

REFERENCE

2425349

RELEASE DATE

November 2024

SUBJECT

Wastewater Flow Compliance and Sampling

REQUESTS

- a. What rate of flow the sewers and pumping stations should be capable of delivering to a WWTW, and what each WWTW must be capable of treating
- b. What sewers and pumping stations are not capable of delivering this rate of flow to a WWTW, and which WWTW are not capable of treating this rate of flow (all data held by NI Water in relation to the above)
- c. Public money has been used by NI Water to carry out a regime of unannounced sampling. This data that has been collected using public money should be made available to the public. Please provide this information.

RESPONSES

We've added extensive information to the [Storm Overflows](#) section of our website, including a document explaining wastewater issues and a map showing the locations and performance of 132 monitored storm overflows. It is our intention that this information will be updated as we learn more about how the wastewater system is performing through the deployment of new monitors and increase the coverage of our modelling studies.

Our annual reports also openly address wastewater performance. In our 2022/23 report, we acknowledged that our current compliance measurement doesn't fully cover flow compliance for treatment plants or sewer networks, noting this as an incomplete view of environmental protection. I would welcome a discussion to help us understand other things we can do to improve our transparency.

Wastewater Regulation Reform

The Northern Ireland Environment Agency (NIEA) are required to lead the Reform process and determine the requirements for the key Regulatory elements. They are

advancing initial plans to reform water regulations, including how wastewater compliance is assessed, as noted in the March 2024 Northern Ireland Audit Office Report. This is what is referred as the Wastewater Regulation Reform Programme.

The reform programme looks at four key areas (unannounced sampling, monitoring priority substances, catchment-based outcomes and introducing flow compliance) as explained further below. The overall aim is to bring environmental performance reporting in Northern Ireland into alignment with UK reporting requirements. It is recognised by NIEA that the outcome of the proposed change will result in new evidence, which will highlight potential non-compliance across the NI Water wastewater asset base. This is likely to generate significant investment needs in terms of capital projects going forwards.

You may know from media reports about our already very challenging situation due to longstanding underfunding. While we welcome environmentally beneficial reforms, our ability to deliver change is dependent on being able to access long term funding. For further context, please see our response to the Programme for Government ([NIWPFGRresponse2024.pdf](#)) on our website. I believe we are aligned in wanting adequate investment to ensure a modern, efficient wastewater system that benefits public health, the environment, and the economy.

Unannounced sampling

NI Water supports the shift to unannounced compliance sampling at our largest treatment sites, expected to begin in 2027, subject to funding outcomes.

In preparation, we're piloting this unannounced approach across select sites to assess its impact and establish new compliance targets for sanitary parameters only. These findings will guide potential operational improvements and inform our PC27 investment plan.

Priority Substances

NIEA intends that the future unannounced sampling regime will also include compliance checks for Priority Substances that are not currently covered yet and are

a cause for concern under the Water Framework Directive and so need to be phased out. These include substances contained in landfill leachates.

Flow Monitoring

Water Order Consent (WOC) standards are set by NIEA to control the discharge of wastewater. NIEA recognises that flow requirements within the WOCs need updating to align with UK standard.

NIEA is leading the work that will provide us with clarity on the flow monitoring systems we must install to record the volume treated and the use of Event Duration Monitors to determine what is happening at the boundary of the works.

Your information requests

Please find below our response to your specific information access requests, which I am replying to under the disclosure provisions of the Environment Information Regulations (EIR) 2004.

What rate of flow the sewers and pumping stations should be capable of delivering to a WWTW, and what each WWTW must be capable of treating (all data held by NI Water in relation to the above)?

In heavy rainfall conditions, NI's wastewater networks are expected to be capable of accommodating around six times what will normally flow in dry weather (known as Formula A) before spilling to a receiving watercourse.

If there is a specific flow rate that a wastewater catchment (and its sewers and pumping stations within) should achieve, then this will form part of the Water Order Consent (WOC). NI Water retain 258 WOCs in a mixture of paper-based and electronic files. Many of these WOCs do not prescribe flow conditions as Drainage Area Studies were not available at the time of issue.

Pulling together the information you've requested would impose a disproportionate cost and divert resources from my already overstretched team that is trying to bring the wastewater system up to a better standard. We have begun a digitisation

programme for our Wastewater Network Asset records, including WOCs, to convert paper documents into digital records and feel that this would ultimately be a better answer for you. This programme is scheduled to complete by Summer 2025.

Therefore, I hope you will understand that we must exempt the request at present under Regulation 12(4)(b) of the EIRs: Manifestly unreasonable.

Regulation 12(4)(b) of the EIR - manifestly unreasonable

The Information Commissioner's Office (ICO) considers that information requested should be released unless the public interest weighs in favour of withholding such information.

There is a public interest in the information requested being released because this may:

- enable third parties to access information that may help them to challenge a decision made, or an action taken by NI Water; and
- clarify incomplete information.

In assessing the case against disclosure:

The ICO has acknowledged that the amount of time required to respond to a request can make it manifestly unreasonable. However, the ICO also considers that Regulation 12(4)(b) of the EIR does not operate as an equivalent to Section 12 (Cost prohibitive) of the Freedom of Information Act 2000 (FOIA).

This is because Section 12 involves a straight calculation of the time required to respond to a request and, under the FOIA, such an approach allows a public authority to consider the request in isolation from other factors, including their ability to meet the request or the extent to which the time required to meet the request would detract from other functions.

The ICO considers, and NI Water accepts, that Regulation 12(4)(b) of the EIR operates quite differently, in that there is no appropriate limit to act as a cut-off point when responding to requests.

The ICO requires that the request itself be manifestly unreasonable, and not just the time required for complying with it. In practice, Regulation 12(4)(b) requires public

authorities to consider a request for environmental information more broadly, taking into account the time to respond to the request as only one factor to be considered along with others, such as the interference with the normal conduct of their activities, or whether compliance entails a significant diversion of resources from other functions. To allow NI Water to determine whether Regulation 12(4)(b) would provide a robust exception and would be correct in this instance, we have considered the following.

- Time for compliance
- Cost of compliance
- Whether compliance would equate to a significant diversion of resources
- Whether compliance would interfere with the normal conduct of NI Water's activities

Time for compliance

To fully comply with your information access request,

- manually determining whether NI Water holds the information,
- manually locating the information, or a document that may contain the information,
- manually retrieving the information, or a document that may contain the information, and
- manually extracting the information from a document containing it.

would take NI Water's Environmental Regulations Team far in excess of 18 hours and, as such, NI Water would deem compliance as taking an unreasonable amount of time.

Cost of compliance

In recognising that, under the EIR, there is no statutory equivalent to the "appropriate limit" under the FOIA, in our deliberations, NI Water has also been able to draw upon guidance from the ICO that states a public authority may only legitimately refuse requests for information on fees grounds under the FOIA if it would take well over 18 hours to:

1. manually determine whether it holds the information requested;
2. manually locate the information requested;
3. manually retrieve the information from a document containing it; and
4. manually extract the information from a document containing it.

While these guidelines do not constitute a strict test to be used under the EIR, they are a helpful group of guiding principles for identifying the actions that can be considered when determining whether a request is manifestly unreasonable.

For NI Water to answer all your queries, we would need to review a substantial amount of information and the cost of manually locating, manually retrieving and manually extracting that information from paper files would exceed well over £450 (i.e. in excess of 18 hours at £25 per hour).

Significant diversion of resources and Interference with the normal conduct of NI Water's activities

For NI Water to provide you with the requested information would necessitate the specialised knowledge and dedicated resources of several teams for an extended period of time to:

- manually determine whether NI Water holds the information; manually locate the information;
- manually retrieve the information; and
- manually extract the information from a system containing it.

These Teams have a significant workload already and NI Water's Business Information Manager would then be required to quality assure any documents for disclosure. This would divert a key member of a small team for an extended period of time from other duties.

As I hope you can appreciate from the above, compliance with the request as it stands would divert resources away from the provision of public services for which NI Water is mandated.

In applying the public interest test under the EIR, NI Water has reached the view, given the nature of the information requested, the timing of the request, and the reasons detailed above, that the public interest in withholding the information is greater than the public interest in disclosing the information.

Approximately 25% of Northern Ireland's wastewater treatment capacity is managed by a third party under a 25-year Public Private Partnership (PPP) known as Project Omega, while NI Water operates the rest. This includes responsibility for six pumping stations. As part of the process for the contractual agreements at the time, the information you request was collated for the much smaller number of PPP assets. The minimum pass forward flow to full treatment consents for these sites is provided below:

- Millisle: 2,645/m³ per day
- Donaghadee: 10,313m³ per day
- New Briggs Rock: 59,773m³ per day
- Seagoe 1: 7,862m³ per day
- Seagoe 2: 24,752m³ per day
- Bullays Hill: 27,526m³ per day

Capability of each wastewater treatment works

Wastewater treatment works above a certain size have numerically specified levels of flow consent. These are when more than 250 population equivalent (PE) discharges to inland waterways and more than 10,000 PE discharging to coastal waters, this information is provided in Annex B.

What sewers and pumping stations are not capable of delivering this rate of flow to a WWTW, and which WWTW are not capable of treating this rate of flow (all data held by NI Water in relation to the above).

As flow is not part of NI Water's regulatory compliance regime at this time, NI Water does not have adequate flow monitoring equipment installed. This means we cannot make a proper assessment of the ability to meet actual flow levels.

Regulation 12(4)(a) (Information not held) of the EIRs provides that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received. All exceptions under the Regulations are qualified and so, in deciding whether or not to disclose the requested information, NI Water must consider the public interest. However, this is not possible where the information is not held.

As the PPP sites had the necessary flow monitoring equipment installed, I can confirm that all PPP operated sites can deliver and treat the prescribed rates of flow, except in conditions of mechanical or electrical failure, as permitted within the respective WOCs.

understands that public money has been used by NI Water to carry out a regime of unannounced sampling. This data that has been collected using public money should be made available to the public. Please provide this information.

The piloting of unannounced sampling commenced in 2019 for a limited sample (44) of our works. The work was expanded in 2020 yet scaled back soon after due to the Covid pandemic. Nevertheless, work has been ongoing and the results of over 12,000 samples are shown in the table below.

Table. UNANNOUNCED SAMPLING COMPLIANCE for NI Water assets only for sanitary parameters for period 2019-2024 YTD

	2019*	2020**	2021**	2022	2023	2024 YTD
% compliance by no. works	96.14	91.49	86.25	82.50	86.61	86.19
% PE served by compliance works	96.99	98.70	97.84	97.96	98.20	98.41

* Limited number of sites monitored (44 No.). Sites not monitored are assumed to pass, in the absence of data to assess otherwise.

** No. of samples collected impacted by Covid and Contract limitations

Please note this table is for NI water sites only as the five PPP wastewater treatment works operate under consents held by Glen Water Ltd have not been subject to the piloting of unannounced sampling.