



# Representing Drainage Water Level & Flood Risk Management Authorities

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<b>Consultation:</b>	Your watercourse: rights and roles - Feedback questionnaire		
<b>By:</b>	Environment Agency	<b>Contact:</b>	Ian Moodie, Technical Manager
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## **Your watercourse: rights and roles Feedback questionnaire**

Response by ADA (Association of Drainage Authorities)

### **About ADA**

ADA is the membership organisation for drainage, water level and flood risk management authorities throughout the UK. ADA represents over 200 member organisations, including: internal drainage boards, regional flood & coastal committees, local authorities, and national agencies; as well our associate members who are contractors, consultants, and suppliers to the industry.

Our purpose is to champion and campaign for the sustainable delivery of water level management, offering guidance, advice and support to our members across the UK, and informing the public about our members' essential work.

### **Feedback Questionnaire Questions**

#### **1. Name**

Ian Moodie

#### **2. Organisation**

ADA (Association of Drainage Authorities)

#### **3. Is the guide clear - does it make sense and does it cover all relevant areas?**

Broadly yes, but some gaps remain especially around regulations, especially: byelaws, protected species and habitats, and waste management. More explanation around the purpose of watercourse maintenance in relation to flood risk management would be helpful.

#### **4. Is the guide the right length? If it's too long, what material would you cut or abridge?**



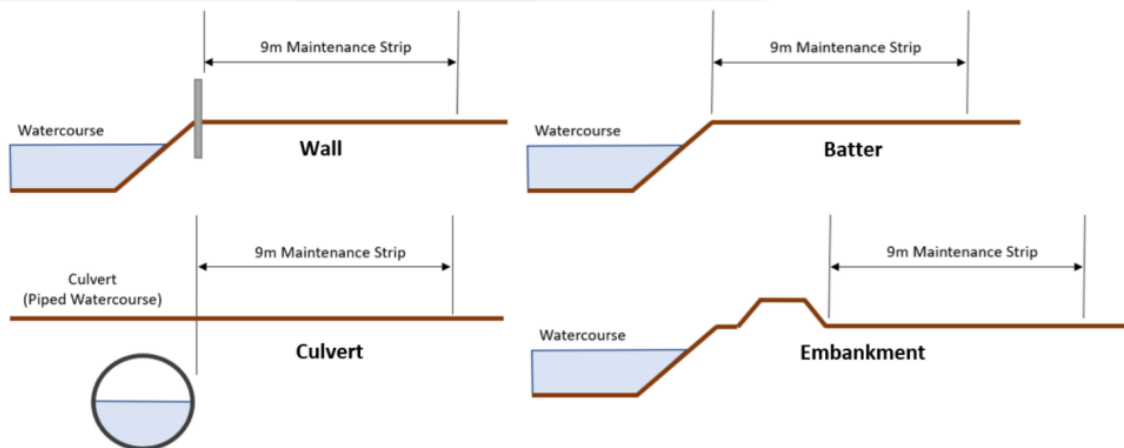
Overall, the guide is of a good length, but some of the clarifications that come later in the document should be flagged earlier and throughout the document more clearly, to avoid misleading readers about regulatory aspects. This could simply a reference to encourage the reader to read the relevant section that comes later.

## 5. Are the diagrams easy to interpret?

Yes, the guide is visually attractive and engaging. However, given that it is ADA's understanding that this should be a partnership document to be support by all risk management authorities, it is overly branded with the Environment Agency logo to the exclusion of other partners who have assisted. ADA would support more neutral branding or recognition of all risk management authorities more equally.

ADA would welcome a diagram clarifying watercourse byelaw restrictions on the erection of obstructions within 9 metres of a watercourse distances. Yorkshire & Humber Drainage Boards have developed a suitable diagram that could be adapted:

No person without the previous consent of the Board shall erect any building or structure (including a fence), whether temporary or permanent, or plant any tree, shrub, willow, or other similar growth within 9 metres of the landward toe of the bank where there is an embankment or wall or within 9 metres of the top of the batter where there is no embankment or wall, or where the watercourse is enclosed within 9 metres of the enclosing structure.



By section 66(6) of the Land Drainage Act 1991 every person who acts in contravention of or fails to comply with any of the land drainage Byelaws is liable on summary conviction in respect of each offence.

## 6. Is the language and tone supportive and helpful?

Broadly yes, but it is wholly written from an Environment Agency first standpoint. Use of 'we', 'our', or 'the Agency' without clarification is not helpful and works against the partnership



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approach that ADA and the Environment Agency have stated support for. This needs correcting throughout as it comes across as exclusionary to other RMAs and partners who have previously supported and helped to draft predecessors of this document.

## **7. Do you have any comments on the "What is this guide about and who's it for?" section?**

The document needs an overarching comment on purpose and function regarding flood risk management, covering the natural flow of a watercourse. The document has such statements around environmental purpose, but not from flood risk standpoint. This could be linked to the concept of river stewardship recognising that there are broader considerations.

## **8. Do you have any comments on the "What is a watercourse?" section?**

The definition also needs to also include dry channels, the exclusion is subjective and confusing compared with legal definitions within the Water Resources Act 1991 and Land Drainage Act 1991.

It is not necessarily the case that main rivers are those watercourses with the greatest flood risk. They may have significantly lower flood risk today than some ordinary watercourses owing to flood risk management undertakings.

Where it is stated that *'similar powers lie with the lead local flood authority, district council or internal drainage board'* it should also state water company as some watercourses remain in their management.

## **9. Do you have any comments on the "Do I own a watercourse?" section?**

Section should start with a simple statement that: *'You own any watercourse if it is within your land.'*

The comment next to the diagram that *'Each party is responsible for half the watercourse'* is often the de facto position, but this may be defined differently in deeds or other legal agreements between landowners in some circumstances. It may also be contradicted or complicated by other de facto positions where there is an adjacent boundary feature such as a hedge or highway.

## **10. Do you have any comments on the "What are my rights and responsibilities?" section?**

The final paragraph in this section regarding legal requirements is important and needs developing much further. It is currently too easy to look at the bullet points without reading this concluding paragraph.

This section should also point to where further support and advice is available regarding those legal requirements cited. People will be looking to this document for assistance, just ending it that they should *'make their own enquiries'* is unhelpful and frustrating to readers.



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## 11. Do you have any comments on the "You are responsible for" section?

The reference to the Environment Agency attending major incidents (final sentence in section) lacks context around what other RMAs would do. For instance, an IDB would attend to severe bank damage causing flooding on an IDB maintained watercourse.

## 12. Do you have any comments on the "How can I take care of my watercourse?" section?

Under '*Vegetation Management*' ADA does not support the sentence as written: '*As a minimum, marginal vegetation on one side of the channel should be left uncut.*' This is often desirable, but may not be feasible, especially within drainage channels closer to outfalls. Therefore, suggest replacing '*As a minimum*' with '*Where possible*'.

Under *Channel Maintenance* it reads as if such works often cause environmental harm, this need not be the case, and many instances of watercourse maintenance are undertaken as part of environmental enhancements. Therefore, ADA suggests that the final sentence simply says: '*Please ensure that your work is sustainable. Consider the environmental impact of your maintenance, and any potential impacts to those downstream.*'

We would welcome reference to suitable watercourse maintenance guidance in this section, such as *The Drainage Channel Biodiversity Manual (ADA/Natural England 2008)*. More useful watercourse management guidance can be found at: [www.ada.org.uk/environment](http://www.ada.org.uk/environment).

The '*You should...*' bullet points in the channel maintenance section needs to include reference to removing accumulated silt and vegetation that is obstructing flows.

This section lacks reference to the regulation of watercourse management works including consents, exemptions, byelaws, and the waste regulations that often apply. This needs to be covered as they are complex. Perhaps a link here could be made to the subsequent sections that cover some of these regulations?

## 13. Do you have any comments on the "Maintenance on farmland" section?

Reference to buffer strips and other such environmental enhancements should refer to agri-environment schemes and guidance that support these measures.

## 14. Do you have any comments on the "You should not" section?

This section should contain reference to consents, exemptions, permits and byelaws.

## 15. Do you have any comments on the "Understanding flood risk" section?

Agree with the wording here, but ADA is concerned that throughout the document the terminology 'flood protection' is used. This can be misleading, as it is accepted that flood risk can



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only be reduced and not eliminated. Flood protection gives the wrong impression in this regard and is a regressive return to such terminology.

## **16. Do you have any comments on the "Flood risk management assets" section?**

No comments raised.

## **17. Do you have any comments on the "What happens if an authority stops maintaining a flood defence on my land?" section?**

The first sentence in this section is misleading as it suggests that the Environment Agency conduct maintenance where the costs are the same or less than the benefits. The Environment Agency has stopped maintaining several watercourses where there are demonstrable benefits from such works that outweigh the costs. Unfortunately the Environment Agency lacks the necessary revenue funding to maintain all of its flood defence assets and main rivers to a good condition. Therefore, the first paragraph needs rewording to explain that the Environment Agency can choose to withdraw maintenance at its choosing. Perhaps this section should explain the difference between 'Powers and Duties' perhaps. There are also legal agreements in some places which require the Environment Agency to continue maintaining regardless of cost/benefit.

The reference to IDBs in paragraph 3 with only a link to [www.ada.org.uk](http://www.ada.org.uk) is misleading. Better to give link to a page explaining IDBs (either [https://www.ada.org.uk/member\\_type/idbs/](https://www.ada.org.uk/member_type/idbs/) or <https://www.ada.org.uk/idb-map/>).

## **18. Do you have any comments on the "How can I manage my watercourse sustainably?" section?**

In paragraph two suggest the word '*effective*' in place of '*greater*'. ADA agrees that more natural and sustainable management can afford effective flood risk management, but disagrees that it necessarily offers greater flood risk management in all settings and circumstances.

Paragraph 3 is the first proper reference to permitting within the document. It is confusing and probably underplayed up until this part of the document. Needs clearer reference to permitting earlier in document pointing readers to the permitting section.

The document incorrectly slips into using 'We' and 'Our' in this section, presumably referencing the Environment Agency. ADA's understanding is that this document should be written as a partnership with all risk management authorities, and therefore avoid using the first person unless it is referring to all RMAs collectively.

## **19. Do you have any comments on the "Do I need permission?" section?**

This section needs flagging in a lot of places throughout the document. This section is very Environment Agency centric, focusing on their consenting processes with limited reference to ordinary watercourses until much later. Perhaps this needs splitting into subsections (e.g. main river / ordinary watercourses) after an initial overview/introduction.



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This section also needs to cover waste regulations, including consents and exemptions.

## **20. Do you have any comments on the "What are the exemptions?" section?**

This section is unhelpful to riparian owners providing only a circular statement that an activity is exempt from needing a permit if it meets the description and conditions of one of the exempt flood risk activities. Such exemptions need to be described or clearly referenced.

## **21. Do you have any comments on the "What about works on other watercourses?" section?**

This section feels a bit lost and an afterthought within the document. It needs substantial revision and must be written in partnership with both a qualified IDB and LLFA practitioner. This is especially important, given that it is the section most relevant to the majority of watercourses in England, and therefore a majority of readers of this document.

This section refers to *'permitted'* and *'unpermitted'* work when it should be *'consented'* and *'unconsented'*.

The second paragraph is misleading and inaccurate. The examples given regarding where consent is necessary could be read as being the ONLY circumstances where works require consent, which would be inaccurate. Suggest rewording with emphasis on the impact to capacity and flow of a watercourse.

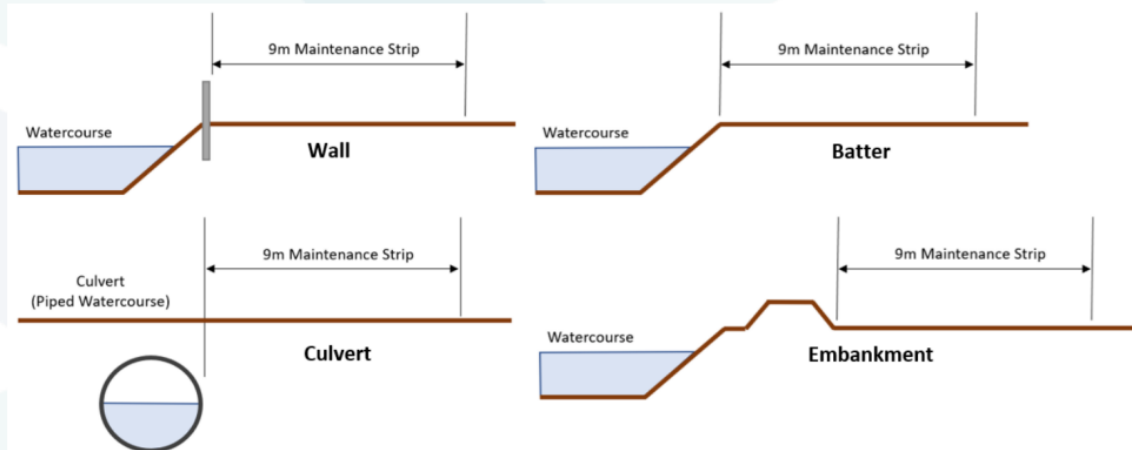
The reference to IDBs in paragraph 3 with only a link to the [www.ada.org.uk](http://www.ada.org.uk) homepage is misleading. ADA already receives a lot of calls from members of the public who have been directed by Environment Agency staff to us assuming we are an IDB or the responsible authority. Better to give link to a page explaining IDBs (either [https://www.ada.org.uk/member\\_type/idbs/](https://www.ada.org.uk/member_type/idbs/) or <https://www.ada.org.uk/idb-map/>).

The lack of reference to flood risk and land drainage byelaws is a major oversight. Land drainage byelaws can be found at: <https://www.gov.uk/guidance/flood-risk-and-land-drainage-byelaws>. Specifically, this section should mention the IDB byelaws related to no obstructions (including tree planting, hedges and fencing) within 9 metres of a watercourse (without prior IDB consent) and also restrictions on increases in flows.

ADA would welcome a diagram clarifying watercourse byelaw restrictions on the erection of obstructions within 9 metres of a watercourse distances. Yorkshire & Humber Drainage Boards have developed a suitable diagram that could be adapted:



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## 22. Do you have any comments on the "Who are the relevant authorities?" section?

It may be better to refer to the relevant authorities earlier in the document, since many have been referred to already throughout the document.

The information regarding internal drainage boards is insufficient. It fails to mention that IDBs have the same regulatory powers in relation to ordinary watercourses within their districts as LLFAs do outside of drainage districts. Should therefore mention consenting and byelaws.

## 23. Do you have any comments on the "Where can I get support?" section?

The comment on where to find sandbags is perhaps unhelpful as it is something the sector has encouraged a move away from for some time. Better to give reference to property flood advice from the likes of the National Flood Forum?

The Local Government Ombudsman is now called the Local Government and Social Care Ombudsman.

The government abolished Agricultural Land & Drainage Tribunals. The relevant tribunal is now called the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage.