt certain drainage infrastructure, which is in private ownership and was constructed prior to 1st October 1973

Consultation Question 4

Do you agree that NI Water should be permitted to adopt and maintain sections of privately-owned drainage infrastructure constructed prior to 1st October 1973, which are critical to the effective operation of its network?

SECTION 7:

Enhanced powers for NI Water to deal with drain and sewer misconnections

Consultation Question 5

Do you agree that NI Water should be given the power to enter private premises to fix drainage misconnections and recover the costs from the landowner, when the landowner refuses entry and also refuses to fix the misconnection themselves?

SECTION 8:

Power for NI Water to register Article 161 agreements in the Statutory Charges Register

Consultation Question 6

Do you agree that NI Water should be provided with a power to enable it to register Article 161 adoption agreements and bonds in the Statutory Charges Register?

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Consultation Question 7

Do you agree that legislation should be provided to enable the Department for Infrastructure to introduce a substantive Homeowner Flood Protection Grant Scheme to residents whose properties are susceptible to flooding, and who meet defined eligibility criteria?

**SECTION 10:
Powers to provide for easements and additional compensation arrangements for affected landowners to facilitate flood storage**

Consultation Question 8

Do you agree that powers should be provided to enable the Department for Infrastructure to provide for easements and additional compensation arrangements for affected landowners, who have agreed to long term adjustments to their land to facilitate storage of flood waters and help mitigate the risk of flooding?

**SECTION 11:
Technical amendments to enable future amendment of subordinate legislation - Powers for the Department to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009**

Consultation Question 9

Do you agree with the proposal to provide a power for the Department to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009?



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