

## ADA Briefing Note: Differential Rating Orders (DROs)



Representing Drainage  
Water Level & Flood Risk  
Management Authorities

This is a statement on the appropriate use of Differential Rating Orders, especially in circumstances where IDBs are amalgamating.

### What is a Differential Rating Order?

A Differential Rating Order (DRO) is used to subdivide the Internal Drainage District of an IDB into sub-districts for the purposes of issuing differential drainage rates or differential special levies. DROs are governed by [Section 38 of the Land Drainage Act 1991](#) (as amended). The petitioning for a DRO is governed by [Section 39 of the Land Drainage Act 1991](#) (as amended).

### DROs and amalgamations

ADA considers that where an amalgamation is proposed the drainage rates and special levies should be harmonised at the earliest possible opportunity resulting in a single rate across the whole amalgamated Internal Drainage District. This will help build a unified Board and ensure that standards of maintenance and work are harmonised across the whole District. In the majority of cases a single rate should be sought from the vesting date of the new Board – thus getting the issue done and dusted at the outset. However, where a harmonised drainage rate cannot be achieved, a DRO will need to be sought.

### When to use DROs

When a harmonised drainage rate and/or special levy can not be achieved DROs may need to be considered. There are two sets of circumstances: those where a DRO is envisaged to be needed in perpetuity and, those cases where a DRO could be applied for a limited period of time.

#### 1. *Permanent DRO*

Permanent DROs should only be used to reflect differential levels of service from an IDB. This may occur where a part of the District is pumped and another area drains under gravity, or where some areas receive a reduced or enhanced level of benefit from IDB activity (e.g. significantly higher land within the District, or coastal land within the District).

#### 2. *Time-limited DRO*

Time-limited DROs could be considered where a single rate and special levy throws up some insurmountable obstacles to the amalgamation process that threaten the success of an otherwise beneficial amalgamation.

For instance: amalgamation may result in a disproportionate shift in Special Levies from one Local Authority to another, or where there are major differentials between the Drainage Rates of existing IDBs. In these cases a DRO could be used to delay the implementation of a unified rate until the end of a spending review period or allow a period of harmonisation of the rates and levies, giving a more gradual transition over a period of years to a common Drainage Rate and Special Levy.

ADA suggests that in such cases the period of time over which the DRO would apply be set by reference to works programmes or spending review periods, and that the period should be specified within the Statutory Order.

### When not to use DROs

ADA advocates the principle of catchment management. Therefore, differential rates and special levies should not be made along political or Local Authority Boundaries as these would not divide the district on a hydrological basis. It would be hard to distinguish the different levels of service provided by the IDB in each sub-district or the technical reasons why, if such boundaries were to be used.

## Types of DRO

Section 28 of the Land Drainage Act 1991 allows for a DRO to determine the proportions of the expenses of the IDB which are to be raised in the respective sub-districts. However, a Board may not wish to specify these proportions in the Statutory Order. Therefore, Defra have two Model Orders for making DROs, termed: Model A and, Model B.

Model B specifies the proportions of the special levy and drainage rates to be raised in each Sub-District. Model A does not specify these proportions. Both Model Orders are re-produced, as provided by Defra, in Annexes 1 and 2.

In most cases it will be more practical to apply Model A as this allows for independent rates and levies to be set in each sub-district, dependent on:

- a) expenses incurred in connection with new works or the maintenance or improvement of existing works in each sub-district; and
- b) any expenses and charges not directly attributable to the maintenance of particular works incurred in each sub-district.

Model A is more flexible than Model B and will allow for changes and fluctuations in the proportions of the expenses incurred by each Sub-District. Therefore, it is likely to be favoured by IDBs and fairer on special levy paying authorities and drainage rate payers. It also could allow for a gradual harmonisation of activity, and therefore a harmonisation of rates and levies within amalgamating Districts over time.

## Applying for a DRO

When amalgamating, an IDB cannot formally apply for a Differential Rating Order until the amalgamation process is complete and a new IDB has been formed. However, if the amalgamating Boards decide before, or during amalgamation that a DRO should be sought for the amalgamated Internal Drainage District then preparatory work can be undertaken by the amalgamating IDBs such as:

- preparing maps of the potential sub-districts,
- preparing financial data for each of the proposed sub-districts including estimated drainage rates and special levies,
- drafting an Order for the DRO based on the Defra Model Order templates (See Annexes 1 and 2) and,
- consult the Environment Agency on the proposed DRO.

Information on new drainage rates and special levies should be included in the basic financial statement provided by the IDBs to the Environment Agency and Defra during amalgamation; this statement would also contain information on DROs if likely to be sought after amalgamation.

To make a DRO, an IDB submits the Order to Defra (the relevant Minister). The IDB must then publish in one or more newspapers circulating within the Internal Drainage District a public notice stating:

- a) that the DRO has been submitted to the relevant Minister;.
- b) that a copy of the DRO is open to inspection at a specified place; and.
- c) that representations with respect to the DRO may be made to the relevant Minister within one month after the publication of the notice.

A model public notice for announcing the submission of a DRO has been produced by Defra and is available in Annex 3.

Once the one month period of notification has been completed, and any representations have been dealt with, the Minister may confirm the Statutory Order, bringing it into force.

## Annex 1: Differential Rating Order Model A

To be used when the proportion of the expenses of the Board to be raised in the sub-districts are NOT to be given

Source: Department of Environment, Food and Rural Affairs (Defra)

LAND DRAINAGE ACT 1991

.....INTERNAL DRAINAGE BOARD (DIFFERENTIAL RATING) ORDER 2.....

WHEREAS the .....Internal Drainage Board as the drainage board for the.....  
.....Internal drainage district are empowered by section 38(1)(a) of the Land Drainage Act 1991, for the purposes of levying differential drainage rates or issuing differential special levies, from time to time by Order to divide that district into sub-districts;

NOW THEREFORE the said Board, in exercise of the powers vested in them by section 38(1)(a) of the Land Drainage Act 1991, and after consultation with the Environment Agency (.....Region) hereby Order as follows:-

(1) This Order may be cited as the.....Internal Drainage Board (Differential Rating) Order 2..... and shall have effect in relation to any drainage rate made and the issue of any special levy by the Board for any  
See note period commencing after 31 March 2.....

(2) The .....Internal Drainage Board (Differential rating) Order 2..... is hereby revoked except in so far as it relates to any drainage rates  
See note made or special levies issued for a period ending before 1<sup>st</sup> April 2.....

(3) The.....Internal Drainage District shall be divided into..... Sub-districts which sub-districts are shown in colour on the map sealed by the Board in relation to this Order and are set out in the Schedule to this Order.

**SCHEDULE**

Number/name of Sub-district      Colour on map

THE COMMON SEAL of the.....  
Internal Drainage board was hereunto  
Affixed this.....day of .....2.....

Chairman

Clerk

**NOTE FOR CLERKS**

The Order should be made prior to the dates entered at the end of numbered paragraphs (1) and (2)

## Annex 2: Differential Rating Order Model B

**To be used when the proportion of the expenses of the Board to be raised in the sub-districts are to be given**

*Source: Department of Environment, Food and Rural Affairs (Defra)*

LAND DRAINAGE ACT 1991

.....INTERNAL DRAINAGE BOARD (DIFFERENTIAL RATING) ORDER 2.....

WHEREAS the .....Internal Drainage Board as the drainage board for the.....  
.....Internal drainage district are empowered by section 38(1)(a) of the Land Drainage Act 1991, for the purposes of levying differential drainage rates or issuing differential special levies, from time to time by Order to divide that district into sub-districts;

AND WHEREAS such an Order may determine the proportions of the expenses of the Drainage board for that district which are to be raised in the respective sub-districts within that district;

NOW THEREFORE the said Board, in exercise of the powers vested in them by section 38(1)(a) of the Land Drainage Act 1991, and after consultation with the Environment Agency (.....Region) hereby Order as follows: -

(1) This Order may be cited as the.....Internal Drainage Board (Differential Rating) Order 2..... and shall have effect in relation to any drainage rate made and the issue of any special levy by the Board for any  
See note period commencing after 31 March 2.....

(2) The .....Internal Drainage Board (Differential rating) Order 2..... is hereby revoked except in so far as it relates to any drainage rates  
See note made or special levies issued for a period ending before 1<sup>st</sup> April 2.....

(3) The.....Internal Drainage District shall be divided into..... Sub-districts which sub-districts are shown in colour on the map sealed by the Board in relation to this Order and are set out in the Schedule to this Order.

- (4) The Respective proportions of the Board's expenses which are to be raised in the.....sub-district of the Board shall be the proportions as shown in the Schedule hereto.

**SCHEDULE**

Number/name of Sub-district	Colour on map	Proportions of expenses
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THE COMMON SEAL of the.....  
Internal Drainage board was hereunto  
Affixed this.....day of .....2.....

Chairman

Clerk

**NOTE FOR CLERKS**

The Order should be made prior to the dates entered at the end of numbered paragraphs (1) and (2)

### **Annex 3: Model Public Notice**

*Source: Department of Environment, Food and Rural Affairs (Defra)*

[..... INTERNAL DRAINAGE BOARD  
NOTICE OF DIFFERENTIAL RATING ORDER 2006]  
Land Drainage Act 1991: Section 38(1)(a)

NOTICE IS HEREBY GIVEN that the [..... Internal Drainage Board] has made and submitted to the Secretary of State for Environment, Food and Rural Affairs, for confirmation by him an Order under Section 38(1)(a) of the Land Drainage Act 1991 to make/revoke a Differential Rating Order.

DURING A PERIOD OF ONE MONTH from the date of publication of this Notice a copy of the said [2006] Order [including a copy of the map delineating the sub-districts] will be deposited at the office of the [Clerk to the Board at *insert IDB address* and will be open to public inspection between the hours of 9:00am and 5:00pm on any weekday (except Saturday).]

ANY REPRESENTATIONS in respect of this Order may be made to Department of Environment Food and Rural Affairs, Area 2D Ergon House, Horseferry Road, London SW1P 2AL at any time within the said period of one month.

[*insert name*]

Clerk to the Board

Tel: *insert number*

email: *insert email address*