

<b>Title:</b> Reforms to the Land Drainage Act (LDA) 1991 for Internal Drainage Boards (IDBs) <b>IA No:</b> Defra 1459  <b>Lead department or agency:</b> Defra  <b>Other departments or agencies:</b> Environment Agency (EA)	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 04/07/2012
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.71m	£0m	£0m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**  
Section 3 and Schedule 3 of the LDA 1991 provides for the reorganisation of IDBs. The EA can prepare and submit a proposal to the Minister for a scheme which allows for changes to IDB boundaries, amalgamations, abolitions, reconstitutions and constitutions of new IDBs. There can be up to 9 of these in a typical year. The process for taking forward structural changes can take at least 9-12 months and includes a series of four one month advertising periods, which requires advertising only in newspapers (in some cases specifically the London Gazette). Previous consultations with stakeholders have identified that the approval procedures for these structural changes to IDBs add unnecessary delay to the process.

**What are the policy objectives and the intended effects?**  
Policy objectives are to:- a) reduce the burden on IDBs and external stakeholders b) improve the efficiency of the process and reduce delays and costs for IDBs and others; c) ensure transparency and inclusiveness so that the views of other affected parties are still taken into account; and d) modernise and introduce flexibility in the way schemes/orders are advertised, in order to reduce costs and allow a wider distribution. In order to achieve these objectives, Defra intends to reduce the number of advertising periods for such IDB reforms from four to two and to introduce greater flexibility for IDBs so that they are able to place notices of reforms on-line, locally on parish boards, thereby targeting more effectively those people most affected.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
The policy options considered are: Option 0 -do nothing; Option 1 -remove two advertising periods from the approval process; Option 2 -remove two advertising periods and make advertising more flexible. A further option of transferring the approval process from the Minister to the EA was considered but not taken forwards as it would have had unintended legal implications and there was no stakeholder support. Option 2 is the preferred option. It is estimated that by reducing the advertising periods from four to two, and making advertising flexible it would offer cost savings, including £3K per scheme change for EA and £700 for Defra. It would also reduce the time taken in approving structural changes, providing IDBs with quicker decisions so they may plan more effectively and save £17.5K per scheme change as a result. Additionally, introducing more flexibility in the way notices of schemes are advertised would further reduce costs and allow a much more targeted distribution. There is broad support from stakeholders for making these changes.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>	
				<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Remove 2 advertising periods from the process

## FULL ECONOMIC ASSESSMENT

<b>Price Base Year</b> 2012	<b>PV Base Year</b> 2012	<b>Time Period Years</b> 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low:</b> 0.27	<b>High:</b> 0.82	<b>Best Estimate:</b> 0.54

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	0	0	<b>0</b>
<b>High</b>	0	0	<b>0</b>
<b>Best Estimate</b>	0	0	<b>0</b>

### Description and scale of key monetised costs by 'main affected groups'

There are no costs associated with these changes.

### Other key non-monetised costs by 'main affected groups'

None

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	0	0.0	<b>0.3</b>
<b>High</b>	0	0.1	<b>0.8</b>
<b>Best Estimate</b>	0	0.1	<b>0.5</b>

### Description and scale of key monetised benefits by 'main affected groups'

We have estimated that the removal of the two advertising periods will save around £200 per scheme; which relates to the removal of the need to advertise the confirmed Order in the London Gazette. There will then be an administrative saving of £187.50 in staff time (EO level) per scheme. The shorter amalgamation process would also save IDBs £17.5K per scheme. Using the best estimate of 4 schemes per year, this equates to an annual saving of £72K.

### Other key non-monetised benefits by 'main affected groups'

This change would streamline the administration process for Defra, the EA and for IDBs.

### Key assumptions/sensitivities/risks

**Discount rate (%)** 3.5

These changes relate to those IDBs wholly or mainly in England. Using information from the last 10 years, we use a best estimate that there will be 4 schemes per year (also use 2 as the low and 6 as the high estimate). Staff time estimates are based on nominal assumptions. By removing the advertising period for the made Order, we intend to remove making the Order subject to the special parliamentary procedure; the special parliamentary procedure has never had to be used so the risk is low.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> 0	<b>Benefits:</b> 0	<b>Net:</b> 0	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Remove 2 advertising periods from the process and make advertising more flexible

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.36	High: 1.07	Best Estimate: 0.71

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

There are no costs associated with these changes

### Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.0	0.4
High	0	0.1	1.1
Best Estimate	0	0.1	0.7

### Description and scale of key monetised benefits by 'main affected groups'

The removal of the two advertising periods has the same benefits as under Option 1. Removing the need to advertise the scheme in newspapers would save an extra £3.5K per scheme. This comes from the EA not having to advertise the scheme in local newspapers (£3K), as well as a cost saving from Defra in not having to advertise the scheme in the London Gazette at the draft order stage (£500). IDBs would also save around £2K per notice. The best estimate for 4 schemes leads to an annual saving of £94K

### Other key non-monetised benefits by 'main affected groups'

This change would streamline the administration process for Defra, the EA and for IDBs. Flexibility in targeting people who need to see the notices makes the process more efficient, as well as possible further savings for IDBs.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

These changes relate to those IDBs wholly or mainly in England. Using information from the last 10 years, we use a best estimate that there will be 4 schemes per year (also use 2 as the low and 6 as the high estimate). Staff time estimates are based on nominal assumptions. By removing the advertising period for the made Order, we intend to remove making the Order subject to the special parliamentary procedure; the special parliamentary procedure has never had to be used so the risk is low.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

# Evidence Base (for summary sheets)

## 1. Introduction

This Impact Assessment (IA) examines the costs and benefits associated with possible reforms to the organisational arrangements for Internal Drainage Boards (IDBs). The Order Making process under section 3 and schedule 3 of the Land Drainage Act (LDA) 1991 provides for the reorganisation of IDBs (including boundary alteration, amalgamation, abolition, constitution etc). It also examines the cost and benefits of making the advertising of notices/orders more flexible under the sections 2(2)(b); 3(4); 38(5)(b); 39(4)(b); 48(3)(b); 58(3); Schedule 3 (2); and Schedule 5(1)(1) of the LDA 1991. IDBs are out of scope of One-in-one Out assessment.

## 2. Background

IDBs are statutory bodies responsible for land drainage in areas of special drainage need; they cover 1.2 million hectares of lowland England. They are long established bodies operating predominantly under the LDA 1991 (though their founding legislation is much older than this consolidating Act). They have permissive powers to undertake work to secure the drainage and water level management within their districts.

Their main focus historically was drainage of agricultural land, but they have evolved to play a much wider role, contributing to flood risk management in urban areas, and protecting and enhancing biodiversity. Much of their work involves the improvement and maintenance of rivers, drainage channels and pumping stations. There are now around 140 IDBs in England (concentrated in East Anglia, Yorkshire, Somerset and Lincolnshire).

The Environment Agency (EA) have responsibility for submitting schemes to the Secretary of State for the reorganisation of IDBs (section 3 and schedule 3 LDA 1991). There have been a substantial number of IDB amalgamations in recent years; IDBs choose to amalgamate with other Boards to improve their efficiency and effectiveness.

## 3. Rationale for Government Intervention

Schemes of reorganisation under section 3 of the LDA 1991 make provision for the constitution, alteration, abolition, amalgamation, and reconstitution of IDBs by the relevant Defra minister. Over the past 10 years, there have been 29 amalgamations schemes, 3 reconstitutions, 3 boundary changes and 2 abolitions; we are aware that there are likely to be more amalgamations in the coming years. Due to the complexity of the procedures laid out in section 3 and schedule 3 LDA 1991, the process for approving scheme changes can take at least 9-12 months. This is primarily due to the advertising process associated with these procedures.

*The procedures are as follow:*

1. under section 3(4) as soon as the EA has submitted a scheme to the Minister, the EA must publish it in newspapers, and allow for inspection and representations to the Minister within 1 month
2. schedule 3, paragraph 2. Before making an order (i.e. draft Order stage), the Minister must give notice of his intention to make it, allowing for inspection of the draft order and a period of time for objections (must be published in the London Gazette). Defra has historically allowed 1 month as a fair period of time for objections.

3. schedule 3, paragraph 4. After the order has been made, the Minister must publish it (together with a notice) “in such manner as he thinks best adapted for informing the persons affected”. The notice must provide for at least 30 days for objectors to lay a memorial praying against the order, before the order comes into effect.
4. schedule 3, paragraph 6. As soon as an order has been confirmed and come into effect, the Minister must publish a notice in the London Gazette, and in such other manner as he thinks best adapted for informing persons affected, stating that the order has come into force and details of where copies of it can be inspected. People may apply to the High Court if they are aggrieved by the Order.

The combined effect of these four advertising periods is not only costly as the advertising has to be paid for, but due to the timescales involved it also causes lengthy delays for the IDBs themselves, as they wait for their schemes to be processed. This means that schemes need to be submitted about a full year before they are expected to come into force.

IDBs want amalgamation changes to come into effect on 1 April in each year, so they are able to close down the existing accounts at the end of a financial year and open up a new account. They currently have to apply at least a year in advance in order to be certain that the changes will be brought in on time by 1 April. By introducing changes to rationalise the advertising periods, IDBs would be able to apply at a later date and still allow time for the changes to come into effect.

Defra is also keen to modernise the advertising requirements for IDB reorganisation by allowing a more targeted and effective distribution of the scheme notices, including through the internet.

#### **4. Policy objectives**

The policy objectives are to:-

- Reduce the burden on IDBs and external stakeholders;
- Improve the efficiency of the process and reduce delays for the IDBs
- Provide IDBs with quicker decisions so they are able to plan more effectively;
- Ensure transparency and inclusiveness so that the views of other affected parties are taken into account;
- Introduce flexibility in the way schemes/orders are advertised, in order to reduce costs and allow a more effective and targeted distribution of notices.

#### **5. Policy Options**

##### **Option 0 – Do Nothing**

This option would retain the status quo. There would be no cost implications, but this option would continue to present a barrier to IDBs wanting to reorganise due to the lengthy delays involved in approving schemes. There would also continue to be protracted periods of advertising and unnecessary costs on Government and the EA.

##### **Option 1 - Remove 2 advertising periods from the process**

This option would seek to streamline these procedures down to two advertising periods by removing the one month advertising period for the made Order (when the Order is formally made and it cannot be amended) and the confirmed Order (when the Order comes into effect). These are procedures 3 and 4, as detailed in section 3. With regard to these advertising

periods, there have been no objections raised after the Order has been made and when the Order has been confirmed. Also, by removing the advertising period for the made Order, we intend to remove making the Order subject to the special parliamentary procedure; the special parliamentary procedure has never been used in relation to IDB Orders so the risk is low.

The two retained advertising periods would still enable interested parties to raise any concerns when the scheme is advertised locally by the EA and when the scheme is then submitted to the Minister and advertised as a draft Order.

We also considered reducing the number of advertising periods from four to one but rejected this on the grounds that it would deny affected parties sufficient opportunity to raise any objections.

There will be no **costs** associated with simplifying the procedures as they stand.

The **benefits** would accrue partly from the reduced advertising costs. This would be in the region of £200 per scheme in advertising costs, (this relates to advertising of the confirmed Order only, since the made Order is only advertised on the Defra website). The length of time taken in processing the Orders would also be reduced.

Over the last 10 years, the number of schemes Defra has dealt with has varied each year from one to nine. Based on this, we are assuming a best estimate of four schemes processed per year. However, we have also considered a range by looking at the benefits of 2 schemes as a low estimate and 6 schemes as a high estimate. Reduced advertising costs for 4 schemes would result in a saving in the order of £800 per annum. There would also be some very modest administrative savings of up to 8 days per annum in Defra (in having to arrange the advertising); this equates to 2 days per scheme, which would amount to a saving of £700, based on the average EO level pay grade.

From the perspective of IDBs, the benefits are that proposed changes would be processed through the system more quickly, reducing operating costs and ensuring that the improvements in the management of flood risk and land drainage which the amalgamations are designed to achieve will be delivered earlier than would otherwise be the case. There should also be administrative benefits of speeding up the process for the IDBs: for example, when two or more IDBs decide to amalgamate, it is considered good practice for them to establish a 'Shadow Board' as an interim measure to oversee the amalgamation and take key decisions over this period. A shorter amalgamation process would reduce the complexity and additional administrative costs associated with this. If we assume

(a) that the average annual administration costs of an IDB is £53k (based on IDB expenditure set out in the IDB Annual Reports); and

(b) that the process is shortened from 12 to 8 months (33% reduction)

the cost of running two boards in parallel during amalgamation would reduce by £17.5k per process (to the nearest 0.5). Four amalgamations a year, would achieve a saving of £70k (in addition to the savings in advertising and administration costs).

This equates to an annual total benefit of £36K, £72K and £107K for the low, best and high estimates respectively. Over a ten year period this option therefore gives a net present value benefit of £0.54 m for the best estimate (4 schemes), and £0.27m for the low (2 schemes) and £0.82m for the high (6 schemes) estimates.

This proposal would streamline the administrative process for Defra, the EA and for IDBs without sacrificing transparency.

Interested stakeholders have been informally consulted on the proposals already and are supportive with no objections having been raised.

## **Option 2 – remove the advertising periods and make the advertising of notices/orders and other IDB byelaws/notices to be more flexible**

There will be no **costs** associated with simplifying the procedures as they stand.

The **benefits** would be the same as in option 1 due to the removal of the two advertising periods. In addition, this option would involve removing the specified requirement for notices to be placed in newspapers.

By modernising the advertising arrangements and making them more flexible, the notices and Orders could be published electronically on IDB websites and parish notice boards and directly brought to the attention of affected landowners and others with an interest in local communities. This would save the EA costs of around £3K by not having to advertise the scheme in the local newspapers, and also save Defra a further £500 by not advertising the draft Order in the newspaper, making a total of up to £3,500 savings; (this is on top of the £200 saving for Defra by not advertising the confirmed Order in the London Gazette, as mentioned in Option 1 above). It would complement the proposal to reduce advertising periods from four to two by making the advertising itself flexible, inclusive and effective.

Within the LDA 1991, the following sections of the Act specify advertising of notices/orders in newspapers for the IDBs and EA:-

**Section 2(2)(b):** Where the EA receives a petition for the alteration of IDB boundaries, the EA have an obligation to publish a notice of the petition in one or more newspapers in order to allow a period of 30 days for any representations.

**Section 38(5)(b):** Where an IDB is applying for a Differential Rating Order, they have a duty under this section to publish the notice in one or more newspapers in the district in order to allow for representations within one month.

**Section 39(4)(b):** Where an IDB or EA receives a petition for the making, variation or revocation of a DRO, there is a duty on the IDB/EA to publish a notice in one or more newspapers in order to allow for representations within a 30 day period.

**Section 48(3)(b):** Where an IDB is making drainage rates, the IDB has a duty to publish a notice in one or more newspapers.

**Section 58(3):** Where the EA is the drainage board, they may by resolution specify their expenses for its functions as an internal drainage board and they have a duty to publish any resolution in one or more newspapers.

**Schedule 5(1)(1):** Where an IDB wishes to apply to the Minister for confirmation of any byelaws, they have a duty to publish their notice of intention in the London Gazette and in other ways they see fit one month prior to applying for confirmation.

IDBs have complained about the costs of advertising in local newspapers, which are usually around £3K per notice. They have suggested that Defra should find a more cost-effective way of advertising these notices. We therefore propose to amend these sections of the 1991 Act to allow IDBs and the EA to make cost-savings, and to give them the discretion to target their notices more directly, as they see fit. IDBs will still have a requirement to advertise their notices and bring them to the attention of people who need to know. It will therefore be up to them as to whether they decide to still make use of local newspapers, or use other means, i.e. digital, websites, newsletters, on parish boards, etc.

IDBs would normally have to advertise their byelaws under Schedule 5(1)(1) after they have amalgamated, so we would expect a minimum saving of around £2K per notice (for the 4 schemes on average), resulting in an £8K saving per annum.

There is no evidence to suggest that advertising notices in the London Gazette is an effective method of disseminating these notices, which are specific to local communities. It currently seems very unlikely that people in these communities read the London Gazette online and they would more likely go to the IDB website locally. Furthermore, the use of more local notices would be just as effective in advertising proposed changes to the IDBs; a good example of such targeted notices is the advertising of planning applications where notices are posted up outside properties, posted on lamp-posts in local areas.

This option gives an annual total of £47K, £94K and £140K for the low, best and high estimates respectively. Over a ten year period this option therefore gives a net present value benefit of £0.71 for the best estimate (4 schemes), and £0.36m for the low (2 schemes) and £1.07m for the high (6 schemes) estimates.

There are also likely to be further benefits (which have not been monetised in this impact assessment) from these proposed changes. Some IDBs might have to advertise Differential Rating Orders under section 38(5)(b) after they have amalgamated. Similarly, IDBs which have not amalgamated may wish to advertise revised byelaws and both of these would result in additional savings.

### **Further option considered - Transferring the approval process from the Minister to the EA**

This option was considered additionally to the other options. This would allow the EA itself to approve structural changes to IDBs without reference to the Secretary of State, provided there were no objections raised to the scheme. The EA would still have to advertise the scheme to ensure there were no objections before approving the changes. If there were any outstanding objections which the EA could not address, the proposal would still have to be referred to the Secretary of State for consideration.

A transfer of administrative responsibilities from Defra to the Agency would not incur any additional costs, but some savings would be expected as decisions would be made within a single organisation and there would be some limited cost savings for Defra staff resources (policy and legal) if the EA were to take on the majority of the approvals. It could also further reduce the delay for IDBs and Government in processing and approving uncontested schemes of reorganisation, although its impact would not nearly be as significant as that of the proposal to remove two of the four advertising periods.

Currently, IDBs are approved as statutory public bodies. If the EA approved the IDB changes themselves, they would have a different status (non-statutory) from any of those approved by the Minister in future so there would be a two tier system of approval. This option could therefore have unintended legal implications for IDBs and their status.

Defra informally consulted relevant stakeholders on this option and there was no support for taking it forward. Therefore, benefits were not monetised as a result.

## **6. Summary and Recommendations**

Option 2 is the preferred option, given strong stakeholder support, and the time and cost savings involved. Reducing the time taken will help to improve the efficiency of the process overall and allow for quicker turn-around time for the IDBs, so they plan more effectively. Allowing more flexibility on the advertising process will also ensure costs savings and a more targeted distribution of notices.



This option requires legislative change through a Legislative Reform Order (LRO). An LRO is a statutory instrument which can amend primary legislation. These changes will only apply to those IDBs wholly or mainly in England.

## **7. Implementation**

We are planning to consult on the changes during 2012 and for the LRO to come into effect in April 2013.

## **8. Post Implementation Plan**

We do not intend to have a formal review of the changes made to the LDA. However, we will constantly review the new procedures following the changes made to ensure that the reforms have helped to meet our policy objectives. We will monitor the time taken to approve the structural changes and seek feedback from the IDBs and EA on how the new procedures are working