



Representing Drainage  
Water Level & Flood Risk  
Management Authorities

**TECHNICAL NOTE**

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**The Environment Act 2021  
Impacts and Opportunities for IDBs**

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## 1. 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. The main focus of the Environment Act 2021 (the Act) is to make the Government's commitment to delivering the targets set against these 4 priority legally binding.

Some aspects of the Act have a direct impact on internal drainage boards (IDBs) and are the result of many years of lobbying by ADA and other industry stakeholders. Other elements of the Act have more subtle and indirect impacts and some offer strategic opportunities for the water level management sector.

Much of the content of the Act now requires secondary legislation or regulation to be developed and consulted upon to fill in the details, as well as setting a date from when the provisions will come into force. ADA will be keeping a watchful eye on developments to ensure that members' interests are understood and represented where necessary, through consultation responses or otherwise.

Below is a summary of all the elements of the Act which are expected to impact IDBs in some way in the forthcoming months and years, in order of significance and immediacy of impact.

## 2. Office for Environmental Protection (OEP)

A new public body, the Office for Environmental Protection (OEP) (<https://www.theoep.org.uk>) was legally formed with the passing of the Environment Act 2021, although it was already functioning in an interim form. Its purpose is to strengthen environmental accountability by holding government and public authorities to account, and to monitor the Government's progress towards their environmental improvement targets, such as those set out in the 25 Year Environment Plan.

The body, now being referred to as the "Environmental Watchdog", will have scrutiny and advice functions, as well as complaints, investigation, and enforcement mechanisms relating to the failure of public bodies to comply with environmental law. In this context "public authority" means a person carrying out any function of a public nature, and so does include IDBs.

The scope and extent of these mechanisms are set out in detail in Part 1 of the Act, Chapter 2, Sections 33-34 and include how information relating to the complaint made against a public body will be requested and handled and how investigations and proceedings will be notified.

The failure of a Public Body to comply with environmental law is defined by the Act as:

- (a) unlawfully failing to take proper account of environmental law when exercising its functions;
- (b) unlawfully exercising, or failing to exercise, any function it has under environmental law.



The complaints function of the OEP went live in January 2020 under the management of the Interim Environmental Governance Secretariat (IEGS) based within Defra. Members of the public are able to submit complaints concerning alleged failures by public authorities to comply with legal requirements in areas such as: the protection of air or water quality, nature conservation, or the management of waste. Complaints may be made via the OEP's website (<https://www.theoep.org.uk/>) or by email, post or phone using the template provided online.

The OEP is required to regularly report on the number of complaints they have received and how they are being progressed and examples of these reports are available, along with other useful related resources and information, on their website: <https://www.theoep.org.uk/reports-publications>

Other functions of the OEP are expected to go live in 2022 once their strategy, detailing how they will carry out their functions, has been developed then issued for consultation and ratified. This will include further detail around their enforcement policies such as the definition of seriousness in terms of incidents and how complaints will be prioritised. While we await this detail, some policy elements are beginning to take shape and are being used to manage current complaints such as the categorisation of complaints into relevant areas of environmental law:

- Nature conservation
- Pollution control
- Environmental monitoring and assessment
- Waste and resources
- Climate change
- Environmental governance
- Not environmental law

**IDBs will be expected to** cooperate with the OEP and provide the environmental data it requests and as set out in the Act.

ADA will continue to monitor the progress of the developing OEP and will update members when necessary.

### **3. Land valuation for the purposes of calculating land drainage charges**

Part 5, Sections 94 to 96 of the Act has provided for regulations to be written to change and update the way that land is valued for the purpose of calculating drainage charges applied to those who benefit from the functions of IDBs.

Current valuation calculations for IDBs are set out in primary legislation from 1991. This means that all IDBs must follow the same methodology and sources of data to rate land in order to apportion their costs. The Act amends the Land Drainage Act 1991 and The Environment (Wales) Act 2016 enabling certain valuation calculations to be stipulated (and updated) in secondary legislation, future-proofing the calculations as land drainage needs change.

The way drainage rates and special levies are currently calculated to apportion the costs of each IDB are based upon historic land valuation lists. For non-agricultural property these ratings lists were created decades ago for the purposes of calculating business and residential rates by Local Authorities.



Now that Local Authorities use a different system to calculate council taxes etc., often those rating lists no longer exist other than those that have been kept by IDBs to apportion their costs. Therefore, there has been no means to calculate the value of other areas of land being considered for inclusion within a new or expanded drainage district, and consequently the drainage charges that would be applied to them.

The provisions in the Act will, once the regulations have been made, **enable IDBs to rate land using more contemporary data and using a more up to date methodology. This will allow for the creation of new IDBs or enable existing IDBs to extend their boundaries**, to include other land where the water level management functions of an IDB are locally deemed to be required.

This measure may affect how some IDBs apportion their costs, but it does not determine the amount each IDB needs to raise. New and expanding IDBs must use the updated valuation calculations, but the remainder of IDBs can choose to adopt the new valuation calculation if they wish to. This is an enabling measure, and in the immediate term the government does not plan to require all IDBs to adopt the changes. However, once available ADA would encourage all IDBs to consider switching to the new methodology in order to enable rating calculations to be made using more contemporary data.

#### 4. Biodiversity Assessment and Reporting

Section 102 of the Act strengthens the duty of public authorities, set out by Section 40 of the Natural Environment & Rural Communities (NERC) Act 2006, to require enhancement as well as conservation, of biodiversity through their functions. This section requires public authorities to actively carry out Strategic Assessments of the actions they can take to enhance and conserve biodiversity, and then take that action. The first Strategic Assessment must be carried out within 1 year of enactment and subsequent assessments no more than every 5 years apart. **This applies to IDBs.**

As they carry out the Strategic Assessment public authorities must have regard (which means proactively find out what they are and integrate their priorities and concepts) to relevant Local Nature Recovery Strategies (LNRS), Species Conservation Strategies and Protected Site Strategies.

Section 103 sets out the requirement for biodiversity reporting. Public authorities with the greatest potential to enhance biodiversity will be designated by regulations, and as such will have a biodiversity reporting duty in line with this section. **IDBs are not currently** an authority which are subject to these reporting requirements, but this could change. Biodiversity reports must include details of the actions taken to comply with the new duty during the reporting period and provide plans of action for the next 5 year reporting period. The regulations will also set out what quantitative data must be included in the reports.

The first biodiversity report must cover a period of no more than 3 years from the day the authority becomes subject to the duty. Subsequent reports must be generated consecutively for periods of no more than 5 years

In practice, it is likely that each **IDB's Biodiversity Action Plan**, alongside its Best Practice Operations Manual, will adequately demonstrate that an IDB has made a Strategic Assessment and has identified the conservation and enhancement actions it plans to take and has taken. **IDBs will need to** keep abreast of any changed or new local strategies or priorities and build them in as they come online to remain compliant. Completing the National Annual Biometrics Survey for IDBs, launched by ADA in 2021, will also help IDBs to gather further quantitative data that will assist them with action reporting if it is requested.

## 5. Local Nature Recovery Strategies

The development of Local Nature Recovery Strategies (LNRS) is required by Section 104 of the Act. The LNRS are expected to be led mainly by Local Authorities but developed and delivered in partnership with a wide range of local stakeholders. Regulations relating to the preparation and management of LNRS are in development and development processes have been trialed by a number of LNRS pilot areas. ADA responded to a consultation relating to proposed LNRS regulations in October 2021 to ensure that the importance of IDB contribution to the development of LNRS in lowland areas is clearly set out.

All LNRS will have the same key elements, which include: definition of the current biodiversity, biodiversity enhancement priorities, opportunities for enhancement or recovery of biodiversity, and details of the proposed actions which will be needed to realise the enhancements. They will identify and map valuable habitats and where there are opportunities for biodiversity restoration and enhancement including habitat creation on a landscape-scale and supporting wider national objectives such as mitigating or adapting to climate change in an area.

LNRS are expected to take a wider natural capital benefits approach to managing the environment. Critically, as well as considering improvements to core wildlife sites, each LNRS will also prioritise improving the 'permeability' of the surrounding landscape for the movement of wildlife, and the creation of corridors or stepping stones of connecting habitat (e.g. drainage ditches and hedgerows).

**IDBs will have to have regard for** the relevant LNRS when considering the actions they can take 'to further' the conservation and enhancement of biodiversity. Having regard for means planning and then taking auditable action. IDBs are already in a good position to shape and contribute to the LNRS where they have an up to date Biodiversity Action Plan (BAP) setting out their plans in this regard. In time each IDB may need to further align their IDB BAP, Environmental Policy and Best Practice Operations Manual with those priorities set out in the LNRS.

## 6. Species Conservation Strategies and Protected Sites Strategies

Section 109 allows for the development of Species Conservation Strategies, which may be prepared by Natural England with the purpose of improving the conservation status of any species of flora or fauna. Any strategy must relate to a particular area and is likely to set out the activities which may impact the species and therefore must be avoided or mitigated. It may also seek to progress habitat creation or enhancement in order to benefit the species.

**IDBs may be designated** by regulation, as a “prescribed authority” and therefore will be expected to co-operate with Natural England in the development and implementation of such strategies if they relate to areas under IDB management. If designated the **IDB will also have a duty to consider** (which includes planning and taking auditable action) the strategies whilst carrying out its functions, including when consenting the work of others.

Clause 106 allows for the development of Protected Site Strategies, which may be prepared by Natural England with the purpose of improving the conservation and management of a protected site (specifically European sites, SSSIs, or MCZs), and managing the impact of activity, such as off-site development, on those sites. This section differs from section 109 slightly in that the designation of a “prescribed authority” is not required. **IDBs will be expected to co-operate** with Natural England in the development and implementation of such strategies if they relate to areas under IDB management and must have regard for them whilst undertaking their functions.

## 7. Biodiversity Net Gain

The Town and Country Planning Act 1990 has been amended by Section 98 of the Act and its associated Schedule 17 to include the provision to make biodiversity net gain mandatory for new developments. These net gain sites are to be listed on a register and must be maintained for a minimum of 30 years. This aims to avoid more poorly designed and managed biodiversity areas and features which have been installed over recent years following development.

To underpin the net gain system, the Act requires that a biodiversity metric is used to calculate the biodiversity value of a site prior to development. A developer is then required to submit a Biodiversity Gain Plan setting out what actions will be taken to enhance the original biodiversity value of the site through development by a minimum of 10% and maintain and secure that enhancement for 30 years. The same biodiversity metric will be used to calculate the expected biodiversity value of the post developed site to demonstrate the 10% enhancement.

Whilst it is not explicitly stated in the Act, this metric is expected to be the Biodiversity Metric 3.0 (and later versions), developed by Defra, which is already available for use (<http://publications.naturalengland.org.uk/publication/6049804846366720>). 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.

Where it is not possible for the minimum 10% biodiversity enhancement to be achieved on-site within the development, the Act allows for two further options. Firstly, an off-site biodiversity gain can be considered, using the same biodiversity metric. Secondly, the Act sets out the plans for the development of a biodiversity credit purchase system controlled by the Secretary of State. Developers will be able to pay a determined sum to fund biodiversity enhancement elsewhere. There is 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 and the associated administration.

Regulations which will give teeth to the net gain and biodiversity credit provisions are in development and will be consulted upon in the coming months. The provisions are expected to become law in late 2023.

**Where IDBs are planning development** which will require planning permission, they will be subject to the new net gain rules from 2023, including the management of the site to deliver the required outcomes for at least 30 years following project completion. Ecological expertise will be required to manage the calculation of biodiversity values and the development of biodiversity gain plans. The Local Government Association's (LGA) Planning Advisory Service website provides some useful information relating to the development of biodiversity net gain, including webinars and templates but it should be kept in mind that the information is aimed at planning authorities so the associated duties will not apply to IDBs:

<https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain>

Where a third party development requiring planning permission includes an IDB drainage channel or other water level management infrastructure within the development boundary, the associated Biodiversity Gain Plan may well propose measures to increase the biodiversity value within or adjacent to that channel or infrastructure. Although it is not explicitly set out in the Act, **IDBs should prepare to assess** Biodiversity Gain Plans to ensure that the proposed measures are compatible with the IDB's delivery of flood and water level management, byelaws, and consents.

The IDB should consider how the proposed measures will impact flood risk as they mature over the minimum 30 year term. For example, newly-planted riparian trees may not pose much risk until they are mature when larger roots may be more likely to affect bank stability and branches and debris are more likely to fall or wash into the channel if not correctly managed. Channel widening or re-profiling and planting within the channel will all have maintenance requirements if the level of flood risk protection is to be maintained so the IDB must assess the maintenance plans to ensure they are appropriate.

Under current planning law, where net gain has been included as a development condition, the plans for the long term maintenance of habitats to secure the enhancement have been inadequate due to difficulty in engaging established and enduring contractors for the required maintenance term. Biodiversity net gain requirements could create a **strategic opportunity for**

**IDBs** offer reliable long-term maintenance contracts for registered net-gain sites linked to IDB channels and networks and perhaps even strategic SUDS within the district. The IDB would also benefit from having control of the maintenance required to maintain conveyance and capacity of such areas and therefore the impact on other IDB assets.

The need for offsite biodiversity net-gain sites to offset local development may present further **opportunity to IDBs**. Developing and publicising “shovel-ready” biodiversity net-gain projects which can be registered as net gain sites would be attractive for support by developers. Similarly, such shovel-ready projects could attract funding from biodiversity credits.

## 8. Abstraction

The Act has implemented two main changes to the Water Resources Act 1991 in relation to abstraction licensing, through Part 5, Section 88. The amendments confer power to the Environment Agency from 2028, to remove the consistently unused headroom from an abstraction license. This means the ability to revise a licence 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 for either revision or revocation from the date indicated.

Anticipated responses to these changes are wide-ranging. In practical terms, this will mean that food producers and manufacturers will have to adapt to become more resilient to changes in water provision. Some landowners may look to secure a more reliable access to water 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.

These legislative changes are part of a longer term package of reforms to water resource management in England. **IDBs may be able to assist** land managers and businesses to adapt to these changes in the future through their infrastructure, networks and expertise.

**IDBs should consider the impacts of permanently reduced abstraction** in environmentally vulnerable areas within and adjacent to IDB districts, and resulting shifts in local abstraction demand. For instance, this may result in requests to maintain higher water levels within some IDB drains for irrigation purposes if the production of irrigated crops is moved away from more sensitive areas which are at risk of abstraction restrictions.

## 9. Waste and resource efficiency

Part 3, Sections 50-56 of the Act and its associated Schedules 5-8 make provisions aimed at strengthening a producers' duty to improve resource efficiency and reduce waste associated with their products. This could include the reduction of waste associated with production, use or obsolescence of the product. The schedules indicate the detail which associated regulation can be expected to enforce in this regard.



This does not appear to directly impact IDBs, however such duties placed upon the **suppliers of products to IDBs** may result in increased production costs and prices.

Section 57 of the Act amends the Environmental Protection Act 1990 to require the preparation of waste to be collected and the collection of waste. In particular, it requires that waste must be sorted into and collected separately in waste “streams” which separate out recyclable materials i.e.:

- Glass
- Metal
- Plastic
- paper and card
- food waste

Regulations relating to these amendments are expected to be drafted and issued for consultation to waste authorities prior to ratification. However, **an IDB would be prudent** to pay some thought prior to regulations being ratified as to how these waste streams will be managed and stored separately for collection to comply with the new duty.

Section 58 and 60 and the associated schedules aim to tackle waste crime, pollution and fly tipping. There are provisions for the development of an electronic waste tagging system and for developing further regulation around the handling and management of hazardous waste. There are also provisions which will allow more non-compliant activities to be considered criminal offences and for penalties for such offences to be increased. All costs in terms of the disposal of waste and environmental permits are expected to be reviewed.

Some of these provisions **may affect the way IDBs** manage waste so ADA will be continuing to watch for opportunities to review and shape developing regulation on behalf of members.

## 10. Collaborative water resource planning

Regional Water Resource Management Plans aim to address the balance of water supply and demand. Part 5, Section 78 of the Act amends the Water Industry Act 1991 to provide for statutory water resource management planning to undertaken collaboratively with all stakeholders reliant on the provision of water, when directed by regulation. That regulation is yet to be developed however we have already examples of how this can work with the establishment of regional water resource partnerships such as Water Resources East (WRE). ADA would encourage **IDBs to 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.

## 11. Wildlife licensing

Section 111 of the Act details amendments to the Wildlife & Countryside Act 1981 which allow protected species licenses to be granted to enable the progression of a development in situations of overriding public interest. Terms of the licence also include that there must be no other satisfactory alternatives and that the “grant of the licence is not detrimental to the survival of any population of the species of animal or plant to which the licence relates”. Flood defence projects in some circumstances may be of the type that qualify as being of overriding public interest to progress, but it is more likely that other mitigations will be possible and the section will not need to be relied upon.

## 12. Habitat Regulations

The changes to the Habitats Regulations will not come into play until after a consultation process and after 1 February 2023. Provisions will allow biodiversity targets and objectives to be developed and would require IDBs as public authorities to carry out their functions whilst furthering these objectives and targets. Until such targets and objectives are known it will not be easy to understand what changes if any an IDB would have to make to maintain compliance. However, as the general target is to reduce biodiversity declines by 2030, we can expect some robust species and habitat-specific enhancement targets to be proposed. ADA will be responding to consultations on the matter where necessary.

## 13. Conservation covenants

Part 7 of the Act, 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 themselves or 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 the lease is for more than 7 years with time remaining. The default end of term for a leasehold conservation covenant would be the end of the lease.

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.

Conservation Covenants can be used to deliver biodiversity net gain requirements for development so where this includes IDB assets, there could be opportunities here for IDBs similarly to those set out above in respect of biodiversity net gain sites. IDBs may be able to apply to become a responsible body for a conservation covenant and be responsible for the management and maintenance of the habitat as part of the net gain requirements of a local development, and be paid for their services. IDBs are encouraged to give some thought of how the approach could be applicable and beneficial to them.