



Representing Drainage
Water Level & Flood Risk
Management Authorities

TECHNICAL NOTE

28th May 2020

The Environment Bill Challenges and Opportunities

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Please note: The Environment Bill may still be subject to change and amendment as it passes through Parliament so the following note is based on its current draft position.

Introduction

The 25-year environment plan, published in January 2018 defined the 4 areas of environmental conservation that the UK Government deemed a priority; air quality, waste and resource efficiency, water and biodiversity. It was clear from these priorities areas that the delivery of this strategy was sure to impact the land drainage sector significantly. The finer detail on what will be required of IDBs as a Public Authority is only now being set out, through the developing Environment Bill. The Government's commitment to delivering the targets set against these 4 priority areas is strong and is set to become legally binding with the enactment of the Bill later in 2020.

Some aspects of the Environment Bill which have direct impact on IDB's are already quite well understood and reported such as the provision to allow an IDB district to be expanded or new districts to be created. Similarly, the changes to the way land is valued and therefore drainage rates and special levy are calculated are also recognized and will be welcomed. However there are some developing elements, some more subtle or indirect within the Environment Bill which are likely to have an impact on the day-to-day operations of an IDB and some which could provide opportunity for the sector. ADA has reviewed the Bill in full, in its current draft form, and presents below a brief summary of these elements.

Biodiversity Assessment and Reporting

Part 6 of the Environment Bill sets out the processes which will combine to help the Government meet their legally binding targets around biodiversity. Clause 93 strengthens the duty set out by section 40 of the NERC Act 2006 to cover the enhancement, as well as the conservation, of biodiversity, and requires public authorities to actively carry out strategic assessments of the actions they can take to enhance and conserve biodiversity. Clause 94 details the requirement for public authorities to produce a report on the actions taken to comply with the new duty and it should be expected that some of this data will need to be quantitative. The first report must be for a period of no longer than 3 years but subsequent reports can be for a period of up to 5 years. In practice, it is likely that the completion of the Biodiversity Action Plan template, as



revised and updated by the ADA biodiversity working group, will adequately demonstrate that an IDB has made this assessment and has identified the conservation and enhancement actions it plans to take. The biodiversity metrics which are also in development with the same ADA biodiversity working group and is hoped will be rolled out in 2021 are being designed with requirement for quantitative data in mind also. The initial biodiversity reports are expected to be produced within 1 year of the enforcement of the clause, rather than the Enactment of the Bill, and we don't yet have sight of either date. However, as the assessments and reports produced by IDB's are required to incorporate the priorities set out by the Local Nature Recovery Strategies, which are not yet up and running, the due date for these initial outputs may not be for some time, perhaps years yet. IDB's should use the interim period to fully engage with the Biodiversity Action Planning and metrics process so that they are ahead of the game and familiar with collecting, analyzing and reporting this type of data.

Nature Recovery Networks

The development of Local Nature Recovery Strategies (LNRS) as required within clause 95 of the Bill is reminiscent of the local Biodiversity Action Plans of past times. The LNRS, to be prepared mainly by Local Authorities will establish which habitats and species are deemed to be a priority for conservation in that area and where there are opportunities for biodiversity enhancement. An IDB as a Public Authority will be expected to align its own individual Biodiversity Action Plan with these priorities. It is not yet defined when these LNRS are expected to be published so it is likely that the initial BAP's developed by IDBs will not be able to take those priorities into account. However is expected that a LNRS areas will largely mirror those of Local Authorities and national parks etc. so having a broad understanding of their current or historic habitat and species priorities, where published, is likely to get IDB's close to the target.

Biodiversity Net Gain, Credits & Metrics

Clauses 90-92 appear to be an attempt to bring together the concepts of biodiversity offsetting, biodiversity net gain and biodiversity valuation and set some nationally consistent parameters to encourage and enable their practical application. Biodiversity net gain is to be made mandatory for new developments under clause 90 and these net gain sites are to be listed on a register and must be maintained for 30 years as set out under clause 91. This should help to address the lack of management of compensatory biodiversity areas and features over recent years following development which have frustrated many. It may even provide some opportunity for IDB's in offering long-term maintenance contracts for relevant net-gain sites which are linked to IDB interests and operations, perhaps even SUDS, but this needs to be explored further to identify opportunities and constraints.

Clause 92 sets out the plans for the development of a biodiversity credit purchase system. It suggests that developers will be able to pay a determined sum to fund biodiversity enhancement, most probably off-site if (it is assumed) it is deemed not be possible to achieve a net gain position within the development. The Bill sets out a restricted range of activities on which the Government can spend monies received in this regard, namely only for biodiversity net gain projects such as habitat enhancement or land purchase for conservation areas. This



may present another opportunity for public authorities in terms of a potential pot of money held centrally or locally which could be drawn from to fund activities which enhance biodiversity in the local area and perhaps within IDB assets.

To underpin this biodiversity credit and net gain system, a robust set of metrics are required in order to consistently apply a biodiversity value to a wide range of habitats. This beginnings of this valuation system is set out in schedule 7A. Firstly it is deemed that the biodiversity created by a development must have a value 10% greater (or more) than that of the on-site biodiversity prior to the development. Secondly, it makes provisions for the development of “the” Biodiversity Metric as a means of valuing habitats as a proxy of biodiversity. Whilst it is not explicitly stated in the Bill, this metric is likely to be the Biodiversity Metric 2.0, developed by DEFRA, which is already available for use and testing in its beta format and is due for formal release in December 2020. The metric is complex and is not intended to replace formal ecological expertise, but rather to be a tool used by them, consistently across the UK’s planning system. In broad terms, the metric calculates biodiversity units using the size of a parcel of habitat, i.e. its area or linear length, and its quality. Again, opportunities could present itself to IDB’s if the value of certain types of habitat managed by IDBs could be determined. Knowing and understanding the difference between the current and potential biodiversity value of any IDB-managed habitat can assist with identifying enhancement actions needed and could also create a funding-ready net-gain project available and attractive for support by developers or their biodiversity credits.

Conservation covenants

Part 7 of the Bill, clause 102, sets out how land owners will be able to enter into a voluntary but legally binding agreement, paid or otherwise, to assign a particular piece of land to be managed for conservation and the public good, by a responsible body. The default term for such covenants is indefinite, in order to secure the purpose and condition of the land through successive ownership but can be negotiated. Leasehold land is also eligible if more than 7 years of the term remain.

At this stage it is unclear whether an IDB could apply to act as a responsible body. The detail suggests that such a body must demonstrate that at least some of its main purpose or function relate to conservation and it could be reasonably determined that an IDB fulfils this criteria. Could there be opportunities here for IDBs to secure land for the long term without purchase to be set aside for multifunctional wetland habitat creation and temporary flood water storage? The concept certainly appears on face value to fit the criteria in terms of furthering conservation and for public benefit. We await the finer detail but perhaps in anticipation, some thought could be given to the usefulness of the provision to IDB’s.

Office for Environmental Protection (OEP) to manage environmental governance

A new public body, the Office for Environmental Protection (OEP) is to be established to strengthen environmental accountability and to monitor the progress towards the Governments environmental improvement targets such as those set out in the 25 year Environment Plan. IDB’s as public authorities will be expected to co-operate with the OEP and provide the environmental data it requests and as set out in the Environment Bill. The body will have scrutiny and advice functions as well as complaints and enforcement mechanisms relating to



the failure of public bodies to comply with Environmental law. The scope and extent of these mechanisms are set out in detail in the Environment Bill part 1 chapter 2.

Abstraction

There are changes due to be made to abstraction licensing through the Enactment of the Bill. The 2 main changes detailed in clause 80 involve the ability for the EA, from 2028, to remove the consistently unused headroom from a license i.e. revising the license to reflect what has historically been used in actuality, and the ability to revoke a license if it is deemed that the revision is necessary to protect the environment. Importantly, no liability for compensation will be made in future for either revision or revocation. This in practical terms will mean that food producers and manufacturers will have to adapt to become more resilient to changes in water provision. Anticipated responses to these changes are wide-ranging. Some landowners may look to secure a more reliable water source to help sustain their irrigation needs for example, through the creation of on-farm water storage or adapt their business to be less reliant on water. IDB's should be considering whether they have any contributions they could potentially make to land-owners and businesses to adapt to these changes in the future through their infrastructure, networks and expertise and consider the impacts of permanently reduced abstraction needs in environmentally vulnerable areas.

Collaborative water resource planning

Part 5, clause 75 of the bill requires that statutory water resource management planning should no longer be undertaken individually by, for example, water companies, but that it should be undertaken collaboratively with all stakeholders reliant on the provision of water. We have already seen good progress in this regard with the establishment of regional water resource partnerships such as WRE. The plans produced so far by WRE have IDB's very much at their heart and many of the proposed solutions rely on the support of IDB's, their assets and capabilities. IDB's should actively engage with their local water resource planning partnership in order to put forward their case and contributions to the development of this catchment approach to water resource management.

Conclusion

The above may be useful in helping IDB's get ahead of the game with the challenges and opportunities presented by the Environment Bill. It is not expected that major changes will be made to the Bill in its current form, as it has to date passed through its second reading in the commons unopposed. However with the current pandemic in mind, there are many uncertainties at this time.