

# Recoupment of Drainage Infrastructure Costs

Department of Agriculture  
and Rural Development

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
NIA 30/03, HC 614 Session 2003/04: 8 June 2004



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Report by the Comptroller and Auditor General  
for Northern Ireland

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# Recoupment of Drainage Infrastructure Costs

Department of Agriculture and Rural Development

HC 614 Session 2003/04  
NIA 30/03

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Comptroller and Auditor General

Northern Ireland Audit Office  
7 June 2004

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# Abbreviations

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<b>C&amp;AG</b>	Comptroller and Auditor General
<b>DARD</b>	Department of Agriculture and Rural Development
<b>DOE</b>	Department of Environment
<b>DFP</b>	Department of Finance and Personnel
<b>DRD</b>	Department of Regional Development
<b>EHS</b>	Environment and Heritage Service
<b>GB</b>	Great Britain
<b>NIAO</b>	Northern Ireland Audit Office
<b>PAC</b>	Public Accounts Committee
<b>SUDS</b>	Sustainable Urban Drainage Systems

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# DARD: Recoupment of Drainage Infrastructure Costs

## Executive Summary

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### Introduction and Background

1. The Department of Agriculture and Rural Development (the Department) has statutory responsibility for drainage and flood protection in Northern Ireland. The development of land for housing, commercial or industrial use increases the amount of impermeable land and results in increased stormwater run-off from the developed area to nearby watercourses. This increases the risk of overloading the downstream watercourse system. The Rivers Agency undertakes drainage infrastructure works, where necessary, to facilitate such developments by reducing the risk of flooding of property or neighbouring areas in the future.
2. Development-led infrastructure schemes (development schemes) are built to Agency standards and generally include an element of 'betterment' in addition to the drainage works required to meet the immediate development need. Betterment would comprise improvements to the drainage infrastructure that are not directly necessitated by the development scheme itself - for example, to alleviate 'existing' flooding problems or rectify existing structural problems on designated watercourses. The costs of development schemes are currently borne entirely by the Agency - developers benefiting from the schemes do not contribute to the costs of implementing them (paragraph 1.1 to 1.3).
3. In June 1990, the Public Accounts Committee (PAC) at Westminster reported on drainage matters<sup>1</sup> and noted that the Department was considering how to recover the cost of development schemes through agreements with developers. NIAO reviewed the progress made by the Department and the Agency, since 1990, towards setting up arrangements to obtain contributions from developers for the cost of infrastructure schemes (1.4).

### Main Findings and Recommendations:

#### On Development Schemes

4. Significant amounts of public funds have been spent on development schemes.

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<sup>1</sup>Westminster PAC 26th Report of Session 1989-90, HC 224, June 1990.



In the five years to March 2003, 96 development schemes were completed at a total cost of £5.3 million (including betterment). Under the current approach to dealing with drainage infrastructure in Northern Ireland, the Agency expects to continue to incur significant costs for the provision of development schemes (2.1 to 2.9).

## On Progress in Charging Developers

5. The Agency has said that in pursuit of developing a charging methodology, it had made a significant number of attempts, since the PAC report in 1990, to develop a way forward:
  - a 1994 paper to the Department of Finance and Personnel (DFP) presented a preferred option - funding development schemes through the rating system. This was subsequently rejected by DFP (3.2 to 3.3)
  - in 1996, an approach to Water Service to consider combining and collecting the cost of off-site drainage and infrastructure improvements through one single payment was rejected on the basis that it was outside the scope of Water Service legislation (3.4 to 3.5)
  - in 1997, the Agency sought legal opinion with a view to amending the Drainage Order to enable charging. The Solicitor's Office recommended apportionment of costs by agreement or, in the absence of agreement, by arbitration. This was rejected by the Agency which saw it as both unworkable and unenforceable (3.7 to 3.10)
  - in 1999, the Agency recommended a joined-up government approach to charging developers and an inter-departmental working group was set up and reported in 2001 (3.13 to 3.15)
  - in 2002, the possibility of a joined-up government approach with the Department of Regional Development's Infrastructure Funding Division became a brief possibility (3.20 to 3.24).

In each case, it was concluded that the appropriate way forward was to amend the Drainage Order, to facilitate collection of contributions from developers. To date, however, the Order has not been amended and so the Agency does not have the statutory authority to obtain contributions from developers.

## Recoupment of Drainage Infrastructure Costs

6. The Department's consideration of how to obtain contributions from developers towards the cost of development schemes has been ongoing for over 13 years since the PAC 1990 Report and remains unresolved. While recognising that there are particular complexities associated with developing a charging methodology, and the various actions by the Agency to seek a way forward, we note that no strategy has yet been put in place. As a result, the Agency is not yet in position to charge for this service, which continues to be met wholly from public funds (3.30).
7. It has not been possible to calculate the precise value lost to the public purse as a result of the absence of a means of recovering costs from developers. However, with over £1 million having been spent annually on development schemes, the amount is likely to be substantial. For example, allowing for some 30 per cent of the costs of schemes being attributable to betterment (which the Agency has said would not be recoverable from developers), potential revenue of some £9 million could have been lost since 1990. The Department said that it is unable to confirm this calculation as it feels that it very significantly understates the attribution to betterment and does not take into account a number of other relevant factors. These include cases where planned development may not have taken place and the possible implementation of on-site storage solutions by developers, leading to loss of central control of infrastructure provision, with the potential for increased flooding (3.31).
8. On the basis of the review work done by the Agency and the Department, it appears to us that the most appropriate way forward would be to amend the Drainage Order, to include provision for a free-standing power to charge. Accordingly, it is our view that the Agency should seek to introduce this as soon as possible. We note that, following our review, the Department told us that while it has concerns regarding a general charging provision in the absence of a charging methodology, it will, nevertheless, take forward the recommendation to seek a free-standing power to charge within the Drainage Order (3.33 to 3.35).
9. Within the overall process of establishing the power to charge, the Agency has to develop a charging methodology for Development Schemes. While the Agency

has considered various charging approaches over the period since 1990, and has consulted with other Departments and Agencies, it has not yet established a recommended charging methodology. We recommend that the Agency:

- carries out a review to estimate the levels of contributions from developers likely to be obtained from various charging options
  - evaluates the merits and potential difficulties of alternative charging methodologies
  - prepares a strategy paper on the way forward, setting out the preferred option for seeking contributions from developers and the anticipated levels and amounts of recovery.
10. Again, following our review, the Department told us that the Agency proposes to appoint consultants to take forward a review to identify appropriate charging methodologies and recommend a way forward (3.36 to 3.39).

## **On Sustainable Urban Drainage Systems**

11. The Agency has also commented that consideration is currently being given to an alternative approach, known as Sustainable Urban Drainage Systems, to restrict storm water discharges from development sites. It said that acceptance of this approach in Northern Ireland, by Government, as a viable alternative could have a significant impact on the need for development schemes. However, the Agency considers it impossible at this stage to determine the extent of that impact (2.9).
12. Sustainable urban drainage is a concept which aims to provide an environmentally sustainable means of controlling surface water run-off from developed areas by allowing the discharge of water to be controlled, prior to its release into drains, sewers and watercourses. Sustainable Urban Drainage Systems (SUDS) are physical structures built to receive surface water run-off. The structures may comprise 'on-site' stormwater storage facilities, constructed by the developer. As these storage facilities would not be part of the watercourse system, responsibility for maintenance would fall outside Rivers Agency's remit.

## Recoupment of Drainage Infrastructure Costs

13. To date, SUDS solutions have been ruled out for drainage in Northern Ireland building developments, because of concerns, highlighted by the Water Service, in relation to design, long-term maintenance, health and safety issues, the potential for flooding if the on-site facilities were full and resulting public liability claims. These concerns relate to developments where adoption of the on-site storage facilities would fall to Water Service (3.16 to 3.17).
  
14. Use of a SUDS-based solution for development-linked drainage works in the future may, in certain cases, represent a feasible option. Currently, however, there are quite diverse views as to its feasibility and so agreement within Government on a SUDS-based approach does not appear imminent. Genuine concerns remain and these need to be resolved. It appears to us, therefore, that any benefits which SUDS, through on-site storage facilities, may bring would be in the longer term. In addition, the evidence suggests that SUDS would not be an appropriate solution for every development situation and so there will continue to be a need for infrastructure drainage works and a mechanism for recoupment of costs from developers (3.40).



# Part: 1

## Introduction and Background

### Introduction

- 1.1 The Department of Agriculture and Rural Development (the Department) has statutory responsibility for drainage and flood protection in Northern Ireland. Rivers Agency<sup>2</sup> (the Agency) undertakes all functions arising from the Department's statutory remit under the Drainage (NI) Order 1973 (the Drainage Order). The Agency's main aim is to:

*“improve social conditions and to support economic development in Northern Ireland through reducing the risk to life and damage to property from flooding by rivers and the sea”.*

- 1.2 The development of land for housing, commercial or industrial use increases the amount of impermeable land and results in increased stormwater run-off from the developed area to nearby watercourses. This increases the risk of overloading the downstream watercourse system. The Agency undertakes river drainage infrastructure works, where necessary, to facilitate such developments by reducing the risk of flooding of property or neighbouring areas in the future (see diagram at Figure 1). Development-led infrastructure schemes (development schemes) are built to Agency standards and generally include an element of 'betterment' in addition to the drainage works required to meet the immediate development need. Betterment would comprise improvements to the drainage infrastructure that are not directly necessitated by the development scheme itself - for example, to alleviate 'existing' flooding problems or rectify existing structural problems on designated watercourses.
- 1.3 The costs of development schemes are currently borne entirely by the Agency - developers benefiting from the schemes do not contribute to the costs of

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<sup>2</sup>Rivers Agency was created in October 1996. It was formerly Watercourse Management Division, within the departmental structure.

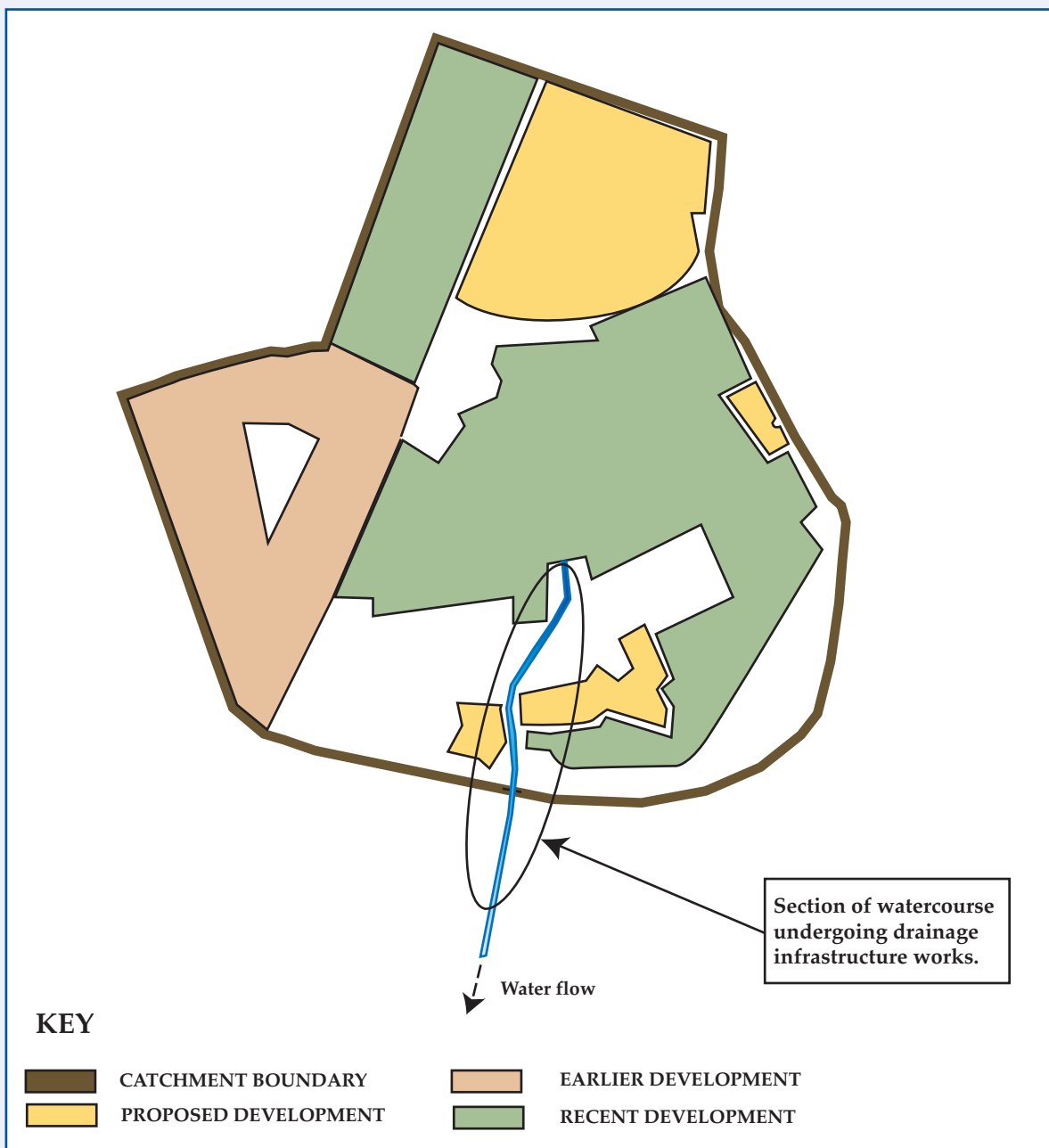
## Recoupment of Drainage Infrastructure Costs

implementing them. The approval for drainage infrastructure schemes is based on a 'cost yardstick' which is agreed annually with the Department of Finance and Personnel (DFP). This methodology was agreed with DFP and introduced in 1986 as an interim approach until the issue of overall infrastructure charging was addressed. The cost yardstick methodology is still in place.

Figure 1

### Diagram of Drainage Infrastructure Works:

Killymeal Drain, Dungannon



Source: Rivers Agency

1.4 In June 1990, the Public Accounts Committee (PAC) at Westminster reported on drainage matters<sup>3</sup> and noted that the Department was considering how to recover the cost of development schemes through agreements with developers. The Committee stated that it looked forward to hearing of progress. In November 1990, the DFP Memorandum of Reply<sup>4</sup> noted that recent planning legislation contained provision for the Department of the Environment (DOE) to enter into agreements with developers to recoup the cost of off-site infrastructure improvement work and that the Department was considering, together with DOE, how best to administer these agreements. It also stated that the C&AG would be advised of the outcome (Appendix 1).

## Scope of NIAO review

1.5 NIAO reviewed the progress made by the Department and the Agency in addressing the issues in the PAC report. Our review focused on:

- the cost of development-related drainage infrastructure schemes and their impact on the Agency's workload
- the progress made by the Department and the Agency, since 1990, towards setting up arrangements to obtain contributions from developers for the cost of infrastructure schemes.

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<sup>3</sup> Westminster PAC 26th Report of Session 1989-90, June 1990.

<sup>4</sup> Department of Finance and Personnel Memorandum of Response to Westminster PAC 26th Report of Session 1989-90, HC 1235, November 1990.

# Part: 2

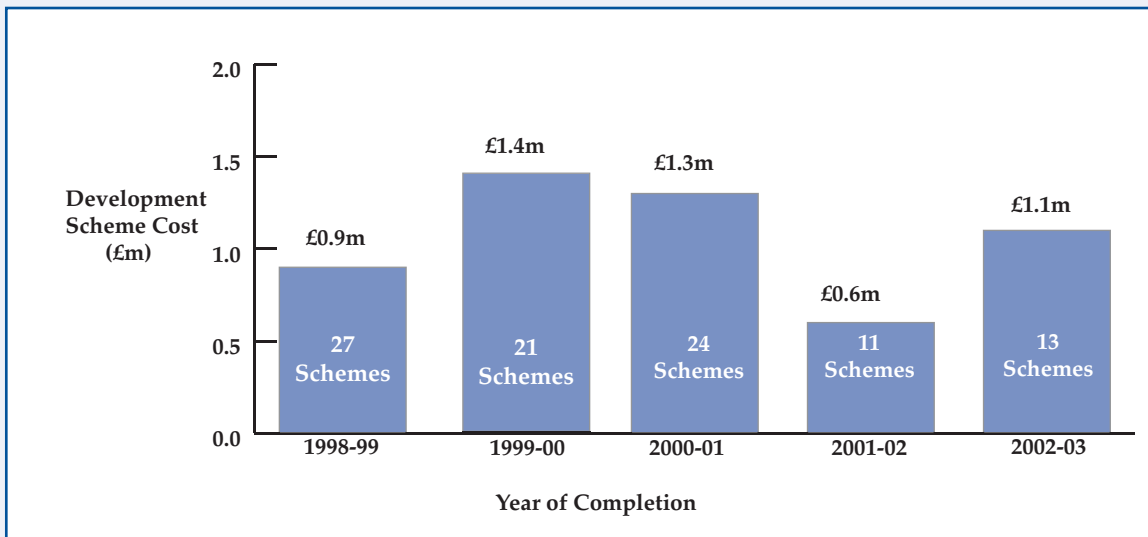
## Development Schemes

### Cost of Development Schemes

2.1 The PAC report, in 1990, noted that an estimated £2.3 million had been spent on development schemes in the three-year period to March 1989. As regards the total cost and number of development schemes undertaken since then, the Agency was unable to provide figures for the complete period without the expending of considerable effort. However, in the five years to March 2003, 96 development schemes were completed at a total cost of £5.3 million (including betterment).

Figure 2

Number and Cost of Development-led Schemes: 1998-99 to 2002-03



Source: DARD



## Impact of Development Schemes on the Agency's Workload

2.2 In order to establish the extent to which there is likely to be future demand for the Agency to undertake development schemes, we examined the development-led workload of the Agency using the following indicators:

- the Agency's capital works programme
- planning applications referred to the Agency, by DOE Planning Service for comment
- 'Schedule 6' consents.

### Capital Works Programme: Development Schemes

2.3 Under the current approach to dealing with drainage infrastructure in Northern Ireland, the Agency expects to continue to incur significant costs for the provision of development schemes. Its capital budget for the three-year period to March 2005 includes estimated expenditure of some £6.2 million for development schemes (including betterment).

2.4 In December 1998, the Agency introduced a formal prioritisation procedure for capital works, in order to improve the management of, and accountability for, its limited resources and to ensure that capital works in areas of greatest need are tackled first. The prioritisation methodology employs weighted criteria, including development-related issues such as development pressure.

2.5 We examined the Agency's capital programme for the two-year period to June 2002 to assess the extent to which development schemes have been prioritised within the programme. Over this period, the number of planned development schemes designated as high priority rose from 12 (39% of all high priority schemes), with committed expenditure of £2.6 million, to 19 (63% of schemes), with committed expenditure of £4.3 million. It appears likely, therefore, that the provision of development schemes will continue to be a significant priority for the Agency.

### Planning Applications

- 2.6 Planning applications which may have a drainage implication (such as increasing the risk of flooding) are referred by Planning Service to the Agency for technical advice. In 1998-99, the Agency's Eastern Region began to monitor the number of applications received from Planning Service. Over the four-year period to March 2002, the annual number of applications increased substantially, from 803 to 1,144, a rise of some 42 per cent. The Agency has indicated that its Western Region is now experiencing a similar rise in planning application referrals. It anticipates that this level of referral from Planning Service for drainage advice will continue and that this is likely to give rise to increased demand for development schemes in the future.



Killymeal Drain, Dungannon

## Schedule 6 Consent

2.7 Schedule 6 of the Drainage Order requires that any individual, developer or authority whose proposal may affect the drainage flow in a watercourse must seek approval of the Agency for consent to discharge into the watercourse. Over the seven years to March 2002, the annual number of Schedule 6 applications processed by the Agency increased by some 43 per cent, from 860 to 1,232 applications. The Agency's Corporate Plan 2000-05 states:

*"The most common Schedule 6 applications are from developers/builders wishing to discharge stormwater run-off into watercourses and from individuals or authorities wishing to culvert or bridge sections of watercourses".*

## NIAO Conclusions

2.8 Based on the indicators reviewed, we note that:

- there has been an increasing level of development activity and this is likely to continue and give rise to the need for further development schemes
- significant levels of public funds will continue to be expended on the provision of development schemes
- the Agency's development-related administrative workload has increased in recent years, due to the significant increase in the number of Schedule 6 and planning application referrals. This suggests increasing levels of development activity in the future.

2.9 The Agency has commented that these conclusions are based on an assumed continuance of the current approach to dealing with development-related storm water discharges in Northern Ireland. It said that consideration is currently being given to an alternative approach (known as Sustainable Urban Drainage Systems - 'SUDS') to restrict storm water discharges from development sites (see paragraph 3.16). The Agency said that acceptance of SUDS in Northern Ireland, by Government, as a viable alternative could have a significant impact on the need for development schemes. However, the Agency considers it impossible at this stage to determine the extent of that impact because of the number of factors involved, including the absence of a government-wide policy on SUDS.

# Part: 3

## Review of Progress in Charging Developers

### Progress 1990 to 1997

#### Consideration of Options

- 3.1 Since the PAC report in 1990, a number of options for seeking contributions from developers towards the cost of development schemes have been considered. In a draft paper in 1991, it was recognised within the Department's then 'Watercourse Management Division' that the powers of the Drainage (NI) Order 1973 were inadequate in relation to obtaining contributions from developers. While it was hoped that DOE Planning Agreements would provide sufficient leverage for the Department to obtain contributions (as indicated in the DFP Memorandum of Reply to the PAC report - see paragraph 1.4 above), the view was that, should this option prove unworkable, the Department would seek to expedite amendment of the Drainage Order. By mid-1992, however, it was clear that senior Departmental staff took the view that Planning Agreements were the preferred option, obviating the need for new statutory powers.
- 3.2 In 1994, the Department submitted a paper to DFP on the way forward. This reviewed five options:
- planning agreements
  - the Great Britain model, including on-site storage facilities
  - withholding of Schedule 6 consent
  - levying a charge on all developers
  - funding development schemes through the Rates.

## Development Schemes: Charging Options

### *Option 1: Planning Agreements*

Planning Agreements to facilitate, regulate or restrict the development use of land were introduced by the DOE under planning legislation in 1991. It was envisaged, at that time, that Planning Agreements would provide the leverage for the Department to seek contributions from developers and this had been discussed with DOE prior to the introduction of the new legislation. Subsequently, in 1993, following discussions with Planning Service, it became clear that Planning Agreements under DOE legislation could not be used by the Department to obtain contributions from developers except in a minority of cases and so did not provide a suitable solution. The Planning Agreements approach could not, therefore, deliver on one of the main reasons for its proposed introduction (to secure financial contributions from developers).

### *Option 2: Follow Great Britain Model (including On-site Storage Facilities)*

In the absence of Planning Agreements, the Department examined the Great Britain (GB) situation, where the onus is on the developer to make provision for increased discharge from development. However, the developer is permitted to construct on-site storage<sup>5</sup> to ameliorate the impact of discharge to an off-site watercourse. However, the Department considered the GB model to be inappropriate to Northern Ireland because:

- the uncontrolled cumulative effect of on-site storage systems in a river catchment can lead to flooding downstream
- the geological conditions limit the scope for use of on-site storage facilities
- the Water Service took the view that on-site storage was not the preferred method for controlling surface water run-off because of long-term maintenance difficulties and public liability concerns. This would restrict the options available to developers seeking to have storm water systems formally adopted by Water Service<sup>6</sup>.

<sup>5</sup> On-site storage is a form of 'Sustainable Urban Drainage System' (SUDS) which stores storm water run-off and releases it slowly to the watercourse, reducing peak flows and the risk of flooding.

<sup>6</sup> The adoption of on-site storage facilities would fall to Water Service (part of the Department of Regional Development) and not to the Agency.

### ***Option 3: Withholding of Schedule 6 Consent***

The withholding of Schedule 6 consent to discharge storm water from a development until the developer has paid a contribution was considered but rejected, because of:

- practical difficulties of collecting contributions after a scheme is completed, especially where the scheme may be carried out prior to a developer seeking discharge consent
- practical difficulties in determining the apportionment of scheme costs between the developer and the Department to allow for 'betterment'
- probable planning restrictions (as a consequence of withholding Schedule 6 consents) leading to planning blight of areas zoned for development
- difficulty and cost of administration.

In 1997, the Departmental Solicitor's Office cast doubt on the ability of the Agency to withhold Schedule 6 consent in respect of developments for which planning approval had already been granted under planning legislation. The Agency has accepted the Solicitor's view that withholding consent would not be an appropriate route.

### ***Option 4: Levy Charge on all Developers***

The Department considered the levying of a charge on all developers thereby spreading the cost, as well as meeting the government's policy that 'the developer pays'. However, it rejected this option on the grounds that, in its view, it would:

- be difficult and costly to administer
- require legislative change
- be viewed as a housing and development tax, with charges passed on to customers, which would be inappropriate given the level of Northern Ireland housing deprivation.

### ***Option 5: Fund Development Schemes through the Rates***

The Agency made a case for the development schemes to be funded through the Rates, with full costs being passed on to the public. The Department considered this method to be attractive because it would be simple and cost-effective to administer and require no amendment of the legislation.

- 3.3 Accordingly, the Department recommended that development schemes be funded through the rating system (Option 5). However, DFP considered that this was unacceptable because it did not meet the policy that the ‘developer pays’, as it would make ratepayers in general meet the costs arising from specific property developments. In DFP’s view, the most attractive option was to levy a charge on all developers (Option 4). DFP drew attention to the original joint approach between the Department and DOE (paragraph 1.4) and recommended that the Department re-examine the other options with DOE, with the exception of the Rates option.
- 3.4 In early 1996, the Department approached Water Service to consider combining and collecting the cost of off-site drainage facilities and infrastructure improvements through one single payment under Water Service legislative powers. The Department’s approach was on the basis that both Departments were essentially dealing with the same storm water and that a single payment would ease collection. However, Water Service stated that this was outside the scope of its legislation.
- 3.5 Subsequently, in April 1996, the Department informed DFP that it would investigate the practicalities and cost-effectiveness of amending the Drainage Order and produce a business case for the way forward. The Department pointed out that this would “*take time to pursue*” and stated that it was not convinced that it would “*be cost-effective for them to set up the necessary machinery to levy charges on individual developers on a fair and equitable basis*”. DFP’s May 1996 response noted the lack of success in finding a joint solution with DOE and accepted that the only remaining option was to amend the Drainage Order. DFP also noted that the amendments to the Drainage Order would be taken forward by the Agency.
- 3.6 As regards a business case for the way forward, the Agency told us that fundamental to this were considerations relating to what ‘contribution’ developers might be expected to pay, bearing in mind the betterment aspect, and what methodology might be employed to measure the charge. We note, however, that a business case was never prepared.

### Legal Position

- 3.7 In March 1997, the Agency wrote to the Departmental Solicitor's Office seeking views on, and implications for, an amendment of the Drainage Order to enable developers to be charged. In May 1997, the Solicitor's Office confirmed that a contribution could **not** be required under the Drainage Order as it presently stood. It advised that the simplest option would be to make provision for a free-standing power in the main body of the Drainage Order to charge in specified circumstances.
- 3.8 The Solicitor's Office also had reservations as to the appropriateness of imposing a 'levy charge', which was the preferred charging option of DFP (paragraph 3.3). It considered that the way forward probably lay in providing for the apportionment of the charge by agreement between the Agency and the developers or, in the absence of agreement, by arbitration. These arrangements would allow for partial cost recoupment from developers towards the cost of development schemes and take into account the cost of 'betterment' (paragraph 1.2).
- 3.9 The Agency considered the solution for the apportionment of costs both unworkable and unenforceable, based on its judgement at that time. It commented that:

*"because of the difficulties in timing of developments relative to timing of drainage schemes we consider that it would be difficult if not impossible to reach agreement with the developers on their portion of the scheme costs and that most cases would require arbitration, which is usually a time consuming and costly process".*

Further, the Agency's view was that this would be unlikely *"to deliver the revenue envisaged by PAC"*. We saw no evidence, however, in support of the Agency's views.

- 3.10 The Agency also considered that, with the need for public consultation, it was likely to take up to two years for the necessary changes in the legislation to be made. In addition, it noted that the Drainage Order, which had been made some twenty five years earlier, was in need of more-widespread revision and consolidation.



## Progress 1997 to 2001

- 3.11 In May 1997, DFP wrote to the Department to enquire about progress on the amendment to the Drainage Order. The Agency informed the Department that legal advice had been sought but more time was needed to consider the way ahead. In August 1997, the Agency and the Department met to consider options for taking forward the undertaking made to PAC. They decided that because of the interest of Planning Service and Water Service in the issue, it would be useful for their positions to be clarified.
- 3.12 Meetings took place with Planning and Water Services in November 1997 and May 1998. At the latter meeting, Planning Service confirmed that existing planning agreements could not be used to obtain a contribution from developers towards the cost of off-site drainage infrastructure provision. Water Service also confirmed that it remained opposed to the on-site storage option because of long-term maintenance difficulties and said that it would not adopt any such systems created by a developer on-site. Subsequently, in September 1998, the Agency confirmed to the Department that there was no scope for co-ordinated action and that it had *“no option but to consider unilateral amendment of the drainage legislation to provide for developers’ contributions”*.

### Interdepartmental Working Group

- 3.13 The Agency told us that, in recognition of the *“very real difficulties that existed”*, it submitted a paper to the Department, in July 1999, on the way forward. In this, it commented that the issue of developer contributions should not be addressed in isolation by the Department as, in the Agency’s view, there should be a more coherent, ‘combined’ approach by the Department and DOE to resolving the issue. Following a meeting involving the Permanent Secretaries of the Department and DOE, an Interdepartmental Working Group was set up in September 1999, comprising the Agency and the Planning, Water and Roads Services<sup>7</sup>. The aim of the Working Group was to resolve the issues raised by the Agency in relation to recovery of drainage infrastructure costs from developers and to fulfil the commitment to PAC. Its terms of reference were:
- to clarify responsibilities, including policy issues, of the inter-related Departmental bodies: Rivers Agency, Water Service, Roads Service

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<sup>7</sup> In December 1999, Water Service and Roads Service transferred from DOE to the new Department of Regional Development (DRD).

and Planning Service to examine current methods of charging developers employed within the Departments

- to examine possibilities for joined-up government, including the opportunity for a single point of contact between developers and the various Departmental agencies
- to seek a way forward to solving the Agency's problem in fulfilling the commitment to the PAC through development of a policy on obtaining contributions from developers.

3.14 The Working Group reported in March 2001 and indicated that:

- responsibilities (of the various Departments/Agencies) were clarified satisfactorily, but inconsistencies in the policies of Agencies were highlighted regarding 'on-site storage facilities'
- both Roads Service and Water Service had legislative powers to charge, backed by Planning Agreements under planning legislation and coupled with strong policies developed over time to secure contributions from developers
- there was no practical gain in providing a single contact point for developers
- the most appropriate approach in devising a methodology for collection of developer contributions towards infrastructure schemes is one based in amended drainage legislation. Other agencies and planning legislation could not provide the leverage required to back up existing drainage legislation to force developers to contribute.

3.15 The findings of the Working Group effectively re-stated what had been indicated by earlier reviews - the most appropriate way of recovering drainage infrastructure costs from developers was to amend the drainage legislation to include a provision to charge (paragraph 3.12). The report pointed to the need for greater clarity on the necessary actions required to establish a charging methodology, but there was no recommendation on the way forward.

## Developments Since 2001

### On-site Storage Facilities

3.16 In May 2001, the Agency wrote to the other Agencies represented on the Inter-departmental Working Group (Roads, Water and Planning Services), signalling its intention to pursue the legislative amendments necessary to recover drainage infrastructure costs from developers. It said that, before doing so, it was inviting comments on three areas of concern, all related to sustainable urban drainage systems (SUDS)<sup>8</sup>, including on-site storage facilities, which in its view could cause difficulties for Government in the future:

- the Agency noted the differing viewpoints on SUDS between the Department for Regional Development and Department of the Environment although it recognised that the Water Service and Environment and Heritage Service were “*coming from different points of consideration in the matter*”. The Agency said that, in formulating its policy on obtaining developer contributions, it would assume that the Water Service policy of non-adoption of ‘on-site storage facilities’ provided by developers would remain
- the Agency considered that there will be major difficulties in cost apportionment for watercourse improvement schemes, which can involve work over a wide geographical area. The Agency commented

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<sup>8</sup> Sustainable urban drainage is a concept which aims to provide an environmentally sustainable means of controlling surface water run-off from developed areas by allowing the discharge of water to be controlled, prior to its release into drains, sewers and watercourses. Sustainable Urban Drainage Systems (SUDS) are physical structures built to receive surface water run-off and can encompass both ‘*on-site*’ and ‘*off-site*’ facilities. Typically, they may include ponds, wetland, swales and porous surfaces and should be located as close as possible to where rainwater falls, providing attenuation for the run-off. SUDS may also provide treatment for water quality, prior to discharge, using the natural processes of sedimentation, filtration, adsorption and biological degradation.

To date, SUDS solutions have been ruled out for drainage in Northern Ireland building developments, because of concerns, highlighted by the Water Service, in relation to design, long-term maintenance, health and safety issues, the potential for flooding if the ‘*on-site*’ facilities were full and the resulting public liability claims. These concerns relate to developments where adoption of the on-site storage facilities would fall to Water Service.

In the types of building development covered by this report, a SUDS-based approach would not be possible in every situation (even aside from the above concerns) – for example, the geological conditions may not be suitable. Where a SUDS-based approach was not possible, ‘*off-site*’ drainage infrastructure works, by the Rivers Agency, would be required. Where a SUDS approach could be considered, the structures would comprise ‘*on-site*’ stormwater storage or soakaway facilities, constructed by the developer. As these facilities would not be part of a watercourse system, responsibility for maintenance would fall outside Rivers Agency’s remit.

that, realistically, such schemes could only be delivered by Government to a recognised standard of service, which may impose major expense on developers. It said that, in many cases, this expense was unlikely to be considered to be directly related in nature and scale to the proposed development and that developers may be forced to look for possible 'cheaper alternatives' which may include on-site storage facilities, widely available in GB. The Agency noted that Government must ensure that these do not proliferate uncontrolled, so approval and adoption may be necessary

- the Agency has an approved methodology for prioritisation of flood defence and drainage infrastructure schemes which compete for the same budget. This limited its ability to time schemes to satisfy development demand and, for this reason also, developers were likely to bring pressure for alternatives such as SUDS.

### 3.17 In response to the Agency's concerns:

- Roads Service agreed that an overall policy should be developed by Government on the matter of SUDS and expressed a willingness to participate in the development of such a policy. It noted the Rivers Agency's intention to pursue legislative amendments to give it the extra leverage to facilitate charging for infrastructure schemes and commented that DRD was looking at the concept of a developer 'impact fee', whereby all developers in a particular area would contribute to the cost of all infrastructure required for development in that area
- Water Service accepted the Working Group's conclusion that policy for obtaining contributions towards the costs of development-related drainage infrastructure should be based in drainage legislation and supported the Agency's pursuance of the legislative amendments needed to deliver this policy. Water Service recognised the Agency's concerns that there were difficulties in cost apportionment for drainage schemes and noted that there were advantages for the developer from the use of on-site storage facilities. However, Water Service commented that it had concerns in relation to design, long-term maintenance difficulties, health and safety issues, the potential for flooding if on-site storage facilities were full and resulting public liability claims. It also commented that, as pressure increases from developers,

there would be the need to explore mechanisms which incorporate appropriate long-term 'maintenance agreements', whereby developers maintain the facilities for a period of time or contribute to maintenance costs and address financing and public liability issues. Water Service indicated its willingness to continue to explore these matters with the Agency.

3.18 Planning Service made no further comment but passed the letter to Environment and Heritage Service (EHS) for a response on the water quality issues. EHS recognised that the focus of the Working Group report had been on the recovery of drainage infrastructure costs, not on the environmental protection issues which are the responsibility of EHS. EHS did note, however, its own commitment to the promotion of Sustainable Urban Drainage Systems generally and its intention to prepare a formal strategy. It said that it would consult with the other Agencies during the drafting stages.

3.19 Following consideration of the responses, the Agency wrote to the Department, in January 2002, outlining:

- the Working Group's conclusions (including the need to pursue an appropriate amendment to the Drainage Order to enable contributions to be obtained from developers)
- that there was a general recognition of the future role of SUDS (NIAO notes, however, that Water Service concerns about the use of on-site storage facilities remained)
- that work was being undertaken in DRD on developers' contributions, with the possibility that these could cover financing of drainage infrastructure provision
- that an agreed Government policy on SUDS was required and that EHS planned to issue a discussion paper to Departments and Agencies which would be useful in directing policy.

The matters identified in bullet points 2 and 3 above were highlighted as the major issues that would impact on drainage infrastructure charging. The Agency also told the Department that it expected that future storm water discharge from development sites would be catered for using both SUDS techniques (i.e. on-site storage facilities) and drainage infrastructure improvement works (the current practice), as appropriate.

### DRD Infrastructure Funding Division

3.20 In January 2002, DRD informed the Department that it had set up a new Infrastructure Funding Division to consider how to secure alternative funding for infrastructure works. This would examine a range of issues, including developers' contributions. DRD considered that this might be an issue on which both Departments could usefully have further discussion.

3.21 Following discussions between the Agency and DRD, it was proposed that the Agency would:

- ascertain the status of the EHS strategy for SUDS
- propose the establishment of another inter-departmental working group involving various bodies to develop an agreed policy on SUDS (with EHS in the lead)
- seek legal advice on the merits of amending the Drainage Order to facilitate cost recovery from developers in advance of any agreed policy on SUDS
- participate in any working group or consultation on policy proposals for developers' contributions towards infrastructure costs.

3.22 As regards the fourth bullet point, in June 2002, DRD's Infrastructure Funding Division produced a paper on its review of policy on developers' contributions. The paper presented options to secure contributions towards roads, water, sewerage and transportation infrastructure. In its introduction, the paper noted that Rivers Agency did not currently have the statutory authority to recover the costs of off-site drainage works. However, it recognised the close link between water services and the drainage services provided by the Agency and commented that the conclusions from the review had read-across implications for the work of the Agency.

3.23 The Agency told us that it was disappointed that it had not had the opportunity to participate in this policy review as it had expected that drainage infrastructure costs could have been included in an overall infrastructure charge. In subsequent discussions, in November 2002, DRD indicated a continuing willingness to assist

the Agency regarding the read-across of any issues. However, DRD made clear its view that the policy review on developers' contributions could not have delivered a cost recovery system for the Rivers Agency as this would need a power to charge under an amendment to the Drainage Order.

We recommend that the Agency closely monitors the progress and findings of DRD, with a view to identifying relevant lessons and, where appropriate, adopting similar approaches.

### **Legal Advice**

- 3.24 In December 2002, the Agency wrote to the Departmental Solicitor's Office to seek advice on the scope of amendments needed to the Drainage Order. The Agency envisaged an amendment providing a general power on charging, enabling the Department to make subordinate legislation to specify both the levels of charge and the arrangements for charging. In response, the Solicitor's Office commented that the scale of the amendments required to introduce a power to charge would probably not be significant.

### **Current Position**

- 3.25 The Agency has said that in pursuit of developing a charging methodology, it had made a significant number of attempts to develop a way forward:
- the 1994 paper to DFP presented a preferred option - funding development schemes through the rating system - which was subsequently rejected by DFP
  - in 1996, an approach to Water Service to consider combining and collecting the cost of off-site drainage and infrastructure improvements through one single payment was rejected on the basis that it was outside the scope of Water Service legislation
  - in 1997, the Agency sought legal opinion with a view to amending the Drainage Order to enable charging. The Solicitor's Office recommended apportionment of costs by agreement or, in the absence of agreement, by arbitration. This was rejected by the Agency which saw it as both unworkable and unenforceable

- in 1999, the Agency recommended a joined-up government approach to charging developers and an inter-departmental working group was set up and reported in 2001
- in 2002, the possibility of a joined-up government approach with DRD Infrastructure Funding Division became a brief possibility.

3.26 The Department has commented that, at various times, the Agency was forced to conclude that the only way forward would involve amendment of the Drainage Order to facilitate collection of contributions from developers. In its view, however, this should only be seen as reflecting the failure to reach agreement with others within Government to a joined-up approach to collection of charges. It said that it had been envisaged, nevertheless, that devising the legislative amendment would entail agreement with other Departments on issues of common interest, particularly on the issue of SUDS. Accordingly, Rivers Agency's apparent delay in pursuing legislative amendment was due to continued discussions seeking agreement on a Northern Ireland Government-wide policy on SUDS, which could have a bearing on the basis for charging.

3.27 The Agency has told us that, in its view, progress on the issue of obtaining contributions from developers ideally should await a Government-wide policy on SUDS, including the use of on-site storage facilities. It is the Agency's view that if the use of SUDS becomes an accepted practice within government this would have a fundamental effect on both the methodology for charging and its overall viability. It said that it is participating in an EHS-led SUDS working group, with wide representation<sup>9</sup>, to address this issue. We note, however, that, the remit of the working group does not specifically include developer contributions.

3.28 While we welcome the work of the working group and the Agency's participation, in our view, this does not obviate the need to establish arrangements for the recoupment of development scheme costs from developers, as the indications are, that there will continue to be a need for the Agency to undertake such schemes. The Agency accepts that there is likely to be a continuing need for drainage infrastructure schemes.

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<sup>9</sup> Environment & Heritage Service, Rivers Agency, Planning Service, Roads Service, Water Service, Construction Service, Building Control, Housing Executive, District Councils (including Parks Service) are represented on the working party.



## Staff Resources

3.29 The Agency has also commented that progress of the issue of recovery of development infrastructure costs has been undertaken amidst other competing priorities, including agentisation (1996) and devolution (1999), and within tightened resource constraints. Consequently, staff resources have not always been available to take the issue forward.

## NIAO Conclusions and Recommendations

3.30 The Department's consideration of how to obtain contributions from developers towards the cost of development schemes has been ongoing for over 13 years since the PAC report in 1990 and remains unresolved. While recognising that there are particular complexities associated with developing a charging methodology and the various actions by the Agency to seek a way forward, we note that no strategy has yet been put in place. As a result, the Agency is not yet in position to charge for this service, which continues to be met wholly from public funds.

3.31 It has not been possible to calculate the precise value lost to the public purse as a result of the absence of a means of recovering costs from developers. However, with over £1 million having been spent annually on development schemes, the amount is likely to be substantial. For example, allowing for some 30 per cent of the costs of schemes being attributable to betterment (which the Agency has said would not be recoverable from developers), potential revenue of some £9 million could have been lost since 1990. The Department said that it is unable to confirm this calculation as it feels that it very significantly understates the attribution to betterment and does not take into account a number of other relevant factors. These include cases where planned development may not have taken place and the possible implementation of on-site storage solutions by developers, leading to loss of central control of infrastructure provision, with the potential for increased flooding.

3.32 The development-led workload of the Agency, which has increased substantially in recent years, is likely to be sustained, with estimated development scheme expenditure of some £6.2 million over the three years to March 2005. Given the pressures on limited resources, we consider it essential that the Agency and the

Department make an early and concerted effort to agree a way forward and initiate the means of securing financial contributions from developers, towards the cost of drainage infrastructure schemes.

3.33 On the basis of the review work done by the Agency and the Department, it appears to us that the most appropriate way forward would be to amend the Drainage Order, to include provision for a free-standing power to charge. Accordingly, it is our view that the Agency should seek to introduce this as soon as possible. In our view, an added value of such provision is that it would also enable the Agency to consider introducing charges for other services it provides, such as the review of planning applications and administration of Schedule 6 applications, both of which have been increasing in recent years<sup>10</sup>.

3.34 We recommend that:

- the Agency takes steps, as a matter of urgency, to seek an amendment to the Drainage Order to include provision for a free-standing power to charge, so that developer contributions towards the cost of development schemes can start to be obtained as soon as possible
- the Department and the Agency draw up action plans, with target timetables, to amend the Drainage Order
- the Agency/ Department dedicates sufficient resources to progress this work as a matter of urgency.

3.35 Since our review, the Department has told us that while it has concerns regarding a general charging provision in the absence of a charging methodology, it will, nevertheless, take forward the recommendation to seek a free-standing power to charge within the Drainage Order.

3.36 Within the overall process of establishing the power to charge, the Agency has to develop a charging methodology for development schemes. We note that there are particular issues relating to the timing of works - which may be undertaken prior to development and may also be staged over a number of years - and to the location of the works, where these are downstream of the development site - that is, 'off-site'. However, we note that, after having considered various charging

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<sup>10</sup> The Agency's Corporate Plan for 1996-2001 indicated that proposals for charges for Schedule 6 applications would be developed by March 1998.

approaches over the period since 1990 and having consulted with other Departments and Agencies, the Agency has not yet established a recommended charging methodology.

- 3.37 We recommend that the Agency:
- carries out a review to estimate the levels of contributions from developers likely to be obtained from various charging options
  - evaluates the merits and potential difficulties of alternative charging methodologies. In our view, the use of a range of case studies drawing on different development scenarios, would assist in determining a preferred charging methodology
  - prepares a strategy paper on the way forward, setting out the preferred option for seeking contributions from developers and the anticipated levels and amounts of recovery.

3.38 We recognise that, in order to establish the most appropriate charging methodology, consultation and agreement with other government Departments and Agencies may be necessary. It is important, therefore, that the Agency continues to engage with these bodies in order to agree a consistent and co-ordinated approach. In addition, consultation should be undertaken with developers and other stakeholders, at the appropriate stages, to help determine the most effective way forward.

3.39 Since our review, the Department has said that the Agency now proposes to appoint consultants to take forward a review to identify appropriate charging methodologies and recommend a way forward. The Department also agrees that a strategy should be prepared but commented that any future agreement on SUDS policy would have an impact.

3.40 We note that use of a SUDS-based solution for development-linked drainage works in the future may, in certain cases, represent a feasible option. Currently, however, there are quite diverse views as to its feasibility and so agreement within Government on a SUDS-based approach does not appear imminent. Genuine concerns remain (paragraph 3.17) and these need to be resolved. It appears to us, therefore, that any benefits which SUDS, through on-site storage

## Recoupment of Drainage Infrastructure Costs

facilities, may bring would be in the longer term. In addition, the evidence suggests that SUDS would not be an appropriate solution for every development situation and so there will continue to be a need for infrastructure drainage works and a mechanism for recoupment of costs from developers. We welcome the ongoing work being led by the Environment and Heritage Service in seeking to resolve the concerns surrounding SUDS and would encourage all of the Departments and Agencies involved to work towards an agreed position that would facilitate the use of SUDS-based solutions where feasible.



# Appendix

Extracts from  
PAC 26th Report of Session 1989-90  
and  
DFP Memorandum of Response

PAC 26th Report, Session 1989-90, HC 224 (June 1990)

**Paragraph 9:**

*“Drainage costs arising from new building development work were estimated at £2.3 million in the three years to 31 March 1989. No recoupment from the developers is made by DANI, but consideration is being given to whether NI legislation could be brought into line with the position in GB, where provision is made for agreement with developers to contribute to off-site drainage costs. The considerable practical difficulties affecting such cost recovery are understood, but we look forward to learning of progress in this matter in due course”.*

DFP Memorandum on 26th Report of PAC 1989-90, HC 1235 (November 1990)

**PAC Conclusion (viii)**

*“PAC noted that consideration is being given to recovering the cost of off-site drainage work from developers and looked forward to learning of progress on this matter (paragraph 9)”.*

**Response (paragraphs 33 and 34)**

*“The Planning and Building Control (Amendment) (Northern Ireland) Order 1990, which is operative from 24 September 1990 contains, inter alia, provision for the Department of the Environment for Northern Ireland (DOE) to enter into agreements with developers to recoup the cost of off-site infrastructure improvement work”.*

*“The Department of Agriculture is currently considering with DOE how best to administer these agreements taking account of experience in the operation of similar legislation in GB. The C&AG will be advised of the outcome”.*

### List of NIAO Reports

Title	NIA/HC No.	Date Published
<b>2003</b>		
The Sheep Annual Premium Scheme	NIA 75/02	6 February 2003
The PFI Contract for the Education and Library		
Board's New Computerised Accounting System	NIA 99/02	20 March 2003
Areas of Special Scientific Interest	NIA 103/02	27 March 2003
Financial Auditing and Reporting: 2001/02	NIA 107/02	2 April 2003
The Use of Operating Theatres in the Northern Health and Personal Social Services	NIA 111/02	10 April 2003
Investigation of Suspected Fraud in the Water Service	HC 735	26 June 2003
Management of Industrial Sickness Absence	HC 736	1 July 2003
Encouraging Take-Up of Benefits by Pensioners	HC 737	3 July 2003
<b>2004</b>		
Navan Centre	HC 204	29 January 2004
The Private Finance Initiative: A Review of the Funding and Management of Three Projects in the Health Sector	HC 205	5 February 2004
De Lorean: The Recovery of Public Funds	HC 287	12 February 2004
Local Management of Schools	HC 297	19 February 2004
The Management of Surplus Land and Property in the Health Estate	HC 298	26 February 2004





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