

Sustainability Committee

SC(3)-03-10 (p6, Paper to Note): 21 January 2010

Short Inquiry into the Flood and Water Management Bill

Evidence from The Association of Drainage Authorities

1. Introduction.

The comments in this Section have been arranged under a number of broad categories which are designed to facilitate comparison between comments here on the current Bill and those in the attached Annex made in relation to the April 2009 Bill. In effect this submission is a commentary on the current Bill with cross reference where relevant to comments made on the first Bill.

This submission has many issues and points in common with the submission of the Association of Drainage Authorities (ADA) to the Parliamentary FWRM Committee. A copy of that submission is attached as an Annex for easy reference.

2. A new risk based approach to flood and coastal erosion management.

The current Bill confirms the commitment to the broader, holistic and more flexible approach to FCERM and defines the components of the new approach and in particular the terminology; functions, roles and responsibilities and the national and local strategic context in both England and Wales.

This reflects the change from a defence-based to a risk-based approach set out in the consultation on the original Bill and as indicated previously the Board supports this approach and is keen to play a full and active part. However, some points raised previously are not addressed in the new Bill, these are:

- The need for a commitment to the construction and maintenance of existing hard defences is a full and integral part of the proposed broader approach.
- There is little reference in the current Bill to the need for community understanding and involvement in FCERM. In our comments on the original Bill we advocated each relevant authority playing a part in this. As we pointed out IDBs have a proven track record for their close working relationship with the local community and that they are ideally placed to continue to undertake this role in future within the IDD. We also suggested that one of the key roles for the Lead Local Flood Authority would be to coordinate this component of an inclusive FCERM approach.

On a more detailed point we fully support the comments made in the ADA submission to the Parliamentary FWRM Committee in relation to the definition of 'Flood'.

3. Clarification of roles of operating authorities, the local authority lead role, oversight role of the environment agency (Wales) and sharing information.

3.1. The Role of IDBs as a Risk Management Authority.

The new Bill sets out the arrangements for the preparation of both national and local (coastal erosion and) flood risk management strategies and the roles and functions of operating authorities, Risk Management Authorities, in their development, maintenance, application and monitoring in both England and Wales. These sections of the Bill address a large number of the points raised previously in particular:

- Definition of the Risk Management Authorities and their functions
- The programmed, cost benefit and budgeting approach of both national and local strategies.
- The requirement of the EA to consult Risk Management Authorities, including IDBs, in connection with the development, maintenance and application of the National Flood and Coastal Erosion Risk Management Strategy (NFCERMS) in England - See comments below re Wales.
- The requirement of the Lead Local Flood Authority to consult Risk Management Authorities, including IDBs, in connection the development, maintenance, application and monitoring of the Local Flood Risk Management Strategy (LFRMS) for its area in both England and Wales.

The Board was particularly concerned that the expertise and experience of IDBs should be available and used in the strategy development and implementation process and the proposals set out in the new Bill address most of the points raised. However we have some remaining concern that the exact powers, duties, role and function of IDBs, both within their IDDs and more widely, remain to be decided as part of the strategy development process.

A further concern in this context relates to the need for IDBs to retain and exercise the full range of their existing powers and duties in their Internal Drainage Districts (IDDs). Elements of this could be extended beyond the IDD to the wider catchment in cooperation with

other Risk Management Authorities. Any such arrangements should be on an equal partnership basis in order to ensure that the IDB can operate and manage effectively. There may also be scope for Lead local Flood Authorities to extend the area of existing IDD's and/or create new IDBs. Our comments below on 'Powers to form Consortia' are relevant here as is the attached Annex on IDBs.

These ideas are particularly relevant to 'the programmed, cost benefit and budgeting approach' to the Strategies in that IDBs already have the expertise, experience and capacity to deliver the full range of FCERM in their IDD's, and potentially beyond.

If on the other hand the extent or power of any of the IDB's existing supervisory, regulatory or consenting roles was reduced they would cease to be able to operate in anything other than an operational contracting role. There are also concerns that a loss of IDB control could result in a reduction in services and an increase in costs for the FCERM function in IDB IDD's

We urge that our comments here and those made in relation to the first Bill fully considered during the Parliamentary process and at the time of the development of the Local Strategies.

3.2. The EA Oversight Role.

The Board supports many of the proposals in the new Bill for the EA in England in relation to National Flood and Coastal Risk Management Strategies. Indeed they address many of the points raised in our original submission. However, we share the concerns set out in the ADA submission that throughout the new Bill the EA have are given significant duties and powers to in relation to the development of the National Strategies and for consenting without any appeals procedure. The position is of course different in Wales where much of this is the responsibility of Welsh Ministers.

In their submission ADA comment on the fact that the EA role in the new Bill is focused on policy and process which does not address the need for work on the ground. We support ADA's view that a balance is needed to ensure that there appropriate outcomes that benefit people, property, conservation/biodiversity, agriculture and landscape. We strongly support ADA's point that 'Without routine maintenance watercourses are incapable of carrying the capacity and flows that they are designed and expected to take in times of need'. This is even more relevant in these times of significant Climate Change

We are pleased to see that the complications of the previous consultation relating to the different approach to and stages of the legislation in England and Wales have been addressed in the new Bill. However, we remain concerned that differences in the role of the EA in Wales and England leave the potential for complications and confusion for the EA's role. This is of particular concern for this Board as we have interests and responsibilities in both countries.

In the context of the above we note an apparent inconsistency in consultation requirements in relation to the National Flood and Coastal Erosion Risk Management Strategy (NFCERMS) in England and Wales, specifically the lack of any requirement for Welsh Ministers to consult on the NFCERMS in Wales.

We also note the absence of an obligation to 'Monitor' the NFCERMS in Wales.

3.3. Lead Local Flood Authority Role

The Board made strong representations in the original consultation that the lead local authority role should be one of 'integrating' and 'coordinating' the activities, functions and responsibilities of the operating authorities. There should be a presumption to building on the strengths of the existing partners and processes rather than giving the local authorities the overall executive lead responsibility. Where an existing operating authority has the role and or responsibility, together with the necessary expertise and experience it would be totally unnecessary and wasteful of resources to transfer this to another body, i.e. the lead local authority.

Whilst this has not been set out in the new Bill, we note the requirement to consult and involve other Risk Management Authorities. This together with the provisions in Section 13 'Co-operation and arrangements' means that there is the potential for IDBs to operate in this way in their IDD's and beyond. We urge that this option is given full consideration in the future arrangements.

We have continuing serious concerns on several points raised in our response to the original consultation in relation to the proposed Local authority Lead Role. In particular:

- Redirected funds to local authorities for FCERM works would immediately be in competition with other local authority demands and priorities - ie the monies would not be 'Ring Fenced' as currently.
- There are insufficient funds and resources, particularly staff with the necessary expertise, experience and local knowledge, in local authorities for them to be able to take on significant additional FCERM responsibilities.
- If these activities are already in hand or are more appropriately done by a body such as an IDB there is little point in a lead local authority 'developing centres of engineering and flood risk experience alongside their existing highway functions and providing support to partners' when this expertise already exists with those parties. In addition such an approach would involve unnecessary and unwarranted expense.

In our original submission we advocated that the lead role should be undertaken in close working partnership with the other relevant operating authorities e.g. through a 'Local Partnership Approach'. We are pleased to note that the spirit of this approach has been incorporated into the Sections on National and Local Strategies and their Effects. However we would reiterate the point that the new approach should build on the strengths that already exist, as in IDB IDD's.

3.4. Widening the Arrangements Undertaking Coastal Erosion Risk Management Functions.

The Board is pleased that our representations for IDBs to be included alongside Local Authorities in working alongside the EA in undertaking coastal erosion works appears to have been accommodated in Section 13, (6), (7), (8) and (9) of the new Bill. We welcome the potential opportunity to be involved in coastal erosion risk management works, particularly in relation to our IDD.

3.5. Catchment and Local Authority Based Boundaries

In our responses to the consultation exercise we drew attention to the fact that an integrated approach to FCERM would need to address the fact that some Risk Management Authorities have hydraulic catchment based boundaries (i.e. the EA and IDBs) and others, most notably local authorities have politically based boundaries. This does not appear to have been incorporated into the provisions in the new Bill. The Board supports the ADA submission on this issue i.e. that the whole of the National and Local Strategy approach should be based on catchment boundaries. The main reason being that we are dealing with systems and processes that are intrinsically related to catchments, a fact reflected in the Water Framework Directive and the associated River Basin Management Plans. At the very least we feel that the Bill should give an indication of the protocol or approach that relevant authorities should take on this issue.

4. Funding issues

We fully support the points made in Section 10 of the ADA submission and in particular:

- The proposals in Section 23 subsections (2) and (3) of the new Bill relating to executive powers for the RFCCs to set levies and to decide where levy funding and IDB precept funding to the Environment Agency should be spent.
- The need for long-term certainty of finance for proper water level and flood risk management.
- The need for mechanisms to ensure accountability and the appropriate degree of financial security for IDBs.
- The current IDB Funding System (being locally raised Agricultural Drainage Rates and Special levies on the relevant Local Authorities - works well and ensures that monies are spent efficiently, is transparent and accountable. It additionally has a proven 'track record' in this respect based upon many years of successful operation.

5. Consenting and enforcement

The Board expressed strong concerns in relation to the first Bill about the potential loss of IDBs' existing responsibility and/or consenting and consenting powers. It would appear that these issues are now to be part of the development and implementation of the National and Local Strategies. We would urge all of the authorities involved to put in place provisions which incorporate IDBs' present consenting and enforcement responsibilities. We would be extremely concerned about the implications for both the effective and efficient operation of IDBs and the significant erosion of status and standing.

We have also made comments relating to Consenting and Enforcement in the Sections on Sustainable Drainage (Schedule) and Designation of Features (Schedule 1).

6. Regional flood defence Committee : regional flood and coastal Committees (RFCC).

The Board made comments in relation to Regional Flood Defence Committees and in particular to Flood Risk Management Wales in the first consultation exercise, urging the retention of the executive powers and the extension of the remit to include coastal erosion.

The Board is extremely disappointed that the new Bill contains proposals to alter the status of RFCCs from an executive to an advisory role. This move would reduce one of their key functions, i.e. local democratic input into the decision making process. The proposal would also reduce the status and standing of a body that has a key potential role in the new FCERM and FCRM process. We have commented elsewhere on the need to have a balance to the enhanced regulatory role of the EA.

The proposed extension of the remit to include coastal erosion is welcome.

7. Sustainability

7.1. Sustainable Development

- The Board welcomes the proposals set out in Section 27 of the new Bill in relation to Sustainable Development. As we indicated in our submission on the first Bill the IDBs' approach to water and flood risk management is inherently sustainable and based on use of natural processes and a holistic approach to all of the potential causes in areas beyond the IDD when working in partnership with others, including local authorities and developers.

7.2. Sustainable Drainage

We strongly support the use of SUDS and we believe that the IDB's have a very valuable contribution to make particularly in relation to the future maintenance and adoption of SUDS as IDB's have both a large specialist knowledge and resources that can be called upon in this respects.

In addition to the IDBs mentioned as having an involvement in SUDS in England this Board is proud of its work on SUDS in South Wales particularly in recent and ongoing residential, commercial and industrial development in Cardiff, Newport, Caldicot and Chepstow.

Notwithstanding the above we do share the concerns set out in the ADA submission about the "drainage system" definition in the new Bill. Many watercourses in lowland areas of England and Wales are channels created by man. Like ADA we do not believe it is the intention of the new Bill to include such extensive hydrological systems as IDB IDD and would urge that a better and more useful definition is used.

We also support the ADA proposal for an addition to the 'Consulting' section of the Schedule, along the lines of:

'11 (e) Internal Drainage Boards, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into an Internal Drainage District'.

8. Third party asset : risk management designation of features

In our submission on the first Bill we supported proposals to give powers to the EA, local authorities and IDBs to formally designate assets owned by third parties that are integral to FCERM. We also support the proposals for a duty on those responsible for third party assets to maintain these in good condition.

As we indicated we have past experience of a number of cases of this type, but have found existing processes extremely long-winded, protracted and expensive.

We feel that the proposals set out in Schedule 1 of the new Bill constitute a comprehensive approach to this issue and we broadly welcome them and look forward to working with other relevant authorities on their implementation.

9. Other issues relating to idbs

All of the points raised here relate to Schedule 2 of the new Bill, Amendment of Other Acts.

9.1. Coastal Protection Act 1949

We note that paragraphs 1 to 4 grant the same powers to the EA which are currently held (and will continue to be held) by the Coastal Protection Authorities

We also note that the new provisions widen the scope of works that can be done to include anything done for the purpose of maintaining or restoring natural processes.

9.2. Land Drainage Act 1991

9.2.1. IDBs Operating as Consortia

In our submission on the first Bill we indicated the need for clear legislation about these powers and clear direction from Defra and WAG about funding and extent of current and future activities. We believed that such a provision should give IDBs equivalent powers to the other key Operating Authorities. We felt that there is an urgent need for these changes to clarify the present confused situation, particularly in Wales. We also advocated retaining the special levy link with local authorities and that the decision to use or implement these powers should lie with the individual IDBs. We also felt that there are unlikely to be any negative impacts and being part of a Limited Company would limit liability of rate payers.

We support the points made in the ADA submission on this issue and feel that Paragraph 28 of the Schedule form a helpful and positive framework for taking this matter forward

9.2.2. Prohibitions on Obstructions in Watercourses

We fully support the comments on the ADA submission on this issue. There are implications here for IDBs existing general supervisory role as defined by Section 1 (2) a of the Land Drainage Act 1991. Whilst the inclusion of this amendment in the act is appropriate for larger scale works without setting a minimum scale of works below which this requirement will not apply there will be an additional and unnecessary administrative obligation for IDBs and the EA on minor everyday works.