



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Water, Flooding and Drainage Bill:
Northern Ireland Water

24 April 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mrs Deborah Erskine (Chairperson)
Mr John Stewart (Deputy Chairperson)
Mr Danny Baker
Mr Cathal Boylan
Mr Keith Buchanan
Mr Stephen Dunne
Mr Mark Durkan
Mr Peter McReynolds

Witnesses:

Mr John Burke	Northern Ireland Water
Mr Mark Ellesmere	Northern Ireland Water
Mr Gary Lawther	Northern Ireland Water

The Chairperson (Mrs Erskine): I welcome to the Committee Mr Mark Ellesmere, general counsel and company secretary, Northern Ireland Water (NIW); Mr John Burke, senior lawyer, NI Water; and Mr Gary Lawther, head of development services, metering and billing, NI Water. We look forward to hearing some of your evidence on the back of that from the Department for Infrastructure.
[Interruption.] Apologies, there is a bit of drilling work going on.

Mr Durkan: It is for the Wi-Fi connection again.

Mr Boylan: The construction work has started already. *[Laughter.]*

The Chairperson (Mrs Erskine): We will pause for a minute.

I think that it has finished now. Apologies.

Mr Mark Ellesmere (Northern Ireland Water): No problem.

The Chairperson (Mrs Erskine): We have received some of your written evidence, so, if you want to introduce yourselves and speak for five or 10 minutes, Committee members will then ask questions.

Mr Ellesmere: Thank you very much for the welcome, Chair, and thank you for the invitation to come to the Committee this morning.

I am not sure that I will be able to talk for five minutes. You referred to our response to the consultation back in 2022. In a nutshell, NI Water is broadly supportive of the policy measures, but that support is subject to seeing more detail and the details of the proposed amendments and the provisions that will come through in due course. From our perspective, it is important that we check that there are no unintended consequences arising from the new legislation. Particularly where NI Water is to be given new powers or obligations, we must make sure that the company is in a position to discharge them properly. For us, there is a focus on serving our customers. As I said, from the company's perspective, the legislation is at an early stage, but we are broadly supportive of it. We work closely with our departmental colleagues and share information and so on. I do not really have a lot more to say by way of introduction, Chair.

The Chairperson (Mrs Erskine): That is grand. Committee members are quite keen to get into the nuts and bolts of the proposed Bill. My question is more or less the same as that which I asked DFI about the costings. It is difficult at present to work through them, but I am sure that NI Water will have some concerns, questions or queries about how some of the powers that will be granted to you will be funded. Do you want to comment more broadly on that?

Mr Ellesmere: Chair, again with the caveat that the legislation is at an early stage, our broad concern is just that. If we are to be given additional obligations or responsibilities, we want to make sure that we can meet them and that we are in a good position to meet them from a cost perspective.

The Chairperson (Mrs Erskine): Have you done any modelling on what that might look like for you? We are talking about private drainage infrastructure (PDI), sustainable drainage systems (SuDS) and all of that. Some of the figures for particular elements were pointed out. What modelling have you done?

Mr Ellesmere: I am not aware of any modelling that we have done, but I can certainly come back to you on that. Gary, are you aware of any modelling on the SuDS?

Mr Gary Lawther (Northern Ireland Water): Yes. We have been doing a wee bit of work to see how other regions manage their SuDS. There are a number of options, and it is not necessarily always the water utility that adopts and maintains the SuDS. In Wales, for example, the SuDS approval body sits under the remit of the relevant council. For each development that goes to the SuDS approval body, the developer has to submit how he plans to maintain the related SuDS and fund it over the lifetime of the development. That falls to the SuDS approval body, which falls under the relevant council.

Northern Ireland Water is extremely supportive of SuDS. SuDS are the right thing to do and have a host of environmental benefits and, potentially, cost benefits. Our concern with SuDS relates to additional powers being given to Northern Ireland Water and the assumption that Northern Ireland Water will adopt and maintain SuDS without an understanding of the funding that will be necessary for that to happen.

The Chairperson (Mrs Erskine): We talked in the previous session about the concerns that NI Water might have about the absence of an appropriate SuDS approval body. Do you want to comment on that? You pointed to an example where councils have responsibility for such bodies. Is that best practice?

Mr Lawther: No, that is just one example from Wales. In England and Scotland, it is slightly different. Different regions have different methods of managing the SuDS approval body. That detail still needs to be worked out with the Department. We would like to understand a bit more about how the Department plans to manage the SuDS approval body.

Mr Durkan: SuDS law. *[Laughter.]*

Mr Stewart: You always get the one-liners in.

The Chairperson (Mrs Erskine): Policy proposal 2 was withdrawn. Do you have any views on why the Department decided not to proceed with that proposal?

Mr Ellesmere: No, I do not. You will have seen our feedback on that proposal.

The Chairperson (Mrs Erskine): Yes.

Proposal 1 concerns the hosepipe ban and powers around watering private gardens and washing private cars etc. We heard in the previous evidence session that the policing of that, from an NI Water perspective, will remain as is.

Mr Ellesmere: Yes.

The Chairperson (Mrs Erskine): Northern Ireland Water does quite a bit of work in that area when there are times of very warm weather here in Northern Ireland. We can point those times out, because they are very few and far between. Is that work effective enough? Would you like to see more powers in that area?

Mr Ellesmere: I do not think so. The enforcement powers are probably set at the right level. From our perspective — John may want to add to this — enforcement through fines is a last resort. The enforcement has to be proportionate. Our main aim during times of high demand and/or drought is to conserve water. If we can achieve that through the threat of enforcement, that is more than effective. There is certainly no intention to make a cottage industry out of levying fines against members of the public.

Mr John Burke (Northern Ireland Water): Prosecution would be the last resort. Sometimes, a warning letter will be sent. In the run-up to what we call a "demand surge event" or a "water shortage possible event", we do a lot of advertising to promote water conservation. As we are monitoring supply and output, we can sometimes see the impact of those campaigns, where we notice a drop in water usage. Certainly, the threat of a prosecution on the back of a hosepipe ban may encourage some people not to use them.

There was some talk about policing. How will we police it? We will rely on people to tell on their neighbours, as we did the last time. The best one was the ex-husband who blamed his ex-wife for using her hosepipe. On those occasions, we simply went out and spoke to the people. Sometimes, that is what you have to do. You say, "Look at what you're doing. You're not being considerate here. Think of other people. We're all trying to have water for our breakfast and for our dinner. Let's do what we can to save water". That is what we try to do.

The proposals will bring us into line with England and Wales, where there are temporary use bans that define other areas. The current legislation is limited and refers to watering a private garden or washing a private car. That is it in a nutshell. That is all that we are permitted to ban under current legislation, whereas, in England and Wales, since 2010 —.

Mr Durkan: What about paddling pools?

Mr Burke: Sorry?

Mr Durkan: What about paddling pools?

Mr Burke: Paddling pools are not in the current legislation, but they are covered by the temporary use bans in England and Wales. If we are looking to mirror the system in England and Wales, or the list of things that can be banned, they will be included in the temporary use ban. Being prohibited from filling it with a hosepipe does not mean that you cannot fill it with a watering can. That is where it becomes — you know.

The Chairperson (Mrs Erskine): Yes.

Mr Burke: That gets into the whole policing piece. People may well phone in and say, "My neighbour's got a big paddling pool here and he's filling it every morning", as happened in 2018. In fact, the likes of Lidl and others were selling mega paddling pools that, we estimate, would have taken a third of a tanker of water to fill. We cannot stop people selling those paddling pools. All we ask of people is to be a bit more considerate of others in times of water shortages.

The Chairperson (Mrs Erskine): Yes. Have there been many prosecutions?

Mr Burke: There have been no prosecutions.

The Chairperson (Mrs Erskine): No prosecutions.

Mr Burke: We have gone out and knocked on people's doors and sent the occasional letter to an area, asking people to be more considerate. There have been no prosecutions. Again, the difficulty with a prosecution is that you have to have the evidence to a criminal standard. We must see someone using the hosepipe to water the garden, wash the car or whatever. You must have evidence beyond reasonable doubt to meet the criminal standard. The power is there. There are stages in the process: issue a warning letter, go out to speak to them, issue a caution and, as an absolute last resort, take a criminal prosecution.

The Chairperson (Mrs Erskine): OK. Peter, I think that you wanted to ask a supplementary question on this one.

Mr McReynolds: Yes, 2018 has been mentioned a couple of times. Do you have any statistics on how many enforcement letters were sent, how many fines were issued and how much money was recouped in that year?

Mr Burke: No fines were issued.

Mr McReynolds: So, in 2018, there were those two areas in Northern Ireland but no real intervention or enforcement.

Mr Burke: There were no prosecutions; there were no fines issued. Someone will not get fined until they go to court.

Mr McReynolds: What was the engagement like with regard to that enforcement?

Mr Burke: I can make enquiries. Certainly, our water network distribution teams would have been out on the ground and, where they saw misuse, knocked on doors. Where we had reports coming in, we would have taken steps to visit those areas. We would not have picked on a particular householder; we would have gone into an area and probably done leaflet drops and whatever. We had our online campaign and a campaign in the papers to save water. It was that type of campaign. We were not going out and saying, "You're using that hose and you shouldn't be using it". We certainly did not take any court action against anyone.

Mr Ellesmere: It was more about trying to influence behaviour than about penalising people.

The Chairperson (Mrs Erskine): I want to ask about policy proposal 4, which deals with private drainage infrastructure. Will you give some examples of the nature, location and size of some of the PDIs that have been adopted by Northern Ireland Water in recent years, just so that we have an indication of how things might look or what might be expected in that area?

Mr Burke: Under article 159, we can adopt private infrastructure on two grounds: if you, as the owner of the private infrastructure, approach us and ask us to take it on or if we approach you and say that we want to take it on. My understanding is that that has happened very rarely since 2006. I can make enquiries about getting the numbers on that. The 2006 Order limited the adoption of privately owned infrastructure to anything constructed post-1973. The proposal is to lift the 1973 restriction. We do not anticipate that resulting in huge numbers of applications.

Again, critical to both article 159 and any proposals is that, for us to take it on, a PDI must be something that will benefit our infrastructure and wider network. Those are the current criteria that are used. If you approach us today and ask us to take it on, we will assess the benefit to NI Water's wider infrastructure. If it suits us to take it on — it is not mandatory; we do not have to take it — we can work with you and decide whether we will take it on in its current state or when you do X, Y and Z. The current legislation permits that, and the removal of the 1973 restriction will not change the situation. We can agree to take on your infrastructure, subject to you bringing it up to an adoptable standard.

Throughout the previous session, much was made of funding issues and the cost to NI Water. Why would we take on infrastructure that is in a poor state of repair because, ultimately, we will be liable for future maintenance and for bringing it up to standard? If you want us to adopt infrastructure, we will do so subject to you bringing it up to an adoptable standard. Likewise, if we approach you and say, "We

will take your infrastructure", the onus is on us to take it up to an adoptable standard. If you want us to adopt it, we will do so as long as it is suitable and critical to our needs. That is the current legislation.

Mr Lawther: Practical examples of that are some of the old Ministry of Defence (MoD) sites that developers have bought. They renovate the houses on the sites and sell them to the public. Shackleton Barracks is one such example. As the infrastructure in the ground is pre-1973, we cannot adopt it, even though the developer is willing to bring some of the manholes up to standard. We have been approached to adopt the infrastructure in those cases but we cannot do so because of the current legislation.

The Chairperson (Mrs Erskine): OK. I open the session up to members.

Mr Stewart: Thanks for the information so far. You were here for most of the previous session, and a lot of the questions will overlap. From what I gather, there is a cautious acceptance with a few caveats thrown in. You have answered most of the questions on proposal 1, and there is no real financial or logistical impact of that on NI Water. It seems to extend your ability to do what you do well, namely promote social responsibility through social media, which, for the most part, is adhered to on the rare occasions that we have a hosepipe ban. Effectively, the public police it by looking over each other's garden fences.

Mr Burke: It also gives the public clarity on what they can and cannot do.

Mr Stewart: Exactly.

Mr Burke: Under the existing legislation, the power to prohibit or restrict watering private gardens was very general. How do you define a private garden? If we are going to mirror the English model, there will be clarification on what is prohibited — for example, the washing of paths, patios et cetera — to make it easier for you, as a householder, to know what you can and cannot do. Therefore, you will not fall foul of any potential ban.

Mr Stewart: In your assessment, there is no significant impact logistically, personally or financially.

Mr Burke: No.

Mr Stewart: That answers that question.

You heard my question on policy 5 in the previous evidence session. We heard that there were 75 examples last year of NI Water wanting to enter private premises to repair damaged misconnections. I was not aware that that was a significant issue. In your consultation response, you included concern about the full consideration of funding and the ability to recover full costs. I want to tease out your concerns on the impact of that policy, financially and logistically.

Mr Burke: I was not aware of a specific number of examples. My understanding is that there were slightly more than 75 misconnections. As to how many we have gone in and repaired as part of a pilot project, I can check that and the costs of doing so. Under article 166 of the current legislation, where a drain or sewer has been an unlawful communication — a misconnection — the person who caused that may be prosecuted. Mr Durkan referred to the third or fourth owner of a property: if you can identify the person who caused the misconnection, that is the person who may be prosecuted under the current legislation. The current legislation allows us to recover the cost of doing so from the offender. We are allowed to go onto any land to prosecute, but the proposal would allow us to go in and actually repair the misconnections. At the moment, we do not have the power to go in and repair them. We want the householder or occupier to carry out that repair, but, if they refuse to do so, the proposal will allow us to go in, carry out the repair and then recover the costs of doing so. The current legislation allows us to recover the costs — our reasonable costs for repairing those misconnections — as a civil debt.

Mr Stewart: Thanks, John. That is useful. DFI is going to come back to us on what those costs look like. I have never been affected by that, and no one has ever come to me about it. Do you have a rough idea?

Mr Burke: I made a note, based on the previous session, to make some enquiries. We had a pilot scheme that involved working with the Northern Ireland Environment Agency, which flagged up some

of the misconnection issues. We can certainly provide to the Committee some details on the number of repairs to misconnections that have been completed and the cost of those. There may be an average cost per misconnection, and I have made a note to find out what that is when I go back.

Mr Stewart: When homeowners or those liable are unable to pay, it just goes through a typical civil debt process where —.

Mr Burke: That is the big issue. There is not much point in us issuing proceedings against what they call a "man of straw". If you cannot afford to pay, why would we spend extra money going to court to be told that you cannot pay? We would have to look at how that is dealt with.

Mr Stewart: Policy area 6 is:

"Powers for NI Water to register Article 161 Agreements on the Statutory Charges Register".

I am interested in getting a feel for the impact that that not being in place has had on the finances of NI Water. What are the estimated future savings as a result of that change? Have you factored that in?

Mr Burke: Ms Dutton mentioned that that should be cost-neutral to NI Water. OK, there is an admin cost, but there will always be. The current application fee for article 161s includes a cost towards their registration. We hold that money, so there is no additional cost to us. That is part and parcel of the fee: once you have paid your connection fee, that includes us registering that on your behalf, so there is no additional fee to you. The only other cost to us will be for the physical registration with the Land Registry. We have a backlog of those going back to 2007 — 17 years ago — as has been mentioned.

The issue arose because previous legislation — the 1973 Order and the 1992 Order — contained a power for Water Service to register article 17 agreements, which subsequently became article 161s. The 2006 Order was effectively an amended version of the Water Industry Act 1991. The draftsman had to take the English legislation and tweak it to, shall we say, Ulsterise it. Statutory charges do not exist in England and Wales and there is no Statutory Charges Register there, so neither were in the Act. He took that model, but perhaps he should have looked at what had gone before. That was an oversight, and, obviously, we have been looking to have that rectified since. We are moving in the right direction on that. If the proposal proceeds as planned, we will carry out a mass registration exercise.

Mr Stewart: OK. That is useful.

The Chairperson (Mrs Erskine): You talked about a backlog. What is the big —?

Mr Burke: Any article 161 that we have entered into since 2007 is sitting unregistered. You are probably talking about a few thousand.

The Chairperson (Mrs Erskine): OK. It would be good to see the numbers.

Mr Burke: I will come back on that, Chair.

Mr Durkan: Sorry, John, did you say that, since 2007, you have been trying to right that wrong? Has the Department just refused to engage or make the effort?

Mr Burke: No, no. There was an initial amendment to the legislation in 2013 that allowed — hold on, I might have the amendment with me.

Mr Ellesmere: We engage regularly with our DFI colleagues, so there has not been a point-blank refusal to engage. Other priorities have —.

Mr Durkan: Moved up the list.

Mr Ellesmere: Yes.

Mr Burke: I do not have it with me, sorry.

Mr Durkan: That is OK.

Mr Burke: We have engaged with the Department over the years. There was a minor amendment to the legislation in, I think, 2013. However, other priorities came along, and it was put on the back-burner. For the past couple of years, we have been trying to get it moving again. We engaged with the Department in 2019 and 2020 on potential changes that we wanted to the legislation. Obviously, events in 2020 overtook that due to the pandemic. A lot of things were put to one side because there were more important things to deal with. We have engaged. I am not here to say that the Department —

Mr Durkan: No, no, no.

Mr Burke: — put it on the back-burner: it did not. We have engaged with it, and it has engaged with us.

The Chairperson (Mrs Erskine): Thank you for clearing that up. Thanks, Mark, for that.

Mr Boylan: Thank you very much for your presentation. You heard the previous exchanges. Those of us who have been here and dealt with legislation know how long it takes. You are right, Mark: the devil will be in the detail when we go through all that. We need to be careful. John, it was concerning that you mentioned previous legislation. We need to be careful that it is not a copy and paste.

Mr Burke: No, no.

Mr Boylan: Let us be fair. That is why I asked about England and Wales. Some of the legislation may be based on best practice, and that is grand. If it is based on best practice, we will work with it.

I have a couple of points that I want to go over with you. You heard some of the engagement that we have had so far. Obviously, you are content with most of the proposals and the direction of travel, but can you expand a wee bit more on proposals 4 and 7? You have talked about most of the other ones. Proposal 4 is on PDI. What are views on that and, obviously, on proposal 7 and on the SuDS approval body? Will you comment on those, please?

Mr Burke: Proposal 4 is about pre-1973 PDI. I do not see that as being a major problem. We may get applications from some of the developers who developed, as Gary mentioned, the MoD sites. As a company, we do not anticipate a huge number of applications for pre-1973 infrastructure to be adopted.

Mr Boylan: I asked about the grant scheme and all that. Do you have any concerns about that?

Mr Burke: The flood grant scheme?

Mr Boylan: Yes. What I was trying to get at is that we need the involvement of all the stakeholders and all the people affected — do you understand me? They are the ones best placed to partake in that. I have seen in the past, even after going out to consultation, the question has been about whether we have consulted the right people and engaged everybody. When we go to introduce any of those proposals, or any piece of legislation or regulation, we need to ensure that we have consulted everybody. What are your views on that? You are clearly content with most of the policy proposals.

Mr Burke: We certainly support the flood grant scheme. Our only concern is if the proposals for a flood alleviation scheme in an area were used as a reason not to give a grant to particular householders. That is a concern we have. What if that scheme does not go ahead, and then there is a flood? You mentioned flooding quite a bit, Mr Durkan. That is our main concern as to whether or not —

Mr Boylan: The response that I got to that question was, "You are engaging with DFI. You should be engaging with the Department." Do you know what I mean? Those are the kinds of conversations —

Mr Ellesmere: We will certainly own our part, if I can put it like that.

Mr Boylan: Absolutely. That is the point that I am trying to get at.

There are views on how to prevent pollution and environmental damage through those proposals. Would you like to comment on that?

I have one other point to make, which I have made on a number of occasions. It goes without saying that councils' local development plans and all these things need to be looked at in the round, because they will play a part. Those conversations need to be had. Obviously, the councils will have you in, and you will have conversations. That is of key importance, starting from the introduction of this here. How we relay and communicate all these things to the general public when we introduce them is important. It is really just commentary, because you heard some of the earlier questions. If you have any more comments on some of those things, fine. If not, I am content with the discussion that we have had so far.

Mr Ellesmere: Thank you.

The Chairperson (Mrs Erskine): Sorry, I hope that you do not mind my coming in before you, Keith.

Mr K Buchanan: As long as you are not too long, Chair. *[Laughter.]*

The Chairperson (Mrs Erskine): No, I never take long.

On proposal 7, we talked about flood alleviation and the scheme. You support that in principle. Northern Ireland Water has requested:

"involvement in any development of this provision"

because it could:

"alert policy makers to the risk ... where access to a HFPGS is influenced by 'a separate Flood Alleviation Scheme'".

I just wanted to check: what is the level of involvement that you would like to see in relation to this?

Mr Ellesmere: I am sorry, Chair: from a DFI perspective?

The Chairperson (Mrs Erskine): From a Northern Ireland Water point of view, what would be the level of involvement that you would want to see in influencing some of this?

Mr Ellesmere: I think that we would want to be well involved in terms of exploring the view that we expressed in our response to the consultation.

The Chairperson (Mrs Erskine): Yes. You said that you engage regularly with the Department. Have any of these discussions come up yet?

Mr Ellesmere: Not to my knowledge, Chair, no. As I said at the beginning, our sense is that we are probably at an early stage of developing policy. We are now at a point where we are about to get more involved in exploring our views with the Department and with other key stakeholders.

Mr Lawther: Over the last few years, we have worked with the Department and other stakeholders on a number of pilot projects in relation to SuDS. There has been quite a good close working relationship in terms of SuDS.

The Chairperson (Mrs Erskine): Clarity around funding is key. I am sorry: I will come to members in a moment. I am taking a bit longer than I thought.

Mr Boylan: That is all right, Chair; that is your prerogative.

The Chairperson (Mrs Erskine): I noticed that, in correspondence to the Department in June 2022, you indicated that:

"further clarity and detail will be necessary particularly in the context of funding / costs implications".

Are you saying today that, since June 2022, those still —? I get that we are still in early days here, but I take it that we still have not had that clarity or those discussions.

Mr Ellesmere: No, we have not, Chair. Not in detail, no.

The Chairperson (Mrs Erskine): OK. Keith.

Mr K Buchanan: My question relates to policy area 1. John, you commented on fines for using hosepipes. If that was implemented tomorrow, would it have any effect on reduction of water usage in hot weather?

Mr Burke: We would like to think so. Certainly —.

Mr K Buchanan: But how?

Mr Burke: How?

Mr K Buchanan: If there was warm weather today and someone was using a hosepipe and you knocked on their door —. I appreciate that it is all about education and getting people not to use them, but if this was implemented tomorrow, how is it going to change water usage in warm weather?

Mr Burke: It will educate people more as to what they can and cannot do.

Mr K Buchanan: Is it going to change it?

Mr Burke: I cannot answer for what people will or will not do. We hope that if we can market this and highlight to people what they can and cannot do, in clear terms —.

Mr K Buchanan: Clearer than it is today: that is fair enough.

Mr Burke: The list gives you literally two things: watering your garden and washing a car. This tells you —.

Mr K Buchanan: But there are no repercussions for doing it, even today, or tomorrow, if this is implemented. I am going to come on to another point. What is the water usage increase in Northern Ireland in hot weather? Say, for example, we are using X today and we have a week of hot weather. What is our percentage increase? Do we know what that is, roughly?

Mr Ellesmere: I could not —.

Mr K Buchanan: As a guesstimate. Is it a 50% increase? Is it a 30% increase?

Mr Lawther: From memory, it is between 30% and 40%.

Mr K Buchanan: Right. So if I was in the south of England, which has a different climate, what is the increase there in hot weather?

Mr Lawther: I am not sure, but it is very —.

Mr K Buchanan: The point being that we are not paying.

Mr Lawther: Exactly.

Mr K Buchanan: So there are no repercussions for turning on my hosepipe. You know what I mean?

Mr Burke: There are no financial implications for turning on your hosepipe.

Mr K Buchanan: No, so —.

Mr Ellesmere: I am sorry to cut across you, Mr Buchanan. What we are trying to do, as I said before, is to help people understand the value of water and put the usage in perspective, primarily as a result of people not paying directly. If we can make tiny inroads into that usage, that will be a big benefit from our perspective.

Mr K Buchanan: If you are in McDonald's and you lift a little ketchup on the way out to eat your chips, if you are not charged for that, you will lift four, but you only need one.

Mr Durkan: Are they not banned now?

Mr K Buchanan: You get my point. There are no repercussions for people using water in warm weather, so therefore they will do it. This will help; I do not disagree. It will make clarity on what people can and cannot do. However, the proof will be in the pudding. Will it change the volume?

My second point is on policy area 4. You touched on privately owned drainage. What does that relate to? Is that very much drainage under the ground?

Mr Burke: Yes.

Mr K Buchanan: It is not open sheughs or that type of thing. It is very much pipes.

Mr Burke: No. It is underground pipes.

Mr K Buchanan: OK. That is not going to change the world dramatically, but it gives you the power that you referred to earlier.

Mr Burke: Yes.

Mr K Buchanan: Back to that policy area 1. Yes, it makes people crystal clear as to what they can and cannot do, but, if there are no repercussions for them, the proof will be in the pudding.

Mr Burke: Unless we catch them physically. Then we can prosecute them. However, that is a last resort.

The Chairperson (Mrs Erskine): I want to ask about policy 8, which was withdrawn. I would like to find out your view on the reasons why it was withdrawn. There was a largely positive response, but obviously the Department has decided not to proceed with the proposal. Can you pinpoint how you feel about the fact that the Department has decided not to proceed? I also want to ask about the impact on Northern Ireland Water resulting from the adoption of the proposal versus the impact of its non-adoption.

Mr Ellesmere: Sorry. I am just familiarising myself again with the proposal. We had linked this back to policy area 2, John, as well.

Mr Burke: On the basis that we were not the lead authority for surface water management.

Mr Ellesmere: Yes. We had a sense, Chair, that it would be unlikely — I think I am right in saying, John — for NI Water to enter land to actually do this. I am talking about policy area 8 at the minute. Sorry, Gary.

Mr Lawther: That is right. Policy area 8 is really around enabling powers for the Department for Infrastructure, so it is more likely to be Rivers, as opposed to Northern Ireland Water.

The Chairperson (Mrs Erskine): OK. Members, are there any further questions? Mark?

Mr Durkan: Thank you, gents. It has been very useful. In policy area 5, there has been a bit of focus on how you want to ensure that you are in a position to discharge the new powers. We focused on more on the powers of recovery, as opposed to the powers of entry themselves, which, one would imagine, would have implications, and not just financial ones, for staff. Have views been sought or obtained from staff or unions on that? I think specifically about powers of entering premises where the landlord has refused entry.

Mr Burke: Under current legislation, for a number of reasons, if we require entry to any land for whatever reason, the 2006 Order provides a range of powers or reasons for entering land. If we are refused, we can seek a warrant from the court to enable us to enter the land without obstruction, shall we say, and, if necessary, we can ask the PSNI to assist us to enter those grounds. That has happened on very few occasions. Often, just the application —.

Mr Durkan: You would not use a sledgehammer to back that up.

Mr Burke: — providing the warrant to the house owner or the owner of the land —. It tends to be more in agricultural settings or larger premises. It would rarely be a domestic house. Providing a copy of the court warrant is usually sufficient for them to say, "OK, hands up", because, should they refuse, they are in breach of the court order. Probably in the last 17 years, we had to use the PSNI once or maybe twice, where there was concern that there might have been physical violence. It is very rare.

Generally, where someone refuses entry, they will get a warning letter saying, "If you do not let us in, we will get a warrant from the court." That in itself will often open the door. Certainly, over the years, we have got warrants from the court. It is called an ex parte application to the local Magistrates' Court. We put an affidavit in stating why we need access and that we have been refused, and we give the reasons for the refusal. If we have had correspondence saying that we are not getting in, we exhibit that to the court. The judge will then make a decision, and in we go. Occasionally, the judge may ask the landowner to turn up —.

Mr Durkan: Then you tell the engineer, "You go in and do that".

Mr Burke: Yes. We will then instruct our contractor to go in, accompanied by our staff, with the power of the warrant.

Mr Durkan: A final point on policy 6. As you explained, it is perfectly understandable that NI Water will not adopt estates where the infrastructure is not up to an adoptable standard and so incur the cost of bringing it up to that standard. Are there instances — I am sure that there are, given the number of cases — where the sub-adoptable standard of infrastructure causes NI Water to incur an indirect cost because of how it flows or goes into the main NIW network?

Mr Burke: If sewage comes along a poor pipe from a private network into our main sewer, there is no impact on us owing to the fact that it is a poor-quality sewer. That does not impact us.

Mr Durkan: It would certainly impact the residents of that area.

Mr Burke: Yes

Mr Durkan: Given that it is not your network, does NI Water have the power to compel the developer to do something about that?

Mr Burke: No, because —.

Mr Durkan: It is not yours.

Mr Burke: It is an existing development, and it has never been subjected to the previous article 17 or the current article 161, because it is already in the ground and already connected. The bulk of those are probably old MoD sites. There is a connection to the network. From the point of view of long-term maintenance, if there are old lead or cast-iron pipes that are rusting or not in good condition, taking it on would mean a future maintenance cost for us. Therefore, we would want it to be brought up to a standard that was not going to impact us financially in the short term.

Mr Durkan: That is OK. Thank you.

The Chairperson (Mrs Erskine): I want to ask a question on the back of that. I am probably asking a silly question, but I am not clear. What happens in situations where that might be the case and you do not have a developer? They may have gone out of business. You are sort of saying that it would not be for you to take on, because it is not at an adoptable standard. Who does that?

Mr Burke: The residents themselves can get together and potentially make an application. Gary may want to comment from a development services perspective. I am thinking of Waterside. The reasonable cost allowance may be capable of being used to offset some of the cost of adoption.

Mr Lawther: We are probably stepping away from the legislation piece around pre-1973 infrastructure.

The Chairperson (Mrs Erskine): I know, yes.

Mr Lawther: We are probably getting into unadopted developments in which a developer may have constructed a new house or a new development and has potentially gone bust or something has happened before he could bring the sewers up to an adoptable standard for Northern Ireland to take ownership of them. That is an issue in some developments and areas. Northern Ireland Water is not funded to bring that infrastructure up to standard. We would require funding from elsewhere to be able to do that. There have been examples of third parties stepping in to provide the funding for bringing the infrastructure up to a standard that would enable us to adopt it. In general, it falls back to the residents to resolve it.

The Chairperson (Mrs Erskine): I will come back to the proposals. On policy area 9, have there been any issues to date as a result of the powers being removed? Are there benefits expected as a result of reinstating the powers?

Mr Ellesmere: There have not, Chair, from our perspective.

The Chairperson (Mrs Erskine): Do members have any other questions? I will pass to Stephen.

Mr Dunne: Thanks for the presentation, folks. I want to ask a question briefly on policy 5, in relation to misconconnections. The officials talked about how it can be a small-scale issue with a washing machine in a single house or, if everybody does it, it can become a problem. Can you give us a bit more of an idea of the extent of the problem? How big an issue is it across Northern Ireland?

Mr Burke: I have already agreed to come back with some figures. The Department mentioned a number of misconconnections — was it 78? That may be an undervalue. I can certainly provide the Committee with figures.

Mr Stewart: 74.

Mr Dunne: You feel that this would make a difference for you, then.

Mr Burke: There is a larger number than 75 out there.

Mr Stewart: They said that the number was significant and then said that it was 78, which does not sound a lot.

Mr Burke: Even 78 is a low number.

Mr K Buchanan: On the back of that, based on figures that we heard bandied about by NI Water yesterday on tonnage and all that, we simply do not know. With regard to pollution incidents such as water from washing machines going down drains, we just do not know. I appreciate that the Minister is starting to put in some metering, but a lot of fingers are pointing at agriculture. I have asked questions to the Minister. The questions have been bounced back, and I have been told to go to NI Water. I am now going back to say, "No, it is up to you to answer me." We simply do not know. The tonnage figures that came out yesterday were interesting. We simply do not know, and, until we do, we will not know what problem we have. I am talking about pollution.

Mr Burke: Oh yes, the combined sewer overflow —.

Mr K Buchanan: More broadly.

Mr Burke: Yes, yes.

Mr K Buchanan: I appreciate that washing machines are only part of it, but they are a big part. Washing machines are not supposed to go down storm drains. We know that. That is part of it. It is interesting that those figures are starting to pop up.

The Chairperson (Mrs Erskine): We appreciate your time and your evidence today. A lot of things still have to be worked through, and we get that, but it is good to have a briefing and an understanding early in the process. We appreciate having that today. A few more questions may pop up, so we will probably be in touch. We will welcome seeing the extra information that you will go back and look at. Thank you very much.

Mr Ellesmere: Thank you.