



Department for  
**Infrastructure**

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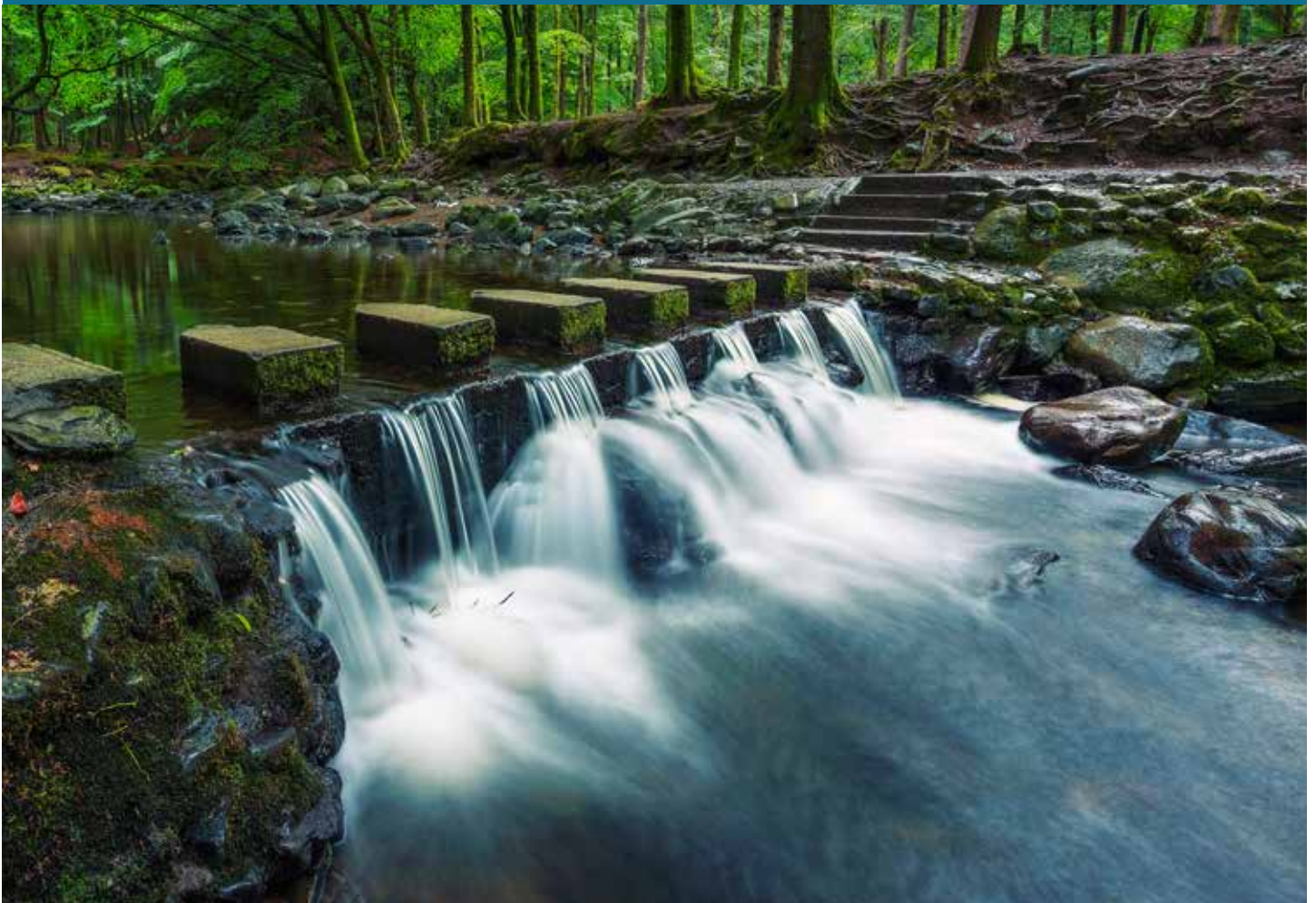
Department für

**Infrastructure**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

# Water, Flooding and Sustainable Drainage: Improving How We Manage Water

**Consultation Report** - Synopsis of responses to the Water, Flooding and Sustainable Drainage consultation, together with the Department's response.



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# **1. INTRODUCTION**

- 1.1 The Department for Infrastructure has completed a public consultation exercise on a number of policy proposals to improve how water, sewerage and flooding services are delivered in Northern Ireland. The aim being to implement the improvements by introducing new legislation in due course.
- 1.2 The purpose of the consultation was to seek views on nine policy proposals. The policy areas under consideration mainly related to improvements in processes for NI Water and for new and improved ways to reduce and mitigate flood risk.

## **Purpose of this Report**

- 1.3 This report records the public consultation findings which will help shape proposals for a Water, Flooding and Sustainable Drainage Bill. It describes how consultation on the policy proposals was undertaken and summarises the responses received. Details on how these responses have influenced the policy proposals can be found in **Annex C**.
- 1.4 The Department is grateful to the many individuals and organisations who participated in the consultation process.

## **Public Consultation**

- 1.5 The 12-week consultation was launched on the 11 March 2022 and ended on the 3 June 2022. Consultees were invited to respond to the consultation on the website's consultation response form, by email to [WaterPolicy@infrastructure-ni.gov.uk](mailto:WaterPolicy@infrastructure-ni.gov.uk), or to submit responses by post by the closing date of 3 June 2022 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

- 1.6 During the consultation, further information came to light which demonstrated that one of the policy areas required additional detailed research. Completion of this consultation report was therefore delayed due to the need to seek supplementary

legal advice regarding proposal viii (Powers for the Department to pay compensation to landowners for flood storage purposes). This has necessitated additional policy work and analysis. As a result, it has been decided that this proposal will be given further consideration, and is not being taken forward at this time.”

- 1.7 Invitations were also sent to those on the Department’s Section 75 contact list, informing them of the launch of the consultation and inviting their comments.
- 1.8 A copy of the consultation document was placed on the Department’s website at <https://www.infrastructure-ni.gov.uk/consultations/water-flooding-and-sustainable-drainage-consultation>
- 1.9 A list of all parties who responded to this consultation can be found at **Annex A**.
- 1.10 A Glossary of terminology used within this consultation report can be found in **Annex B**.
- 1.11 Consultation responses will help inform policy development across the nine topics by drawing upon a wide range of experience and opinions.

## 2. CONSULTATION RESPONSES

- 2.1 The consultation asked nine questions. These have been listed in Section 3 of this report.
- 2.2 A total of thirty responses were received before the consultation closed, and receipt was acknowledged.
- 2.3 All responses have been reviewed and the comments have been categorised in line with the consultation questions to allow for a consistent analytical approach. Further details on specific key issues/comments raised in respect of the consultation and the Department's response to those issues/comments are set out in Section 4 of this report with the heading, 'SPECIFIC KEY ISSUES / COMMENTS RAISED AND THE DEPARTMENT'S RESPONSE'.
- 2.4 Not all respondents answered all questions. Some respondents declined to answer yes or no to certain questions, instead preferring to make general comments or raise specific issues.
- 2.5 Respondents marked with an asterisk (\*) in **Annex A** did not submit the response on the standard response form.
- 2.6 In general, there was support for most topics contained within the consultation, with the majority of respondents agreeing with questions 1, 3, 4, 5, 6, 7, 8 and 9. Question 2 had less support, the reasons for which are analysed in Sections 3 and 4.

### **3. KEY ISSUES RAISED IN RESPONSES**

3.1.1 This section provides a summary of the key issues raised in the consultation responses. It is not intended to be a comprehensive report of every view expressed, but rather a synopsis of the key issues raised by respondents. Section 4 provides a more detailed breakdown of the key issues/comments received, as well as the Department's response.

**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.

There was general agreement to this proposal.

The Department noted that some respondents welcomed the fact that hosepipe bans were not being extended to non-domestic customers, whilst others felt that NI Water should first get control of leaks within its network.

NI Water has a dedicated budget for repairing leakages each year and is repairing approximately 220 leaks every week. Detecting and repairing leaks can be very challenging work which will take years to address. It is, therefore, not practical to consider repairing leaks as an immediate solution or an alternative to a hosepipe ban during periods of prolonged hot weather and/or periods of high demand.

Some respondents asked for clear definitions of the terms "hosepipe" and "filling or maintaining" a swimming pool. This will be considered when drafting legislation.

Four respondents to the consultation did not provide an answer to this question.

**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?

There was significant division in the responses to this proposal.

Some respondents welcomed powers for NI Water to enter onto private land to build SuDS to tackle drainage issues. Other respondents raised concerns about the rights of landowners, as well as the possibility that SuDS might sterilise land for future development.

One respondent raised several legal questions about this proposal. These will be considered when drafting legislation.

Some respondents asked for clarity around ownership, maintenance, and liability of SuDS post-construction.

Three respondents to the consultation did not provide an answer to this question.

The Department is considering revising this policy to only be used with agreement of the landowner and is proposing to delay commencement of this power until SuDS guidance has been developed as set out in Question 3. The policy proposal will therefore not be taken forward under the proposed legislation.

**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?

There was general agreement to this proposal.

Respondents welcomed the laying of a framework which could increase the use of SuDS to tackle flooding, reduce our carbon footprint and reduce pressure on the sewer network. Additionally, some respondents noted the economic benefits that the increased use of SuDS could bring in the future, by freeing up capacity in combined sewers to enable future development in constrained areas.

Several respondents raised concerns about the ongoing maintenance, liability, and ownership of SuDS, as well as the approval process for creating new SuDS.

Other respondents raised concerns about flooding on agricultural land and suggested that more native broadleaf trees should be planted.

One respondent to the consultation did not provide an answer to this question.

**Question 4** Do you agree that NI Water should be permitted to adopt and maintain sections of privately-owned drainage infrastructure constructed prior to 1<sup>st</sup> October 1973, which are critical to the effective operation of its network?

There was general agreement to this proposal.

Respondents welcomed the proposal to enable the adoption of pre-1973 private drainage infrastructure (PDI), where required. Some respondents specifically noted that a large amount of flooding incidents can be traced back to unadopted PDI.

A respondent proposed that this new power should include rights of notice and appeal, similar to other powers already provided for in the 2006 Order. The Department will consider this when drafting legislation.

Two respondents raised concerns about pollution and environmental damage from inadequate PDI. The Department would reiterate that it is the responsibility of the landowner to maintain their own private drainage, and the Department is proposing that NI Water should only adopt sections which are critical to the functioning of the network.

Six respondents to the consultation did not provide an answer to this question.

**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?

There was general agreement to this proposal.

Respondents who agreed with this proposal welcomed it for improving enforcement powers against polluters and raising environmental protection.

Several respondents questioned how costs would be apportioned, and if the costs could be split between NI Water and the landowner. The Department acknowledges that some low-income households may have difficulty paying for



repairs. However, NI Water is a publicly funded company, and it would be unfair to burden the taxpayer with the repair bill for repairs to private property which is causing pollution and which the owner has refused to fix.

Some respondents asked the Department to consider the context in which misconnections arise and to look at each on a case-by-case basis. The Department will consider this as legislation is being developed.

Six respondents to the consultation did not provide an answer to this question.

**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?

There was strong support among respondents for this proposal.

Respondents who approved of this proposal noted the benefits to solicitors and councils in getting quicker access to important information about the adoption status of sewerage infrastructure.

One respondent provided four suggestions as to how this could be implemented, and the Department has responded to these specific proposals in Section 4.

One respondent also proposed that charges be removed from the Register upon NI Water discharging its responsibility. The Department is considering this point.

Nine respondents to the consultation did not provide an answer to this question.

**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?

There was strong support among respondents for this proposal.

Respondents who approved of this proposal referenced the success of the pilot scheme.

Specific concerns raised by respondents included the need for clear, open and transparent eligibility criteria with a robustly monitored and controlled governance system in place. In addition, one consultee focused on the need to invest in flood risk prevention measures as opposed to expenditure on grant funding.

Eight respondents to the consultation did not provide an answer to this question.

**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?

The Department is considering revising this policy proposal, it will therefore be the subject of further research and will not be taken forward under the proposed legislation at this time.

**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?

There was general agreement to this proposal.

Respondents who supported this proposal welcomed that this power could save the Department time, money and administrative resources, while opposition to this proposal stemmed from concerns that this may result in reduced scrutiny and oversight of these two regulations.

Eight respondents to the consultation did not provide an answer to this question.

## **4. SPECIFIC KEY ISSUES / COMMENTS RAISED AND THE DEPARTMENT'S RESPONSE**

**Proposal 1:** Expand the list of activities which NI Water may temporarily prohibit or restrict as part of a hosepipe ban beyond the watering of gardens and washing of private motor cars.

### 4.1 Details of the specific key issues/comments raised in respect of the consultation

**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.

and the Department's response to those issues/comments are set out below.

The Department noted that the comments received were largely positive. Twenty-six respondents provided an answer to this question. Of those respondents, twenty-two (84.62%) agreed with the proposal to extend the range of activities which NI Water may temporarily prohibit or restrict as part of a hosepipe ban.

Respondents noted the significance of climate change putting additional pressure on our precious water resources, and that current powers for NI Water were too restrictive to adequately tackle growing pressures which can be faced during times of high water usage. Respondents noted that it is important for the relevant authorities to have powers to restrict unnecessary water use, when necessary, and to promote conservation.

**Proposed response: Agreed.**

Concerns were raised by some respondents about the welfare of fish and other animals in the context of restricting the filling of domestic ponds during a hosepipe ban.

**Proposed response: Agreed.** The Department recognises this concern and proposes to remove the filling of domestic ponds as one of the proposed additions to additional hosepipe ban powers.

Some respondents asked for clear definitions to be included in any legislation, for example, the terms “hosepipe” and “filling or maintaining” a swimming pool.

**Proposed response: Agreed.** This will be considered when drafting legislation.

## Final policy

The Department proposes to:

- i.) Introduce primary legislation to expand the list of categories which NI Water may temporarily prohibit or restrict as part of a hosepipe ban, if required; and
- ii.) Exclude the filling of domestic ponds from the scope of any new hosepipe ban categories.

**Proposal 2:** Provide NI Water with a new power of entry to enable it to carry out works beyond the laying of pipes, including the construction of 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?

The Department noted that the comments received were significantly divided. Twenty-seven respondents provided an answer to this question. Of those respondents, thirteen (48.15%) agreed with the proposal to grant NI Water a new power of entry onto land for flood management or SuDS.

Respondents who agreed noted the importance of NI Water accessing private land to carry out its duties and strengthen sewerage infrastructure.

**Proposed response: Agreed.**

Respondents who disagreed focused on the rights of landowners, and raised concerns that SuDS could potentially sterilise land, preventing future development on the site. This included suggestions that works should be carried out with agreement of the landowner, and that it may be disproportionate to use this as a power of entry. Additionally, it was suggested that this power is used as an option of last resort, and that its use should be subject to an application to the Department and/or Lay Magistrate.

**Proposed response: Noted.** The Department has considered these points and has decided not to proceed with this policy at the present time.

A respondent also enquired as to whether the Department could instead use Article 10 of the Drainage (Northern Ireland) Order 1973 to acquire land (by agreement or compulsorily) and provide compensation, as an alternative to the acquisition of new powers to carry out works for flood management purposes.

**Proposed response: Not agreed.** The Drainage Order provides powers for the Department to acquire land, etc. for the purposes of that Order.

Multiple respondents raised questions about liability, ownership, and maintenance of SuDS post-construction.

**Proposed response: Agreed.** The Department proposes to revisit this policy as part of the process for implementing SuDS and its associated guidance and/or legislation. This should resolve concerns and ambiguity over ownership, liability, and maintenance of SuDS.

## **Final policy**

The Department proposes to revisit this policy as part of the process for implementing SuDS and its associated guidance and/or legislation. The policy proposal will therefore not be taken forward under the proposed legislation.

**Proposal 3:** Provide the Department for Infrastructure with a power to issue future guidance on the design, approval, and maintenance of SuDS.

**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?

The Department noted that the comments received were largely positive. Twenty-nine respondents provided an answer to this question. Of those respondents, twenty-five (86.21%) agreed with the proposal for the Department to be given a power to issue future guidance on SuDS.

Several respondents raised concerns about liability, ongoing maintenance, and ownership of soft SuDS post-construction. One respondent felt that it would be premature to promote legislative change before establishing the nature and remit of a SuDS approval body.

**Proposed response: Agreed.**

### **Final policy**

The Department proposes to introduce primary legislation to provide it with a power to introduce future guidance on the design, approval, and maintenance of SuDS.

**Proposal 4:** Provide NI Water with a power to adopt and maintain certain sections of privately-owned drainage infrastructure constructed prior to 1<sup>st</sup> October 1973, which are critical to the effective operation of its network.

**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?

The Department noted that the comments received were largely positive. Twenty four respondents provided an answer to this question. Of those respondents, twenty (83.33%) agreed with the proposal to permit NI Water to adopt pre-1973 private drainage infrastructure (PDI).

**Proposed response: Agreed.**

One respondent stated that any power provided in this regard should be on an equivalent basis to those already provided in the 2006 Order, such as Articles 159, 160 162 and 206(3). These include rights of notice and of appeal and no authorisation for the sewerage undertaker to require payment in respect of the making of any declaration or in respect of any agreement to make such a declaration.

**Proposed response: Noted.** The Department notes these comments and will take them into consideration during the drafting of legislation. Additionally, the Department will also consider appeal rights for landowners who have PDI which NI Water has decided not to adopt.

Some respondents asked if this proposal could have a negative impact on biodiversity and if consideration should be given to adopting sections of inadequate PDI which regularly create a risk to human health or pollute the environment.

**Proposed response: Noted.** Fixing and adopting old PDI, where it is critical to the operation of NI Water's network, would ensure that failing private infrastructure would no longer cause damage to the environment or harm biodiversity, if that had been the case.

One respondent noted that it is essential that NI Water gets value for money as it is a publically funded body.

**Proposed response: Agreed.**

## **Final policy**

The Department proposes to introduce primary legislation to provide NI Water with a power to adopt pre-1973 private drainage infrastructure which is critical to the effective operation of the sewerage network.

**Proposal 5:** Provide NI Water with a power to enter premises to fix drainage misconnections and recover the costs from the landowner in instances when the landowner refuses entry and refuses to repair the misconnection themselves.

**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?

The Department noted that the comments received were largely positive. Twenty-four respondents provided an answer to this question. Of those respondents, twenty (83.33%) agreed with the proposal to provide NI Water with a new power of entry to repair drainage misconnections and recover costs from uncooperative landowners.

One respondent noted that such access powers would allow for quick and cost-effective remediation of misconnections which are a source of pollution.

**Proposed response: Agreed.**

Another respondent raised potential concerns regarding this proposal. These included making sure that NI Water's combined sewers were specifically excluded from the definition of drainage misconnections, that the power should only be used as a last resort and that appropriate oversight is put in place.

**Proposed response: Noted.** The Department will investigate these points during the legislative drafting process.

Several other respondents raised the issue of costs, stating that they were cautiously in favour of the proposal but were concerned that costs may prevent a landowner from repairing a misconnection. Other respondents queried who should be responsible for paying for the cost of repairing a misconnection.

**Proposed response: Noted.** The Department is considering this. The responsibility for paying for repairs should lie with the owner of the infrastructure. NI Water is a publicly funded body, and it would be unfair to burden taxpayers with the costs of repairing a misconnection on private property when the owner refuses to pay to fix it themselves.

Two respondents stated that consideration should be given to the context in which misconnections arise, including why they are occurring and how they can be prevented in the first place.



One respondent queried if there would be a drive to identify and rectify misconnections, or if NI Water was seeking this power to be applied retrospectively after specific events pointed to a misconnection.

**Proposed response: Noted.** NI Water will attempt to repair misconnections as and when it locates them.

## Final policy

The Department proposes to introduce primary legislation to provide NI Water with a power to enter private premises to repair drainage misconnections and recover the costs from the landowner when the landowner refuses entry or refuses to fix the misconnection themselves.

**Proposal 6:** Provide NI Water with a power to register Article 161 adoption agreements and bonds 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?

The Department noted that the comments received were very positive. Twenty-one respondents provided an answer to this question. Of those respondents, nineteen (90.48%) agreed with the proposal to provide NI Water with a power to enable it to register Article 161 Agreements in the Statutory Charges Register.

### **Proposed response: Noted**

One respondent suggested that, while they would welcome new powers for NI Water to register adoption agreements – they would also recommend that:

- (i) Existing Article 17 Agreements prior to 31/3/2007 where the infrastructure has not yet been adopted, remain in place in the Statutory Charges Register;
- (ii) Article 161 Agreements post 1/4/2007 and prior to commencement of this power, where the infrastructure has not yet been adopted should be registered in the Statutory Charges Register and remain registered post-adoption;

(iii) Article 161 Agreements post 1/4/2007 and prior to commencement of this power, where the infrastructure has already been adopted, only the adoption should be registered in the Statutory Charges Register; and

(iv) Article 161 Agreements after commencement of this power should be registered immediately and subsequently cancelled on adoption of infrastructure. The adoption will then be registered in the Statutory Charges Register.

Another respondent noted that this proposal should be supported by a review process to ensure that charges are removed on discharge of responsibilities.

**Proposed response: Partly Agreed.** Having consulted with the Departmental Solicitors Office and discussed the matter with the Registrar of Titles, the Department considers that only extant Article 161 Agreements should be included on the Statutory Charges Register. The registering of adoption agreements is not a suitable use of the Statutory Charges Register. Powers should also allow for charges to be removed from the register once the adoption has been completed.

## Final policy

The Department proposes to introduce primary legislation to provide NI Water with a power to register extant Article 161 adoption agreements and bonds in the Statutory Charges Register, and to remove the Article 161 agreement from the register once the sewer has been adopted.

**Proposal 7:** Provide legislation 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.

**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?

The Department noted that comments received were extremely positive. Twenty-two respondents provided an answer to this question. Of these respondents, twenty (90.91%) agreed with the proposal to introduce a substantive Homeowner Flood Protection Grant Scheme.

### **Proposed response: Agreed**

Several respondents raised questions about how the Homeowner Flood Protection Grant Scheme will be defined, and what its specific remit will be, especially in the context of a proposed Flood Alleviation Scheme (FAS). Consultees also raised concerns around due diligence and stated that money should be used to prevent flooding, rather than being spent on grant aids to properties at risk of flooding.

**Proposed response: Noted.** The Department has made it clear within the eligibility criteria included in the pilot scheme that if a FAS is proposed then a HFPGS would not be applicable. If a FAS does not meet the cost-benefit criteria or has been ruled out for any reason, then a HFPGS may be considered acceptable subject to meeting the eligibility criteria. The current criteria will be reviewed to ensure there are clearly defined remits for both schemes, as well as clearly defined eligibility criteria as we continue to develop this policy. Draft criteria will be subject to public consultation in due course. The Department will also ensure that there are clearly established guidelines for the procurement of a suitably qualified contractor to deliver the scheme, in compliance with Managing Public Money NI (MPMNI) and procurement guidelines.

### **Final policy**

The Department proposes to:

- i.) Introduce primary legislation to provide the Department with a power to introduce a substantive Homeowner Flood Protection Grant Scheme; and
- ii.) Consult on the detail of the HFPGS in due course.

**Proposal 8:** Introduce primary legislation to provide the Department for Infrastructure with a power to provide for easements and enter into additional compensation arrangements with landowners in exchange for their land facilitating storage of flood waters.

The Department noted that comments received were largely positive. Twenty-three respondents provided an answer to this question. Of these respondents, eighteen (78.26%) agreed with the proposal to provide the Department for Infrastructure with powers to come to compensation arrangements with landowners whose land is 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?

The Department received a range of comments in relation to introducing powers to enable it to provide easements and additional compensation arrangements for affected landowners who have agreed to long-term adjustments to their land to facilitate storage of floodwaters to help mitigate the risk of flooding. The Department welcomes the responses received and has acknowledged these as outlined below.

The Law Society noted that any compensation arrangements should, as a minimum, be equivalent to compensation arrangements already provided for in existing legislation.

**Proposed response: Noted.** The Department notes these comments and will explore other existing compensation provisions that exist and consider any potential read-across when developing this particular policy further.

The RSPB NI raised concerns that this policy would simply be spending vast quantities of money to rectify problems created by another government department (DAERA). They stated that flooding is a symptom of unsustainable land management driven by current agricultural policies and funding given to the agriculture sector.

**Proposed response: Not agreed.** The Department would like to highlight that it is the intention to make funding available to a range of landowners and will not be restricted to owners of agricultural land. For example, certain flooding may be prevented by designing structures for attenuation of water on areas of golf courses, unused fields, and other disused land. This attenuated water could also create attractive amenity spaces and temporary habitats for ducks and other birds, while protecting other species in areas which would be otherwise be susceptible to flooding.

There were concerns raised that flooding land may result in the loss of ancient woodlands, hedgerows, and other irreplaceable habitats.

**Proposed response: Noted.** The Department would like to make clear that before any agreement could be made with a landowner to attenuate water, an environmental impact assessment would first be undertaken. Ancient woodlands are an irreplaceable resource, which need to be protected.

The Ulster Farmers' Union strongly opposed any compulsory purchase of land for flood storage measures.

**Proposed response: Noted.** The Department notes this point and would like to reiterate that this policy relates to voluntary agreements with landowners to attenuate water on their land. This is not a new power for compulsory purchase of land.

There were also concerns of potential corruption within such a scheme.

**Proposed response: Noted.** The Department would like to note that schemes that provide a solution to existing flooding issues would be considered. Business cases would be prepared with a cost benefit analysis carried out to ensure value for money to the public.

A point was also raised that suggested money be provided to landowners who plant trees on their land as part of natural flood management solutions.

**Proposed response: Noted.** The Department believes that this is a positive idea and will consider it further when developing this policy, although this may be a policy area better suited to DAERA.

Ards and North Down Borough Council noted that the policy was unlikely to be successful without bringing landowners on board and establishing a partnership with them.

**Proposed response: Agreed.** The Department agrees that cooperating with landowners and building partnerships will be critical to the effective implementation of this proposal.

Another consultee raised concerns around “quid pro quo corruption” if there is not appropriate oversight for this proposed scheme.

**Proposed response: Noted.** The Department notes the need to have clearly established guidelines for the procurement of a suitably qualified contractor to deliver the scheme, in compliance with Managing Public Money NI (MPMNI) and procurement guidelines. However, the proposals for flood storage would only be implemented on the basis of need, which would in turn be based on the design of a specific Flood Alleviation Scheme, that required supplementary attenuation/storage.

## **Final policy**

The Department proposes that this policy proposal be the subject of further research and will not be taken forward under the proposed legislation at the present time.

**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?

**Proposal 9:** Introduce primary legislation to provide the Department for Infrastructure with a power to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Flood Directive) Regulations (Northern Ireland) 2009.

The Department noted that the comments received were generally positive. Twenty-five respondents to the consultation provided an answer to this question. Of these respondents, sixteen (64%) agreed with the proposal to provide the Department for Infrastructure with powers to amend, update, or revoke the two aforementioned regulations, should the need arise.

**Proposed response: Agreed**

One respondent enquired what amendments, updates or revocations are proposed, and stated that any amendments should only be undertaken with appropriate consultation and primary legislation only introduced as and when appropriate.

**Proposed response: Noted.** None at present, it is important that, should the need arise, the Department has the power to amend these regulations. The Department previously had powers to amend, update or revoke these regulations prior to the UK leaving the EU. The Department does not currently have any plans to change these regulations, but appropriate consultation would be carried out if that position changes.

Other consultees raised concerns around procedural transparency, risks of reduced scrutiny, and divergence. They considered that the granting of an overarching power to amend, update or revoke without scrutiny by MLAs would be a worrying adoption of processes which lack transparency.

**Proposed response: Agreed.** Any amendments made would be by means of a statutory rule which would be subject to the normal Assembly procedures and associated scrutiny.

One respondent enquired how 'biodiversity' would be treated under this proposal, and asked if there were any risks to UK or NI commitments under multi-lateral environmental agreements.

**Proposed response: Noted.** The Department works closely with all relevant agencies and Departments, as appropriate, and relies upon their expertise in areas where there is significant policy overlap.

## **Final policy**

The Department proposes to introduce primary legislation to provide the Department with a power to amend, update or revoke the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009.

## ANNEX A – List of Consultee Returns

<b>Consultee Number</b>	<b>Consultee Name</b>
1	Belfast City Council*
2	Law Society of Northern Ireland*
3	Royal Society of Ulster Architects*
4	Royal Society for Protection of Birds NI*
5	NI Water*
6	Mid Ulster District Council*
7	Council for Nature Conservation and the Countryside*
8	Woodland Trust*
9	Drinking Water Inspectorate*
10	Ards and North Down Borough Council*
11	Alliance Party NI*
12	Armagh City Banbridge & Craigavon Borough Council*
13	Lisburn and Castlereagh City Council
14	Ulster Farmers' Union
15	Mid and East Antrim Borough Council
16	Royal Society for the Prevention of Accidents
17	Farming Carbon
18	Fermanagh and Omagh District Council
19	Watertight International
20	Northern Ireland Fire and Rescue Service



<b>21</b>	Private Individual 1
<b>22</b>	Private Individual 2
<b>23</b>	Private Individual 3
<b>24</b>	Private Individual 4
<b>25</b>	Private Individual 5
<b>26</b>	Private Individual 6
<b>27</b>	Private Individual 7
<b>28</b>	Private Individual 8
<b>29</b>	Private Individual 9
<b>30</b>	Private Individual 10

Respondents marked with an asterisk (\*) did not submit the response on the standard response form.

NB: Two further responses were received from consultees after the consultation had closed. These responses did not form part of the consultation report.

## **ANNEX B – Glossary**

Combined Sewer	A sewerage system that collects both wastewater and rainwater.
Flood Alleviation Scheme (FAS)	Flood alleviation schemes involve the construction of flood walls, banks and other flood management measures to reduce flood risk to homes and commercial property which have been identified as being at significant risk.
Misconnection	A misconnection occurs when a polluting source has been connected to a stormwater drain. For example, a washing machine which feeds into a nearby waterway instead of a foul water sewer.
NI Water	Northern Ireland Water is the water and sewerage undertaker for Northern Ireland.
Private Drainage Infrastructure (PDI)	Sewerage infrastructure which has not been adopted by NI Water or another body and is held in private ownership.
Sewerage system/infrastructure	A system of pipes and ducting which collects and transports sewage.
Soft SuDS	A term used to describe natural flood management creations such as rills, swales, and attenuation ponds. This contrasts with engineered solutions like attenuation tanks and oversized pipes which are known as 'Hard SuDS.'
Statutory Charges Register	A registry established in 1951 to provide purchasers of land with an easy method of checking whether a property is affected by certain statutory restrictions which could not easily be discovered otherwise.
Sustainable Drainage System (SuDS)	A drainage system that controls the quantity and quality of run-off waters by providing storage, for example in tanks or ponds. This delays or prevents discharge to streams or rivers until there is capacity to accommodate it.

## ANNEX C – Final Policy Summary

<u>Proposal</u>	<u>Recommendation post-consultation</u>	<u>Legislative amendment required (Y/N)</u>
<p>Proposal 1 - Powers for NI Water to implement wider water shortage measures.</p>	<p>Proceed – Subject to amendment</p> <ul style="list-style-type: none"> <li>• Hosepipe bans will not be extended to the filling of ponds containing fish or other aquatic life.</li> <li>• The Department will consider definitions of “hosepipe” and “filling or maintaining a swimming pool” during the drafting process.</li> </ul>	<p>Y</p>
<p>Proposal 2 – Powers for NI Water to enter onto private land to carry out works for flood management purposes including construction of sustainable drainage.</p>	<p>Do not proceed with policy at present.</p> <ul style="list-style-type: none"> <li>• The Department proposes to revisit this policy as part of the process for implementing SuDS and its associated guidance and/or legislation. The policy proposal will therefore not be taken forward under the proposed legislation.</li> </ul>	<p>Y</p>
<p>Proposal 3 - Provision of an enabling power for the Department to introduce arrangements to encourage developers to use sustainable drainage systems (SuDS) as the</p>	<p>Proceed</p>	<p>Y</p>

<p>preferred drainage solution in new developments.</p>		
<p>Proposal 4 – Powers for NI Water to adopt certain drainage infrastructure, which is in private ownership and was constructed prior to 1<sup>st</sup> October 1973.</p>	<p style="text-align: center;">Proceed</p> <ul style="list-style-type: none"> <li>• During the drafting of legislation, the Department will consider whether this power should be provided on an equivalent basis to those already provided in the 2006 Order, such as Articles 159, 160 162 and 206(3), including rights of notice and of appeal.</li> <li>• The Department will also consider adoption and appeal rights for landowners who have PDI which NI Water has decided against adopting.</li> </ul>	<p style="text-align: center;">Y</p>
<p>Proposal 5 - Enhanced powers for NI Water to deal with drain and sewer misconnections.</p>	<p style="text-align: center;">Proceed</p> <ul style="list-style-type: none"> <li>• The Department will liaise with the Departmental Solicitor’s Office as to whether NI Water’s own combined sewers need to be excluded from the definition of a drainage misconnection.</li> <li>• The Department will consider how costs should be shared for low-income households.</li> </ul>	<p style="text-align: center;">Y</p>
<p>Proposal 6 - Power for NI Water to register Article 161 agreements in the Statutory Charges Register.</p>	<p style="text-align: center;">Proceed</p> <ul style="list-style-type: none"> <li>• Powers will allow for charges to be removed from</li> </ul>	<p style="text-align: center;">Y</p>

	<p>the register once the adoption has been completed. This will be considered during the drafting of legislation.</p> <ul style="list-style-type: none"> <li>• Having consulted with the Departmental Solicitors Office and discussed the matter with the Registrar of Titles, the Department considers that only extant Article 161 Agreements should be included on the Statutory Charges Register. The registering of adoption agreements is not a suitable use of the Statutory Charges Register.</li> <li>• The Department proposes that only extant Article 161 Agreements should be included on the register.</li> </ul>	
<p>Proposal 7 - Powers for the Department to grant fund Homeowner Flood Protection measures.</p>	<p>Proceed</p> <ul style="list-style-type: none"> <li>• The Department will aim to ensure there are clearly defined criteria setting out the differences between the Flood Alleviation Scheme and the Homeowner Flood Protection Grant Scheme.</li> <li>• The Department proposes to consult on the detail of this scheme at a later date.</li> </ul>	<p>Y</p>
<p>Proposal 8 - Powers to provide for easements and additional compensation arrangements for affected landowners to facilitate</p>	<p>Do not process with policy at present.</p> <ul style="list-style-type: none"> <li>• The Department proposes that this policy proposal be the subject of further research and</li> </ul>	<p>Y</p>

flood storage.	will not be taken forward under the proposed legislation at the present time.	
<p>Proposal 9 - 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.</p>	Proceed	Y

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