

The Welsh Government's Legislative Consent Memorandum on the Rivers Authorities and Land Drainage Bill

April 2019

Background

The Bill

Overview

- 1.** The Rivers Authorities and Land Drainage Bill¹ (the Bill) received its first reading in the House of Commons on 5 March 2018 and is sponsored by David Warburton MP (i.e. it is a Private Member's Bill).
- 2.** This Bill was considered and amended² in a Public Bill Committee in the House of Commons on 11 March 2019. Report stage and third reading took place on 15 March 2019. The Bill received its first reading³ in the House of Lords on 18 March 2019. Second reading is yet to be scheduled.
- 3.** The explanatory notes to the Bill (as introduced) state that:

“The Bill contains two measures. The first will provide the Secretary of State for Defra with powers to establish new bodies known as ‘Rivers Authorities’. The second will address a current obstacle to the raising of the expenses of certain internal drainage boards under the Land Drainage Act 1991.”⁴

¹ [Rivers Authorities and Land Drainage Bill 2017-19 Bill 172](#)

² [Rivers Authorities and Land Drainage Bill, as amended in Public Bill Committee, 2017-19 Bill 354](#)

³ [Rivers Authorities and Land Drainage Bill, HL Bill 169](#)

⁴ [Rivers Authorities and Land Drainage Bill, 2017-19 Bill 172: Explanatory Notes, March 2019](#)



4. The explanatory notes to the Bill (as introduced) state that:

“[Internal drainage boards (IDBs)] are public bodies which are established or modified via a statutory process under the Land Drainage Act 1991 (LDA). IDBs are mainly funded locally through drainage rates paid directly by agricultural landowners and special levies issued to district or unitary authorities. The proportion of drainage rates and special levies paid to each IDB is dependent upon the amount of agricultural and urban land in that IDB’s district.”⁵

5. Clause 1 makes provision for the establishment of rivers authorities, in England, by inserting new section 21A to 21J into the *Flood and Water Management Act 2010*.

6. Clause 2 amends the *Land Drainage Act 1991* (the 1991 Act) to enable the Secretary of State to make regulations which establish an alternative methodology for the calculation of the value of other land in an internal drainage district.

7. Clause 3 inserts three new sections into the 1991 Act to enable information sharing.

8. Clause 4 inserts a new section 41A into the 1991 Act which enables the Secretary of State or the Welsh Ministers to make regulations. Such regulations may establish an alternative methodology for the calculation of the value of chargeable property (agricultural land and buildings) in an internal drainage district (IDD).

9. Clause 5 provides the Secretary of State with the power to make consequential amendments by way of regulations. These may amend, repeal or revoke any enactment. Clause 5(6) specifically includes Measure or Acts of the National Assembly for Wales (or instruments made under such Welsh legislation) in the definition of enactment.

10. Clause 6 provides that the Bill extends to England and Wales, subject to provision in 6(2) and (3). This includes ensuring that an amendment made by Schedule 2 has the same extent as the provision being amended, and that clauses 5 to 8 extend to England and Wales, Scotland and Northern Ireland.

⁵ [Rivers Authorities and Land Drainage Bill 2017-19 Bill 172: Explanatory Notes, March 2019](#)

- 11.** Clause 7 sets out the arrangements for commencement of the provisions within the Bill, while clause 8 provides for the short title of the Bill.
- 12.** The explanatory notes to the Bill, as introduced in the House of Lords on 18 March 2019, indicate that a legislative consent memorandum is needed in respect of clauses 2 to 8 of the Bill.⁶

The Welsh Government's Legislative Consent Memorandum

- 13.** In accordance with Standing Orders 29.1 and 29.2, a Legislative Consent Memorandum (LCM) is required because provisions in the Bill modify or fall within the Assembly's legislative competence.
- 14.** On 15 March 2019, the Minister for Environment, Energy, and Rural Affairs laid before the National Assembly an LCM in respect of the Bill.⁷
- 15.** On 19 March 2019, the Business Committee referred the LCM to this Committee, and the Climate Change, Environment and Rural Affairs Committee for consideration. The Business Committee set a reporting deadline of 25 April 2019.⁸
- 16.** Paragraphs 13 to 15 of the LCM set out the Welsh Government's assessment of which provisions in the Bill require consent, namely clauses 2 and 4.⁹
- 17.** Paragraphs 16 to 18 of the LCM sets out the Welsh Government's reasons why including provision for Wales in the Bill is appropriate:

“This issue is present across the IDD and IDBs in England and Wales. Any legislative solution would require primary legislation, and taking these provisions forward in this UK Private Member's Bill provides an opportunity to remedy this issue in a consistent manner in England and Wales.

An amendment to the Land Drainage Act 1991 was introduced through section 83 of the Environment Act 2016. However, those provisions only grant powers to Welsh Ministers to revise the methodology for non-

⁶ Rivers Authorities and Land Drainage Bill HL Bill 169: Explanatory Notes, March 2019

⁷ Welsh Government, Legislative Consent Memorandum, Rivers Authorities and Land Drainage Bill, March 2019

⁸ Business Committee, Timetable for consideration of the Legislative Consent Memorandum on the Rivers Authorities and Land Drainage Bill, March 2019

⁹ Welsh Government, Legislative Consent Memorandum, Rivers Authorities and Land Drainage Bill, March 2019

agricultural land, not for agricultural land. We now need to address this issue for both non agricultural and agricultural land equally and this legislation is the means by which to do this.

These changes are important as without them the IDB, which in Wales is NRW, is unable to collect the correct income.”¹⁰

Committee consideration

18. We considered the Welsh Government's LCM in respect of the Bill at our meeting on 1 April 2019.¹¹

19. On 18 April 2019, the Minister wrote advising us of her intention to lay a revised Legislative Consent Memorandum, which would seek consent for clauses 3 and 5, in addition to clauses 2 and 4.¹²

Our view

20. We note the Welsh Government's reasons as to why, in its view, making provision for Wales in the Bill is appropriate.

21. We note that the Welsh Government's view is that clauses 2, 3, 4 and 5 of the Bill require the consent of the National Assembly. We further note that the view of the UK Government is that consent is needed in respect of clauses 2 to 8 of the Bill. We agree with the view of the UK Government. In our view, clauses 2 to 8 require the consent of the National Assembly, to the extent that they are within the legislative competence of the Assembly in accordance with section 108A of the *Government of Wales Act 2006*.

22. As regards clause 5, we note that subsection (6) permits the amendment of Measures or Acts of the National Assembly via regulations. It is unclear why this fact has not been referred to in the Legislative Consent Memorandum. We would welcome clarification as to whether such regulations would engage the Statutory Instrument Consent Memorandum process under Standing Order 30A.

23. Further, it is unclear why the Welsh Government was not in a position to introduce its own legislation, and we would welcome clarification on this point.

¹⁰ Welsh Government, [Legislative Consent Memorandum, Rivers Authorities and Land Drainage Bill](#), March 2019

¹¹ Constitutional and Legislative Affairs (CLA) Committee, 1 April 2019

¹² [Letter from the Minister for Environment, Energy and Rural Affairs, 18 April 2019](#)