

RIVERS AUTHORITIES AND LAND DRAINAGE BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Rivers Authorities and Land Drainage Bill as introduced in the House of Commons on 5 March 2018 (Bill 172).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs, with the consent of David Warburton, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill contains two measures. The first will provide the Secretary of State for Defra with powers to establish new bodies known as “Rivers Authorities”. The second will address a current obstacle to the raising of the expenses of certain internal drainage boards under the Land Drainage Act 1991.

Policy background

- 2 A Rivers Authority established under the Bill will be a locally accountable body with the power to issue a precept to billing authorities, which will then collect the money from council tax payers for additional local flood risk management work. This follows the precepting model in the Local Government Finance Act 1992 which applies to county councils, single purpose Fire and Rescue Authorities and Police and Crime Commissioners.
- 3 Under the Bill, the initiative to establish a new Rivers Authority must come from local flood risk management authorities, which include the Environment Agency, lead local flood authorities (i.e. the county or unitary council), district councils, internal drainage boards (IDBs), water companies, and highway authorities. The risk management authorities must develop and consult on a proposal for the establishment of the new body, which must then be submitted to the Secretary of State for Defra along with a cost benefit analysis. The Secretary of State may then establish the new Rivers Authority by making regulations under the affirmative procedure.
- 4 Regarding the potential use of the provisions, it is expected that risk management authorities in Somerset may wish to put forward a proposal to put the existing Somerset Rivers Authority (SRA) on a statutory footing as a major precepting authority. The SRA was established on a non-statutory basis in 2014, following the serious flooding in Somerset during winter 2013-2014. The SRA is currently funded through contributions from Somerset councils, who are able to make use of flexibility provided in the Local Government Finance Settlement to raise an ‘alternative notional amount’ to pay for the work of the SRA. The current board of the SRA have called on the government to provide them with precepting powers: the government is not currently considering establishing Rivers Authorities in other parts of England.
- 5 The second measure in the Bill relates to internal drainage boards (IDBs). These are public bodies which are established or modified via a statutory process under the Land Drainage Act 1991 (LDA). IDBs are mainly funded locally through drainage rates paid directly by agricultural landowners and special levies issued to district or unitary authorities. The proportion of drainage rates and special levies paid to each IDB is dependent upon the amount of agricultural and urban land in that IDB’s district. In order to determine the special levy charge, the LDA refers to rateable values outlined in the “non-domestic rating list of a charging authority on 1st April 1990” and “valuation list on 31st March 1990”. IDBs use this information to calculate the value of all “other urban land” in the district as part of their annual calculation to apportion their expenses between drainage rates and special levies. In some areas, however, the 1990s rating lists are not available. This means that IDBs in these areas cannot extend their boundaries, and new ones cannot be established. The provision in the Bill would therefore allow the levy to be apportioned via an alternative methodology, which will be set out in secondary legislation subject to the affirmative procedure.

Legal background

- 6 The principal pieces of legislation that govern the performance of flood defence

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functions are the Land Drainage Act 1991 (LDA), the Water Resources Act 1991 (WRA) and the Flood and Water Management Act 2010 (FWMA).

- 7 The LDA outlines the duties and powers to manage land drainage for a number of bodies in England and Wales including the Environment Agency (EA), internal drainage boards (IDBs), local authorities, navigation authorities and riparian owners.
- 8 The WRA is concerned with the functions of the EA in England including its flood defence functions and its revenue raising powers in respect of them. The principal distinction between the two Acts is that the EA will be responsible for the control of “main rivers” while other authorities will concern themselves with “ordinary” watercourses – those that are not “main rivers”.
- 9 The FWMA gives responsibility to the EA for developing a National Flood and Coastal Erosion Risk Management Strategy for England, which provides a framework for managing all sources of flood and coastal erosion risk in a coordinated way. The FWMA also gives responsibility to local authorities, as Lead Local Flood Authorities (LLFAs), for local flood risk management in their area. The FWMA established the concept of risk management authorities (RMAs), which are:
 - a. The EA in England;
 - b. Natural Resources Body for Wales;
 - c. LLFAs;
 - d. district councils for an area (where there is no unitary authority);
 - e. IDBs;
 - f. water companies; and
 - g. highway authorities.
- 10 The provisions in the Bill operate mainly by amending the FWMA in order to allow the establishment of Rivers Authorities, and by amending the LDA in order to allow IDBs to calculate the aggregate annual value of chargeable properties (on which drainage rates are levied) and the aggregate annual value of all other land in the district (on which a special levy is raised) in order for them to apportion drainage rate expenses according to an alternative/updated methodology.

Territorial extent and application

- 11 Clause 6 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The Bill extends to England and Wales, except for clauses 5 to 8 which extend to the whole of the United Kingdom.
- 12 The clauses in the Bill which relate to Rivers Authorities will apply to England only.
- 13 With regard to the clauses which relate to the expenses of IDBs, clauses 2 to 4 will apply to England and Wales. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which these clauses relate are within the legislative competence of the National Assembly for Wales. A legislative consent motion will be sought in relation to these provisions.

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- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions. As the Bill is a Private Member's Bill, the English vote provisions in the Standing Orders of the House of Commons relating to Public Business do not apply.

Commentary on provisions of Bill

Clause 1: Rivers Authorities

- 15 Clause 1 inserts new sections 21A to 21J into the Flood and Water Management Act 2010 (FWMA) to provide for the establishment of Rivers Authorities. Subsection (2) also amends section 6 of the FWMA to insert the definitions of a "Rivers Authority" and a "relevant risk management authority".
- 16 New section 21A gives the Secretary of State the power to establish 'Rivers Authorities' by regulations, under the affirmative procedure. The area of a Rivers Authority must align with the boundaries of one or more local government areas in England. The new section 21B provides the Secretary of State with a power to make regulations about an initial shadow period for a Rivers Authority before it is fully established. This is to enable the shadow Rivers Authority to set an amount of precept to fund its first full financial year and carry out other preparatory functions for its first full year of operation. New section 21C makes clear what can be provided for in regulations about the composition of the Rivers Authority, including matters around governance and remuneration. Section 21D applies certain provisions of the Local Government Act 1972 on committees and local government procedure in relation to a Rivers Authority. Subsection (5) also provides a power for the Secretary of State to make further provision about the proceedings of a Rivers Authority or any of its committees or sub-committees.
- 17 New section 21E sets out the main functions of Rivers Authorities. The Rivers Authority will have a duty to prepare a plan of flood risk management work which is proposed for the coming financial year by all the RMAs in that authority's area. Having mapped out this existing work, the Rivers Authority will then identify any opportunities for co-ordination between the different RMAs. If the Rivers Authority identifies any gaps in the local strategy, i.e. it identifies works which could be done in addition to the planned work, it must then publish a plan of proposed additional flood risk management work. This additional flood risk management work must supplement the work that existing RMAs have already planned to carry out. The Rivers Authority can then either fund the relevant RMA to do that additional work or it can carry out the work itself on behalf of the relevant RMA, if an arrangement is made under a Public Sector Co-operation Agreement (PSCA) under section 13(4) of the FWMA to do so. If no additional flood risk management work is identified, the Rivers Authority must publish a statement of reasons to that effect. The Rivers Authority must notify the relevant RMAs, Natural England and the Secretary of State after publishing a plan or statement under this section.
- 18 Section 21F provides that the Rivers Authority has the power to do anything that is incidental to the carrying out of its functions. This includes the power to enter into contracts and other agreements and acquire and dispose of property.
- 19 New section 21G establishes that the Secretary of State must prepare and publish a National Framework for Rivers Authorities. This must set out priorities and objectives for Rivers Authorities in connection with the exercise of their functions and may contain guidance on transparency, accountability and scrutiny arrangements.

- 20 Section 21H permits the Secretary of State to change the boundary of the area of a Rivers Authority by regulations if an RMA in the area of the authority puts forward a proposal to do so or the Secretary of State thinks it is necessary to do so in consequence of local government reorganisation. The area must still conform to the boundaries of a local government area and must not form part of the area of another Rivers Authority.
- 21 The Secretary of State may by regulations under section 21I provide for the winding-up of a Rivers Authority. The regulations may transfer all property, rights and liabilities (including staff) of the authority to another body, or they may make provision for the disposal of assets held by the authority, the termination of contracts of employment of staff and the treatment of any surplus funds. Before making regulations under section 21I, the Secretary of State must consult the Rivers Authority itself, the relevant RMAs, Natural England, persons liable to pay council tax within the area of the authority and such other persons as considered appropriate.
- 22 Section 21J makes further provision about the procedure of regulations relating to Rivers Authorities.

Clause 2: Valuation of other land in drainage district

- 23 Clause 2 inserts a new section 37A into the Land Drainage Act 1991 (LDA) which enables the Secretary of State to make regulations, by the affirmative procedure, which establishes an alternative methodology for the calculation of the value of other land in an internal drainage district. These regulations may include provision about the methods to be applied or factors to be taken into account in determining land, for the value of land to be determined on the basis of estimates, assumptions or averages, for the value of land to be determined by reference to the value shown in a list or register prepared for the purposes of another enactment and to make adjustments to the value of land. The regulations may include provision for a drainage board to elect that the regulations apply to them and to specify a procedure for that election, as well as provision for different classes or different descriptions of drainage boards.

Clause 3: Disclosure of Revenue and Customs information

- 24 Clause 3 inserts three new sections to the LDA to enable information sharing. New section 37A provides a power to the Valuation Office Agency ('VOA') to disclose Revenue and Customs information to certain 'qualifying persons' (which include individuals and bodies) for a 'qualifying purpose', which is to enable or assist a qualifying person to whom the disclosure is made to carry out any functions under Chapter 1 or 2 of the LDA (or s.75 of the Local Government Finance Act 1988). There is also included in these provisions a regulation making power to make regulations (by the affirmative procedure) to add, amend a reference to or remove a qualifying person and to add, amend or remove a qualifying purpose. These regulations may only be made with the consent of the Commissioners for Her Majesty's Revenue and Customs.
- 25 New section 37B provides restrictions on onward disclosure of Revenue and Customs information when VOA data can be shared and retained, and applies criminal sanctions to a person who discloses information relating to a person whose identity is specified in the disclosure or whose identity can be deduced from it.
- 26 New section 37C sets out the conditions under which the data issued by the VOA would be exempt from the FOI Act.

Clause 4: Valuation of agricultural land in drainage district

- 27 Clause 4 inserts a new section 41A into the LDA which enables the Secretary of State to make regulations by the affirmative procedure or the Welsh Ministers to make regulations by laying

those regulations before the National Assembly for Wales and having them approved by resolution of the National Assembly for Wales, which establishes an alternative methodology for the calculation of the value of chargeable property (agricultural land and buildings) in an internal drainage district. These regulations may include provision:

- a. about the methods to be applied or factors to be taken into account in determining the annual value of each chargeable property;
 - b. for the annual value of a chargeable property to be determined on the basis of estimates, assumptions or averages;
 - c. for the annual value of a chargeable property to be determined by reference to the value shown in a list or register prepared for the purposes of another enactment;
 - d. for the annual value of a chargeable property to be determined by reference to the amount payable under a hypothetical transaction involving the property (including assumptions to be made about the date, nature, characteristics and terms of the transaction and the characteristics of the property); and
 - e. for the determination of the annual value of a chargeable property to be made on behalf of a drainage board by a person or a person specified in the regulations and to make adjustments to the annual value of a chargeable property.
- 28 The regulations may include provision for a drainage board to elect that the regulations apply to them and to specify a procedure for that election, as well as provision for different classes or different descriptions of drainage boards.

Clause 5: Consequential provision

- 29 This clause contains power for the Secretary of State to make consequential amendments as he considers appropriate. These regulations may amend, repeal or revoke any enactment.

Clause 6: Extent

- 30 Clause 6 provides that the Bill extends to England and Wales, subject to the provision in subsections (2) and (3).

Clause 7: Commencement

- 31 Clause 7 provides for the extent and commencement provisions of this Bill and its short title, to come into force on the day on which the Bill is passed.
- 32 Clause 1 and Schedules 1 and 2 come into force two months after Royal Assent.
- 33 Under subsection (2), the remaining provisions of this Bill will come into force on such day or days as may be appointed by regulations made by the Secretary of State or Welsh Ministers.

Clause 8: Short Title

- 34 Clause 8 provides that the short title of this Bill is the Rivers Authorities and Land Drainage Bill.

Schedule 1: Rivers Authorities: Further amendments to the Flood and Water Management Act 2010

- 35 Schedule 1 makes further amendments to the Flood and Water Management Act 2010 (FWMA).
- 36 Paragraph 2 amends section 27 of the FWMA so that the duty to make a contribution towards the achievement of sustainable development when exercising a flood risk management

function also applies to a Rivers Authority.

- 37 Paragraph 3 amends section 39 of the FWMA to also apply it to a Rivers Authority. Section 39 allows local authorities and IDBs to carry out works which will or may cause incidental flooding (subject to certain conditions).
- 38 Paragraph 4 of Schedule 1 inserts Schedule A1 into the FWMA. New Schedule A1 to the FWMA sets out the procedure for the Secretary of State to establish a new Rivers Authority by regulations on receipt of a scheme from a relevant RMA. Schedule A1 also provides that there must be a local consultation on the draft scheme and a production of a cost benefit analysis before the scheme can be submitted to the Secretary of State.

Schedule 2: Rivers Authorities: Amendments to other Acts

- 39 Schedule 2 makes consequential amendments to local government legislation. In particular, the Schedule adds Rivers Authorities to the category of major precepting authorities in section 39(1) of the Local Government Finance Act 1992. This allows the Rivers Authority to issue a precept for the exercise of its functions to the billing authorities in its area. The precept will be charged by the Rivers Authority across the whole of its area in the same way that other major precepting authorities do. Rivers Authorities will also be subject to the council tax referendum regime set out in Chapter 4ZA of the Local Government Finance Act 1992.

Commencement

- 40 The extent and commencement provisions of this Bill, its short title and the power to make secondary legislation to make consequential provision in clauses 5 to 8 will all come into force on Royal Assent. The provisions in relation to Rivers Authorities come into force two months after Royal Assent. The remaining provisions of the Bill about ratings will be brought into force by means of regulations made by the Secretary of State or the Welsh Ministers.

Financial implications of the Bill

- 41 The Bill is not expected to require additional expenditure by central government, because the intention is that a Rivers Authority created under the powers conferred by the Bill will be funded, or largely funded, out of a precept added to council tax.
- 42 The alternative methodology for the calculation of the value of other land in an internal drainage district is not expected to result in any need for additional funding of internal drainage boards through revenue support grant from central government.

Parliamentary approval for financial costs or for charges imposed

- 43 The Bill will not require a money resolution or a ways and means resolution.

Compatibility with the European Convention on Human Rights

- 44 Clause 1 and paragraphs 8 and 9 of Schedule 2 may be considered to engage Article 1 (protection of property) of Protocol 1 to the Convention, since the clause enables a

Rivers Authority to issue a precept which will result in the levying of a tax, thereby engaging Article 1. However, Article 1 recognises the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. The provisions contained in clause 1 and paragraphs 8 and 9 of Schedule 2 will not change the way in which council tax is raised. They are considered compatible with the Convention as any interference through the levying of taxes will have a legitimate aim of funding additional flood risk management work, which is in the public interest and is proportionate.

- 45 Clauses 2 and 4 may also be considered to engage Article 1 of Protocol 1 to the Convention, since the provisions (through regulations to be made under them) will either enable, or affect the ability of, certain IDBs to raise special levies and drainage rates. The amendments made by the clauses to the LDA will not change the principle that drainage rates and special levies are payable to an IDB, but they will change the way in which drainage rates and special levies are calculated. The interference is in the public interest in order to enable internal drainage districts to derive benefit or avoid danger (especially flood risk) as a result of drainage operations. The provisions are compatible with the Convention as any interference through the levying of taxes will have the legitimate aim of funding an IDB's flood risk management work, which is in the public interest and is proportionate.
- 46 Clause 3 may engage rights under Article 8(1) (right to respect for private and family life) of the Convention, as personal information may be disclosed by virtue of the provisions. The disclosure of such information will be compatible with Article 8, since it will be in accordance with the law (including the Data Protection Act 1998), and is necessary for the aims contemplated by the clause. In addition to the safeguards provided by the Data Protection Act 1998, the clause itself contains restrictions on the onward disclosure of information: disclosure may only be made to a 'qualifying person' for a 'qualifying purpose', with such persons and purposes being specified in regulations. Additionally, it will be an offence to disclose any personal information where the disclosure contravenes the power provided by the clause.

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	No
Clause 2	Yes	Yes	No	No	Yes (W)
Clause 3	Yes	Yes	No	No	Yes (W)
Clause 4	Yes	Yes	No	No	Yes (W)
Clause 5	Yes	Yes	No	No	Yes (W)
Clause 6	Yes	Yes	No	No	Yes (W)
Clause 7	Yes	Yes	No	No	Yes (W)
Clause 8	Yes	Yes	No	No	Yes (W)
Schedule 1	Yes	No	No	No	No
Schedule 2	Yes	No	No	No	No

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