

Response ID ANON-N89E-BSYT-6

Submitted to Environmental Outcomes Reports: A new approach to environmental assessment
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Respondent details

What is your name?

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What is your organisation?

Organisation:
ADA (Association of Drainage Authorities)

What type of organisation are you representing?

Interest group or voluntary organisation

If you answered "other" please provide further details:

About this consultation

Would you like anything in your response to be kept confidential?

No

If yes, please state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. If no, please state none in the box. :

None

An outcomes-based approach

1 Do you support the principles that will guide the development of outcomes?

Not Answered

2 Do you support the principles that indicators will have to meet?

No

3 Are there any other criteria we should consider?

Please specify:

Q.1. Do you support the principles that will guide the development of outcomes? [Yes / No].

ADA broadly agrees with the principles guiding the development of outcomes. Such principles need to follow through into the development of adequate support and guidance. Whilst it is obviously that environmental expertise will always be needed in the development of outcomes, ADA would stress the importance of ensuring the experience of sector groups in their development, and that this is properly representative of those that have to consider and undertake environmental assessments.

It is also an important principle to avoid duplication with other existing legislation or where this may be better dealt with through policy. ADA supports the statement within the consultation document that:

"We will seek to avoid replicating elements of assessment where change is more effectively achieved elsewhere within the framework, within which the assessment process sits."

Given the above statement ADA would strongly encourage Defra to review The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017) when translating this into the new Environmental Outcome Reporting framework, given the myriad of legislation related to protected species, habitats, and environmental sites etc., as evidenced by the ADA Environmental Good Governance Guide for Internal Drainage Boards (2022). There is certainly some regulatory overlap in this area.

Q.2. Do you support the principles that indicators will have to meet? [Yes / No].

No. Given the range of flood and water management works that are covered by The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017) it may be challenging to apply indicators in all cases.

Q.3. Are there any other criteria we should consider?

Some consideration of the size, scale and nature of the activity must be considered in the application and relevance of the indicators.

IDB officers highlighted a need to take a proportionate approach to routine and periodic management and maintenance activities that risk management authorities such as IDBs undertake to sustain watercourses and water levels within lowland protected sites should not be subject to Environmental Outcome Reports, where appropriate mitigations are undertaken. Such works might include coppicing/pollarding trees and removing overhanging/dangerous branches, bankside and in channel vegetation management, and de-silting within established practices for the channel, allowing for the deposition of arisings within 9 meters of the top bank of an existing ordinary watercourse. Given that S28G authorities may cease to undertake an activity that has been supporting the condition of a SSSI over several years. There is a concern that some IDBs may be forced to withdraw from routine water level management activities that are critical to sustaining and improving the condition of lowland protected sites where the regulatory requirements of EORs are overly complex, onerous, bureaucratic, time consuming, and costly. IDB officers have highlighted examples where delays in issuing decisions related to protected sites by Natural England have postponed or cancelled work at significant expense. This is particularly critical in relation to water level management works, where the window for undertaking the work may be very narrow owing to ground and water conditions and various restrictions relating to breed periods for birds and other species.

4 Would you welcome proportionate reporting against all outcomes as the default position?

No

5 Would proportionate reporting be effective in reducing bureaucratic process, or could this simply result in more documentation?

Please specify:

ADA would support a more proportionate approach being taken especially in regards to the scoping process.

However, ADA is concerned that this could simply result in greater documentation.

Given that S28G authorities may cease to undertake an activity that has been supporting the condition of a SSSI over several years. There is a concern that some smaller risk management authorities, such as internal drainage boards, may be forced to withdraw from routine water level management activities that are critical to sustaining and improving the condition of lowland protected sites where the regulatory requirements of EORs are overly complex, onerous, bureaucratic, time consuming, and costly. Even the advertising costs to report initial decisions on scoping are becoming prohibitive to smaller authorities.

6 Given the issues set out above, and our desire to consider issues where they are most effectively addressed, how can government ensure that EORs support our efforts to adapt to the effects of climate change across all regimes?

Please specify:

ADA considers that adapting to the effects of climate change in relation to The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017) is better address by other regulation and policy.

Currently there are barriers to the move towards a circular economy with regards to material removed from watercourses as part of flood and water management activities. This can be further frustrated in an overly bureaucratic approach to the consideration of waste related to will also play an essential role in our transition to net zero.

What an Environmental Outcomes Report will cover

7 Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives?

Please set out the reasons for your answer:

Yes there is, but ADA is concerned that this could be overly simplistic and fail to understand the nuance and complexity of the flood risk and water level management needs trying to be addressed when a risk management authority undertakes works under The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017).

8 How can the Government ensure that the consideration of alternatives is built into the early design stages of the development and design process?

Please set out the reasons for your answer:

When an Environmental Outcomes Report is required

9 Do you support the principle of strengthening the screening process to minimise ambiguity?

Please set out the reasons for your answer:

Yes, however if this does result in more routine flood and water level management activities requiring an Environmental Outcomes Report and these activities serve to underpin the wider conservation need of a protected site. This may create a disincentive to undertake such work. This could ultimately result in worse environmental outcomes.

10 Do you consider that proximity or impact pathway to a sensitive area or a protected species could be a better starting point for determining whether a plan or project might require an environmental assessment under Category 2 than simple size thresholds?

Yes

11 If yes, how could this work in practice? What sort of initial information would be required?

Please set out the reasons for your answer:

This may help in some cases, but could result in a much greater proportion of plans or projects being scoped in and actually increase ambiguity about when assessment is required.

Strengthening mitigation

12 How can we address issues of ineffective mitigation?

Please set out the reasons for your answer:

13 Is an adaptive approach a good way of dealing with uncertainty?

Not Answered

14 Could it work in practice? What would be the challenges in implementation?

Please set out the reasons for your answer:

ADA is concerned about how this could increase uncertainty and costs around plans and projects for flood and water level management undertaken under The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017).

Mainstreaming monitoring

15 Would you support a more formal and robust approach to monitoring?

No

16 How can the Government use monitoring to incentivise better assessment practice?

Please set out the reasons for your answer:

No. not at this time. ADA is concerned about how this could increase uncertainty and costs around plans and projects for flood and water level management undertaken under The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017).

17 How can the Government best ensure the ongoing costs of monitoring are met?

Please set out the reasons for your answer:

18 How should the Government address issues such as post-decision costs and liabilities?

Please set out the reasons for your answer:

Unlocking data

19 Do you support the principle of environmental data being made publicly available for future use?

Please set out the reasons for your answer:

Yes

20 What are the current barriers to sharing data more easily?

Please set out the reasons for your answer:

Internal drainage board officers reported a need for a better and more consistent system for sharing information related to the management of protected sites between all parties involved in their management. In one case an internal drainage board is undertaking a completely new survey of a freshwater protected site that is facing saline intrusion risks because existing data gathered by other statutory authorities had not been shared with it.

21 What data would you prioritise for the creation of standards to support environmental assessment?

Please set out the reasons for your answer:

Reporting against performance

22 Would you support reporting on the performance of a plan or project against the achievement of outcomes?

No

23 What are the opportunities and challenges in reporting on the achievement of outcomes?

Please set out the reasons for your answer:

Such reporting would create a further additional burden for smaller public authorities. If this is undertaken on an annual basis it must be incorporated into existing reporting pathways for smaller authorities, for instance the IDB1 return form completed by internal drainage boards and returned to Defra annually.

Transition

24 Once regulations are laid, what length of transition do you consider is appropriate for your regime?

iii) 2 years

Please state regime:

The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017)

Supporting the capacity and capability across regimes

25 What new skills or additional support would be required to support the implementation of Environmental Outcomes Reports?

Please provide an answer:

Any commencement should only begin once adequate guidance and training has been rolled out to all risk management authorities, especially smaller RMAs such as internal drainage boards.

There is currently a paucity of guidance and training support for risk management authorities related to the application of The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (and as amended 2017). Limited available guidance has been withdrawn by Defra, and insufficient guidance and training support exists within the sector. Whilst we do not consider that this is resulting in negative environmental outcomes, we do think that this results in the inconsistent application of the regulations by risk management authorities, and where the regulations are considered under the existing regime do not increase the quality of the environmental outcomes. The current regulatory regime is perceived as a burdensome, costly, and bureaucratic exercise, that depletes smaller risk management authorities limited resources to make a positive difference for the environment that they serve.

The consultation document states: Using data obtained on performance of the regimes (section 10), guidance will be regularly reviewed allowing us to amend our approach as we understand more about how plans and projects are affecting the delivery of outcomes. Guidance will facilitate innovation and best practice, recognising that innovation often originates at the local level, before being adopted nation-wide. To help us develop the guidance, we will set up a working group or groups to ensure we harness the experience of users, consultees, the development sectors, and subject matter experts. However, it is not ADA's experience that this is currently undertaken by Defra, and as such ADA has a very low confidence that adequate guidance through engagement with users, consultees and sector groups will be undertaken regularly under the new regime.

Such guidance should aim to be clear on routine flood and water management activities that are undertaken by risk management authorities that are considered

IDB officers highlighted a need to take a proportionate approach to routine and periodic management and maintenance activities that risk management authorities such as IDBs undertake to sustain watercourses and water levels within lowland protected sites should not be subject to Environmental Outcome Reports, where appropriate mitigations are undertaken. Such works might include coppicing/pollarding trees and removing overhanging/dangerous branches, bankside and in channel vegetation management, and de-silting within established practices for the channel, allowing for the deposition of arisings within 9 meters of the top bank of an existing ordinary watercourse. Given that S28G authorities may cease to undertake an activity that has been supporting the condition of a SSSI over several years. There is a concern that some IDBs may be forced to withdraw from routine water level management activities that are critical to sustaining and improving the condition of lowland protected sites where the regulatory requirements are overly complex, onerous, bureaucratic, time consuming, and costly. IDB officers have highlighted examples where delays in issuing decisions related to protected sites by Natural England have postponed or cancelled work at significant expense. This is particularly critical in relation to water level management works, where the window for undertaking the work may be very narrow owing to ground and water conditions and various restrictions relating to breed periods for birds and other species.

Public Sector Equality Duty

26 The Government would be grateful for your comments on any impacts of the proposals in this document and how they might impact on eliminating discrimination, advancing equality and fostering good relations.

Please provide your comments: