

Water Bill

Internal Drainage Boards

November 2013

This note provides an overview of the changes the Water Bill will make to Internal Drainage Boards, and explains why we're making these changes. Further detail on the Water Bill can be found in other briefing notes.

Contents

Introduction	1
Land Drainage Act 1991	1
Approving IDB structural changes	1
Making byelaws.....	2
Dissemination of information	2
Changes we are making through the Water Bill.....	2
Approving IDB structural changes	2
Making byelaws.....	3
Dissemination of information	3

Introduction

Internal Drainage Boards (IDBs) are locally funded and operated bodies, responsible for water level management in areas of special drainage need. Historically their main focus was drainage of agricultural land (IDBs are currently responsible for drainage of approximately 11% of agricultural land in England). However, IDBs have developed to play a much wider role in managing water levels; reducing flood risk for both rural and urban communities (including protection of businesses and infrastructure) and in protecting and enhancing valuable wildlife habitats. They work in close partnership with the Environment Agency, Natural England, local authorities and others in carrying out their duties.

There are currently 123 IDBs in England. They vary in size and are currently funded largely by a mixture of drainage rates paid by farmers and by special levies on unitary and district local authorities. They are concentrated mainly in East Anglia, Yorkshire, Somerset, Lincolnshire, Sussex and Kent. The eight IDBs in Sussex and Kent are operated by the Environment Agency.

The Land Drainage Act 1991 (“the 1991 Act”) consolidated the existing legislation relating to internal drainage boards. The 1991 Act applies to England and Wales only. The 1991 Act was amended by the Flood and Water Management Act 2010, but a series of constituting Acts remain in relation to IDB functions.

The current position: Land Drainage Act 1991

Approving IDB structural changes

Under section 3 of the 1991 Act, IDBs may undertake re-organisational changes to deliver operational or efficiency benefits, such as making changes to their boundary or to the structure of the Board; taking forward amalgamation of a number of Boards into one IDB; abolishing an IDB, or creating a new IDB. The Environment Agency prepares schemes of reorganisation for IDBs, which they are required to submit to Ministers for approval.

Where a scheme is submitted to Ministers and Ministers agree to proceed with the proposed changes, the Minister makes an order confirming the IDB scheme following the statutory procedures set out under Schedule 3 of the 1991 Act. The process under section 3 and Schedule 3 for taking forward IDB structural changes can take at least 9-12 months and includes a series of advertising periods.

Previous consultation discussions with IDBs identified that the process for making structural changes to IDBs gives rise to unnecessary burdens and costs. IDBs and other stakeholders have suggested that Defra should reduce the length of time taken to bring the changes into effect.

Making byelaws

IDBs and local authorities all have powers to make byelaws. Under Section 66 of the 1991 Act, IDBs and Local Authorities can make flood risk management bye laws for certain purposes. The procedure which IDBs must follow is set out in Schedule 5 of the 1991 Act. However Local Authorities follow the procedure set out in section 236 of the Local Government Act 1972 (“the 1972 Act”).

Defra wishes to align IDBs’ bye law-making procedure under the 1991 Act for those IDBs in England with that of Local Authorities so both will follow the same process for making bye laws under section 236 of the 1972 Act. Defra’s ultimate aim is to reduce the bureaucracy and costs involved in the process of making flood risk management byelaws in England by removing Ministerial oversight of both IDB and Local Authority bye laws.

Dissemination of information

Under various sections of the 1991 Act, public notices have to be published in “one or more local newspapers” and in the case of IDB byelaws, these are currently published in the London Gazette.

The requirement to advertise a range of notices, procedures and orders only in newspapers is inflexible and out of date. Many IDBs consider that the cost of advertising in local newspapers is often disproportionate to the benefit and have suggested that Defra should look for a more cost effective way of advertising which allows the IDBs to determine how they target the people affected by any changes, to achieve the most effective dissemination of information.

Changes being made through the Water Bill

Approving IDB structural changes

The Water Bill will streamline the IDB structural reform process by simplifying the steps to be taken. The new process would be:

- 1) Advertisement of the Scheme by the Environment Agency calling for objections and representations (1 month)
- 2) Advertisement of the Draft Order by Defra in the London Gazette calling for objections and representations, as well as ensuring the Order is advertised locally by other means (1 month)
- 3) Once the Order has been made and come into effect, Defra to advertise this fact in the London Gazette allowing 6-weeks for challenge to the High Court.

Under this proposed approach, the Order would be made after two advertising periods have taken place – as opposed to three periods under the present arrangement. This will

simplify and shorten the process through which the Order would come into effect. In order to achieve this, we are removing the 30 day advertising period as currently set out under Schedule 3, paragraph 4, for raising objections once the Order has been made. Since we are removing the opportunity to raise objections at this stage, this would also mean that the Order would no longer be subject to Special Parliamentary Procedure. The 30 day advertising period after the Order has been made is inextricably linked to the Special Parliamentary Procedure, so we cannot remove one without the other.

We do not consider that removal of this 30 day objection period and the Special Parliamentary Procedure from the process as removing a necessary protection. The Environment Agency's initial advertising of the scheme followed by the publication of the draft order in the London Gazette supported by wider local publication would still ensure that people have two opportunities to voice their opinions and make representations if they wished to do so. Experience indicates that people who wish to raise objections have normally made representations when the Environment Agency advertises the scheme. Objections are then addressed before the Environment Agency submits the scheme to Ministers to be made into a draft Order. Objections have, to date, rarely, if ever, been received after the draft Order stage. We do not consider that the third advertising period and associated Special Parliamentary Procedure (which has not previously been invoked so far as we are aware) provide additional value and transparency which would justify the additional delay they currently give rise to. We estimate that the removal of this advertising period would shorten the process for introducing an Order by at least three months.

Making byelaws

The Water Bill will also amend section 66(5) and Schedule 5 of the 1991 Act so they do not apply to IDBs in England. We are also amending section 236 of the Local Government Act 1972 in order for IDBs to follow the same byelaw-making procedure as the local authorities. IDBs would no longer have to seek ministerial approval of their byelaws. Defra wishes however to retain the requirement under Schedule 5 paragraph 1(b) of the 1991 Act for IDBs to notify every Local Authority in their area and any other public authorities which the drainage authority consider may have an interest of their proposed byelaws. This is to ensure that there are no conflicts between IDB authorities and provisions or requirements set by other authorities.

Dissemination of information

Through the Water Bill, we are amending various sections of the Act to remove the requirement of publishing notices in local newspapers and byelaws in the London Gazette. This will allow for a wider, more targeted distribution of notices (e.g. use of electronic means, parish notice boards), whilst retaining a fair, open and inclusive process, taking full advantage of the knowledge and experience of IDBs and the Environment Agency in ensuring that the advertising reaches the appropriate people.

Defra understands that advertising in some local newspapers can be costly and is mindful that this method of advertising alone may not represent best value for money in reaching out to communities. Defra also understands that many local newspapers are not necessarily widely distributed in rural communities or in some cases may no longer be published. We recognise that IDBs often have a great deal of local experience and expertise about what methods work best in disseminating information to their communities and that some IDBs may still see local newspapers as an important mechanism for reaching their key target audience. We consider that IDBs and the Environment Agency should therefore be allowed the scope to choose whether to use local newspapers or any other appropriate mechanisms, such as websites, local parish boards, to ensure the notices are publicised in the most effective way.

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