



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Water, Flooding and Drainage Bill:
Department for Infrastructure

24 April 2024

NORTHERN IRELAND ASSEMBLY

Committee for Infrastructure

Water, Flooding and Drainage Bill: Department for Infrastructure

24 April 2024

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:

Ms Alison Clydesdale	Department for Infrastructure
Ms Julie Ann Dutton	Department for Infrastructure
Mr Ryan Robinson	Department for Infrastructure

The Chairperson (Mrs Erskine): I welcome Alison Clydesdale, director of the water and drainage policy division in the Department for Infrastructure (DFI); and Julie Ann Dutton and Ryan Robinson from the water and drainage policy division. Alison, it is good to see you again today. We are looking forward to getting into the nuts and bolts of the pre-legislative scrutiny of some of the Bill, which will come to the Committee and the Assembly in due course. We have some of the written evidence already, so, if you do not mind, please keep your comments to five minutes or so, and then we will go to members for questions.

Ms Alison Clydesdale (Department for Infrastructure): Thank you, Chair, for inviting us to brief the Committee on the outcome of DFI's public consultation on the policy proposals for a water, flooding and sustainable drainage Bill. I am joined by my colleagues Julie Ann Dutton, who is the head of the water policy and legislation team, and Ryan Robinson, who is the head of the flooding and drainage policy branch.

The proposed Bill seeks to amend existing legislation, namely, the Water and Sewerage Services (Northern Ireland) Order 2006, to help reduce pollution in our watercourses, strengthen our resilience against extreme weather events such as drought and flooding, and introduce more sustainable and environmentally friendly solutions to manage our water resources and help reduce and mitigate flood risk. The public consultation ran for 12 weeks, from March to June 2022, and included nine policy areas. We received 30 consultation responses, and I acknowledge the contribution of those individuals and organisations that took the time to help shape our policy development.

There was widespread support for the majority of the policy proposals, and we now, therefore, seek to take forward seven of those policy areas for inclusion in the new Bill. You have the details of those

policy areas in your briefing document, but, just to summarise, they cover additional activities to be included in a hosepipe ban; an enabling power to introduce arrangements and guidance for sustainable drainage systems — those are often referred to as "SuDS" — that will help make SuDS the preferred means of dealing with surface water; a power to adopt pre-1973 private drainage infrastructure (PDI) where it assists the operation of Northern Ireland Water's (NIW's) network — it is hoped that that may help mitigate flooding or damage to the environment. There are also powers for Northern Ireland Water to better deal with misconnections; registration of adoption agreements in the statutory charges register; putting the homeowner flood protection grant scheme on a statutory footing; and some technical amendments following EU exit. All those policy areas largely relate to improvements in processes for Northern Ireland Water, improved ways to help reduce flood risk and improved protection of the environment from pollution.

While the responses have been extremely positive, as I said, we noted some concerns around two of the proposals, namely, providing Northern Ireland Water with a new power of entry to carry out works beyond laying pipes, which could include the construction of sustainable drainage systems, and the proposal to allow for compensation arrangements for landowners to facilitate longer-term adjustments for storage of flood waters. We have taken those concerns on board, and both proposals will be revisited at a later date. Therefore, it is not proposed to include those policy areas in the Bill.

The concerns about the first policy proposal area that we do not intend to include in the Bill, which relate to the powers of entry for Northern Ireland Water, were largely raised around ownership and maintenance of SuDS. However, we believe that the powers on SuDS that we are proposing for the Bill will need to be developed first in order to deal with the responsibilities for ownership, liability and maintenance. That, then, would allow us to refocus the policy to facilitate Northern Ireland Water constructing SuDS in agreement with a landowner once a SuDS framework is in place, developed and approved.

The second policy proposal area that we are not proceeding with is the compensation power for long-term adjustments to facilitate flood storage. From considering the consultation responses, we believe that further research and cross-departmental engagement will be required on the types of agreements and legislation provision that may be needed to facilitate longer-term natural flood management schemes and to shape the policy in that area.

In the absence of Ministers and under the powers that were provided by the Northern Ireland (Executive Formation etc) Act 2022, the Department began initial engagement with the Office of the Legislative Counsel (OLC), and the drafting of clauses is under way. Following the Committee's consideration of the proposals today, the Minister will seek Executive agreement to the final policies and hopes to introduce the Bill before the end of the calendar year to enable Assembly scrutiny of the Bill to commence. I hope that that is helpful, and we are happy to answer any questions that you may have.

The Chairperson (Mrs Erskine): Thank you very much. We appreciate you coming to the Committee today to talk about the matter.

I would like more detail about the withdrawal of policy proposals 2 and 8. You said that SuDS would need to be dealt with first. Will something be coming before then, or will there be separate legislation? What will that look like?

Ms Clydesdale: The power in the Bill that we are taking on SuDS will allow us to provide guidance and arrangements for SuDS. That will allow us to bring regulations again, and we will come back to the Committee with further regulations at that stage. We are taking the power as an enabling power in order to allow us to put in place arrangements for SuDS that will include maintenance, approval and all those things. We believe that, once we have those in place, they will provide a framework to allow Northern Ireland Water to go on to land to do SuDS with the agreement of the landowner.

The Chairperson (Mrs Erskine): OK. Are you saying that you need further development of policy proposals 2 and 8 before anything else comes forward on them?

Ms Clydesdale: Yes. We think that the further development on SuDS will take place as part of this drafting process. Once we have done this drafting process and the enabling power, we will have the power to move forward on SuDS and provide the approval framework that is not there at the moment. That will help Northern Ireland Water go on to land to do SuDS if they are required.

The Chairperson (Mrs Erskine): OK. Obviously, we know that the budget position is tight. Northern Ireland Water says that it does not have enough money to do what is on its agenda. What assessment overall has the Department made on costs and savings to it, and what will that look like for Northern Ireland Water in any proposed Bill? Has any cost analysis been done on that, and how it will be funded?

Ms Clydesdale: With any legislation, we are required to bring forward a range of assessments, one of which is a regulatory impact assessment that looks at all those things. On the specific cost, these are the policy proposals that will bring forward the enabling powers. We need the enabling powers to allow us to bring forward further secondary regulation in due course, and there will be further impact assessments at that stage on what we bring forward.

The Chairperson (Mrs Erskine): What about the hosepipe ban and all that and the definitions for hosepipes? What is the process, and how will the Department be guided in its work to define in legislation hosepipe bans and filling and maintaining swimming pools?

Ms Clydesdale: At the moment, the policy proposal sets out the thinking behind the hosepipe ban, and the clauses will detail that. I will ask Julie Ann to say a little more about what that proposes to cover.

Ms Julie Ann Dutton (Department for Infrastructure): That is right. The OLC will draft the appropriate legislation. I know that some concerns have been raised about definitions of the likes of water that is drawn by hosepipe, but we had initial discussions with the OLC on that, and it seems to be quite content that the wording is sufficient. It is very similar to the wording that is used in other jurisdictions. The OLC does not feel that there is a necessity to have a definition for a hosepipe, but that is the very early advice. The legislation has not been finally drafted yet, so we will still be working with the OLC on the definitions.

The Chairperson (Mrs Erskine): Lastly, before I go to members, I will ask about the proposal for private drainage infrastructure. How many PDIs are we seeking to adopt? What will that look like? What will be the extent of that?

Ms Clydesdale: We are not seeking to adopt a specific number of PDIs. Again, that is a general enabling power to allow Northern Ireland Water to adopt private drainage infrastructure when it is to the benefit of its network. Ryan can give some details about how much private drainage infrastructure we have in Northern Ireland.

Mr Ryan Robinson (Department for Infrastructure): Just to give a wee bit of context, there are 176 kilometres of PDI throughout Northern Ireland, with around 87 kilometres in the greater Belfast area. That comes from some research that the former Rivers Agency carried out in 2015.

The Chairperson (Mrs Erskine): Did you say 86 kilometres in Belfast?

Mr Robinson: Eighty-seven.

The Chairperson (Mrs Erskine): I will open the meeting to members.

Mr Stewart: I will stick with policy proposal 1, first of all, and then we can go through each policy proposal in order.

Has an assessment been carried out of the impact that that policy proposal will have on water shortages, given the proposed legislative changes? How much water will be saved through those changes and whatever new enforcement will be applied?

Ms Clydesdale: No. The policy intent is to manage water supplies, primarily in times of drought. You may remember that a hosepipe ban was enacted in 2018. That did not cover all the areas that we propose a ban would cover now. This policy proposal is about managing water shortages and ensuring that there is enough water supply in a time of high demand or drought.

Mr Stewart: I appreciate that. I am trying get my head around whether an assessment has been carried out of how much water will be saved once these new measures to extend the hosepipe ban have been applied.

Ms Clydesdale: No, not that I am aware of.

Mr Stewart: OK. I am curious about and want to get a feel for how NI Water will be able to police the additional powers and, if people were to break the bans, what enforcement measures will be place as a result of those powers.

Ms Dutton: There are already enforcement powers for hosepipe bans in the 2006 order. Those powers would be used for the new powers.

Mr Stewart: Would the policing of the policy be exactly the same?

Ms Dutton: Yes.

Mr Stewart: Is there a plan to extend the definition of a hosepipe? What would that look like?

Ms Dutton: No, not for the term "a hosepipe". The OLC has advised that "hosepipe" is fairly self-explanatory and that people should be aware of what a hosepipe is. That does not stop people using a watering can for watering certain plants and things; they will still have access to things like that. This is about where they would be using substantial amounts of water through a hosepipe, a power hose and those types of thing.

Mr Stewart: The only concern that I will flag up, which you mentioned in your submission, is about those who build ponds. Is there an understanding that there would be a flexibility in that? What was the feedback from the consultees on that?

Ms Dutton: Some consultees were concerned about fish and other wildlife that use domestic ponds. We propose removing that restriction from the legislation so that filling domestic ponds would be allowed.

Mr Stewart: Thanks. Chair, I do not know whether we are going to look at the policy too.

The Chairperson (Mrs Erskine): If you do not mind, I will come in off the back of that. You said that the policing of the proposed policy will be the same as that which is already in place. I am not sure that it has been effective enough. I do not know whether there have been any prosecutions when hosepipe bans have been in place, so why is the policy staying the same?

Ms Clydesdale: It will stay the same, but the areas that will be banned will be expanded. The enforcement will remain the same. In 2018, the hosepipe ban was in place in only two areas, but this proposal will extend that list significantly. The enforcement provision will be the same, and, if I am right, Julie Ann, it will allow for a fine to be levied in that case.

Ms Dutton: It will.

The Chairperson (Mrs Erskine): Are sprinkler systems included in the list?

Ms Dutton: They are not specifically included in the list, but a standard sprinkler system would be fed by a hosepipe. I am honestly not sure about that; I would have to look at it to see whether sprinkler systems fall into any of the categories, but we have not individually specified sprinkler systems.

The Chairperson (Mrs Erskine): Sprinkler systems tend to be a bit more popular now, so it would be strange if they were not included. I suppose that they also fall under your definition of "a hosepipe".

Ms Dutton: They would probably fall within the definition of "watering private gardens", but we can double-check.

The Chairperson (Mrs Erskine): OK.

Mr Stewart: Sorry, Chair, I want to pick up on one more little aspect: power hosing. Would the proposals extend to commercial power hosing and those who are affected by that, or is it just for people's domestic properties?

Ms Dutton: It is just for domestic properties at this point.

Mr Stewart: Thank you. That is all.

Mr Boylan: Are we asking about policy proposal 1 first? Are we on policy proposal 1, Chair, or are we just asking general questions?

The Chairperson (Mrs Erskine): I am easy. If you want to ask —.

Mr Boylan: OK, I will move on to the SuDS policy proposal. Thank you, Chair, and thanks very much to the witnesses for their presentation. I have just a couple of points. It says in your papers that you will:

"issue future guidance on the design, approval, and maintenance of SuDS".

How would that guidance improve on what came before?

My other point is about the SuDS approval body that has been mentioned. Have you any views on that? Can you give an explanatory note on that, please?

Ms Clydesdale: That power would hugely improve what was there before. Essentially, there was no legislative provision at all for SuDS, so the power would be a step change.

We are taking a power by regulations in order to allow us to bring forward guidance on design and maintenance of SuDS and on a SuDS approval body. That enabling power will allow us to bring that forward by future regulations. We will have to consult on arrangements for design and maintenance and, indeed, for a SuDS approval body in due course. That will require further consultation, but this is just the enabling power.

Mr Boylan: I thought that we had been dealing with SuDS for a number of years, because there were conversations, but, clearly, we had not.

You mentioned England and Wales. That is not to say that their legislation gets it right all the time. We just need to be mindful that we are doing a proper consultation. We need to get out there and get at it and include everybody we need to include.

My other point is on policy proposal 7, which is on the alleviation schemes. Will you expand a wee bit on the eligibility criteria and how that is working out? Who is getting it, who is on the flood alleviation scheme at the minute and how we can change powers to support some groups, some houses and some developments? You have seen what has happened in the last number of months, so just expand a wee bit on how that will impact and benefit people.

Ms Clydesdale: Sorry, is that the homeowner flood protection grant scheme?

Mr Boylan: Yes, the flood protection scheme.

Ms Clydesdale: The flood protection grant scheme to date has been a pilot study using experimental powers under the Drainage Order. These proposals will bring those powers forward on a statutory basis. That will mean further consultations on what a final scheme and the criteria would look like.

Mr Boylan: Chair, that will do me on that point. I might have some other questions.

Mr Durkan: This question is also on policy proposal 7 and the homeowner flood protection grant scheme. Further consultation will, obviously, be required to place the scheme on a statutory footing, but, at this early enough stage, have you any ideas on how eligibility might change or anything like that?

Ms Clydesdale: No. We would have to consult with our DFI Rivers colleagues at that stage. The pilot scheme has been very successful and well-received. There are relatively low numbers of applications. DFI Rivers will be doing a post-project evaluation that will inform the consultation.

Mr Durkan: It has been successful, but there have been relatively low numbers of applications. That seems that it has probably not been that successful, and my experience is that, for victims of flooding, it has been onerous. It also suggests the involvement of social landlords in any new legislation. This is a homeowner flood protection grant, but I have seen tenants of social housing being excluded from it. There seems to be a lack of engagement from the Housing Executive and others, which is barmy, because the policy proposal would protect not only people's homes, of course, but the public purse.

Ms Clydesdale: There have been 20 applications per year on average since 2017. Just to remind you, the focus of the scheme is for homes that are subject to a one in 25-year flooding event and not part of a wider flood alleviation scheme. That is the criterion for the pilot scheme.

Mr Durkan: Is it not twice in the past 25 years that they have been flooded? Has that been revised since the initial pilot? I think that they had to be able to demonstrate being flooded twice.

Ms Clydesdale: Yes, on two or more occasions in the last —.

Mr Durkan: Yes.

Ms Clydesdale: It is a flooding event that happens every one in 25 years but flooding on two or more occasions. So, it is a one in 25-year event twice.

Mr Durkan: You can understand why that could confuse people.

Ms Clydesdale: Yes, it is a one in 25-year event twice.

Mr Durkan: They have to prove that it can be a one in 25-year event that has happened twice in the past 25 years —

Ms Clydesdale: Yes, absolutely, that is it.

Mr Durkan: — and that could have been twice in the past three years.

Ms Clydesdale: Yes. It is a one in 25-year event that has happened twice. That will all be revised as part of the criteria when we consult on those. DFI Rivers administers the scheme. We work closely with it on this measure, so there will be a consultation on that.

The Chairperson (Mrs Erskine): Cathal, do you want to come in off the back of something that Mark said?

Mr Boylan: Just a bit on this section. Obviously, NIW is a key stakeholder in this. What engagement have you had so far with NIW on this proposal?

Ms Clydesdale: On the homeowner flood protection grant scheme?

Mr Boylan: Yes.

Ms Clydesdale: That scheme is operated by DFI Rivers. Rivers works closely with Northern Ireland Water and has had some discussions with it, but this proposal is a departmental policy to protect homeowners.

Mr Boylan: No, 100%. All that I am saying is that we need to make sure that everybody is involved in it to get it right. Do you know what I mean? Everybody plays a part. That is OK. I just wanted to ask.

Ms Clydesdale: Northern Ireland Water responded to the consultation and was supportive of it.

Mr Boylan: OK, and will it play a part going forward?

Ms Clydesdale: Absolutely

Mr Boylan: OK. Thank you.

Mr Baker: My question is on policy proposal 9, which is about the removal of powers since Brexit. What has been the impact of removing those powers, and what are the benefits of reinstating them?

Ms Clydesdale: I will ask Julie Ann to come in on that, but I will first say that we are making the technical amendments in order to speed up things in the future, should we need to make amendments, and to streamline work and be more efficient with Assembly time so that we do not always have to come back to it. Currently, changing any of the regulations has to be done through a change to primary legislation, which is time-consuming. We are putting in a process to streamline that so that, if we bring forward changes to legislation, it will be done through secondary legislation. That would still be subject to the Committee's scrutiny, but this is about trying to make things more efficient. Julie Ann, do you have anything to add?

Ms Dutton: No, except to say that there has been no impact so far from the EU exit. As Alison said, the measure is there just to future-proof.

Mr K Buchanan: Thank you for coming along. My question follows on from Cathal and Mark's questions on the homeowner flood protection scheme. My understanding of the scheme is that people can modify only a physically erected house and not its boundary. Will the measure change or help that? In the countryside, a lot of people can put a little embankment behind their house to prevent water getting to it, but, under the flood protection scheme, they would have to physically do something to their house. Will the scheme develop in order to allow people to do something to the boundary of their property?

Ms Clydesdale: As I said, that is a scheme for DFI Rivers, so the fine detail of the measure will be done in consultation with it. We are just here to talk about the power that we are taking. I can certainly ask Rivers to come back to you.

Mr K Buchanan: OK. We can take a note of that. We will raise it, given that lots of people were not eligible for the scheme, because the issue was with the perimeter of their house rather than the actual house.

My next point is on policy proposal 2, which you are dropping. What drove you to drop it? Was it the high percentage of people who disagreed with it? What was the driver for dropping policy proposal 2?

Ms Clydesdale: You mean the powers for Northern Ireland Water?

Mr K Buchanan: Yes.

Ms Clydesdale: I just wanted to check. That was the proposal on which people were most divided, which was shown in the consultation responses. We were a little surprised at that. Most of the consultation responses focused on ownership and maintenance issues, particularly those that are to do with ponds. If someone built a pond on the land, for example, there were issues about who would maintain and look after it. Those seemed to be the main issues. Do you want to add anything, Julie Ann?

Ms Dutton: There were a lot of objections to that policy proposal. When we looked at it further, we saw that it would provide Northern Ireland Water with the power to enter land in order to construct flood or SuDS-type arrangements. At present, it has the power to enter land only in order to put down pipes. The power would be a bit useless without the guidance —.

Mr K Buchanan: Sorry for cutting across you. Does DFI Rivers have that power as well or just Northern Ireland Water? I know that you are dropping the proposal, but if the power were there, would it cover DFI Rivers?

Ms Dutton: No, it is just for Northern Ireland Water.

Mr K Buchanan: Can you give me an example? This is my final point. A study was done on the Moyola river outside the Castledawson area. That river floods at times. It goes into land and back out of it. There is a scheme to look at that. What power does or could DFI Rivers have to say to a farmer, "We need your land to flood"? Does that happen anywhere? If policy proposal 2 were implemented, would it give DFI Rivers, not just Northern Ireland Water, the power to do that?

Ms Clydesdale: No. It is a power just for Northern Ireland Water.

Mr K Buchanan: Only Northern Ireland Water?

Ms Clydesdale: Yes.

Mr K Buchanan: Do you know whether DFI Rivers has any power?

Ms Clydesdale: We will have to check with DFI Rivers and come back to you on that.

Mr K Buchanan: If a farmer wanted to let his or her field flood, how would that work? It would be interesting to understand that, because I thought that that policy covered both DFI Rivers and Northern Ireland Water. I know that you are dropping the policy.

Ms Dutton: I think that you may be talking about the flood storage policy. Ryan may be able to explain that in a bit more detail. That is another policy that has been dropped.

Mr Boylan: It has been dropped.

Mr Robinson: We are looking at that for future schemes for natural flood management. We will do some cross-departmental work on it.

Mr K Buchanan: DFI Rivers has no power to say to a farmer, "We are taking your land to create a floodplain". Is that right?

Ms Clydesdale: DFI Rivers has powers under the Drainage Order, which it uses to facilitate its flood alleviation schemes. Is that what you mean?

Mr K Buchanan: Can it do that today?

Ms Clydesdale: It can do it under the Drainage Order, but this relates to the Water and Sewerage Services Order. It is different. DFI Rivers' powers rest in the Drainage Order, which allows them to take forward its flood alleviation schemes. They can pay one-off compensation events for short-term measures. You may be talking about a longer-term solution, with longer-term adjustments made to land and what have you. For that, we need to look further at flood storage generally but more so at natural flood management. The Department needs to engage with DAERA about the impacts on land and suchlike. Is that perhaps what you mean?

Mr K Buchanan: Yes. I have one final point about the hosepipe ban. How does its implementation impact on window cleaners in rural areas? When a window cleaner goes to rural houses to wash windows, he generally uses a hosepipe.

Ms Dutton: If he is a business, it does not impact on him.

Mr K Buchanan: At all?

Ms Dutton: Yes.

Mr K Buchanan: OK. Fair enough. Thank you.

Mr Dunne: I have a point about the hosepipe issue. There has been so much rain over the past period that it feels unusual to be talking about it. You said that 2018 was the last time that there was a hosepipe ban. Will you provide some context by telling us how many times a hosepipe ban has been introduced over, say, the past 10 or 15 years?

Ms Clydesdale: Yes. The only one that I am aware of is the one in 2018. There was a spell of hot weather in 2020 when a ban was considered, but the rain came, and reservoir levels came back to what they had been. I am most familiar with the 2018 ban, which is the most recent one.

Mr Dunne: That was six years ago. OK. Thank you for that.

Mr Durkan: Can we look at other jurisdictions to see whether there has been an increased frequency in the need to apply such measures elsewhere?

Ms Dutton: Yes, we looked at other jurisdictions, but I do not have that information to hand.

Mr Durkan: It is just that we are seeing more examples of extreme weather events.

Ms Dutton: England often has hosepipe bans in place in various areas. We looked at there, but, as I said, I do not have that information available at the moment.

Ms Clydesdale: We are blessed in Northern Ireland with quite a lot of rain. *[Laughter.]* It is not anticipated that the measure will be used as much here as it will perhaps be used in other areas of the UK.

The Chairperson (Mrs Erskine): Thank you. Some members have a few more questions. It seems that more consultation needs to take place on certain elements of the legislation. How much progress has been made? NI Water is a massive body that is involved with the Bill. It responded and raised some concerns with some policy proposals on SuDS and one thing and another. You also talked about DAERA. Post-consultation, how much engagement has there been with agencies? Their involvement is crucial for some of the delivery and implementation.

Ms Clydesdale: No further consultation is required on the seven policy proposals that are going ahead. Further consultation would be required if we were to come back to the Committee with secondary legislation on some of the seven areas. We believe that further consultation is required on flood storage more widely as part of natural flood risk management. We have started some early engagement with DAERA on that issue in order to look at all the impacts on flood storage.

Ms Dutton: As we work through the draft clauses, we will liaise with Northern Ireland Water about the provisions that affect it directly.

The Chairperson (Mrs Erskine): For example, the policy proposal 3 relates to SuDS. Of the respondents, 86% raised concerns about liability, ongoing maintenance and ownership of soft SuDS post-construction. NI Water referenced the need for a SuDS approval body, stating that it is:

"premature to promote legislative change, particularly within the Water & Sewerage Services (NI) Order 2006, without confirmation of DfI's position on the nature and remit of a SuDS Approval Body."

Can you point to any consideration of that by the Department in light of NI Water's comments?

Ms Dutton: Yes. At the moment, the power that we are introducing is only an enabling power to allow us to make future regulations. We will work with stakeholders as we work through how the regulations may be drafted and their implications for the various stakeholders. At this stage, we are only bringing in powers that allow us to set guidance on how SuDS should be designed and approved by an approval body and how they should be maintained. That is just the initial power to allow us to do that. Everything else will be subject to consultation and worked through in regulations.

The Chairperson (Mrs Erskine): Do you envisage there being quite a bit of secondary legislation?

Ms Dutton: Yes, I think so.

Ms Clydesdale: Secondary legislation is certainly needed to establish the SuDS approval body. Before we introduce that legislation, we would need to consult, and we would bring to the Committee the consultation for approval and, in due course, the responses. The Department is supportive of SuDS, and I am sure that you are aware that many councils' local development plans (LDPs) already

promote and encourage the use of SuDS. Their use is not brand new, but it has never been placed on a legislative footing, and that is where we are trying to get to. In the absence of that legislative footing, the Department has done everything that it can to encourage SuDS through our storm water management group. That is an ongoing process, and, as part of that, we liaise with the Northern Ireland Environment Agency (NIEA) and NI Water on SuDS mainly for housing developments. We have done a lot of work, but we do not have the legislative basis on which to take SuDS forward, so that is what this legislation is for.

The Chairperson (Mrs Erskine): What does the Department envisage for the approval body specifically? Which body will have that responsibility?

Ms Clydesdale: That is precisely what we will consult on: which body will be best placed to be the approval body. We will need to look at the number of applications that need approval for SuDS. All of that will be shaped as part of the policy consultation.

The Chairperson (Mrs Erskine): OK.

Mr Stewart: I will ask about policy proposal 5, which is to create powers for Northern Ireland Water to enter private premises to repair drainage misconnections. Pardon my ignorance, but how substantial an issue is that for it to necessitate legislative change? On the back of that, I am interested to get your feel for Northern Ireland Water's response that the proposal is incomplete without full consideration of how it will be funded and whether costs should be fully recovered.

Ms Dutton: Between the NIEA and Northern Ireland Water, the problem seems to be raised often. It is often to do with a washing machine that has been installed in a garage and connected to the storm drain instead of the foul drain. When a whole lot of houses in a development have done that same thing, it creates a lot of pollution, which enters the river. It is quite a widespread problem. At present, Northern Ireland Water has powers to stop it up, but that is not satisfactory, because people operating a washing machine will not be able to use it. The new powers would enable Northern Ireland Water to remedy the misconnection as opposed to stopping it up.

Mr Stewart: Was Northern Ireland Water's response based on the fact that it needs funding to be in place before it can start work on cost recovery? Is there a gap in its budget for tackling that full on?

Ms Dutton: The issue is probably that people worry that some homeowners may not be able to pay.

Mr Stewart: That is my next point: what happens in that case? Again, I am a little bit ignorant of the specific legislation, but, if it goes in to recover costs that are substantial and the homeowner or the person who rents the property cannot pay, is NI Water liable for the cost of the work that it is required to do?

Ms Dutton: Northern Ireland Water will have to draw up its own procedures on how it proposes to tackle all those issues. It will therefore have to set up a process.

Mr Stewart: Its fear is that its budget will be damaged every year if it cannot go after the full costs.

Ms Clydesdale: To put this into the context of the numbers that are required, since 2012, 74 drainage misconnections have been identified in the North. That is the sort of number about which we are talking. Northern Ireland Water advises property owners of their legal obligation to repair the misconnection, but, for a variety of reasons, that sometimes does not happen, so the powers would allow Northern Ireland Water to repair the misconnection and help reduce pollution and then to recover the costs from the property owner.

Mr Stewart: This is my last point on that. For the 74 misconnections, is there a breakdown of the average initial cost of enforcement to Northern Ireland Water before it recovers the cost? I am looking to know the figure, because I am curious about the size, in financial terms, of the problem that we are talking about and whether the concern is about its impact, given the pressures that Northern Ireland Water is under. It would be interesting to get that in writing.

Ms Clydesdale: Those are historical figures. We can certainly ask Northern Ireland Water whether it has them.

Mr Stewart: That would be good.

The Chairperson (Mrs Erskine): Mark, you wanted to come in on the back of that.

Mr Durkan: I have a supplementary question on how the power would be applied retrospectively. How far back would it go? Is it for people with new connections, or misconnections, or could it be someone who is the third or fourth inhabitant of a property since the misconnection was made in the first place when there is no recourse to go after the tradesperson who was responsible for it?

Ms Clydesdale: It will apply only when the legislation comes into effect.

Mr Durkan: Yes, it will apply when the legislation comes in, but is it from when it comes in or will it be able to be applied retrospectively?

Ms Clydesdale: We will have to work that out with the OLC, I think. We have not got that far with it yet.

Mr Boylan: Listening to the conversation has given me some food for thought. I appreciate policy proposals 7 and 9, which are grand. Consultation has been done, and there seem to be a lot of respondents in favour of them, which I do not mind. Two policy proposals have been taken out for further consultation and further debate. That is OK until we get to the situation in which you are talking about where we need to engage with DAERA. The introduction of the policy proposals is grand in principle, but my issue is that we need to make sure that they are future-proofed. That is the key element.

You mentioned secondary legislation. What time frame are we talking about for the roll-out? Day and daily, we are hearing about this problem and that problem. First, we need to get the engagement right and that all the stakeholders are involved. Secondly, we need to make sure that we are thinking ahead and future-proofing, not only on the proposals but on the impact that they will have across the board. I am concerned about the time frame because of the mention of secondary legislation.

Ms Clydesdale: Clearly, the timescale will be dependent on when the primary legislation comes into effect to give us the powers to go forward with the secondary legislation. We are working on the other policy areas of flood storage, which we discussed, in early policy development. We will have to take a range of policy options to the Minister for him to consider before we go out to consultation.

Mr Boylan: We have a three-year mandate in which to pass the primary legislation and then roll out the secondary legislation. Those of us who have been involved in the legislative process before will know what is involved. I ask only in the context that, if this is the right thing to do, we need to move it on. There is more consultation to do. Let us have proper engagement and proper discussions in order to future-proof the policy proposals.

Ms Clydesdale: The technical amendments that we are proposing are an effort to future-proof in order to streamline the process and make best use of Assembly time. Rather than have to make changes through primary legislation, it is quicker and more efficient to make them through secondary legislation, so we have the powers in the proposed Bill to try to future-proof as much as we can.

The Chairperson (Mrs Erskine): How will you determine the level of Assembly control over some of the secondary legislation that may have to be introduced? Will it be subject to affirmative resolution?

Ms Clydesdale: We do not know the detail of that yet, but the normal procedures will be followed. Whether it is subject to affirmative or negative resolution, it will still come to the Committee for scrutiny in the normal way.

The Chairperson (Mrs Erskine): Sorry, but I want to go back to policy proposal 6. Prior to the establishment of Northern Ireland Water in 2007, the then Water Service had the power to register article 161 agreements in the Statutory Charges Register. I am thinking about the administrative cost to Northern Ireland Water. What do the figures look like for any implementation costs for Northern Ireland Water? Why is it taking so long to introduce that policy proposal? Do you have any idea of the annual cost to Northern Ireland Water from not having had the provision in place for the past 17 years?

Ms Clydesdale: We do not have those figures with us, and we would have to go to Northern Ireland Water for them. Policy proposal 6 has been broadly welcomed, and Northern Ireland Water told us in its consultation response that it sees it leading to administrative savings. The detail and the cost is a matter for Northern Ireland Water.

The reason that it has taken so long is that it was not included in the 2006 Order. I do not know why it was an omission from the 2006 Order. The Water Service had those powers previously. I was not here in 2006, so I cannot say why they were not put in the 2006 Order. Working with Northern Ireland Water, we identified the gap in the legislation, and that is why we are introducing the provision at this time. Julie Ann, do you want to say anything else about the 161s?

Ms Dutton: No, I do not think so. It should not be a cost to Northern Ireland Water, because the applicant is required to pay the fee.

Mr Boylan: Absolutely.

Ms Dutton: There is a standard fee.

The Chairperson (Mrs Erskine): Is that a small cost? It is a small cost to the applicant, but Northern Ireland Water's administrative costs are probably a bit more. I am assuming that, but it could still involve a cost to NI Water.

Ms Clydesdale: The power is to register article 161 agreements in the Statutory Charges Register. It is not necessarily about article 161 fees. The Statutory Charges Register allows purchasers of land to check the position with that land. Northern Ireland Water has told us that it anticipates there being administrative savings, but we do not have the detail of that. We can ask for that detail and get back to you.

The Chairperson (Mrs Erskine): I am interested because 17 years is a long time. I am guessing that Northern Ireland Water has flagged the issue with the Department in those 17 years.

Ms Clydesdale: I have not been in the Department for 17 years, so I do not know. I cannot answer that, sorry.

Ms Dutton: It has been talked about in the past, but this is the first available opportunity to include it a Bill, at least in my time.

The Chairperson (Mrs Erskine): Do members have any other questions?

Mr Boylan: No.

Mr Stewart: Not just now, Chair.

Mr Boylan: You have been waiting 17 years to ask that question, Chair. *[Laughter.]*

Mr Stewart: We will hear from NI Water.

Mr Durkan: I have a question that goes wider than the legislation. It is on the adoption of streets or estates. There will be an admin cost to the numerous enquiries to Northern Ireland Water. You said that 17 years is a long time, but there are areas older than 17 that are making perhaps a dozen enquiries a year. There are not just enquiries from developers, applicants and residents but from elected representatives. I can imagine that dealing with those enquiries is pretty burdensome as well as costly. There will be a cumulative cost.

Ms Clydesdale: As we sit here, there are 3,506 unregistered agreements in place. I presume that they were made in the 17 years since the 2006 Order came into effect. That will give you some context.

Ms Dutton: There will have been many more unregistered agreements than that over the 17 years, but the areas will subsequently have been adopted.

Mr Boylan: I have one final question for Alison. It is important. Having listened to the conversation, I know that the consultation responses are key to this. LDPs were mentioned earlier, however. They are going to play a big part in the future. Do you feel that the councils that responded to the consultation have identified the need to try to move forward with the policy proposals, particularly those on SuDS, the local development plans and the way in which we now go forward? Are we getting it? Is everyone on the right path and having the right conversations? I ask that because you are dealing with NIW, planning, construction, flood alleviation and all the other provisions. Having had the broader conversation, are you getting the feeling that everyone is on the right path? We have to get all our ducks in a row in order to get this right over the next number of years.

Ms Clydesdale: Absolutely. We have those conversations with the wider water stakeholders at many levels. For SuDS in particular, we have the storm water management group. It includes councils, the NIEA, which is also a key player, and Northern Ireland Water. That group meets a lot and has provided initial advice on the maintenance and design of SuDS. A lot of groundwork has been done, but, as I said, we need the original powers to allow us to take forward the policy proposals and put them on a legislative footing.

Mr Boylan: Fair enough. Thank you.

The Chairperson (Mrs Erskine): Everyone is content for now. Thank you very much for coming to the Committee. We appreciate it. No doubt, as I say all the time, we will see you again.

Ms Clydesdale: No doubt. *[Laughter.]*

The Chairperson (Mrs Erskine): Thank you for your time.

Mr Boylan: Chair, what if we have other questions for the Department?

The Chairperson (Mrs Erskine): Should members have any other questions, we will submit them to you. We look forward to receiving some of the other evidence on issues that you have mentioned. Thank you.

Ms Clydesdale: Thank you.