



## Department for Environment, Food and Rural Affairs

### Consultation on the draft Flood and Water Management Bill

#### CIWEM Response, July 2009

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CIWEM welcomes the production of the draft Flood and Water Management Bill, which aims to further integrate flood, water and environmental management. We do feel that there are certain areas where there could be further integration of the water cycle but the measures we are particularly supportive of within the bill are local authority responsibility, SUDS, partnership working and streamlining organisational responsibilities. We have set out our comments on the Bill below, both generally and in response to specific questions posed in the consultation. We hope that these are of help to you and we would be very pleased to discuss them with you further should this be helpful.

#### **Key Issues of Concern to CIWEM**

##### **Local Authority Role**

CIWEM endorses the proposed increase in responsibility for upper tier/unitary local authorities (LAs). The importance of local expertise in the context of effective flood risk management cannot be underestimated and this increased responsibility reflects such importance. We are concerned that with this increase comes **sufficient funding and capacity building** to support local delivery and decision making, and ensure that local authorities can act as an 'intelligent client' when dealing with contractors. The Bill offers a great opportunity to deliver better-integrated environmental management given adequate support, guidance and funding.

We believe that the Bill can deliver a 'renaissance' in the development of successful partnerships within local authority departments as well as with external partners and this could deliver significant benefits in other areas, as the impact assessment for the Bill accurately notes. However, there must be an urgently delivered **programme of capacity building** so that LAs are able to deliver multiple benefits and discharge their duties effectively. This can be achieved through the production and dissemination of guidance, utilising other recent good practice case studies, followed by a learning process from successful LA examples so that 'struggling' LAs have clear examples to follow. Guidance on capacity building is being considered by a group of bodies including LANDFORM, CIWEM and LGA.

We are not convinced that there is a major issue of **skills shortages** within the sector itself and we would question whether there is a need for a multiplicity of new courses on flooding which are supposed to deliver new flood engineers. The Institution's view is that if there is sufficient funding for new posts within LAs there will be a flow of expertise towards LAs and this will not cause failures in delivery of the Bill or market instability. Our detailed discussions with consultancies have not indicated any concern over the loss of key staff in the instance that the Bill is fully implemented.

##### **SUDS**

It is pleasing to see a focus on SUDS within the Bill. CIWEM is a Member of the National SUDS Working Group and we have held regular major conferences on this subject area to gather the key organisations and share knowledge. Outputs from these conferences are found at <http://www.ciwem.org/events/outputs.asp>

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We would hope to see a presumption for SUDS unless there are compelling reasons otherwise. We would also wish to see further attention on retrofitting SUDS to existing properties where feasible.

### **Integration, Public Participation and Partnership Working**

The UK is often noted in international discussions as being very poor at delivering partnership working and community engagement. However, we feel that this is no excuse to avoid making every possible effort to develop extensive partnership arrangements in the delivery of the Bill. We would suggest that a 'set' of guidance is produced for effective stakeholder/partnership/community working which utilises information from good practice case studies such as the Ribble Basin pilot study for River Basin Management Plans under the Water Framework Directive. This pilot study was chosen as a demonstration project of public participation in the new Directive. The consultants' report for this is noted at:

<http://www.wrcplc.co.uk/default.aspx?item=106>

### **What isn't covered in the Bill**

The Bill still doesn't address the bigger picture of the need for overarching legislation to enable truly joined-up water and environmental management which considers the whole water cycle.

### **Comments on specific sections of the Bill**

#### **Executive Summary**

There is a slight dichotomy between the definitions used within the text and what is meant in the Executive Summary for 'all types of flooding'. The proposed policy on surface water flooding seems to consider just water that comes directly from run-off whereas in reality surface water flooding can come from diverse sources, including sewer blockages which are noted in the Bill as separate. In reality, when people are flooded, it is generally irrelevant what proportion came from different sources; we need to have a system of management of our environment that minimises flood risk within environmental constraints.

#### **1. How far, in general, would you say that the draft legislation is written in a reasonably clear style that is likely to be understood by readers?**

The Draft Bill is written in a reasonable clear style and is generally understandable.

#### **2. In general, do you think the individual clauses are too long, too short or about the right length? How far is their overall order in the draft legislation reasonably logical and easy to follow?**

The clauses are relatively concise. Clarity of detail may be compromised by brevity in some instances.

#### **8. Are you content with the definitions of "risk" and "risk management" in the draft Bill?**

The definitions are clear. In terms of the interaction of Government with the wider general public, there should be a greater emphasis on education and awareness of 'risk' and what it means to people.

#### **9. Are you content that the draft Bill should enable a wider range of approaches to managing flood and coastal erosion risk than is currently allowed under existing legislation, such as**

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#### **resilience, and that it should be sufficiently flexible to accommodate new approaches which may be developed in future?**

We support the aims of the Bill to enable a wider range of approaches. We would welcome the inclusion of a clear definition of 'natural processes', 'land management' and 'resilience' to support this.

The definitions of resistance and resilience are restricted to buildings. Resilience and resistance covers a much wider remit to allow the bill to be related to the wider communities and supporting systems such as critical infrastructures.

#### **10. Does the approach in the draft Bill to flood and coastal erosion risk management adequately cover adaptation?**

We would welcome explicit reference to adaptation responses within the Bill.

#### **11. Does the proposed approach to flood and erosion risk management:**

##### **• facilitate and encourage authorities to make effective links between land management and flooding and erosion?**

More detail is required to clearly set out the processes and links between authorities responsible for land management and flooding and erosion.

##### **• enable and encourage authorities to play an appropriate role in the delivery of wider multiple objective projects through the use of their flood and erosion management functions, including projects that are specifically required to achieve environmental, cultural and social outcomes?**

The role of the Environment Agency in appraising and approving this type of project is critical. For this to be effective, an approach to appraisal is required which gives adequate weight to these wider multiple objectives in order to deliver integrated schemes.

As noted earlier, the proposed approach does facilitate and encourage authorities to make effective links between land management and flooding and erosion in terms of new developments, but it is not effective for private landholdings and agricultural land, over which LA have minimal influence. A proposed action for 'nuisance' where land management practices cause flooding will have minimal benefit apart from areas where there is repeated flooding.

There is a considerable weakness in policy that there is little reason for land managers to manage their land in an environmentally sound way, apart from minor incentives to some under environmental stewardship payments. CIWEM calls for further power to be vested in the Environment Agency and LA in order to discourage land management practices that are clearly unsustainable; such as farming unsuitable crops on marginal land.

It is very encouraging to see an appreciation that flooding certain areas may have environmental benefit. CIWEM's recent conference with CLG in July 2009 on 'Planning and Water' noted the benefits of taking land out of development and using it actively for flooding and multiple benefits.

#### **12. Are there any approaches to flood and coastal erosion risk management that should be adopted but which the draft Bill would not allow?**

The bill is silent on the use of strategic planning to reduce the impact of flooding, linking appropriately to PPS 25. Encouragement or support of relocation of properties or parts of

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communities to more sustainable locations, where this is the clear sustainable option is not mentioned.

#### **13. Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management?**

Yes. These objectives must be measurable and very clearly defined.

#### **14. Are the component parts of the EA strategic overview clear and correct and do they achieve the objectives?**

Yes, although greater clarity is required about the degree to which flooding from sewers is of concern to the EA in the setting of its strategy.

There is a need for strengthened mechanisms to ensure that democratic accountability is provided at the appropriate scale.

#### **15. If not, what further changes should be made?**

We believe a mechanism should be provided to provide democratic accountability of the EA in its decision making. We believe the change of roles of Regional Committees to an advisory/consultative role goes against this. If the committees are too large to be effective, then they should be restructured or reduced in size, but not relegated to advisory roles.

#### **16. Do you have any comments on the proposal that the EA issues a National Strategy for FCERM with which all operating authorities will be required to act consistently when delivering their FCERM functions?**

We support the proposal for an EA issued National Strategy for FCERM, although a national strategy may be at odds with water company customers' willingness to pay for improvement to sewerage systems, and with Water and Sewerage Companies' funding cycles.

#### **17. Do you have any comments on the proposal that other bodies would have to have regard to the EA's National Strategy and guidance? Do you consider that any other bodies should be added to the list in clause 23? In particular, how should the sewerage industry be brought into the new framework?**

Priorities of local authorities and sewerage undertakers need to be aligned if both are to have regard to a common strategy for the reduction of flood risk.

#### **18. Do you think that the EA should be required to consult as part of preparing or publishing its strategy?**

Most definitely and with sewerage undertakers.

#### **19. Should the EA have a regulatory role in relation to coastal erosion risk management, in particular for consenting and enforcement as set out in paragraphs 103-105? What alternative arrangements might be preferable?**

Yes. In doing this, it must have a duty to consult with the appropriate operating authority, where this is not the EA.

#### **20. Should the Secretary of State have the power to direct the EA to undertake local flood risk management work in default of local authorities, and recover reasonable costs?**

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Yes with particular EA focus on local authorities with poorer experience and skills, but the government should first ensure local authorities are adequately funded to utilise their powers

**21. Should the EA be able to undertake coastal erosion risk management works concurrently with local authorities where appropriate to support the delivery of the strategic overview role?**

Yes, but in co-operation/agreement with the relevant local authority.

**22. The EA is drawing up a coastal map showing which operating authority will exercise FCERM powers on each length of coast. Should the EA maintain this and should the procedure for amending the map be the same as for main river maps, or should it be a non-statutory process?**

The EA should maintain the coastal map which shows operating authorities areas of jurisdiction and the amendment of this should be a statutory process.

**23. Do you have any comments on the proposed changes to main river maps as set out above?**

No.

**24. The Government's response to Sir Michael Pitt's Review accepted that county and unitary local authorities should have the 'local leadership' role described above. Does the draft Bill implement this effectively and support the development of effective local flood management partnerships?**

As noted earlier, it is crucial that LA are supported by effective guidance and good practice case studies so that they have the capacity to take on this expanded role. Partnerships need to be created and managed. There should be clear guidance on the form that the 'flood management partnerships' take and their links to the public/community engagement process. It is essential that there is a support and advisory service for this early phase of the new LA role.

We believe that the Bill should clearly indicate the default position and that ultimate responsibilities lie at the upper tier local authority, but allow flexibility to delegate or subcontract these back to lower tiers where locally beneficial to reflect existing capabilities and expertise in Districts.

**25. Do you have any comments on the proposal that the county and unitary local authorities will develop a strategy for local flood risk management and that district local authorities and IDBs would be required to act in a manner which is consistent with that strategy in delivering their FCERM functions?**

Strong, inclusive and effective partnerships are important if the LA are to be able to deliver strategies within a sensible timescale. The cost and importance of these partnerships must not be underestimated. LA cannot be left to work this out for themselves. There also needs to be guidance on cross-boundary issues and the interaction of partnerships across boundaries.

See comment on question 24 above. Partnerships between authorities are crucial in this regard, especially to ensure ongoing links to other linked areas such as development planning.

**26. Do you have any comments on the proposal that other bodies would have to have regard to the local flood risk management strategy and guidance? Do you consider that any other bodies should be added to the list?**

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In terms of organisations which need to 'have regard to' the guidance, we would suggest that this list is fairly exhaustive and include water and sewerage companies, large landowners such as National Trust and perhaps the guidance should be disseminated widely to all landowners.

It would be useful to explain what 'with regard to' means and how this differs from 'act consistently with'.

#### **27. Do you think that the county and unitary local authorities should be required to consult the public as part of preparing or publishing their strategy?**

It is extremely important that there is a high level of public engagement in strategy development. There should be regular forums where the public can engage with the partnerships.

Public engagement is key to implementing good practice at a household scale and can facilitate acceptance of strategies which impinge on public open space.

#### **28. Further to its duty to investigate flooding incidents, should the county or unitary local authority have powers to carry out works of an emergency nature? If so, what powers would be needed?**

The LA should have powers to carry out emergency works but powers ought not to extend to the public sewer system where sewerage undertakers have responsibility.

#### **29. Do you think that the EA and county and unitary local authorities should be able to gather information from private landowners and individuals about flood drainage assets related to their respective responsibilities? What if any sanction is needed to ensure information is provided?**

The EA should have right of access to information with a suitable sanction if this is withheld and the EA or other authority should be able to recover their own costs of gathering this information if it is not provided.

#### **30. Should county and unitary local authorities be legally required to produce annual reports on the way that they are managing local flood risk? Should this requirement be annual?**

LA should be legally required to produce annual reports on the way they are managing local flood risk.

#### **31. Should the EA provide support and advice to the local overview and scrutiny functions as part of the exercise of its strategic overview role?**

Yes, this role will be key until there's greater capacity in local authorities. Sewerage undertakers can also play a key supportive role if they are funded to do so.

#### **32. Should the list of bodies required to cooperate with overview and scrutiny committees be extended to encompass all relevant authorities and as a result pick up IDBs and water companies?**

Yes

#### **33. Should Regional Flood and Coastal Committees (or another body) be involved in peer reviewing any annual reports produced by local authorities?**

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Yes.

**34. Should district local authorities and IDBs continue to manage flood risk from ordinary watercourses, taking account of Local and National Strategies?**

Yes but this should be a delegated responsibility from upper tier authorities.

**35. Should county and unitary local authorities have powers, concurrent with district local authorities and IDBs, to manage flood risk from ordinary watercourses in their areas? Or should they remain able to act only in default?**

Yes - powers could then be delegated if the skills, experience and resources at district level are more appropriate.

**36. Should any sea flooding works that a local authority wants to undertake require the consent of the EA?**

Yes, ideally this should be by mutual agreement and cooperation as (21).

**37. Should all relevant organisations have the power to undertake any flood and coastal erosion risk management at the request of another body?**

Yes, provided that funding can flow smoothly between organisations.

**38. Should the functions of consenting, and the production and coordination of the strategy (for both EA and county and unitary local authorities) remain as ones which cannot be carried out by another authority?**

The ultimate responsibility should rest with one organisation but flexibility should be provided to allow delegation of the 'workload' among operating authorities where appropriate. We must ensure that long-term (25 year) wastewater strategies of sewerage undertakers are aligned with local strategies.

**39. Are these assumptions reasonable? Is further evidence available to improve the analysis? Are the measures detailed proportionate with the scale of benefits assumed?**

The assumptions of the costs of producing a SWMP (assuming with full partnership and public engagement) are very low. To do a proper job of these plans will not be a cheap effort. However, if the SWMP are produced to a high standard and all recommendations implemented they will have major benefits that far outweigh the costs.

£100,000 is significantly low compared to the spend on fluvial and coastal flood and coastal risk management. Given the EA's latest estimate that surface water flood risk is greater than all the rest put together (2.8 million properties and 5.2 million properties), the assumed investment seems grossly inadequate. We stress the need for full, clear funding of these activities to be available for Local Authorities.

**40. As agreed in the Government response to Sir Michael Pitt's Review, there will be a duty on relevant organisations to cooperate and share information. Do you think the list of relevant authorities to whom this applies is comprehensive?**

Yes. But the term 'co-operate' needs better definition and sewerage undertakers' inputs need to be funded through the price review mechanism.

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#### **41. Should the EA and county and unitary local authorities be able to specify the format and standards for information to be shared between organisations?**

It is important that standard approaches to data management and software packages are generally used; however, healthy partnerships should be able to agree different standards if these are more suitable locally.

#### **42. Do you agree that national design, construction and performance standards for sustainable drainage of new developments and re-developments should be developed and approved by the Secretary of State and Welsh Ministers?**

We thoroughly endorse the development and approval of national standards for SUDS, although water supply and sewerage companies need to be involved in this development as well.

#### **43. Are there particular issues which must be addressed in the standards to make them effective, that have not been mentioned?**

SUDS needs to be clearly defined as it currently means different things to different stakeholders. It needs to be seen as a system that covers all relevant measures including infiltration, storage and conveyance and represent a system of measures to manage water as close to its source as possible.

Whatever criteria are included in the Standards need to be effectively managed, monitored and enforced in resulting developments.

Standards need to be clear, but flexible enough in application to incorporate varying local circumstances.

The current proposal seems only to promote strategic SUDS in the public space. There is a need to embrace wider opportunities to deliver source control and SUDS on smaller scale developments.

We feel that one shortfall in the approach to forming SAB in all LA is that there is limited scope for SUDS 'champions' to enthuse and encourage developers to see SUDS as a positive development and that SAB may just become a 'rubber stamping' body. There is still a need for a well-funded body to discuss SUDS development on a national basis, such as the current National SUDS Working Group.

#### **45. Does the process for adoption and connection described here provide a clear and workable approach for developers, local authorities and water and sewerage companies? Do you have any suggestions which would make the process simpler, speedier or lower cost?**

The approach is clear. We will welcome opportunities to make the approval process proportionate to the risks and scale of the development.

#### **46. Are there examples where a communal SUDS should not be adopted by the SAB?**

Perhaps where a private organisation wishes to retain ownership (e.g. for recreation).

#### **47. Do you agree with how the envisaged arrangements for replacing the automatic right to connect will work?**

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The Bill appears to assume that the sewer is still the eventual disposal route for flows. It would be more suitable if the default was a watercourse and if this was not possible an existing sewer could be used subject to assessments of benefit and costs.

We agree with the principle but are concerned about how this will work in practice.

**48. Can the use of National Standards as a material consideration for the purposes of s115(4) of the Water Industry Act 1991 provide sufficient legal certainty to prevent inappropriate agreements to drain highways to sewer?**

There will need to be a very clear statement of how National Standards are to be applied in detail for this to be workable.

**49. What is the appropriate balance to enable good SUDS designs that work with the lie of the land, can discharge to watercourse, and can be accessed for maintenance and inspection, whilst protecting the rights of landowners?**

To be considered in National Standards.

**50. How wide should the SABs' ability to delegate be?**

Wide and by local agreement. We would welcome a flexible approach to delegation.

**52. Views are welcomed on how best to ensure the maintenance of private SUDS, and ensure that they are not redeveloped.**

The SAB should keep a record of private SUDs, which should be recorded on property deeds and HIPs.

**53. Is there any legal impediment to prevent a SAB from adopting an existing SUDS?**

Unknown, though the bill seems to only specify new SUDs and not existing SUDs.

**54. Do you agree that performance management of SUDS maintenance should be included within the local government performance framework, as part of their climate change adaptation function?**

Yes.

**55. Do you agree that Regional Flood Defence Committees should be renamed as Regional Flood and Coastal Committees?**

Yes. We welcome the implicit move away from 'defence' to 'risk management' and the extension from flood to flood and coastal

**56. Should RFCC status be predominantly advisory rather than executive?**

We believe that for democratic accountability to continue, RFCC's should continue to be executive. If required, they can be restructured or reduced in size to make them more effective.

**57. Should the focus and roles of RFCCs be as described in above? If not, do you have any other proposals?**

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We would wish our concerns about democratic accountability to be addressed in the definition of the RFCCs role and would wish to see this reflected in the Bill.

**58. Do you agree that the membership of RFCCs should be appointed as outlined above in future? If not, do you have any other proposals?**

We agree that the Local Authorities should retain a majority on the RFCCs.

**59. Should RFCCs' levy-consenting powers be extended to coastal erosion issues?**

Yes.

**60. Are there any other issues that you wish to raise in regard to RFCCs?**

We stress the need for the RFCCs to have a role in ensuring provision of democratic accountability for the decisions of the EA.

**61. Should flooding from sewerage systems caused solely by system failure be excluded from transposition of the Floods Directive? If not, how might such flooding be integrated?**

Sewer flooding caused by blockage or structural failure should be excluded.

A clear definition of system failure is required.

**62. Should the EA and county and unitary local authorities assume responsibility for implementing the Floods Directive, with the EA focusing on national mapping and planning and local authorities having specific responsibilities in relation to local flood risk? If not, what other arrangements would you suggest?**

Yes. Coordination is required as outputs such as assessments and mapping produced at the different scales and tools will produce conflicting results. We can not have two sets of documents comprising our submissions for floods directive being in conflict.

**63. Should county and unitary local authorities be responsible for delivering PFRAs for local flood risk as described above? If not, who should be responsible?**

Yes, with the proviso that flexibility of delegation to Districts is possible.

**64. Is this framework a suitable approach for determining 'significant risk' or are there alternative approaches to consider?**

Yes.

**65. Should county and unitary local authorities be responsible for determining significant local flood risk (ordinary watercourses, surface water and groundwater)? If not, who should be responsible?**

Yes, with the proviso that flexibility of delegation to Districts is possible.

**66. Should the proposed selection of 'significant risk' areas by local authorities be moderated along the lines of the arrangements set out above?**

Yes.

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**67. Do you agree with the proposed mapping arrangements set out above? If not, what alternative arrangements do you suggest?**

Yes.

**68. Should the EA and local authorities have the discretion to determine whether or not to produce flood maps, as described above? If not, what other arrangement should apply?**

Yes, if they have relevant funding in place and ensure the correct experts produce the maps and subject to final decision by EA.

**69. Should the arrangements for FRMPs be as set out above? If not, what alternative arrangements do you suggest?**

Yes. The role for ensuring consistency of measures by the EA should be extended to ensuring consistency of the assessments and mapping (see response to Q. 62).

**70. Do you agree with the co-ordination arrangements set out above? If not, what alternative arrangements do you suggest?**

The EA are the correct body to co-ordinate with the Water Framework Directive, and to co-ordinate the various maps and plans.

The importance of this cannot be overemphasized. The EA should set out their plans and programmes early to allow other organisations developing plans and maps to plan accordingly.

**71. Should the first cycle PFRA be brought forward one year, as proposed above, to enable mapping to take up to two years in common with the rest of the mapping and planning cycle?**

Yes.

**72. Do you agree with the other proposals set out above for reporting and review? If not, what alternative arrangements do you suggest?**

Yes.

**73. Do you agree that the duty to act in accordance with WFD requirements should apply equally to all FCERM authorities?**

Yes.

**74. Do you think this approach provides a satisfactory mechanism for ensuring that the relevant bodies deliver the requirements of the WFD?**

Yes - we would hope that this would be the case. The consultation mechanisms associated with WFD may need to be strengthened.

**75. Should we introduce a system of third party asset identification and designation, as set out above?**

Yes.

**76. Is there a case for greater powers on third party assets than we have suggested?**

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We would like to see a duty on owners to maintain assets. If this cannot be achieved mechanisms for enforcement and cost recovery or compulsory purchase where appropriate may be required.

**78. Should there be a duty on those responsible for third party assets in England and Wales to maintain them in a good condition?**

Yes.

**79. Should regulation of the ordinary watercourse network (where there are no IDBs) transfer to county and unitary authorities? Or should this role in future sit with the district and unitary authorities?**

Regulation should be with top tier local authorities to reflect other responsibilities, however, flexibility should be provided to ensure the role is carried out by the authority best placed to do so.

**80. Should it be possible to make consents subject to reasonable conditions?**

Yes.

**81. Views are sought on whether the minimum volume figure should be 5,000 or 10,000 cubic metres, or another figure.**

We agree that 10,000 is a practical figure for all reservoirs, however flexibility should be included to enable a risk based approach to be applied for lower capacity reservoirs. Whichever minimum capacity gets adopted, government will need to act to build capacity of competent panel engineers to manage the significant increase in reservoirs coming under the Act.

**82. Views are also sought as to whether criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc.**

Only if developed within a clear risk based framework.

**83. Do you have a view on what information should be requested at the point of registration to enable an effective risk based approach thereafter? How can we design this and the collection process to minimise the burdens imposed by registration?**

Crest/spillway levels, adjacent land levels, geological information, design and construction information, historical performance and failure information, catchment map (for impounding reservoirs) and inundation extent and hazard map from possible breach(es).

**84. Do you agree the proposed classification is appropriate and that the EA should have responsibility for classifying all reservoirs under the new regime?**

Yes.

**85. Do you believe there might be a role for insurance in improving reservoir safety and, if so, how might this work?**

With the large number of private reservoir ownership, an insurance system which is focussed on ensuring any requirement in the interest of safety is carried out is welcomed. This will ensure better protection of the downstream communities.

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**86. Do you have a view on whether and how the Government could most fairly keep to a minimum the financial burdens placed on the owners of those reservoirs which are being brought within the regulatory regime for the first time?**

We support a link between the risk posed by a reservoir and the requirements for information and costs of registration. Promoting availability of insurance as above will also help in the longer term.

**87. Again, we welcome views on how to ensure charges within a scheme can be made proportionate.**

Charges will need to be clearly linked to EA's overall expenditure on enforcement, be open to scrutiny, with the EA having a duty to provide the service in an efficient manner.

**89. Do you consider that there is a direct conflict or inconsistency between the IDBs' supervisory role and the local leadership role of the county and unitary local authorities?**

Yes, it would be clearer if the upper tier local authorities take on the supervisory role, with the IDBs working in within this. However, IDB's need to retain responsibility for the day to day operational management of water courses using their local knowledge. Concern is expressed over catchment boundaries not being consistent with local authority boundaries.

**90. If the IDBs' supervisory role was repealed, what would IDBs no longer be able to do that they currently can?**

This role allows IDB's to respond quickly to stakeholders' issues. The removal of this role would reduce the Board's ability to effectively manage the Board's responsibilities and respond to stakeholders. Any removal of the powers under this role would necessitate consultation with the upper tier authority making the decision making more remote and this would lead to a slower response to stakeholders e.g. water levels for recreation purposes. Ways of ensuring appropriate delegation or streamlined processes would be required.

**91. Should regulation of the entire ordinary watercourse network (including within IDB watercourses) transfer to county and unitary authorities in order to provide a consistent approach?**

Yes. However, the local knowledge of the IDBs should be properly utilised in carrying out this function. Each area of the network requires a different level of watercourse management. It is well established that the needs of ordinary watercourses in lowland catchments are very different to those in other parts of the country due to the level of flood risk they control.

**92. Do you think that IDBs should have specific powers to share services and form/participate in consortia?**

Yes.

**93. Do you think that IDBs should have specific powers to form/participate in limited companies/limited liability partnerships for the purposes of sharing services?**

Yes.

**94. What negative impacts might there be from providing IDBs with these specific powers?**

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None, providing that proper accountability and control were present and that the taxation implications were covered.

**95. Do you agree the proposals outlined are the best way to simplify these procedures? If not, what alternative approaches should be considered?**

We agree that the procedures should be streamlined but think that the upper tier authority should have full responsibility for these procedures.

**96. Do you agree that the title of IDBs should change in the future to reflect the wider approaches that IDBs will undertake now and in the future?**

The key point is what the IDB is actually achieving rather than the title of the organisation. However, if it will aid public understanding of the role of IDBs then we would not object to this name change.

**97. Do you agree that 'Local Flood Risk Management Board' is an appropriate new title, or is there a better alternative?**

Yes but "Authority" instead of Board.

**98. Do you agree that the principles of the Medway Letter should be relaxed allowing IDBs to expand their boundaries beyond their traditional areas?**

Yes, in order to better control the flood risk in their area. However, we believe that the boundary expansion should be encouraged, agreed to by local stakeholders and be based on an appropriate impact assessment.

**99. Do you agree that there should be a specific requirement for IDBs to produce an impact assessment demonstrating the cost benefit implications of a boundary expansion?**

Yes.

**100. Do you agree that the future supervision of IDBs would fit better with county and unitary local authorities rather than the EA in the future?**

Yes to ensure effective local management. However, the IDB systems have to be managed on a catchment basis. The challenges of boundaries would need to be resolved to ensure one IDB is not within the supervision of more than one upper tier authority.

**101. Do you think that county and unitary local authorities should take over the lead on amalgamation (etc.) schemes from EA in the future under this supervisory role?**

No, see response to 104.

**102. Do you agree that lifting the bare majority limit on local authority membership of IDBs will allow for fairer representation on boards in the future?**

Yes, but elected members have generally provided greater expertise on the Board and the majority of work is carried out on agricultural land which benefits both agricultural and urban areas. There is no method available to quantify this benefit and thereby make a fair apportionment but a compromise could be to limit either the elected or appointed membership to a minimum of one third, with the balance being apportioned in accordance with income stream.

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#### **103. Are there other models of membership that you think would be more appropriate?**

LA members should be those council members or other representatives with a genuine interest in flood risk management and/or environmental matters. There is no method of making a fair apportionment but a compromise could be to limit either the elected or appointed membership to a minimum of one third, with the balance being apportioned in accordance with income stream.

#### **104. Do you agree that the Secretary of State should have powers to determine the size, shape and structure of IDBs in the future?**

We do recognise the importance and need for continued reduction from the levels which have been achieved over the past few years. Within this we recognise the efforts of some IDBs who have successfully amalgamated. It may be necessary for the Secretary of State to set maximum numbers for each county based total area and other relevant criteria and allow the exact shapes and individual sizes to be determined locally.

#### **105. What consultation would need to occur before individual changes in size, shape and structure of IDBs were to take place? What sort of powers would be most appropriate?**

We agree with the Bill's intention to manage flood risk on a catchment basis. Any other changes should also enable local IDB watercourse knowledge to be preserved at a local level. The consultation on changes to IDB's should include all relevant stakeholders and there should be the right of appeal through either a judicial review or a more affordable specific appeal body.

#### **106. Views are sought on whether the assumptions are reasonable. Can further evidence be made available to improve the analysis? Are the measures proportionate with the scale of benefits assumed?**

On first reflection we would question some of the assumptions used to calculate the cost and benefit figures.

#### **108. Do you agree that there is a case to retain powers for the EA to levy (a) general drainage charges, and for IDBs to retain similar powers to levy (b) agricultural drainage rates in England and Wales?**

Yes, but the power to levy a general drainage charge should also be passed to the local authority if necessary.

#### **109. Do you agree that EA's current powers to levy special drainage charges should be repealed?**

Yes.

#### **110. Do you agree that only county and unitary local authorities should be funded for local flood risk management to allow them to prioritise funding based on where benefits would be greatest?**

Yes, it is very important that the local knowledge and experience of the IDB's and district councils are factored into the process to increase local involvement and the strong links with the planning process.

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**111. Do you think that replacing the IDB special levy in England and Wales with agency or contractual arrangements between IDBs and the relevant local authorities would improve the delivery and prioritisation of local flood risk management?**

Yes. However, care should be taking to ensure the existing strengths of the IDBs are retained, to ensure we do not reduce local accountability and the links between raising and spending the money. IDB's already undertake work on behalf of LA's and EA on a £ for £, rechargeable basis.

**112. Are there other arrangements that would remove or reduce the problems associated with the special levy in England and Wales, including those referred to above?**

Yes, by excluding special levies from the LA Capping calculation.

**113. Is there a case to end both IDB highland water charges and EA's precept on IDBs in England and Wales?**

Yes.

**114. If the Medway letter were retained, would there still be a case to end the payments?**

Yes, probably more so. The boundary extension would result in increasing the yield from Agricultural Drainage Rates and special levies.

**115. What additional steps or measures could be taken to make sure developers in England and Wales contribute towards the pressures new developments place on future local and central government budgets?**

The legislation could be strengthened to ensure that Drainage Authorities have clear powers to levy development charges rather than relying on bye-laws. These charges should be, where possible, linked to the actual cost of providing the drainage to the development (or the cost of a flood storage area).

**116. How can people be made aware of their riparian responsibilities when they first buy properties that include riparian land?**

At the earliest stages of the property purchase process. Perhaps include this as a standard local search (HIPs) when these are done.

**117. What else could be done to improve existing riparian owners' awareness and understanding of their responsibilities?**

Through awareness and advertising campaigns.

**118. What examples are there of strategies that have succeeded in increasing the engagement of riparian owners and improving their contribution to maintenance?**

IDBs have done leaflet drops in the past which have a varied success rate.

**119. How could the powers provided to drainage bodies by section 25 of the Land Drainage Act 1991 be improved?**

Many IDBs use the powers to good effect. An improvement may be to register a charge on property where work is done and the owner cannot be traced.

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**120. Do you agree with the suggestion that ENI be offered to applicants and respondents in all ALT land drainage cases?**

We support any steps that remove the threat of litigation in relation to watercourse management.

**121. Do you agree with the introduction of a fee for all applications to the Agricultural Land Tribunal that concern land drainage? This would not affect hearings for agricultural tenancies.**

We support this step.

**122. If an application fee were introduced, at what level should it be set?**

£100 is a reasonable deterrent.

**123. Do you agree that a fee should be charged for an ALT hearing on drainage? Should that fee be paid by the losing party or should this be decided by the ALT?**

We agree to the charge and suggest that the ALT should decide.

**124. If a hearing fee were introduced, at what level should it be set?**

Unable to comment.

**125. What cases are you aware of where people might have made use of the ALT had its remit extended beyond ditches and included all ordinary watercourses?**

No comment.

**126. Do you think that it would be a good idea to extend the remit of the ALT to include all ordinary watercourses? Do you think that it should also be extended to cover the main river network?**

No comment.

**127. In what other ways, if any, could the regulations and processes of the ALT be improved as regards cases involving drainage issues?**

No comment.

**128. Do you think the ALT should be renamed? If so, what name do you suggest?**

No comment.

**129. Do you believe that failure to maintain the flow of water through watercourses should be described in law as a statutory nuisance?**

Yes, this would give clarification on an individual's responsibilities in relation to watercourses.

**130. If a statutory nuisance were created concerning "obstructed watercourses", should it be administered by the ALT, by district and unitary local authorities or by some other body/bodies?**

By the district or local authority.

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**131. Do you agree that a new statutory nuisance should be created to tackle the risk of runoff flooding?**

Yes.

**132. If a statutory nuisance were created for run-off risk, which public bodies should be responsible for its administration and enforcement – the ALT, unitary and district local authorities, or unitary and county local authorities?**

By the district or local authority.

**133. What is the range of costs involved in conducting expert investigations into potential surface run-off statutory nuisance?**

From £50 upwards. This could be multi-million in the case of a major development.

**134. What sized reductions in damages can be expected when run-off risks are eliminated?**

Unanswered – this question is ambiguous.

**135. Should the owners of properties that cause a surface run-off statutory nuisance have to pay the entire cost of eliminating the nuisance? What would happen if the owner was unable to afford the work? How else could the works be paid for?**

In principle yes. The cost could be registered as a charge if the owner were unable to pay and the LA in their leadership role were unable to assist or a shared cost/payment plan could not be negotiated with the property owner.

**136. Should local authorities be encouraged to make more use of their Article 4 powers to reduce the growth in surface run-off risk?**

Yes.

**137. Please tell us of any recent occasions you are aware of in which run-off from farmland caused substantial disruption or damage to neighbouring property.**

In 2007 there was upland water run-off that caused flooding to a number of properties in the lowland areas. This happened on more than one occasion.

**138. Do you agree that local authorities should, in areas of high risk of run-off flooding, be given powers to impose restrictions on management practices and oblige landowners to make improvements to drainage in particular portions of land implicated in run-off flooding?**

Yes. The role of IDBs should also be recognised.

**139. If you do agree with the above proposition, what land management practices should be included in the national list of possible restrictions?**

Liaison with Natural England and other relevant authorities is required to agree a comprehensive list of these practices.

**140. What would be the administration costs of working with a landowner to convince them to change the way they managed their land and support them with doing so?**

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Better coordination across Government and inclusion of flood risk management objectives in land management delivery mechanisms could deliver synergies. An initiative similar to Catchment Sensitive Farming would be required - but it would be best to combine initiatives rather than set up separate mechanisms in order to better engage with landowners.

**141. Do you agree that any proposed changes to the existing legislation, not contained in the draft Bill or covered elsewhere in this consultation document, should be discussed directly with relevant organisations in England and Wales so that changes might be introduced in the resulting legislation, without the need for further general consultation?**

No. We would prefer full consultation on additional measures.

**153. Do you agree that powers should be given to sewerage companies to require householders to rectify misconnections as described above? Are there alternatives?**

Yes, resulting in a much more transparent roles and responsibilities to address the issues. Additional costs associated with these would be dealt with by Ofwat in the price reviews.

**154. Do you agree that a project-based approach would reveal optimal funding structures?**

Yes. There is potential merit in this approach.

**155. Are there alternative approaches to securing effective and properly regulated collaborative projects that could be explored?**

The Environment Agency as well as the Water Companies has the engineering and programme management capabilities to manage collaborative projects.

**156. Do you agree that consumers would benefit from a project-based approach to suitable large projects?**

Yes if cost reductions and equitable funding options could be developed.

**157. Do you agree that existing water companies would normally be best placed to manage the procurement exercise?**

No. The Environment Agency also has the procurement, engineering and programme management capabilities to manage collaborative projects.

**158. What types of projects should be covered by the regime?**

**159. Do you agree that these changes provide for the most appropriate body to handle complaints?**

Yes.

**161. Do you agree that a power to improve the hydromorphological condition of water bodies in England and Wales is necessary to deliver WFD requirements on hydromorphology? Please state why.**

Yes. A strategic approach to hydromorphological improvements is required and the EA is best placed to deliver this.

**163. Do you think this proposal provides an appropriate mechanism to enable improvement of hydromorphological conditions?**

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Yes, subject to sufficient funding availability.