

Appendix C Consultation questions

1.10 Style and accessibility of draft legislation

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| <p>1 How far, in general, would you say that the draft legislation is written in a reasonably clear style that is likely to be understood by readers?</p> | <p>Generally the proposed legislation is written in a clear easily readable style</p> |
| <p>2 In general, do you think the individual clauses are too long, too short or about the right length? How far is their overall order in the draft legislation reasonably logical and easy to follow?</p> | <p>The clauses are about the right length and the sequence is logical</p> |
| <p>3 In general, do you think the individual sentences in the draft are too long, too short or about the right length and is their structure too complex, too simple or about right?</p> | <p>About right</p> |
| <p>4 Please give examples of anything in the style of the draft legislation that you particularly liked or disliked. Please also give your reasons.</p> | <p>Particularly dislike the changes made to existing legislation in other Acts, within the draft Bill, by inserting / removing words. For example the proposed changes to the Land Drainage Act 1991 in clause 36 to clause 48. Such changes are not easy to follow / understand.</p> |
| <p>5 Please give examples of provisions that you thought helpfully simple or well expressed or ones that could be made simpler or otherwise improved. Please also give your reasons.</p> | <p>While the draft legislation is generally well written and easy to understand some clauses could be clearer. Specifically clauses 206(2), 241(1), 257(2) and 262 could be clearer. The definition of “natural watercourse” in clause 220(4) seems very vague. It would be helpful if definitions in other legislation were repeated instead of being referred to. For example it would be helpful if the</p> |

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| 5 | continued | definition of “source of supply” (as section 221 of the Water Resources Act 1991) was repeated in clause 255, the definition of “main river” (as section 113 of the Water Resources Act 1991) was repeated in clause 8 and the definition of “Highway Authority” (as section 1 of the Highways Act 1980) was repeated in clause 12. |
| 6 | Are there any drafting techniques (such as cross-references to other provisions of the draft legislation) that you would like to see used more or less? | No comment additional to those above |
| 7 | Please suggest any improvements to the way in which legislation is drafted that you think would make it easier to understand and apply. | A single unifying act is required to bring together and clarify “drainage” legislation. This Act is a lost opportunity to do so |

2.1 New approaches to Flood and Coastal Erosion Risk Management

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| 8 | Are you content with the definitions of “risk” and “risk management” in the draft Bill? | Yes |
| 9 | Are you content that the draft Bill should enable a wider range of approaches to managing flood and coastal erosion risk than is currently allowed under existing legislation, such as resilience, and that it should be sufficiently flexible to accommodate new approaches which may be developed in future? | Yes |
| 10 | Does the approach in the draft Bill to flood and coastal erosion risk management adequately cover adaptation? | Yes |

- 11** Does the proposed approach to flood and erosion risk management:
- facilitate and encourage authorities to make effective links between land management and flooding and erosion?
 - enable and encourage authorities to play an appropriate role in the delivery of wider multiple objective projects through the use of their flood and erosion management functions, including projects that are specifically required to achieve environmental, cultural and social outcomes?
- We are not convinced that the proposed approach to flood and erosion risk management will facilitate and encourage authorities to make effective links between land management and flooding and erosion risk management unless funding and additional resources are made available through direct government support. It may be possible to influence some land management practices by discussion / agreement with landowners, but this will be very dependent on the cooperation of landowners. Tough and distinct sanctions should be granted to the authorities against land owners should they fail to comply
The draft legislation will allow authorities to seek to achieve wider multiple benefit projects through their flood and coastal erosion risk management functions.
- 12** Are there any approaches to flood and coastal erosion risk management that should be adopted but which the draft Bill would not allow?
- No. However, there would appear to be a conflict between clause 42 and clause 47.
Clause 42 (2) would appear to give district councils; IDBs and unitary authorities power to carry out works on ordinary watercourses (but not county councils).
Clause 47(4), (5) and (6) appear to give power to act under section 24 – 26 of the Land Drainage Act 1991 the Lead Local Flood Authority.
County Councils should be given powers under Clause 42(2) to carry out works on ordinary watercourses.
- 13** Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management?
- Yes, subject to additional resources being made available

2.2 Future roles and responsibilities

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| 14 | Are the component parts of the EA strategic overview clear and correct and do they achieve the objectives? | Yes |
| 15 | If not, what further changes should be made? | NA |
| 16 | Do you have any comments on the proposal that the EA issues a National Strategy for FCERM with which all operating authorities will be required to act consistently when delivering their FCERM functions? | No – subject to funding and resources being addressed |
| 17 | Do you have any comments on the proposal that other bodies would have to have regard to the EA's National Strategy and guidance? Do you consider that any other bodies should be added to the list in clause 23? In particular, how should the sewerage industry be brought into the new framework? | We are not aware of any other bodies that should be added to the list.
The water companies are listed as a “relevant authority” in clause 12 and must therefore act in a manner that is consistent with EA's National Strategy and guidance, as stated in clause 22. |
| 18 | Do you think that the EA should be required to consult as part of preparing or publishing its strategy? | Yes, consultation is essential and the EA must have regard to comments received. |
| 19 | Should the EA have a regulatory role in relation to coastal erosion risk management, in particular for consenting and enforcement as set out in paragraphs 103-105? What alternative arrangements might be preferable? | No response as not relevant to Windsor and Maidenhead area |

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| 20 | Should the Secretary of State have the power to direct the EA to undertake local flood risk management work in default of local authorities, and recover reasonable costs? | Yes, subject to suitable safe guards being put in place. For example Notice to be served on defaulting authority. The consultation makes it clear that these additional duties are expected to be provided without any increase in resources and funding. Therefore it is unlikely that that the Secretary of State will incur any costs in carrying out these functions.
Subject to resources being made available from government in appropriate cases |
| 21 | Should the EA be able to undertake coastal erosion risk management works concurrently with local authorities where appropriate to support the delivery of the strategic overview role? | No response as not relevant to Windsor and Maidenhead area |
| 22 | The EA is drawing up a coastal map showing which operating authority will exercise FCERM powers on each length of coast. Should the EA maintain this and should the procedure for amending the map be the same as for main river maps, or should it be a non-statutory process? | No response as not relevant to Windsor and Maidenhead area |

2.3 Main River Mapping

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| 23 | Do you have any comments on the proposed changes to main river maps as set out above? | Agree with proposals in general. However, the accuracy needs to be improved and individual properties identified that are at risk or not at risk in any given catchment. |
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| 24 | The Government's response to Sir Michael Pitt's Review accepted that county and unitary local authorities should have the 'local leadership' role described above. Does the draft Bill implement this effectively and support the development of effective local flood management partnerships? | Yes, however, there would appear to be a conflict between clause 42 and clause 47.
Clause 42 (2) would appear to give district councils, IDBs and unitary authorities power to carry out works on ordinary watercourses (but not county councils).
Clause 47(4), (5) and (6) appear to give power to act under section 24 – 26 of the Land Drainage Act 1991 the Lead Local Flood Authority.
County Councils should be given powers under Clause 42(2) to carry out works on ordinary watercourses. |
| 25 | Do you have any comments on the proposal that the county and unitary local authorities will develop a strategy for local flood risk management and that district local authorities and IDBs would be required to act in a manner which is consistent with that strategy in delivering their FCERM functions? | Agree with proposals |
| 26 | Do you have any comments on the proposal that other bodies would have to have regard to the local flood risk management strategy and guidance? Do you consider that any other bodies should be added to the list? | Agree with proposal that other relevant public bodies as set out in clause 23 should have regard to national / local flood risk management strategy and guidance.
A further category reading "any other body or party undertaking activities likely to have a significant affect on flood risk" could possibly be added to the list. |
| 27 | Do you think that the county and unitary local authorities should be required to consult the public as part of preparing or publishing their strategy? | Yes. Local engagement and support is crucial to success and delivery |
| 28 | Further to its duty to investigate flooding incidents, should the county or unitary local authority have powers to carry out | Yes. Powers would be required to, enter onto private land to investigate surface water and groundwater |

works of an emergency nature? If so, what powers would be needed?

flooding, to undertake work on private land in response to surface water and groundwater flooding incidents and powers to inspect the public sewer system (i.e. lifting covers on the public sewer system). They must also be able to recover all costs from private land owners

29 Do you think that the EA and county and unitary local authorities should be able to gather information from private landowners and individuals about flood drainage assets related to their respective responsibilities? What if any sanction is needed to ensure information is provided?

Yes. Such information could be requested / obtained using powers similar to the Local Government Miscellaneous Provisions Act 1976.

30 Should county and unitary local authorities be legally required to produce annual reports on the way that they are managing local flood risk? Should this requirement be annual?

No. Bi-annually is sufficient

31 Should the EA provide support and advice to the local overview and scrutiny functions as part of the exercise of its strategic overview role?

Yes

32 Should the list of bodies required to cooperate with overview and scrutiny committees be extended to encompass all relevant authorities and as a result pick up IDBs and water companies?

Yes

33 Should Regional Flood and Coastal Committees (or another body) be involved in peer reviewing any annual reports produced by local authorities?

No, the Lead Local Flood Authority should be accountable to its own Scrutiny Panel. A peer review by the RFCC would add another layer of bureaucracy.

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| 34 | Should district local authorities and IDBs continue to manage flood risk from ordinary watercourses, taking account of Local and National Strategies? | No, the Lead Local Flood Authority should be responsible for managing flood risk from ordinary watercourses. The LLFA could delegate functions to districts / IDBs by agreement but must retain responsibility. |
| 35 | Should county and unitary local authorities have powers, concurrent with district local authorities and IDBs, to manage flood risk from ordinary watercourses in their areas? Or should they remain able to act only in default? | The Lead Local Flood Authority should be responsible for managing flood risk from ordinary watercourses. The LLFA could delegate functions to districts / IDBs by agreement but must retain responsibility. |
| 36 | Should any sea flooding works that a local authority wants to undertake require the consent of the EA? | No response as not relevant to Windsor and Maidenhead area |
| 37 | Should all relevant organisations have the power to undertake any flood and coastal erosion risk management at the request of another body? | Yes, but responsibility must remain with the original organisation. |
| 38 | Should the functions of consenting, and the production and coordination of the strategy (for both EA and county and unitary local authorities) remain as ones which cannot be carried out by another authority? | Yes |
| 39 | Are these assumptions reasonable? Is further evidence available to improve the analysis? Are the measures detailed proportionate with the scale of benefits assumed? | Not known |

2.5 Duty to cooperate and share information

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| 40 | As agreed in the Government response to Sir Michael Pitt's | No, Approved Building Inspectors and Network Rail |
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Review, there will be a duty on relevant organisations to cooperate and share information. Do you think the list of relevant authorities to whom this applies is comprehensive?

should be added to the list.

- 41** Should the EA and county and unitary local authorities be able to specify the format and standards for information to be shared between organisations?

Yes

2.6 Sustainable Drainage Systems

- 42** Do you agree that national design, construction and performance standards for sustainable drainage of new developments and re-developments should be developed and approved by the Secretary of State and Welsh Ministers?

Yes, and consultation will be essential. Well-designed, maintainable SUDS systems with good access are essential and National Standards will be key in achieving this. This will obviously create a two-tier system with householders potentially responsible for the maintenance of the surface water systems serving their property if the property was built before the Bill was enacted, and potentially the Local Authority if the property was built after the Bill was enacted. It will also lead to a number of apparent inequalities. Local Authorities will for instance be responsible for maintaining SUDS systems such as swales and soakage basins, and landowners will be responsible for maintaining significant ordinary watercourses under the threat of action under the Land Drainage Act 1991. Many Local Authorities also take the stance that

frontagers are responsible for the maintenance of roadside ditches, and the Environment Agency takes the stance that riparian owners are responsible for general (non flood defence) maintenance of main river.

- 43** Are there particular issues which must be addressed in the standards to make them effective, that have not been mentioned?
- Yes. Small scale developments in areas where the ground conditions are not receptive to SUDS (i.e. London clay). Good access to the proposed SUDS system must be provided.
- 44** Are there examples where this form of approval, for the surface water drainage system associated with a new development, is not appropriate?
- No
- 45** Does the process for adoption and connection described here provide a clear and workable approach for developers, local authorities and water and sewerage companies? Do you have any suggestions which would make the process simpler, speedier or lower cost?
- Yes, the process described provides a clear and workable approach.
- No
- 46** Are there examples where communal SUDS should not be adopted by the SAB?
- Yes, small scale developments / redevelopments in areas where the ground conditions are not receptive to SUDS systems, in which case conventional connection to surface water systems is still be appropriate.
- 47** Do you agree with how the envisaged arrangements for replacing the automatic right to connect will work?
- Yes. However some water companies have refused to accept connections from SUDS systems in the past and will only accept connections from systems that are not potentially susceptible to infiltration

- Water Companies should only be able to object to such connections where high water table may lead to flow into the public sewer system and the Lead Local Flood Authority should have the final say.
- 48** Can the use of National Standards as a material consideration for the purposes of s115(4) of the Water Industry Act 1991 provide sufficient legal certainty to prevent inappropriate agreements to drain highways to sewer? Yes
- 49** What is the appropriate balance to enable good SUDS designs that work with the lie of the land, can discharge to watercourse, and can be accessed for maintenance and inspection, whilst protecting the rights of landowners? The SUDS Approving Body should be given similar powers to those given to the Water Companies under Section 159 of the Water industry Act 1991. Developers could then requisition off site sewers meeting all costs of the works including any compensation payments to landowners.
- 50** How wide should the SABs' ability to delegate be? No response, as Windsor and Maidenhead is a Unitary Authority
- 51** Are additional enforcement powers needed – in particular, should the SAB have an independent power to enforce the approved SUDS? How would this work? The SUDS Approving Body should have independent powers and should not be reliant Planning or Building Regulation powers
- 52** Views are welcomed on how best to ensure the maintenance of private SUDS, and ensure that they are not redeveloped. Yes, a restrictive covenant could be placed upon the deeds of all properties with SUDS systems within the curtilage. This covenant must be transferable to new owners

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| 53 | Is there any legal impediment to prevent a SAB from adopting an existing SUDS? | Yes, access, gaining current owners permission to adopt / modify and bringing up to an appropriate standard |
| 54 | Do you agree that performance management of SUDS maintenance should be included within the local government performance framework, as part of their climate change adaptation function? | No |

2.7 Regional Flood Defence Committee

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| 55 | Do you agree that Regional Flood Defence Committees should be renamed as Regional Flood and Coastal Committees? | Yes |
| 56 | Should RFCC status be predominantly advisory rather than executive? | Yes, but must retain executive role for Local Levy |
| 57 | Should the focus and roles of RFCCs be as described in above? If not, do you have any other proposals? | Yes, but should not peer review Local Authority activities |
| 58 | Do you agree that the membership of RFCCs should be appointed as outlined above in future? If not, do you have any other proposals? | Yes. Local Authority majority must be retained |
| 59 | Should RFCCs' levy-consenting powers be extended to coastal erosion issues? | No response as not relevant to Windsor and Maidenhead area |

60 Are there any other issues that you wish to raise in regard to RFCCs?

No

2.8 EU Floods Directive

61 Should flooding from sewerage systems caused solely by system failure be excluded from transposition of the Floods Directive? If not, how might such flooding be integrated?

Yes, but as suggested in the consultation paper / explanatory notes flooding from sewers (both foul and surface water) caused by increases in volume due to rainfall must be included

62 Should the EA and county and unitary local authorities assume responsibility for implementing the Floods Directive, with the EA focussing on national mapping and planning and local authorities having specific responsibilities in relation to local flood risk? If not, what other arrangements would you suggest?

Yes, provided additional funding and resources are made available by Government

63 Should county and unitary local authorities be responsible for delivering PFRAs for local flood risk as described above? If not, who should be responsible?

Yes, provided additional funding and resources are made available by Government

64 Is this framework a suitable approach for determining 'significant risk' or are there alternative approaches to consider?

Yes, provided additional funding and resources are made available by Government

65 Should county and unitary local authorities be responsible for determining significant local flood risk (ordinary watercourses, surface water and groundwater)? If not, who should be responsible?

Yes, provided additional funding and resources are made available by Government

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| 66 | Should the proposed selection of 'significant risk' areas by local authorities be moderated along the lines of the arrangements set out above? | Yes, provided additional funding and resources are made available by Government |
| 67 | Do you agree with the proposed mapping arrangements set out above? If not, what alternative arrangements do you suggest? | Yes |
| 68 | Should the EA and local authorities have the discretion to determine whether or not to produce flood maps, as described above? If not, what other arrangement should apply? | No, the Environment Agency / Lead Local Flood Authority should not have discretion in the production of flood risk maps, to ensure consistency throughout the country |
| 69 | Should the arrangements for FRMPs be as set out above? If not, what alternative arrangements do you suggest? | Yes |
| 70 | Do you agree with the co-ordination arrangements set out above? If not, what alternative arrangements do you suggest? | Yes |
| 71 | Should the first cycle PFRA be brought forward one year, as proposed above, to enable mapping to take up to two years in common with the rest of the mapping and planning cycle? | Yes |
| 72 | Do you agree with the other proposals set out above for reporting and review? If not, what alternative arrangements do you suggest? | Yes |

2.9 Water Framework Directive

- 73 Do you agree that the duty to act in accordance with WFD requirements should apply equally to all FCERM authorities? Yes
- 74 Do you think this approach provides a satisfactory mechanism for ensuring that the relevant bodies deliver the requirements of the WFD? Yes

2.10 Third Party Assets

- 75 Should we introduce a system of third party asset identification and designation, as set out above? Yes
- 76 Is there a case for greater powers on third party assets than we have suggested? Yes, the Lead Local Flood Authority should be able to carry out works and recover costs.
- 77 Are there assets that are not 'structures or natural/man-made features' that should also be designated? None that we are aware of.
- 78 Should there be a duty on those responsible for third party assets in England and Wales to maintain them in a good condition? Yes. These must be readily enforceable by Local Authorities with more power and easier implementation than currently exists

2.11 Consenting and enforcement

- 79 Should regulation of the ordinary watercourse network (where there are no IDBs) transfer to county and unitary? This role should sit with the Lead Local Flood Authority (County and Unitary Authorities). Consenting and

authorities? Or should this role in future sit with the district and unitary authorities?

enforcement must remain with the Lead Local Flood Authority to ensure clarity of responsibility.

80 Should it be possible to make consents subject to reasonable conditions?

Yes

2.12 Reservoir safety

81 Views are sought on whether the minimum volume figure should be 5,000 or 10,000 cubic metres, or another figure.

10,000 cubic metres

82 Views are also sought as to whether criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc.

Initial criteria should be volume (to keep the initial assessment simple) and the assessment of risk should include all relevant factors such as construction

83 Do you have a view on what information should be requested at the point of registration to enable an effective risk based approach thereafter? How can we design this and the collection process to minimise the burdens imposed by registration?

As consultation

84 Do you agree the proposed classification is appropriate and that the EA should have responsibility for classifying all reservoirs under the new regime?

Yes, the Environment Agency should be responsible for classifying all reservoirs (details of classification are of course still to be confirmed)

85 Do you believe there might be a role for insurance in improving reservoir safety and, if so, how might this work?

While insurance may have a role to play in reservoir safety (i.e. reservoir managers should be required to have third party insurance) clear regulations and regular inspections by qualified engineers are key to reservoir

safety.

It would appear from the legislation, as drafted, (clause 106 and clause 116 (2)) that there is no requirement to notify the Environment Agency of, or to appoint a construction engineer to supervise, significant alteration or reconstruction of a reservoir provided the capacity is not altered (we are sure that this is not the intention).

86 Do you have a view on whether and how the Government could most fairly keep to a minimum the financial burdens placed on the owners of those reservoirs which are being brought within the regulatory regime for the first time?

No response to specific question. However, clause 105(4) states “If the whole of the reservoir is used for the purpose of a commercial or other undertaking the person carrying on the undertaking is the reservoir manager” “Other undertaking” could include organisations with limited resources, such as sailing clubs or angling clubs, ahead of the reservoir owner. This may not be appropriate.

87 Again, we welcome views on how to ensure charges within a scheme can be made proportionate.

No comment

88 No decision has yet been made about making use of the existing power to give Directions contained in the Reservoirs Act 1975 (as amended by the Water Act 2003). Views are invited on whether to proceed ahead of enactment of the proposals in the draft Bill. Points to bear in mind are:

- The existing power to give a Direction would apply only to LRRs; and the costs of offsite planning would not be borne

Category 1 responders should be able to recover costs and expenses that they reasonably incur in relation to any off-site emergency plan, that they are required to prepare, from the reservoir manager, and this provision should be included in the Flood and Water Management Act to allow the recovery of these costs in relation to all high risk reservoirs.

by the undertaker.

- The power to give a Direction under the new Bill proposals could apply to all high risk reservoirs above the minimum volume criterion; and could provide for the reservoir manager to meet the costs of off-site planning should a specific emergency response plan be needed. Views are sought on whether the Bill should provide for this.

3.1 Possible reforms to the role and governance of Internal Drainage Boards

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| 89 | Do you consider that there is a direct conflict or inconsistency between the IDBs' supervisory role and the local leadership role of the county and unitary local authorities? | Yes, there is clearly a direct conflict between the IDB supervisory role and the proposed local leadership role of the Lead Local Flood Authority. However, with no IDBs in the Windsor and Maidenhead area, and no direct experience of their workings / performance it would be inappropriate to comment further. |
| 90 | If the IDBs' supervisory role was repealed, what would IDBs no longer be able to do that they currently can? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 91 | Should regulation of the entire ordinary watercourse network (including within IDB watercourses) transfer to county and unitary authorities in order to provide a consistent approach? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 92 | Do you think that IDBs should have specific powers to share services and form/participate in consortia? | No response as there are no IDBs in the Windsor and Maidenhead area. |

- 93** Do you think that IDBs should have specific powers to form/participate in limited companies/limited liability partnerships for the purposes of sharing services? No response as there are no IDBs in the Windsor and Maidenhead area.
- 94** What negative impacts might there be from providing IDBs with these specific powers? No response as there are no IDBs in the Windsor and Maidenhead area.
- 95** Do you agree the proposals outlined are the best way to simplify these procedures? If not, what alternative approaches should be considered? No response as there are no IDBs in the Windsor and Maidenhead area.
- 96** Do you agree that the title of IDBs should change in the future to reflect the wider approaches that IDBs will undertake now and in the future? No response as there are no IDBs in the Windsor and Maidenhead area.
- 97** Do you agree that 'Local Flood Risk Management Board' is an appropriate new title, or is there a better alternative? No response as there are no IDBs in the Windsor and Maidenhead area.
- 98** Do you agree that the principles of the Medway Letter should be relaxed allowing IDBs to expand their boundaries beyond their traditional areas? No response as there are no IDBs in the Windsor and Maidenhead area.
- 99** Do you agree that there should be a specific requirement for IDBs to produce an impact assessment demonstrating the cost benefit implications of a boundary expansion? No response as there are no IDBs in the Windsor and Maidenhead area.
- 100** Do you agree that the future supervision of IDBs would fit better with county and unitary local authorities rather than the EA in the future? No response as there are no IDBs in the Windsor and Maidenhead area.

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| 101 | Do you think that county and unitary local authorities should take over the lead on amalgamation (etc.) schemes from EA in the future under this supervisory role? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 102 | Do you agree that lifting the bare majority limit on local authority membership of IDBs will allow for fairer representation on boards in the future? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 103 | Are there other models of membership that you think would be more appropriate? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 104 | Do you agree that the Secretary of State should have powers to determine the size, shape and structure of IDBs in the future? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 105 | What consultation would need to occur before individual changes in size, shape and structure of IDBs were to take place? What sort of powers would be most appropriate? | No response as there are no IDBs in the Windsor and Maidenhead area. |
| 106 | Views are sought on whether the assumptions are reasonable. Can further evidence be made available to improve the analysis? Are the measures proportionate with the scale of benefits assumed? | No response as there are no IDBs in the Windsor and Maidenhead area. |

107 There is no question 107

3.2 Current funding structure

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| 108 | Do you agree that there is a case to retain powers for the EA to levy (a) general drainage charges, and for IDBs to retain | The Environment Agency should retain powers to levy general drainage charges. |
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- similar powers to levy (b) agricultural drainage rates in England and Wales?
- No response regarding IDBs retaining levy powers.
- 109** Do you agree that EA's current powers to levy special drainage charges should be repealed?
- Yes
- 110** Do you agree that only county and unitary local authorities should be funded for local flood risk management to allow them to prioritise funding based on where benefits would be greatest?
- Yes, This is essential if County / Unitary Authorities are to take on the leadership role this additional funding is essential. It should also be ring fenced and not part of the RSG
- 111** Do you think that replacing the IDB special levy in England and Wales with agency or contractual arrangements between IDBs and the relevant local authorities would improve the delivery and prioritisation of local flood risk management?
- No response as there are no IDBs in the Windsor and Maidenhead area.
- 112** Are there other arrangements that would remove or reduce the problems associated with the special levy in England and Wales, including those referred to above?
- No response as there are no IDBs in the Windsor and Maidenhead area.
- 113** Is there a case to end both IDB highland water charges and EA's precept on IDBs in England and Wales?
- No response as there are no IDBs in the Windsor and Maidenhead area.
- 114** If the Medway letter were retained, would there still be a case to end the payments?
- No response as there are no IDBs in the Windsor and Maidenhead area.
- 115** What additional steps or measures could be taken to make sure developers in England and Wales contribute towards the pressures new developments place on future local and
- Development requiring specific works, whether planned or unplanned, should contribute towards the cost of, or fund, the works via Section 106, and contribute towards

central government budgets?

future costs via appropriate commuted sums. Development benefitting from pre existing defences could contribute towards future flood risk management / maintenance costs via a charge per habitable unit, paid by the developer, similar to the sewerage / water infrastructure charge. How general flood risk management costs of development that does not fall into either of the above categories is recouped is far more difficult. A general one off charge per property could possibly be introduced.

3.3 Reducing property owners' and occupiers' impact upon local flood risk

116 How can people be made aware of their riparian responsibilities when they first buy properties that include riparian land?

Many ordinary watercourses are not currently mapped or recorded, and this limits the opportunities to make people aware of their riparian responsibilities when they first purchase a property.

A standard question could be added to the Home Information Packs, asking if there are any ditches or watercourses on or adjacent to the property. An accompanying statement could point out that the landowner / adjoining landowner are normally responsible for the maintenance of such ditches / watercourses even if the ditch / watercourse is beyond the property boundary indicated on the property deeds (property owners frequently try to deny responsibility for ordinary watercourses adjoining their properties, stating that the watercourse is beyond the boundary indicated on their deeds).

117 What else could be done to improve existing riparian owners'

Raising the awareness of riparian ownership is difficult.

awareness and understanding of their responsibilities?

118 What examples are there of strategies that have succeeded in increasing the engagement of riparian owners and improving their contribution to maintenance?

The Borough has in the past included articles relating to ordinary watercourses / riparian ownership in its annual publication sent to all residents. Whether this significantly raised riparian owners awareness of their responsibilities is questionable.

Ultimately, following the preparation of Surface Water Management Plans it would, theoretically, be possible to write to all landowners pointing out their responsibilities. However, in an area with numerous ordinary watercourses this would be a major undertaking.

In the past the Borough has arranged and co funded works on some ordinary watercourses, having obtained contributions from the landowners. During this exercise it was made clear, in correspondence with landowners, that they were responsible for the maintenance of the watercourses, and that the works undertaken by the Borough did not relieve them of any future responsibility. Some local community groups have also started to take an interest in the maintenance of ordinary watercourses in their area, using their local knowledge to trace owners and arrange clearance of obstructions, or even arrange clearance of obstructions themselves when the landowner cannot be traced.

119 How could the powers provided to drainage bodies by section 25 of the Land Drainage Act 1991 be improved?

The powers provided by Section 25 of the Land Drainage Act 1991 are adequate for dealing with isolated obstructions. These powers should be transferred to the Lead Local Flood Authority.

These powers could be extended to cover watercourses adjoining or lying near to the authorities boundary

119	continued	<p>(currently an authority cannot take any action on watercourses outside of its boundary and is therefore reliant on neighbouring authorities to take action). Also, It is often difficult for landowners to act in isolation, where long lengths of ordinary watercourse and numerous riparian owners exist (in such circumstances if a particular owner digs out their length of ditch silt and debris from further upstream may simply move downstream). Problems are exasperated where access is poor. In such circumstances the only practical solution would appear to be for the Lead Local Flood Authority to take the lead and arrange the works, having first obtained contributions from the landowners. Also, using current legislation it is very difficult to reinstate ditch lines that have been filled, or culverted, sometime ago. Hopefully the provisions of the new legislation will address this. Current land drainage legislation is, in general, very complex and past case law is often confusing or even appears to be conflicting.</p>
120	Do you agree with the suggestion that ENI be offered to applicants and respondents in all ALT land drainage cases?	Yes
121	Do you agree with the introduction of a fee for all applications to the Agricultural Land Tribunal that concern land drainage? This would not affect hearings for agricultural tenancies.	Yes
122	an application fee were introduced, at what level should it be set?	£100, as suggested in the consultation paper.

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| 123 | Do you agree that a fee should be charged for an ALT hearing on drainage? Should that fee be paid by the losing party or should this be decided by the ALT? | Yes, a fee should be introduced.
The ALT should decide which party plays the fee (including the option of splitting the costs) |
| 124 | If a hearing fee were introduced, at what level should it be set? | £1000, as suggested in the consultation paper.
However, the ALT should have discretion to charge the full costs of the hearing in cases where one party has been frivolous or particularly intransigent. |
| 125 | What cases are you aware of where people might have made use of the ALT had its remit extended beyond ditches and included all ordinary watercourses? | Limited experience indicates that parties are reluctant to use the ALT process due to the length of time taken to reach a conclusion |
| 126 | Do you think that it would be a good idea to extend the remit of the ALT to include all ordinary watercourses? Do you think that it should also be extended to cover the main river network? | The ALT remit should be extended to include ordinary watercourses and main rivers. |
| 127 | In what other ways, if any, could the regulations and processes of the ALT be improved as regards cases involving drainage issues? | No comment |
| 128 | Do you think the ALT should be renamed? If so, what name do you suggest? | Yes, "Drainage and Agricultural Land Tribunal" as suggested. |
| 129 | Do you believe that failure to maintain the flow of water through watercourses should be described in law as a statutory nuisance? | Yes |

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| 130 | If a statutory nuisance were created concerning “obstructed watercourses”, should it be administered by the ALT, by district and unitary local authorities or by some other body/bodies? | By the Lead Local Flood Authority |
| 131 | Do you agree that a new statutory nuisance should be created to tackle the risk of runoff flooding? | Yes, where deliberate acts, or neglect, have lead to problems (i.e. not where natural runoff is the cause of the problems). |
| 132 | If a statutory nuisance were created for run-off risk, which public bodies should be responsible for its administration and enforcement – the ALT, unitary and district local authorities, or unitary and county local authorities? | The Lead Local Flood Authority |
| 133 | What is the range of costs involved in conducting expert investigations into potential surface run-off statutory nuisance? | Not known, but is likely to be significant. Dependent on scale of problem and cooperation, or otherwise, of landowners |
| 134 | What sized reductions in damages can be expected when run-off risks are eliminated? | Not known, and it is, of course, not possible to eliminate all run-off risks (any more than it is possible to eliminate all flood risks from other sources). |
| 135 | Should the owners of properties that cause a surface run-off statutory nuisance have to pay the entire cost of eliminating the nuisance? What would happen if the owner was unable to afford the work? How else could the works be paid for? | Yes. The Lead Local Flood Authority could undertake the works in default (following a suitable enforcement process) and a charge could be placed against the property. |
| 136 | Should local authorities be encouraged to make more use of their Article 4 powers to reduce the growth in surface run-off | Yes |

risk?

- 137** Please tell us of any recent occasions you are aware of in which run-off from farmland caused substantial disruption or damage to neighbouring property.
- In the late 1980s run-off from farm land resulted in serious flooding in the Cookham / Cookham Dean area. The Borough has since undertaken major capital works to prevent a reoccurrence of this. More recently run-off from farm land caused serious flooding on a major "A" class road.
- 138** Do you agree that local authorities should, in areas of high risk of run-off flooding, be given powers to impose restrictions on management practices and oblige landowners to make improvements to drainage in particular portions of land implicated in run-off flooding?
- Yes, but these powers need to be given to the Lead Local Flood Authority, and a system of arbitration will be required (possibly via the ALT).
- 139** If you do agree with the above proposition, what land management practices should be included in the national list of possible restrictions?
- Ploughing down hill should be forbidden.
Natural ponds / wetland areas / all ditches should be retained.
- 140** What would be the administration costs of working with a landowner to convince them to change the way they managed their land and support them with doing so?
- Highly dependent on landowners cooperation, or otherwise. May not be possible in some cases without powers to require changes to be made. It should be recognised that the LA's will have costs in simply initiating these partnerships

3.4 Single Unifying Act

- 141** Do you agree that any proposed changes to the existing
- No, the draft Bill includes numerous references to

legislation, not contained in the draft Bill or covered elsewhere in this consultation document, should be discussed directly with relevant organisations in England and Wales so that changes might be introduced in the resulting legislation, without the need for further general consultation?

regulations being made by the Secretary of State (for example, on the exact content of the register of structures or features) and makes reference to, but does not provide details of, enforcement powers relating to Designated Features and SUDS systems. The draft Bill therefore lacks detail, and it is likely that existing legislation will need to be amended to address any conflicts that are revealed as work progresses. A single unifying Bill essential. As the changes likely to achieve this may have a significant affect on the authorities involved further consultation will be necessary.

142 If so, are there any particular or general issues on which you would want to be involved in this way?

See response to question 142

4.1 Hosepipe bans

143 What non-essential uses of water do you think should be restricted in order to save water in times of drought?

No comment

144 For those domestic uses of water which are not covered by the existing hosepipe ban powers, but which may be prohibited as a result of any changes, for example the cleaning of patios with a hosepipe or pressure washer or filling of domestic swimming pools, how can the cost of inconvenience to the householder be measured? Are you able to provide an assessment of the impacts?

No comment

145 Some businesses could be affected at an earlier stage in a drought if further uses are prohibited. Are you able to provide

No comment

any assessment of the likely impact and costs for businesses should they be unable to use water supplied through a hosepipe or similar apparatus?

- 146 Do you agree that the legislation should not set a standard notice period? If not, what period would you suggest? Yes

4.2 Power of entry – water resources functions

- 147 Do you agree that a power of entry should be introduced to cover the EA's functions to measure and manage water resources? Yes

4.5 Water Administration Regime

- 148 Should the special administrator be required to pursue the rescue objective for viable water companies that experience financial difficulties? No comment

- 149 Should a hive-down provision be available in the water administration regime to make the transfer process more efficient? No comment

- 150 Do you agree that we should remove the right of an undertaker to veto a transfer? No comment

4.6 DWI Recovery of Charge

- 151 Do you agree that DWI should introduce charging to recover the cost of their regulatory activities from water companies? No comment

and licensed water suppliers in line with other water regulators?

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| 152 | Do you agree with the principle that charges to individual water companies and licensed water suppliers should be proportional to the relative regulatory burden they represent? | No comment |
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4.8 Misconnections

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| 153 | Do you agree that powers should be given to sewerage companies to require householders to rectify misconnections as described above? Are there alternatives? | Agree that sewerage companies should be given powers to rectify misconnections |
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4.9 Development of a project based delivery approach for large infrastructure projects in the water sector

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| 154 | Do you agree that a project-based approach would reveal optimal funding structures? | No comment |
| 155 | Are there alternative approaches to securing effective and properly regulated collaborative projects that could be explored? | No comment |
| 156 | Do you agree that consumers would benefit from a project-based approach to suitable large projects? | No comment |
| 157 | Do you agree that existing water companies would normally be best placed to manage the procurement exercise? | No comment |
| 158 | What types of projects should be covered by the regime? | No comment |

4.10 Complaint handling powers

159 Do you agree that these changes provide for the most appropriate body to handle complaints? No comment

4.11 Securing compliance

160 Do you agree that these changes will enhance Ofwat's ability to protect customers? Yes

5.3 Hydromorphology powers

161 Do you agree that a power to improve the hydromorphological condition of water bodies in England and Wales is necessary to deliver WFD requirements on hydromorphology? Please state why. Yes, the hydromorphological condition of water bodies and the affect of works on these conditions have not necessarily been taken into account in the past. Powers should be given to the Environment Agency to allow hydromorphological issues to be tackled in their own right

162 Do you agree with these criteria for the use of the power? Yes

163 Do you think this proposal provides an appropriate mechanism to enable improvement of hydromorphological conditions? Yes

Annex A – The policy position in Wales Flood and Coastal Erosion Risk Management

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| 164 | Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management? | No response as not relevant to Windsor and Maidenhead area |
| 165 | Is the proposed allocation of an enhanced oversight role to the EA in Wales appropriate? | No response as not relevant to Windsor and Maidenhead area |
| 166 | Will the scope of the proposed role allow the EA in Wales to adequately support the Welsh Assembly Government in driving forward a single overarching approach to flood and coastal erosion risk management? | No response as not relevant to Windsor and Maidenhead area |

Understanding the Local Risk

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| 167 | Is there a need for an enhanced understanding of all local flood risks in Wales, and if so which risks should be included? | No response as not relevant to Windsor and Maidenhead area |
| 168 | Do we need to produce Local Surface Water Management Plans in Wales? If so, what form should they take and what should be included? | No response as not relevant to Windsor and Maidenhead area |
| 169 | Do you agree that local authorities are best placed to lead on local flood risks and specifically surface water flood risk management? | No response as not relevant to Windsor and Maidenhead area |
| 170 | How might different maps work and plans for addressing different sources of flood risk be best integrated? | No response as not relevant to Windsor and Maidenhead area |

Roles & Responsibilities

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| 171 | Is the split of responsibility between the key operating authorities appropriate? | No response as not relevant to Windsor and Maidenhead area |
| 172 | Does the suggested split of responsibilities make it easy to understand which operating authority is responsible for which risks of flooding? | No response as not relevant to Windsor and Maidenhead area |
| 173 | Will the suggested split of responsibilities ensure that the gaps in coverage of the current systems are addressed and filled? | No response as not relevant to Windsor and Maidenhead area |

Flood Risk Management Wales

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| 174 | Should the role and remit of Flood Risk Management Wales remain limited to the risks of flooding from main rivers and the sea regardless of the role and remit of the Environment Agency? | No response as not relevant to Windsor and Maidenhead area |
| 175 | If the remit of the Committee is to be changed then what should be the extent of the Committee role? | No response as not relevant to Windsor and Maidenhead area |
| 176 | If the role and remit of Flood Risk Management Wales is extended, how often should the Committee meet? | No response as not relevant to Windsor and Maidenhead area |
| 177 | Should Flood Risk Management Wales remain an executive committee of the EA, or should it become an advisory committee and why? | No response as not relevant to Windsor and Maidenhead area |
| 178 | Should Flood Risk Management Wales' existing levy raising | No response as not relevant to Windsor and |

powers in respect of flood risk management be extended to encompass coastal erosion risk management.

Maidenhead area

Risk Management Planning

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| 179 | Do you agree that local authorities should be responsible for the production of PFRAs for local flood risks? | No response as not relevant to Windsor and Maidenhead area |
| 180 | Subject to your views in relation to Surface Water Management Plans in paragraphs 23 to 26 above, do you consider them to be a suitable format for the completion of PFRAs in respect of local flood risks? | No response as not relevant to Windsor and Maidenhead area |
| 181 | If there is no requirement to produce Surface Water Management Plans in Wales, what should be done to meet the requirements of the Floods Directive in respect of local flood risks?

• We would be interested in your responses to the questions posed in Section 2.8 as well as the ones below. | No response as not relevant to Windsor and Maidenhead area |
| 182 | Do you agree that local authorities should be responsible for the production of maps for local flood risks? | No response as not relevant to Windsor and Maidenhead area |
| 183 | Subject to your views in relation to Surface Water Management Plans in paragraphs 23 to 26 above, do you consider them to be a suitable format for the mapping required in respect of local flood risks? | No response as not relevant to Windsor and Maidenhead area |
| 184 | If there is no requirement to produce Surface Water Management Plans in Wales, what should be done to meet | No response as not relevant to Windsor and Maidenhead area |

the mapping requirements of the Floods Directive in respect of local flood risks?

Sustainable Drainage Systems

In addition to the questions in Section 2.6 Welsh Ministers are seeking views on the following questions, which are specific to Wales

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| 186 | Which is the most appropriate organisation to take responsibility for adoption and management of SUDS in Wales: <ul style="list-style-type: none">• local authorities;• sewerage undertakers; or• another body (please specify)? | No response as not relevant to Windsor and Maidenhead area |
| 187 | Should there be flexibility within the system to appoint different organisations as SUDS Adopting Bodies in different areas? | No response as not relevant to Windsor and Maidenhead area |
| 188 | Should the automatic right to connect to a public sewer be amended for new sites and redevelopments as proposed in Section 2.6 above? | No response as not relevant to Windsor and Maidenhead area |