

The background image is a blue-tinted photograph. In the upper right, a tractor is visible, possibly pulling a piece of equipment. In the lower left, a small boat or skid steer is in a body of water. The overall scene appears to be a rural or agricultural setting. The text is overlaid on the center of the image.

GOOD GOVERNANCE

FOR INTERNAL DRAINAGE BOARD MEMBERS

VERSION TWO 2025

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HOW TO USE THIS GUIDE

What this guide is

This booklet is an introduction to the governance and management of an internal drainage board. It is not intended to be a definitive legal guide. It is a reference guide that offers an overview of best practice and signposts the reader to readily available, detailed advice that can be found elsewhere.

This document sets out concisely what an internal drainage board (**IDB**) in England must do, should do and could do in order to remain legally compliant and demonstrate best practice.

Who it is for

The Good Governance Guide is designed with board members in mind. That is not to say that other IDB employees cannot use this guide. The concise format of the guide directs the reader to relevant best practice or legislation and can help them to develop appropriate strategies and policies that will ensure their IDB achieves its objectives. As you will see in the following pages, the proper running of an IDB is an essential part of the board member's role which is why they are the focus of this guide.

Acronyms and abbreviations

For brevity, internal drainage boards are referred to by their common abbreviation "IDB" throughout this guide.

Where legislation, regulations or common phrases have been referenced, they are stated in full on the first occasion in each chapter. The guide then sets out the relevant abbreviation or acronym in bold typeface and in brackets. From then on,

the shortened version has been used throughout the chapter:

Legal framework

This guide has been written with reference to the English legal system only and therefore has direct relevance to all IDBs in England. However, the principles of the document are entirely relevant to internal drainage district or commission operations in Wales and Scotland and the management of watercourses in Northern Ireland, and those bodies in the devolved nations of the UK are wholly encouraged to make full use of the guide, but with the recognition that their legislation may be slightly different from that quoted for England.

Duties and powers

It is important to understand the distinction between a statutory (legal) duty which requires your IDB to act, and a permissive power which enables the IDB to act. Where a duty exists, the guide has either expressly referenced it or included the term "must". An IDB must act where there is a statutory duty to do so.



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Welcome

Since publication of the first edition of this guide back in 2018, I know that it has had extensive use in helping board members, officers and those interested in internal drainage board (IDB) affairs, to understand how the systems and processes all work. This second edition of the guide is an excellent and expanded resource, particularly for both new and existing board members, IDB officers, and also for those who are thinking about joining an IDB.

As a board member, you are both part of the democratic framework of the country representing the interests of your community, and the long and eventful history of living and working with water in lowland England. This guide will help you understand more about your role and the difference you can make.

Throughout human history, efforts have been made to control the water, protect the land, and shape our water landscape. Early on, people worked together to reclaim land, dig channels, and built new embankments to control water. In more recent times, a desire for some degree of national consistency led to the creation of drainage boards to execute works and their maintenance. Those IDBs became the foundation for the democratic governance of water; and the public water management authorities that continue to this day.

Water level and flood risk management relies on a gyroscopic balance between people and culture, the economy and our environment and if any one of those components creates an imbalance in relation to the other two, then the whole system fails. IDBs, as small local authorities with the unique task of managing water levels, are in an excellent position to maintain equilibrium.

The principle of a collaborative approach to water management across our

river catchments endures at the heart of today's IDBs. It remains more efficient to build and maintain our water environment together; and to delegate the design and execution of works to professional well governed organisations. The current primary legislation for IDBs is the Land Drainage Act 1991, the Flood and Water Management Act 2010 and the Environment Act 2021, which provide some helpful tools for IDBs to play an even stronger role in all aspects of flood and water management in their local area. To take advantage of these opportunities, it is so important in today's world to engage with your community and other public authorities in a positive and proactive way. IDBs need active, interested and committed people to serve and get involved in their work.

Being elected or appointed as an IDB board member does not mean you are expected to have all the solutions for managing water in your local area, but through your interest in water management and your local knowledge, you will be ideally placed to deal with the range of challenges and opportunities that arise. Engaging in learning, training and development will build your confidence as a board member giving you the satisfaction of knowing that you and your IDB have made a difference.

If you are not yet a board member; but are thinking of putting yourself forward, please contact your local IDB to find out how you might get involved – they will be delighted to hear from you.

I hope you enjoy working with your community to reduce the risk of flooding, manage water resources and enhance your local water environment by serving your local IDB. I wish you every success and I am confident that this latest version of the guide will help you to develop your role as a board member.

Innes Thomson, Chief Executive, ADA

I MANAGING FLOOD RISK IN ENGLAND

Discover the historical basis for the management of flood risk in England, those authorities involved in managing flood risk today, and the important legislation that underpins their functions.



I. MANAGING FLOOD RISK IN ENGLAND

- I.1 **Historical basis.** In medieval times, drainage operations to help prevent or manage the inundation of land by flood waters or the sea were typically undertaken by neighbouring landowners. English law still retains the basic principle that the landowner is the person with primary responsibility for preventing the flooding of their own land. However, this led to disputes as to what works should be done and who should maintain these works and pay for them, sometimes resolved by commissions of local land owners ("**commissions de wallis et fossatis**"). These grew in number to respond to an increase in disputes in the 1300s, perhaps due to climate change and lack of labour to maintain flood defences after the Black Death.

Commissions were first placed on a statutory basis in 1427 by a statute of Henry VI. Subsequent legislation such as the Statute of Sewers 1531 and the Commissions of Sewers Act 1706 strengthened the powers of commissioners who levied a drainage rate or **scot** based on the acreage of each landowner who would benefit from drainage works, much as today.

Historically, IDBs' focus was drainage of agricultural land; IDBs are currently responsible for the drainage of approximately 60% of Grade 1 agricultural land supporting a wide range of crops. Over time, IDBs have developed and evolved to play a much wider role in managing water levels, reducing flood risk for both rural and urban communities (including protection of businesses and infrastructure) and in protecting and enhancing valuable wildlife habitats. They have permissive powers to maintain 22,000km of watercourses, supporting 50,000 farms and small holdings; reducing flood risk to ~800,000 properties, 1,500km railway, 210km of motorway and over 50 power generating sites. They also work in close partnership with the Environment Agency, Natural England, local authorities and others in carrying out their duties.

Over the centuries, this need to manage flood risk, within a catchment or flood prone area, for public benefit, led to the creation of what is now the Land Drainage Act 1991 (**LDA 1991**). It sets out how a framework of statutory bodies that today includes your IDB, operate. These have the power, in the public good, to raise funds to deliver "flood and coastal erosion risk management" (**FCERM**) works within and for the benefit of a specific catchment, area or locality.

- I.2 **The Department for Environment, Food and Rural Affairs (Defra)** is the government department responsible for leading on FCERM policy in England.

I.3 Risk Management Authorities (**RMA**s) are, according to the Flood and Water Management Act 2010 (**FWMA 2010**), the main statutory bodies with powers to carry out flood risk management functions. All IDBs are RMAs, as is:

I.3.1 the Environment Agency (**EA**), which is responsible for taking a national strategic overview of the management of all sources of flooding and coastal erosion in England. This includes, setting the direction for managing the risks through strategic plans (such as the national FCERM strategy), providing evidence and advice to inform government policy and supporting others, working collaboratively to support the development of risk management skills and capacity, and providing a framework to support local delivery. For watercourses, the EA's primary jurisdiction relates to main rivers, which are usually larger rivers and streams and are those shown on the statutory map held by the EA.

Work on or near main rivers, on or near a flood defence structure, in a flood plain or on or near a sea defence is regulated under environmental permits. Regional flood defence and land drainage byelaws also control some activities around watercourses and flood defences.

The EA also has permissive powers, but not a duty, to carry out maintenance, improvement or construction work on designated main rivers.

I.3.2 the County Council/Unitary Authority, which is designated as a lead local flood authority (**LLFA**) under the FWMA 2010. LLFAs are responsible for local flood risk management. This means ensuring risks of flooding from surface water, groundwater and ordinary watercourses are identified, regulated, and managed as part of a local flood risk management strategy.

They have permissive powers under the LDA 1991 to regulate ordinary watercourses (outside of internal drainage districts). This includes maintaining a proper flow by issuing consents for altering, removing, or replacing certain structures or features on ordinary watercourses. They can also enforce obligations to maintain flow in a watercourse and repair watercourses, bridges, and other structures. Where required, this can include serving suspension notices, removing unpermitted structures, or prosecuting where in the public interest.

Following certain criteria, LLFAs must also investigate local flood incidents and publish the results of such investigations. They also act as a statutory

consultee for surface water drainage schemes, planning applications for major developments and maintain a register of assets in the area.

1.3.3 the District Council, or Borough, which is empowered to undertake works to ordinary watercourses, outside of internal drainage districts. District and borough councils are also risk management authorities and key partners in planning decisions for local flood risk management. They can carry out flood risk management works on minor watercourses (outside of internal drainage districts). They also work in partnership with the lead local flood authority and others to ensure risks are managed effectively, including decisions on development in their area. In a unitary local authority area, the unitary authority also carries out the duties and functions of a district council.

1.3.4 Water and Sewerage Companies play a major role in managing flood risk. They manage the risk of flooding to water supply and sewerage facilities, and flood risk from the failure of their infrastructure. They have a duty under section 94 of the Water Industry Act 1991 to provide, improve and extend and maintain public sewers and drains to ensure their area *“continues to be effectually drained”*.

1.3.5 Highways Authorities. National Highways and unitary/county councils have the lead responsibility for providing and managing highway drainage and roadside ditches under the Highways Act 1980. The owners of land adjoining a highway also have a common-law duty to maintain ditches to prevent them causing a nuisance to road users. They co-operate with the other risk management authorities to ensure their flood management activities are well coordinated.

1.4 The Regional Flood & Coastal Committee (RFCC) provide a link between flood risk management authorities and other relevant bodies to develop mutual understanding of risks in their regions. They are made up of members appointed by lead local flood authorities and the EA, with a chair appointed by the Secretary of State.

They ensure coherent plans are in place for:

- identifying, communicating, and managing flood and coastal erosion risks across catchments and shorelines.
- promoting efficient, targeted investment in flood and coastal erosion risk management.

- 1.5 **Important legislation.** There are a few specific Acts of Parliament related to the management of water and flood risk that it is important to be aware of:

Land Drainage Act 1991 (LDA 1991) sets out the functions of IDBs and local authorities in relation to land drainage.

Flood & Water Management Act 2010 (FWMA 2010) provides for better, more comprehensive management of flood risk, defines RMAs and the role of LLFAs. It amended the LDA 1991.

Water Resources Act 1991 consolidates previous water legislation concerning water resources. It defines the responsibilities of the Environment Agency in relation to watercourses and groundwater.

Water Industry Act 1991 sets out the main powers and duties of the Water and Sewerage Companies in relation to the supply of water and the provision of sewerage services.

Environment Act 2021 strengthens the requirements for biodiversity enhancement and nature conservation.

- 1.6 **Key terms** The flood and water level management sector contains a myriad of terms and acronyms and legal definitions that can be confusing and easily misunderstood. Below is a short guide to some of the key commonly used terms, as defined by section 72 of the LDA 1991.

“**Watercourse**” includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers and passages, through which water flows, but not public sewers.

“**Drainage**”, includes defence against water (including sea water), irrigation (other than spray irrigation), warping (meaning to deflect water from its course) and the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse. It therefore covers far more than the simple evacuation of excess water, including irrigation and defence against flooding.

“**Flood**”, means where land not normally covered by water becomes so covered.

2 ABOUT YOUR IDB

Learn about the fundamentals of your IDB. Understand its legal status, how it was formed, and how it exercises its permissive powers and statutory duties to deliver its role as a local public authority. Find out about the key appointments your IDB should make.



2 ABOUT YOUR IDB

2.1 **What is my IDB?** Your IDB is a local public authority, existing to defend a local area from flood risk, and to manage water levels. It should have a close relationship with those who rely on it for such defence and management. As described in section 1 of the Land Drainage Act 1991 (**LDA 1991**), an IDB shall:

- (a) exercise a general supervision over all matters relating to the drainage of land within their district; and
- (b) have such other powers and perform such other duties as are conferred or imposed on IDBs by the LDA 1991.

Under section 1(3) of the LDA 1991, each IDB is a corporate body, meaning that it acts as an entity with a legal existence separate from its board members, similar to a limited company. It can therefore own land, enter into contracts, and be subject to court proceedings. However, unlike a company, it must act strictly within the limits of the legal powers conferred on it by legislation.

2.2 **Where do you find IDBs?** At time of writing there are 112 IDBs in England, covering approximately 10% of the land (predominantly in low-lying areas in England such as East Anglia, Kent, Lincolnshire, Somerset, Yorkshire). IDBs predominantly appear where there is a particular flood risk to an area and where the existence of a dedicated local public authority is thought necessary to alleviate that risk. Formally, an IDB can exist where an area will derive benefit or avoid danger as a result of drainage operations – this is known as its internal drainage district. It is the area that is considered to directly benefit from your IDB's activities and within which the IDB may levy drainage rates and issue special levies (see 7.3 and 7.6). You can find an interactive map of all the IDBs in England on ADA's website (see 11.3).

2.3 **What is my IDB's role?** Your IDB's role is to represent the relevant water level and flood risk management interests within its internal drainage district. It is therefore important for your IDB to understand the needs of all others involved in maintenance work or capital projects for water level and flood risk management and to be able to work towards resolving problems together. As a board member, you have a responsibility to be well-informed and indeed actively seek information about the breadth of interest in works being carried out by your IDB.

2.4 **Exercising powers and duties.** IDBs operate within a framework laid down by statute. Your IDB's activities mostly involve the exercise of a statutory permissive power, enabling it to undertake defined activities if it so wishes, rather than a statutory duty

which your IDB is required to fulfil as a public authority. IDBs have permissive powers to protect against flooding and to carry out water management works. However, this is not a legal obligation. This means the board has the 'power to' carry out works but is not duty bound to do so and will not be liable for the failure to exercise these powers. Therefore, the action to be taken in a particular case under permissive powers is predominantly within the properly exercised discretion of your IDB.

In general, drainage boards, local authorities and the Environment Agency will only act where there is a clear economic benefit and/or an appropriate engineering solution that is achievable, and where environmental legislation is not contravened. Landowners have ultimate responsibility for protecting their own property from flooding and erosion and must act within statutory planning regulations and other applicable legislation.

If a board does decide to exercise a power, then it could owe a potential duty of care in negligence but only if:

- (a) the board's decision was so unreasonable as to be outside its discretion;
- (b) the board's actions actually caused flooding on the claimant's land; and
- (c) that resulted in harm or loss to the claimant.

Even if the board's decision to, for example, release water from a watercourse to relieve water levels downstream could be shown to be unreasonable, then a claimant would still have to show that act was the actual cause of the flooding of their land.

Historically, the common law rule is that a person who, for his own purposes, brings onto land and collects and keeps there anything likely to do mischief if it escapes is liable for damage caused if it does escape (the rule in **Rylands v Fletcher** (1868)). However, in **Partakis-Stevens v Sihan** [2022] EWHC 3249 (TCC), [154]), ***"a landowner will not be liable in nuisance for the consequences of what would be recognised as a natural use of his land by him, unless the quality or extent of that use by him was unreasonable"***.

Generally, this does not apply to a public body exercising a statutory power in the absence of negligence.

In theory, claims could be brought under the First Protocol to the European Convention of Human Rights – the denial of the peaceful enjoyment of property. In **King and others v the Environment Agency** [2018] EWHC 65 (QB)

an unsuccessful action on these grounds was brought against the EA. It was held that the EA was not liable to prevent flooding by reason of its omissions, even if those omissions were unreasonable - “[t]here is no legal right to be protected from flooding and its effect, and... at common law landowners are responsible for safeguarding their land and property when flooding occurs”.

It is also possible for a board to be liable in nuisance or negligence. In **Anchor Hanover Group v Arcadis Consulting** (UK Ltd) [2021] EWHC 543 (TCC), the High Court rejected the application by the EA to strike out a claim in negligence against it by a group of landowners claiming compensation for flooding.

The court, at paragraph 59, reiterated the general statement of principle that **“public authorities do not owe a duty of care at common law to private individuals or bodies simply by exercising their statutory powers or duties”**. A public authority would only be under a duty of care **“where the principles applicable to private individuals or bodies would impose such a duty, as for example where the authority has created the source of danger or has assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation”** (paragraph 50).

The case of **Christchurch Drainage Board v Brown and Heathcote CC** [1987] 9 WLUK 23 is a New Zealand case, but Christchurch drainage board appealed the decision of the original appeal court in New Zealand to the UK appeal court. The UK appeal court held that Christchurch drainage board owed the claimants a duty of care in negligence. The drainage board's statutory powers included providing and maintaining defences against flooding and approving drains, pumping facilities and sewage arrangements proposed for developments. Heathcote county council (**HCC**) was responsible for dealing with applications for planning permission and issuing building permits. Part of HCC's considerations was whether there was any danger of flooding on the application land and relied on the drainage board for information about flood risk etc.

The claimants had applied for a building permit. HCC referred only part of their application to the drainage board, who visited the site and approved the application without any comment about flood issues. However, the drainage board did not draw the claimant's attention to the flood danger. Although the function for the drainage board was to approve the drainage and sewage arrangements, as a matter of practice, the drainage board would also report on flood danger. The claimants' house later flooded three times in two years after which the claimants had to have the ground floor level raised. The claimants claimed that the drainage board owed them a duty of care in negligence.

The court held that a duty of care could be assumed. It was held that if the drainage board habitually checked for flood risk without an express request from HCC, even without an express request from HCC, the drainage board owed a duty of care to the claimants.

IDBs have a statutory duty to protect and enhance the environment, as set out in the Environment Act 2021 and other legislation. More information on this can be found in the Environmental Good Governance Guide for Internal Drainage Boards (2022) on ADA's website (see [11.3](#)).

As locally funded bodies, it is therefore important for your IDB to meet regularly and reflect the proper needs of the local communities and the environment for which it performs those functions. Your IDB will, whether it is exercising powers or duties, wish to manage effectively the flood risk to its internal drainage district as far as can be done at a cost which is acceptable to the local community that funds the IDB through drainage rates and special levies. It should, therefore, be dynamic and professional in delivering its services and draw up and publish strategic plans, setting out how it intends to perform its functions, maintain and improve its assets, and schedule the construction or acquisition of new assets as required. While your IDB needs the advice and input of professional staff/advisers to do so, your own input as a board member with local knowledge is key and, therefore, it is most important that you play your full part in your IDB's business.

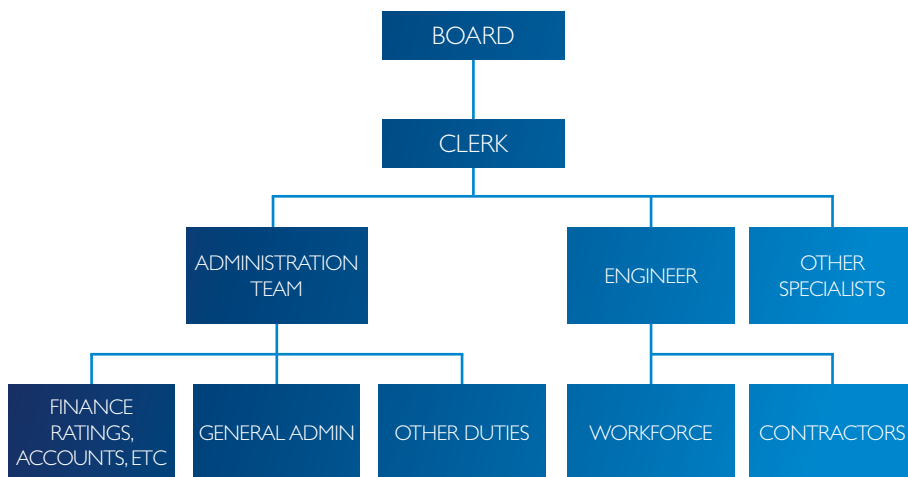
2.5 How was my IDB created? Many IDBs were originally created several hundred years ago and, whilst many have been reconstituted or are considering reconstitution to take account of changing circumstances, they have a long history of undertaking local works, often under local legislation. Internal drainage districts and boards that were in existence before 1st September 1989 continue to have effect by virtue of section 140 of the Water Act 1989 and section 1(1) of the LDA 1991. Today, your IDB will normally have been constituted by statutory instrument under the LDA 1991. This statutory instrument will contain the details relating to the names and extent of the internal drainage district by reference to a formal map, and the number of board members. It will also designate the first board members of the IDB.

2.6 Are all IDBs the same? IDBs are not identical. They differ because they are established to manage the specific water management needs arising within their local area. Their internal drainage districts vary in extent depending on the size of the catchment in which they work. Some IDBs will have one or more pumping stations while others will rely on gravity drainage systems. A few have a specialist primary purpose, such as the management of water flows into their internal drainage districts in summer particularly in respect of environmentally protected areas.

The Medway Letter. There is no formula laid down in statute as to how the boundaries of an IDB are drawn. However, criteria were defined in a letter giving the decision of the Minister on an appeal against a proposed scheme prepared by the River Medway Catchment Board in 1933 known as the “Medway Letter”. Whilst the Medway letter does provide some guiding principles, today flood risk managers typically refer to flood zones that are based on the predicted annual probability of river and sea flooding occurring. Reassuringly, these flood zones often correlate closely with existing IDB boundaries.

- 2.7 **Can IDBs employ staff?** Yes, ensuring your IDB has access to people with the appropriate skills and knowledge is essential. Some IDBs will have a number of employees, while others will have no employees and instead arrange for their work to be carried out by another person or body. Consortiums exist where a number of IDBs come together under an agreement to operate more efficiently and to use shared resources and employees. This is provided for under section 11 of the LDA 1991. Where your IDB employs staff, the LDA 1991 states that reasonable remuneration can be paid and housing accommodation provided, but otherwise the general law applicable to employment will govern the relationship.

TYPICAL STAFF AND MANAGEMENT STRUCTURE OF AN IDB



2.8 Key appointments. Your IDB must have a chair, who is responsible for running IDB meetings and its business (see 3.8), and if desired a vice chair. Your IDB should also have a clerk, who is the formal point of contact for the IDB (see 2.9); a responsible financial officer (**RFO**) to manage its financial affairs (see 8.1); and an engineer to look after maintenance and improvement works (see 6.4), regulatory functions (see 6.5), and environmental delivery (see 6.8). In some cases the same person may undertake these roles. Your IDB should also appoint an independent and competent internal auditor (see 8.10.3-8.10.5).

2.9 Your clerk. Your IDB should have a clerk (who may also be titled chief executive or similar), who will provide advice and administrative and financial support, and take action to implement the IDB's decisions. It is the clerk's job to receive information from other bodies and keep up to date on the laws and procedures affecting your IDB. Your IDB should ensure that your clerk and board members work as a team to provide an effective service for the internal drainage district.

Remember, your clerk answers to the IDB. Where the IDB has other staff, they are often managed by the clerk who may therefore be referred to as the IDB's chief executive, senior officer or similar. An individual board member cannot act as the line manager of either the clerk or other employees. Your chief executive – or clerk – will usually be responsible for the staff and the chief executive/clerk will be responsible to the board as a whole.

3 BOARD MEMBERS

Understand your role as a board member; how members are elected or appointed to your IDB, the importance of objectivity and independence in your decision making, and the role of your IDB's chair.



3 BOARD MEMBERS

- 3.1 **Role.** As a board member, you are accountable for your IDB's actions or omissions and must take all reasonable steps to ensure that the IDB acts properly in achieving what it sets out to do. As a public body, the board must:-
- a) not act so irrationally or reasonably that no reasonable person would so decide ("Wednesbury unreasonableness", named after ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** [1948] 1 KB 223);
 - b) make decisions free from bias or personal interest, in accordance with correct procedure and after due consultation;
 - c) act within its statutory powers;
 - d) when taking a decision which affects the rights of others, it must act fairly and in accordance with the European Convention on Human Rights;
 - e) not discriminate on the grounds of the 9 protected characteristics set out in the Equality Act 2010 (Pregnancy and maternity, age, disability, gender reassignment, marriage and civil partnerships, race, religion or belief, sex and sexual orientation).

Under paragraph 1(1) of Schedule 2 to the Land Drainage Act 1991 (**LDA 1991**), The Department for Environment, Food & Rural Affairs (**Defra**) may authorise by order only the chair of a board to be paid an allowance. Board members do not receive any payment, apart from the reimbursement of reasonable expenses to attend meetings, carry out inspections and attend conferences or joint meetings. Why therefore should you get involved? You will appreciate that, as the IDB is specifically created to manage land drainage and flood risk within its internal drainage district, you almost certainly will be or will represent those who will be reliant on the IDB for protection from flooding and will therefore directly benefit from its operations. Your task as a board member is to bring relevant local issues to the attention of the IDB, and help it make decisions on behalf of its internal drainage district.

- 3.2 **Number of board members.** Board members of your IDB are either elected members or appointed members. Elected members are those representing drainage ratepayers from the agricultural community within your internal drainage district. Under paragraph 5 of Schedule 2 to the LDA 1991, appointed members are those appointed by the local authorities that collect funds from ratepayers for your IDB through a demand mechanism called the special levy (see 7.6). The number of places for elected members on your IDB is set out in the order

constituting the IDB. This means that the number of appointed members on your IDB is always additional to that number.

Special levy paying council(s) are entitled to assign appointed members onto your IDB in proportion to the proceeds of special levies that they must contribute to your IDB's total special levy and drainage rates income. However, where the special levies represent the majority of an IDB's combined income from special levy and drainage rates, the overall number of appointed members is capped at one more than the total number of elected members under Schedule 1 para.6(1) of the LDA 1991 as amended by SI 1992/3079 reg.4.

The numbers of board members on an IDB varies around the country. However, Defra suggests that in general IDBs should not be larger than 21 board members, and for smaller IDBs, not larger than 13. IDBs larger than this may wish to consider reconstituting to a smaller size to see fewer vacant seats, more contested elections, and better attendance at meetings. Constitutional changes to your IDB are submitted by the Environment Agency (**EA**) (see 9.6).

- 3.3 **Qualification and election of board members.** IDBs hold elections every three years in accordance with the provisions of the Land Drainage (Elections of Drainage Boards) Regulations 1938, as amended. Elected members are directly voted for by drainage ratepayers and the duly elected members take office on 1st November following the election. The qualifications for voting, and eligibility to stand for election, are set out in paragraphs 1-4 of Schedule 2 to the LDA 1991. A person must be (a) the owner and occupier of not less than 4 rateable hectares in the board's area, or (b) the occupier of not less than 8 such hectares, or (c) the occupier of land with an assessable value of £30 or more in the area or (d) someone nominated by an owner and occupier of land in the area of not less than 4 hectares or of an assessable value of £30 or more.

The electorate are the occupiers of property liable to pay drainage rates the year before. Each elector has between 1 and 10 votes, depending on the annual value of their property within your internal drainage district (see 7.2). Under paragraph 10 of Schedule 2 to the LDA 1991, if the place of an elected member becomes vacant before the end of their term of office, the board must elect to co-opt a new member, unless there is less than 6 months left of the term of office. The person co-opted should be someone qualified to stand for election as an elected member:

- 3.4 **Appointed members** do not have to be a councillor or employed by the special levy paying council, but under paragraph 5(2) of Schedule 2 to the LDA 1991, the council must have regard to the desirability of appointing a person who (a) has knowledge or experience of some matter relevant to the functions of the board

(including knowledge of the board's area or commercial experience) and (b) has shown capacity in such a matter. This is therefore an opportunity for the council to encourage and facilitate the diversity of membership and relevant interests and experiences on your IDB. Such interests may include for instance: biodiversity and conservation, business and commerce, local democracy (e.g. parish council), a local flood group, industry, highways, service infrastructure, recreation and amenity, heritage and archaeology, navigation, or angling. It is recommended that the council routinely engages with, and has a mechanism to receive feedback from, appointed members regarding the work and decisions of the IDB.

A vacancy occurring in the appointed membership is filled by the relevant council and the term served by such appointed members is a matter for the appointing local authority. It is important to note that when acting as a board member of your IDB, you are there to serve the interests of the IDB (see 2), which may, on occasion, differ from party political wishes, or those of your appointing council.

- 3.5 **Substitute members.** Nothing in the LDA 1991 refers to the appointment of substitute members who could attend meetings of the board in the event of illness/absence of the appointed member. Special levy councils will normally appoint to membership of a board through their outside bodies appointment process, which is usually undertaken at a council meeting or delegated to an officer. The process is unlikely to include appointment of substitutes. It is therefore worth thinking about discussing with your relevant council(s) if they are willing to appoint a substitute member(s), particularly if you only have one member representative from the council. You should note that, if no substitute has been appointed, there is no provision to allow any member of the council simply to attend in the place of the appointed member.
- 3.6 **Commissioners.** There are some IDBs, usually called commissioners, which are subject to provisions, particularly regarding eligibility and elections of board members, which are within local legislation and differ from those applicable to the majority of IDBs. Board members of such a body should seek the advice of its clerk as to these provisions. The term IDB is, however, used within this guide to include such commissioners, unless the contrary is stated.
- 3.7 **Objectivity and independence.** Discussions and decisions taken by your IDB should not be influenced by external or political influences unrelated to the functions of the IDB. All board members of your IDB are required to take any decision in the best interests of the IDB and internal drainage district, its drainage rate and special levy payers, and the local community it serves. In doing so, you should take into account the full range of factors, including the need to deliver effective land drainage and flood management, the importance of promoting biodiversity, and the need to

deliver value to both the local agricultural community that pays drainage rates, and to the wider local community on behalf of which the special levy is demanded from council ratepayers. Board members also owe a fiduciary duty to rate and special levy payers not to be recklessly indifferent to the proper financial stewardship of the board (see *Brent London Borough Council v Davies and others* [2018] EWHC 2214).

3.8 Your IDB's chair. The chair has a very important role within your IDB and should have a close working relationship with the clerk and its senior officers to ensure the smooth and proper functioning of the board.

3.8.1 Roles and responsibilities. The chair will liaise with the clerk in compiling the agenda and managing the meeting and its business and ensure that proper procedures are followed. Board members should therefore always work through them. When a vote on a proposal is tied, the chair may be allowed a casting vote, in accordance with the IDB's standing orders. The chair is entitled to use their casting vote as they please. They are under no obligation to use such a vote impartially or to follow an officer recommendation (see *R v Bradford City Council ex p. Corris* [1990] 2 QB 362 and *R. (on the application of Hewitson) v Guildford Borough Council* [2011] EWHC (Admin)).

The chair will also sign minutes of meetings and your IDB's accounting and governance statements within its annual governance and accountability return. The chair should ensure that these, and any other documents which they are called upon to sign, approve or authorise, are properly scrutinised. The chair would also normally be requested to call any extraordinary meetings which your IDB may require.

Best practice is to have a document, approved and periodically reviewed by your IDB, which sets out the respective roles and responsibilities of your IDB's chair and clerk. A model 'Division of Responsibilities' document is available from the ADA website (see [11.3](#)).

3.8.2 Remuneration. Your IDB can, with the minister's approval, pay an allowance to the chair in accordance with Schedule 2 to the LDA 1991.

3.8.3 Length of tenure. The chair of your IDB should, withstanding exceptional circumstances, follow the principles within the Cabinet Office's Governance Code on Public Appointments 2016, which states that there is a strong presumption that no individual should serve more than two terms of three years or serve in any one post for more than ten years.

4 GOVERNANCE

Good governance is the key to any well-run public authority. This section explains the responsibilities and guiding principles involved in good governance. It also sets out the important documents that underpin your IDB's own governance and how these are supported by training and learning and the staff your IDB employs.



4 GOVERNANCE

IDBs are public bodies which are subject to legislation. The main piece of legislation you should be aware of is the Land Drainage Act 1991 (**LDA 1991**) (see 1.1.2).

Schedule 1 of the LDA 1991 covers the rules about election of members of IDBs and appointment of local authority members to IDBs. Schedule 2 of the LDA 1991 covers expense and proceedings of IDBs, including the requirement for IDBs to make standing orders to regulate their meetings and decision-making. These statutory rules and the general principles of good governance apply to all public bodies and are summarised below.

4.1 Responsibility. It is of utmost importance for IDBs to adhere to a proper and robust governance and regulatory framework. This includes establishing mechanisms for monitoring and review, with active participation from board members. As a board member, you have a vital role in ensuring that all decisions made by your IDB are well-founded and supported by effective processes. Proper governance is the responsibility of all board members.

Your IDB should prioritise effective communication and engagement with rate and levy payers. It should maintain written employment contracts with staff, ensure proper record-keeping, establish a robust system of financial control, conduct efficient meetings, and remain well-informed about relevant topics. Well-prepared and well-informed board members and officers are more likely to avoid difficulties and ensure the smooth functioning of the IDB and its operations.

4.2 Guiding principles. The Committee on Standards in Public Life (sometimes known as the Nolan Committee after its first chair, Lord Nolan) identified seven general principles of conduct that should underpin public life. It is recommended that all public bodies, including IDBs, reflect these principles in how they operate and also in their codes of conduct for members. The principles of public life are:

- **Selflessness:** Acting in the public interest
- **Integrity:** Avoiding improper obligations and influences
- **Objectivity:** Acting fairly
- **Accountability:** Willingness to undergo public scrutiny
- **Openness:** Transparency in actions and decisions
- **Honesty:** Commitment to truthfulness
- **Leadership:** Promoting high standards of conduct and challenging poor behaviour

These principles, together with respect for others, the promotion of equality, and the upholding of the law, should underpin your IDB's governance arrangements. As a body spending public money and delivering a public service, your IDB should provide:

- a clear definition of purpose, responsibilities and desired outcomes,
- an appropriate corporate culture,
- transparent decision making,
- a strong governance team and real accountability.

It is therefore essential that your IDB, and its board members and officers, actively and regularly consider its compliance with these principles and identify and deal with any issues.

4.3 10 themes of good governance

The Good Governance Institute believes there are ten principal themes that illustrate aspects of good governance (see 11.3):-

- **Clarity of purpose, roles and behaviours** – Boards need to ask themselves one fundamental question: 'what is the point of this organisation?' The purpose of the organisation, and the vision set by those that govern it to support the achievement of that purpose, is the starting point for any system of good governance.
- **Application of principles** – The principles driving an organisation must be of fundamental value, understood by all users and reflect the organisation's purpose. It is suggested that there are ten: entity, accountability, stakeholders, governance and management, the board and constructive challenge, delegation and reservation, openness and transparency, board support systems, knowing the organisation and its market, and competence.
- **Leadership and strategic direction** – Without clear strategic direction and leadership embedded within the governance system, organisations can be successfully reactive, but are also prone to going into organisational free-fall.
- **Effective external relationships** – Good governance has the interests of all stakeholders at its roots. The best boards and governing bodies ensure their leaders are directly engaged in stakeholder relationships.
- **Effective internal relationships** – Boards must understand how their own organisations' internal stakeholders are feeling and acting. At the root of many

organisational issues is a lack of good communication between those who run the organisation and those who work for them.

- **Transparency and public reporting** – Openness builds confidence and early disclosure supports early improvement. A mature organisation will have empowered staff who welcome comments, who apologise when things go wrong and respect users' expectations that things will be put right.
- **Systems and structures** – Organisations must be able to benchmark themselves against relevant best practice and track compliance against standards and targets. They must ensure a clear line of sight from the front line of service delivery through to board level on quality and safety.
- **Challenge on delivery of agreed outcomes** – It is not always easy to identify and measure outcomes in complex environments or to identify specific causes of failure, but there are tools available to help and boards should be well-informed about them and about how their organisations measure up against relevant benchmarks.
- **Risk and compliance** – The risk system used by boards should properly alert management and boards of any danger of failing to meet compliance standards.
- **Organisational effectiveness** – Boards should regularly discuss what value they can add to their organisations. Good governance includes identifying a vision, developing a strategy, selecting and supporting a leadership to deliver that strategy, assurance that progress is being made, the stewardship of resources, and the guardianship of quality and safety – all done to the highest standards of probity and transparency.

4.4 Important documents. Standing orders, scheme of delegation, policy statement, financial regulations and code of conduct are the core documents required by your IDB and contain much of the detail that will demonstrate good governance. They must be approved by the full IDB board. In order to properly undertake your duties and ensure that the above principles are met, you should either personally have or know the whereabouts of your IDB's important documents and the budget for the current year; the map of your internal drainage district, your IDB's byelaws, risk assessment documentation, policies, and procedures for emergencies.

4.4.1 Policy statement. This provides a public statement of your IDB's approach to its management of water levels and flood risk within its internal drainage district and should be easily accessible on your IDB's website.

- 4.4.2 **Standing orders.** These are the detailed rules for meetings and proceedings of your IDB, including the quorum required for meetings, the constitution of committees, delegation and the rules for the discussion of business. Your IDB must adopt standing orders, with the approval of the Department for Environment, Food and Rural Affairs (**Defra**), which has produced a template. These standing orders will also set time limits in relation to meetings and the production of meeting papers but normally, save in an emergency, you should receive fourteen days' notice of a meeting and an agenda seven days before the meeting, to ensure you are notified of the matters to be discussed.
- 4.4.3 **Scheme of delegation.** Under paragraph 3(1) of the LDA 1991, IDBs may make rules for authorising the delegation to committees of any of their powers. IDBs should have a clear scheme of delegation, identifying those powers reserved to the board, and those powers delegated to committees. The IDB should also clearly list its committees and state which are advisory committees to the board and which have decision-making powers. IDBs should clearly set out each committee's terms of reference and state the committee's functions and what powers are delegated to them. Your IDB may also delegate some powers to officers, for example to your clerk, chief executive and chief engineer. Section 101 of the Local Government Act 1972 is specific that a local authority may delegate to a committee or an officer; but paragraph 3(1) of schedule 2 to the LDA 1991 only refers to the ability of boards to make rules for the authorisation of delegations to committees. As a general rule, it is not possible for a person or body entrusted with a delegation to then subdelegate that function – ***delegatus non potest delegare*** but it is lawful for the board or its committees to authorise officers to implement its decisions and the courts have accepted a degree of implied delegations to officers, see ***Provident Mutual Life Assurance Association v Derby City Council*** [1981] 1 W.L.R. 173 and of ***R. (on the application of Blow Up Media UK Ltd) v Lambeth LBC*** [2008] EWHC 1912 (Admin), in which sub-delegation of planning functions was permitted on the basis that it would have been wholly impracticable for the officer with express authority to have taken all the decisions himself.

There is no power to delegate to a member, sitting as a "committee of one": ***R. v Secretary of State for the Environment Ex p. Hillingdon LBC*** [1986] 1 W.L.R. 807.

Any scheme of delegation should be in accordance with your IDB's policies, should be clear and easy to understand and should be adopted by the board.

- 4.4.4 **Financial regulations.** These set out how your IDB manages its financial affairs. For example, they will detail the process for making and approving payments and for purchasing goods and services, including how and when tenders and quotes are required (see 8.2).
- 4.4.5 **Member code of conduct.** Board members should also adopt a member code of conduct, setting out the standards expected from both them and your IDB collectively. This code should be based on the Local Government Association's model code of conduct for councillors.
- 4.4.6 **Procedure for investigating complaints under the member code of conduct.** IDBs should adopt arrangements for assessing, investigating and determining complaints made against members under the member code of conduct. Such arrangements should enable members to see and understand allegations made against them, have the opportunity to respond to allegations and for those allegations and the members' response to be considered by a panel of members unconnected with the matter.
- 4.5 **Other standards policies.** IDBs should add to their ethical framework by adopting other related guidelines on issues such as whistleblower protection, anti-bribery and corruption and data protection and privacy. Regular review of these policies and any complaints, issues arising under them will ensure that the policies remain relevant and effective in promoting good governance practices.
- 4.6 **Employment.** The law requires that at all times your IDB must act as a responsible employer; and should be careful to appreciate its obligations to any direct employees, agency or contract staff. All employees must have written particulars of employment and all staff should have a written contract of employment or contract for services. IDB employees enjoy the full security of the law whether they are full-time or part-time workers and the law protects them in terms of pay, annual leave, sick leave, maternity and paternity leave, pay and from bullying, harassment or discrimination. Your IDB should adopt a code of conduct for employees setting out the levels of expected and accepted behaviour and an agreed grievance procedure to ensure that concerns raised by an employee are handled properly if they occur. Health and safety law (see 10.3) also protects employees (and members of the public); your clerk should be able to advise on such matters. Many IDBs follow the employment conditions set out in the ADA Lincolnshire branch wages, salaries and condition of service manual, known as the "White Book".

- 4.7 **Complaints arising outside the member code of conduct (Service Complaints).** IDBs should also have a clear and concise complaints policy for any member of the public or organisation wishing to raise a complaint about operational or other matters, which does not fall within the code of conduct. The policy should set out whom to complain to in the first instance and how to take the complaint to a second or appeal stage. The policy should also set out the rights of the complainant to contact the Local Government and Social Care Ombudsman if they are dissatisfied with the outcome.
- 4.8 **Training.** As a board member, you should keep up-to-date with legal and administrative changes and the duties placed upon your IDB. Training for board members and structured professional development for employees is recommended, and it is good practice for your IDB to routinely review board members' and employees' training needs to ensure that your IDB's knowledge remains current, and seek appropriate courses or guidance.
- 4.9 **Authority to execute deeds.** IDBs should have a clear understanding of the authority to execute deeds on behalf of the organisation. This includes the power to enter into contracts, agreements, and other legal documents. Having clear procedures and mechanisms in place for executing deeds ensures compliance with legal requirements and enhances the overall governance of the IDB. The common law requirement for a deed to be executed under seal has been abolished for individuals (by the Law of Property (Miscellaneous Provisions) Act 1989) and for companies (by the Companies Act 2006). No similar abolition exists in relation to public bodies and so the common law requirement for IDBs to use a seal remains.

5 MEETINGS

Find out what happens at an IDB meeting, how you should behave at board meetings, and the importance of disclosure and declarations of interest. Understand how some matters may be delegated to committees by your IDB.



5 MEETINGS

- 5.1 **General.** Board meetings are for making decisions by the full IDB, while committee meetings may involve a smaller number of board members for a specific issue or issues within the scope of the terms of reference for that committee.
- 5.2 **Meeting frequency.** Your IDB should decide on, and publish on its website, its yearly schedule of meetings in advance. Your IDB must have at least two full board meetings in every financial year; to consider not only the general business, but also the budgets and the levels of drainage rates and any special levies (see 7), and the annual governance and accountability return and the accounts for the previous financial year (see 8.10).

The board meeting to approve the budget and to set the drainage rates and special levies must be held on or before the 15th February prior to the financial year in question (see 7.1), while the annual governance and accountability return and the IDB's accounts must be approved on or before 30th June after the end of the relevant financial year (see 8.10.7). One of your IDB's meetings each year must act as an annual general meeting (**AGM**) at which the election of your chair and vice chair will be made.

- 5.3 **Openness.** The provisions of the Public Bodies (Admission to Meetings) Act 1960 (**PB(AM)A 1960**) apply to boards as they have the power to levy a rate (paragraph 1(h) of Schedule 1 to the PB(AM)A 1960). Under section 1(1) of the PB(AM)A 1960, meetings of your IDB must be open to the public and reasonably accessible to any attendee unless excluded by resolution when publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or other special reason stated in the resolution and arising from the nature of that business or of the proceedings.

Openness and transparency fosters good relationships with communities and other public authorities. The recording, filming and reporting of all public meetings is permitted but should not disrupt the meeting, and the IDB may wish to set reasonable rules to prevent disruptive behaviour. Under section 1(3) of the PB(AM)A 1960 where the public are excluded from a meeting, the board may also prevent the use of methods of reporting on the meeting which can be used remotely or relaying or recording the meeting.

In addition, under common law, the chair of a meeting may exclude those causing disruption to a meeting. A chairman should issue a first warning before excluding a person from a meeting. If that is ignored, then it is usually helpful to adjourn the

meeting while officers seek to remove the disruptor or seek assistance from the police in doing so. If disruption is anticipated, it is sensible for officers to agree a plan of action in advance with the chair of the meeting and the police.

- 5.4 **The agenda** is the list of business to be transacted at meetings and each item should make it clear what it is about, what (if any) actions are required, and what decisions may be made. The clerk will compile and issue the agenda and accompanying papers usually in consultation with the chair. You may ask the clerk to add items to the agenda but must consider the time limits set by the standing orders as to when this may be done. Under section 1(4) of the PB(AM)A 1960 public notice of the time and place of the meeting must be given by posting at the board's offices and on its website at least three clear days before the meeting. Copies of the public parts of the agenda must be made available on the board's website and paper copies provided on request and on payment of postage to any newspaper.
- 5.5 **Attendance.** Your IDB membership is important and only very good reasons should prevent your attendance. If you are unable to attend, you should contact the clerk with an apology and explanation. Under paragraph 8(2) of Schedule 1 to the Land Drainage Act 1991 (**LDA 1991**), if you fail to attend any meetings of your IDB for six months consecutively, your membership ceases unless the absence is due to illness or some other reason approved by the IDB. Paragraph 8(2) of Schedule 2 to the LDA 1991 omits the words "in advance" used in the parallel section 85(1) of the Local Government Act 1972 when referring to the board's approval, however boards should only consider approving more than 6 months absence well in advance of the expiry of that period as it will be unclear whether a vacancy has occurred and this may affect the membership of committees.
- 5.6 **At the meeting.** It is the chair's job to manage the meeting by introducing agenda items, inviting board members to speak, focusing discussion and clarifying matters for decision. Board members, having engaged in discussion, vote for or against a proposal, usually by a show of hands, and the minutes then record those decisions. If you cannot decide, you may abstain. Remember however, that IDB decisions are corporate decisions, and your chair should not allow one person or a small group of board members to dominate your IDB's work, or to make decisions on its behalf. The meeting should remain quorate at all times, so remember to inform the clerk in good time ahead of a meeting if you need to leave early. Normally voters' names are not minuted but if necessary, you can ask for names to be recorded. You should keep contributions short and to the point and always work through your chair. Whilst you have the right under the Article 10 of the European

Convention of Human Rights to freedom of expression on political matters (including the administration of the IDB) that is subject to the requirement to treat others with respect, see *Heesom v. Public Services Ombudman for Wales* [2014] EWHC 1504 (Admin). You can criticise the policies and performance of the board but do not engage in personal attacks on others.

Good meeting etiquette. The following ten points will help you and your IDB have productive and fulfilling meetings:

- 1 Start on time.
- 2 Come prepared, read the agenda, previous minutes, and any accompanying papers, think about anything you may wish to ask in advance.
- 3 Switch any electronic devices to silent.
- 4 Laptops and other devices should remain closed unless being used in place of hard copy papers, or to present, contribute or take official minutes.
- 5 Actively listen to other points of view.
- 6 Avoid interrupting the speaker.
- 7 Contribute clearly and concisely.
- 8 Don't engage in side conversations.
- 9 Stick to the agenda and reach and communicate conclusions and resolutions.
- 10 Finish on time. Ideally, a meeting should not last more than two hours otherwise concentration begins to lapse.

- 5.7 **Disclosure of interests.** Under paragraph 3(3) of Schedule 2 to the LDA 1991 a member of a board who has an interest in any company with which the board has or proposes to make a contract must (a) disclose the fact and nature of the interest and (b) take no part in any deliberation or decision of the board relating to that contract.

Your IDB should adopt a board members' code of conduct (see 4.4.5) and have a register of board members' interests, which your clerk must establish and maintain. Registrable interests include contracts, ownership of land and assets, and employment or business interests in or affecting the internal drainage district. A board member should disclose any such interests within 28 days of becoming a board member or, if later, the interest arising. Disclosure also applies to the relevant interests of board members' spouses, civil partners, immediate family or cohabitants. The register should then be made available to the public. If the clerk decides, on reasonable grounds, that, by making a disclosable interest public, a board member might be subject to a threat of violence or intimidation, the fact, rather than the details of the interest can be registered. This is known as a "sensitive" interest.

5.7.1 [The disclosure and declaration of interests](#) at meetings should be done at the beginning of each meeting and during the meeting if the need arises. Depending on the type of interest, you may either not be able to participate in the debate and vote, or you may still be able to participate and vote after declaring the interest, in accordance with the standing orders and paragraph 3(3) of Schedule 2 to the LDA 1991 as above. If in doubt, seek advice from your clerk. However, the general liability to pay either drainage rates or through payments to the local authority, the special levy, is not such an interest, as it is a decision affecting the board members as a whole, rather than an individual.

5.7.2 [A conflict of interest](#) therefore arises where there is a risk that an individual's ability to apply judgment or act in one role is, or could reasonably be perceived to be, impaired or influenced by a secondary interest. Examples include the following scenarios:

- a board member (or their employer or other close associate or family member) carries out work for your IDB;
- your IDB's decisions on commissioning and procurement are influenced by a board member (or officer) using their power while in office to shape a policy or decision, with a view to opening up opportunities to future employment;
- where they might profit from public office by drawing on information or knowledge derived from their public role to profit financially;
- where gifts are received or where staff are recruited without proper processes, particularly where relatives are employed.

In all cases, it is sensible to err on the side of caution and, where you are uncertain, to discuss the potential conflict in advance with the clerk.

5.7.3 Accepting significant gifts or hospitality also creates a perception of biased decision-making even if the gift has no bearing on judgment and your IDB should be aware of the provisions of the Bribery Act 2010, which both defines and creates criminal offences of bribery. Your IDB therefore needs to manage this risk by putting in place appropriate safeguards around these activities by adopting a gifts and hospitality policy or equivalent. The cross government report on conflicts of interest issued by the National Audit Office is a useful reference work in this area (see [11.3](#)).

5.8 After the meeting, the clerk, or the committee clerk, writes up the minutes as a legal record of what was decided. It is, therefore, important that the minutes are accurate and record clearly the actions to be taken and accordingly, the minutes of the previous meeting should be confirmed and signed at the start of every meeting. Paragraphs 3(4) and (5) of Schedule 2 to the LDA 1991 provide that, until the contrary is proved, an IDB or committee minute signed by the chair of that meeting is to be regarded as a proper record and that all IDB and committee meetings were duly convened and their proceedings in order. Your IDB's proceedings are also not affected by any vacancy in the membership or by any issue relating to a board member's appointment or qualification. For boards with a turnover of less than £25,000 per year under paragraph 29 of the Transparency Code for Smaller Authorities (see [9.2.1](#)), draft minutes of meetings must be published on your IDB's website within one month after the meeting has taken place. ADA recommends that boards with a turnover of over £25,000 also follow the above requirement.

5.9 Virtual meetings. Since the pandemic, most IDBs can facilitate holding virtual and/or hybrid meetings. The ADA model standing orders for IDBs refers to members being present at meetings however; paragraph 4 of the ADA model standing orders permits boards to choose to meet at a place to be confirmed on the agenda, including: in person, by remote attendance, or a combination of the two. For local authorities, the Local Government Act 1972 refers to members being present and voting in meetings. Local authorities were given the freedom to meet remotely during the pandemic under specific regulations which came to an end. In *Hertfordshire County Council & Ors v Secretary of State for Housing, Communities And Local Government* [2021] EWHC 1093 the court held that the reference to meetings in the 1972 Act meant a physical location and that remote attendance was no longer possible after the end of the regulations.

Walk Safe Security Services Ltd v London Borough of Lewisham [2024] EWHC 1787 (Admin), the court dismissed an appeal on the lawfulness of remote licensing hearings stating that in the absence of an express statutory definition of “hearing” in either the Licensing Act 2003 or the Licensing Act (Hearings) Regulations 2005, in principle the term “hearing” could be applied both to an in-person hearing and a remote hearing using video conferencing technology. The question for the court was not whether remote hearings were permitted but whether they were expressly prohibited. In the court’s judgment, there was no clear indication in the regulations that remote hearings were precluded for licensing hearings. This lends some support to the argument that because there is no express prohibition on IDB meetings being held remotely, such meetings are lawful.

In addition to the provisions of its standing orders, your IDB may have an adopted protocol for how these meetings are run, but the most important issue to remember is that the meeting should be run as far as possible like a fully in-person meeting. The following general rules should apply to remote or hybrid meetings:

A member is present when they are able:

- a) To hear and, where practicable, see and be so heard and, where practicable, be seen, by other members in attendance; and
- b) To hear and, where practicable see, and be so heard and, where practicable, be seen, by any members of the public entitled to attend part of or all of the meeting.

A fundamental principle is that the attendance of a member or an officer is equally valid irrespective of whether they are attending in person or from a remote location. It will not be appropriate for any member to make any adverse comment or inference in respect of any other member or officer’s chosen location for attendance.

Hybrid meetings should promote engagement, dialogue and transparency in the same manner as if the meeting were held physically.

Boards should make every effort to employ high-quality audio-visual systems for hybrid meetings.

Hybrid meetings will follow the board’s usual meetings practice in terms of publication of agendas and reports, and they will follow normal standing orders and procedural rules where possible.

All voting will be carried out either by affirmation of the meeting, by using the electronic voting system and on the virtual meeting platform in use, or by means of a roll-call of all members present both remotely and in person.

All voting results will be announced by the chair before moving to the next item of business.

- 5.10 **Voting and decision making.** The decisions made by the board and therefore binding upon it will be enabled by a simple majority of the board members attending, including any substitutes present at the time of the vote on each item on the agenda. The chair will, in the case of a tied vote, have the opportunity to exercise a casting vote but is not required to do so if, due to the split view of the board members, he/she regards it as appropriate not to push the item at issue to a conclusive decision or outcome. If the chair decides to exercise a casting vote then they may do so as they please. They are under no obligation to use such a vote impartially or to follow an officer recommendation (see 3.8.1).

6 DELIVERY

In this section we delve deeper into what your IDB's operational powers and duties are that enable it to maintain and improve watercourses and assets, regulate water management within your internal drainage district, conserve and enhance the environment, and work effectively with others.



6 DELIVERY

- 6.1 **An essential flood risk and water level management authority.** The most forward-looking IDBs are dynamic and professional in their management of water levels and flood risk within their internal drainage district, for the benefit of the communities they serve. This involves planning and delivering work, such as: maintaining watercourses and some rivers; operating assets such as pumping stations, sluices, water intakes (feeds) and other structures; improving the drainage system by building new or enhancing existing infrastructure for the improved management of water to manage the risks of flood and drought; ensuring the human, economic and natural environment remain sustainable.

It also means regulating changes that may affect the watercourses and assets within your internal drainage district, including new development. This is achieved through your IDB's regulatory powers (byelaws and consents) (see 6.5), and by engaging with the planning system. National guidance expects local planning authorities to consult with their local IDB on any planning proposal which could affect drainage or flood risk (see 11.3).

Finally, by working closely with other risk management authorities (**RMAs**) (see 1.3), other organisations and your local communities, your IDB can build strong and effective partnerships that collectively deliver more to reduce flood risk and manage water levels to benefit the local community. Such partnerships can achieve more than could be achieved by your IDB on its own.

- 6.2 **Powers and duties.** As you have already read (see 2.4), IDBs operate within a framework laid down by statute. An IDB is not like an individual, who generally has the legal ability to do anything that the law does not forbid. Instead, your IDB must work within the statutory rules which govern what your IDB can do, what it must do, or what it must not do. These are set out in legislation, such as acts of parliament and statutory instruments (e.g., orders, regulations, rules, codes etc.) some of which apply specifically to IDBs and others which apply more generally. Your IDB must therefore be careful not to act beyond its powers or enter into an unnecessary risk which could lead to financial and legal difficulties.

It is important that you understand the distinction between a **statutory duty** which **requires** your IDB to act, and a **permissive power** which **enables** the IDB to act. Also, even if your IDB is exercising your IDB's permissive powers, the work done is a matter of policy that you as board members should decide upon.

- 6.2.1 **Policy statement.** Your IDB **must** exercise its flood and coastal erosion

risk management functions in a manner that is consistent with both the national flood and coastal erosion risk management (**FCERM**) strategy produced by the Environment Agency (**EA**), and the local FCERM strategy published by your lead local flood authorities (**LLFAs**). This is in accordance with sections 12 and 13 of the Flood and Water Management Act 2010 (**FWMA 2010**). By adopting and publishing a formal policy statement, your IDB can set out how it intends to exercise its statutory powers in a consistent manner. ADA with the Department for Environment, Food and Rural Affairs (**Defra**) has produced a template of such a policy statement which your IDB can use to help develop its own (see 11.1 and 11.3).

6.3 The primary operational powers conferred on your IDB are:

to maintain and improve any existing ordinary watercourses or drainage works, and to construct new watercourses or drainage works, within its internal drainage district. If managing flood risk from the sea, your IDB requires the consent of the EA unless this is to carry out the maintenance or operation of existing works.

to dispose of any matter removed when widening, deepening or dredging any ordinary watercourse; or to deposit this matter on the banks of such a watercourse, or on a width of adjoining land as enables the matter to be removed and deposited by mechanical means in one operation. Your IDB may also enter into arrangements with a district/unitary council regarding the removal of this matter. Quite often local councils will arrange for off-site disposal for works undertaken in urban areas, if the IDB is prepared to carry out maintenance (which councils are sometimes not as well equipped to do).

to authorise persons to enter land to perform your IDB's functions. Written notice must be given to the occupier of land before entering land and no less than seven days' written notice must be given to the occupier if the land is residential or access with heavy plant is involved, in accordance with the Land Drainage Act 1991 (**LDA 1991**). Exceptions to this apply when access is required in an emergency. Provisions about notices and service are contained in sections 64 and 71 of the LDA 1991, respectively.

to make byelaws under section 66 of the LDA 1991. These are extremely important to the effective management of the district.

to operate drainage works in consultation and agreement as necessary with the EA, so as to manage the level of water in a watercourse to support and enhance

the natural environment and to facilitate spray irrigation. IDBs will often let water into their internal drainage districts to retain and maintain water levels for conservation, irrigation and other associated purposes. A transfer licence from the EA is required for gravity intakes of water from main rivers outside of internal drainage districts and an abstraction licence is required for all pumped feeds.

to acquire land or interests in land either by agreement or, if authorised by Defra, compulsorily, for the purposes of your IDB's functions. It is important to remember that IDBs are subject to similar rules as local authorities about disposing of land for best value. Section 63 of the LDA 1991 states that, except with the consent of the relevant minister, an IDB shall not dispose of land, otherwise than by way of a short tenancy (less than 7 years), for a consideration less than the best that can reasonably be obtained. Your IDB can demonstrate best value by obtaining a professional market valuation for the land. In addition, without the consent of the relevant minister, an IDB cannot dispose of land which it has acquired through compulsory purchase or when there is an agreement in place to compulsory purchase the land.

6.3.1 Important Considerations. When delivering any of these operational powers your IDB, in accordance with section 61A of the LDA 1991, must:

- further the conservation and enhancement of the environment;
- have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest;
- take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects;
- have regard to the desirability of preserving public access to such areas and other areas of natural beauty; and
- ensure that any rights to water or land that it has are suitably made available for recreational purposes. In this regard it specifies that for recreational purposes, a charge may be levied and that your IDB must take into account the needs of chronically sick or disabled persons.

6.4 Maintaining and improving watercourses and assets. Watercourses and assets used to control water, such as pumping stations, sluices, weirs, flap valves etc., periodically require maintenance, refurbishment and improvement. An IDB

will normally maintain the most important arterial ordinary watercourses and associated water control assets within its internal drainage district, and such other watercourses where there is sufficient public benefit. Having good strategic plans will help your IDB prioritise works, make suitable financial forward plans and budgetary decisions, and better engage with other local partners, ratepayers, and the wider community.

- 6.4.1 Planning and preparation.** Your IDB should proactively plan maintenance and improvement works, by preparing, and publishing, both an annual and a longer-term plan that sets out the works which it intends to undertake. To build greater public understanding of your IDB's work, your IDB should also publish a record or map of the watercourses it periodically maintains, and a statement of the types of general maintenance activities it routinely undertakes and why.
- 6.4.2 Waste regulation.** When using, treating, storing and disposing of waste, including dredged material, the provisions of the Environmental Permitting Regulations 2016 apply. For most routine IDB maintenance related activities, suitable waste exemptions exist which must be registered with the Environment Agency before these operations take place. For instance, the DI exemption allows your IDB to deposit dredged material on the banks of the waters it was dredged from and to treat it by screening and removing water. If a suitable exemption is not available, your IDB will need to apply to the Environment Agency for an appropriate permit (these may either enable waste disposal following a set of standard rules or be bespoke to the operation). You can find out more about waste regulation from the EA (see 11.3).
- 6.4.3 Main rivers** are those watercourses as shown on the statutory main river map held by the EA. The EA possesses the primary statutory jurisdiction over main rivers, and an IDB is not able to undertake works on such watercourses without specific consent and agreement of the EA.
- 6.4.4 Watercourses** which do not form part of the main river system are termed "ordinary watercourses". IDBs can choose to maintain any ordinary watercourse within its internal drainage district.
- 6.4.5 Rechargeable works.** Your IDB may also carry out and maintain, by agreement with any person and at their expense, any drainage works, (other than on main rivers) which that person is entitled to undertake, although in such a case, your IDB will, in carrying out the work, only have

the rights, for example, to enter land, possessed by that person. Additional risks must be properly considered when taking on this work.

- 6.4.6 **Service of notices and documents** under the LDA 1991 is evidenced by delivery to the person concerned, by leaving it at their proper address (if an individual) or by sending it by post to them at that address. Service to a corporate body should be addressed to the secretary or clerk. In the case where any document is required to be served on the owner or occupier of any premises and if the name or address cannot be ascertained; or in the case of service on the occupier, if the premises appear to be unoccupied, the document may be served either by leaving it with a person who appears to live on or be employed on the land or by leaving it fixed to a building or object on the land.

In **Worcestershire County Council v Pain & Ors** [2024] EWHC 913 (Admin), several irrigation pools had been created from a watercourse by the deposit of large amounts of waste. The council as lead local flood authority served notices on Mr Pain and others under section 24 of the LDA 1991 requiring amongst other things, that the land be reinstated. The council prosecuted for failure to comply with those notices and were successful in the magistrates court. Pain appealed and overturned the prosecution in the crown court but the high court ultimately found for the council. The case turned on whether the final requirement of the notices, namely to 'reinstate land to former condition', was lawful.

Under section 24 of the LDA where a council chooses to specify in a notice the steps which are to be taken to remedy a nuisance, those steps must be "clear and lawful". There can be no scope for genuine doubt as to what must be done to comply with the notice.

- 6.4.7 **Compensation** is generally payable by your IDB where injury or damage results from its operations and is determined, in the absence of agreement, by the upper tribunal, which is part of the administrative justice system of the United Kingdom. However, under section 15 of the LDA 1991, no compensation is payable as of right for loss sustained in the exercise of the powers to remove or deposit matter, unless such loss is due to lack of reasonable care. Your IDB may, if it thinks fit, make an ex-gratia payment in accordance with section 15 of the LDA 1991.

- 6.5 **Regulatory powers.** Your IDB is also a regulatory authority and its prior written consent is therefore required for certain activities. The extent of the activities

affected by this requirement will depend on whether your IDB has made byelaws, governing its internal drainage district.

6.5.1 Byelaws are by far the most important power available to your IDB to control the activities of others that may affect your IDB's system. Both the LDA 1991 and the FWMA 2010 contain provisions regulating watercourses, but it is strongly recommended that your IDB makes byelaws to more closely protect its system, and by extension the landscape and communities it serves. Byelaws can be made for the purposes set out under section 66 of the LDA 1991. For example, byelaws may provide that without your IDB's consent, no increase in volume or flow should be discharged, either directly or indirectly, to watercourses in the internal drainage district, and that no buildings or structures should be constructed within a certain distance of an IDB maintained watercourse or structure. Breach of byelaw is a criminal offence and your IDB may take remedial action and recover its expenses.

Your IDB makes the byelaws by resolution. They must then be formally advertised and confirmed by Defra before they come into force (see [11.3](#)). While your IDB is free to draft its own byelaws and seek such confirmation, Defra do have a template set of byelaws that should cover the activities and omissions to be safeguarded by your IDB. Your IDB should therefore find little difficulty in making byelaws which follow that template, but if your IDB wishes to add to or amend these, they would have to justify any changes to Defra and possibly, objectors.

6.5.2 Consents. Whether or not such byelaws exist, your IDB's consent will still be required under section 23 of the LDA 1991 for works in an ordinary watercourse for the erection or alteration of a mill dam, weir or like obstruction; the erection of a culvert or the alteration of a culvert where the flow of a watercourse is affected. An application fee of £50 may be charged for the consideration of such an application. Consent must be given or refused in writing within two months from application and must not be unreasonably withheld. Consent may be given subject to reasonable conditions. Failure by your IDB to approve or refuse consent within this timeframe means that the IDB is deemed to have consented and will result in the application being considered granted.

Where works are carried out without your IDB's consent, your IDB may serve a notice to act, which is normally served on the person responsible for the works/obstruction. Failure to comply with the notice is an offence

and your IDB may remedy the contravention and recover its expenses. Your IDB should note, however, that to comply with section 23 of the LDA 1991 it must consult the EA before itself carrying out this type of work.

Where the proper flow of a watercourse is impeded, except where due to mining subsidence, your IDB may also, under section 25 of the LDA 1991, serve a notice on, the person having control of the part of the watercourse where any impediment occurs, an adjoining occupier or any person responsible for the impediment. Failure to comply with the notice is an offence and your IDB may, where a default occurs, remove the obstruction and recover its expenses. There is a right of appeal to the magistrates' court against the notice under section 27 of the LDA 1991.

Your IDB should also be aware of the powers available to private owners regarding the clearance or improvement of ditches in sections 28-30 of the LDA 1991.

6.5.3 Enforcement. While there is no "one-size fits all" approach to enforcement action, the common steps set out below may be taken by your IDB:

- 1 Informal request to the person responsible,
- 2 Formal written request to the person responsible,
- 3 Notice served on the person responsible,
- 4 Court injunction application (if required),
- 5 Remedial work undertaken by IDB (if required),
- 6 Recovery of costs.

6.6 Mining subsidence. Where mining activity causes subsidence which affects a drainage system maintained by a drainage authority outside of the Doncaster Drainage Act area (see below), section 36 of the Coal Mining Subsidence Act 1991 requires the Mining Remediation Authority (**MRA**) to carry out or meet the cost of appropriate remedial measures to the reasonable satisfaction of the appropriate drainage authority or agree with the IDB to arrange these works. An IDB is the appropriate drainage authority in relation to measures to be carried out within its internal drainage district. The exceptions are main rivers, for which the EA is the appropriate drainage authority, and the LLFA for all areas outside of internal drainage districts. The MRA is, however, able to issue a "stop notice" to delay any non-emergency work, where it considers that further subsidence is likely to occur.

The Coal Mining Subsidence Act 1991 applies to any area in England and Wales outside of the Doncaster drainage area. This area is defined by the Doncaster Area Drainage Act 1929, as amended by the Doncaster Area Drainage Act 1929 (Amendment) Order 1994, for which there are specific provisions set out in this local legislation. Where this is relevant, your clerk should be able to advise further.

Where any loss of efficiency has or is likely to arise in drainage systems or drainage works (including fixed plant and machinery) within the Doncaster Drainage Act area due to mining operations, it is the duty of the mine owner or MRA (where the mine workings are vested in the MRA) to construct and maintain in a proper condition to obviate or remedy that loss of efficiency and the mine owner or the MRA may agree with the IDB to carry out these works on their behalf (Part 1, Section 9 of the Doncaster Drainage Act 1929 as amended).

6.6.1 Designating structures. Your IDB may also designate a structure, or a natural or man-made feature of the environment, if its existence or location affects the risk of flooding. If such a designation is made under Schedule 1 of the FWMA 2010, the consent of your IDB is required for any works to the structure or feature, and the designation is registrable as a local land charge. If a breach occurs, your IDB may serve an enforcement notice, requiring the contravention to be remedied. Structures or features that are designated or owned by another relevant authority may not be designated by your IDB and a number of ancillary provisions regarding this designation procedure and its effect are contained in the Schedule. The IDB must notify any other designating authority which it thinks may have an interest in the designation or cancellation.

6.6.2 Exemptions for certain undertakings. Your IDB should note that, while certain bodies, for example, water and sewerage companies or the highway authority will normally be exempt from byelaw requirements to obtain consent, their own legislation, for example, the Water Industry Act 1991 or the Highways Act 1980, may contain similar requirements re consent. As regards your IDB's own operational activities, section 23 of the LDA 1991 does not apply to actions carried out by certain bodies or under statutory powers. Under section 67 and Schedule 6 of the LDA 1991, there are a number of bodies that have special protection which means that your IDB generally requires their permission before entry onto their property to undertake works.

6.7 Development control and planning. Your IDB's regulatory powers and strategic plans will enable it to manage changes in land drainage and flood risk within

your internal drainage district. However, the wider town and country planning system could also affect the flood risk posed to both a new development itself, and to other land and properties as a result of the development. While your IDB is not a local planning authority or formally a “statutory consultee” on planning matters, the local planning authority is required to consider flood risk and coastal change (Paragraphs 159 to 173 of the National Planning Policy Framework) when deciding the outcome of a planning application. Therefore, as the supervising body established to manage flood risk in a vulnerable area, your IDB’s views, knowledge and expertise should be properly considered by the local planning authority.

It is therefore good practice for a local planning authority to consult your IDB on planning matters and your IDB’s appointed members in particular can help ensure that your IDB’s views are considered. A number of IDBs have formal or informal arrangements with their local planning authorities and your IDB should be encouraged to establish such arrangements to seek to manage development and flood risk. It is good practice for an IDB to have a development control policy including standing advice that applicants and local planning authority case officers can refer to. The use of your IDB’s byelaws will, however, allow development close to or affecting an IDB watercourse or structure to be controlled, even where planning permission is granted.

- 6.8 Conserving and enhancing the environment.** When carrying out its functions, your IDB must pay particular regard to the effect on the environment. Some environmental legislation relates specifically to maintaining or restoring the condition of protected sites or protecting certain species, but there are statutory duties for your IDB to conserve and enhance biodiversity in the wider landscape, such as within section 102 of the Environment Act which amends the previous requirements of section 40 of the Natural Environment and Rural Communities Act 2006.

Your IDB should seek to have relevant processes in place, suited to its functions and local environmental needs, and follow any conditions, guidance, or codes of practice issued by an appropriate environmental authority. The ADA website has a range of helpful environmental guides aimed at IDBs, especially the latest Environmental Good Governance Guide (see [11.3](#)).

- 6.8.1 Biodiversity action plan (BAP).** Your IDB should have a BAP setting out objectives it has approved for the conservation and enhancement of biodiversity within the internal drainage district. These objectives will be set based on those local habitats and species that would benefit from particular management or actions by your IDB. Delivery of your IDB’s

BAP is the best way of demonstrating its commitment to biodiversity. Your IDB should report at least yearly to the board on progress towards the implementation of the BAP. A template BAP and guidance for IDBs are available from the ADA website (see 1.1.3).

6.8.2 Protected sites. Within the UK, sites that are nationally important for plants, animals or geological or physiographical features are protected by law as sites of special scientific interest (**SSSIs**).

Under the Wildlife and Countryside Act 1981 (Section 28G), your IDB, as a public authority, must take reasonable steps to further the conservation and enhancement of any SSSI. Your IDB must ask for advice and approval (known as 'assent') from Natural England before carrying out works in line with its functions, where they are likely to damage the condition or special features of a SSSI, even if the work is not within a SSSI, e.g. changes in water levels. Natural England may give your IDB advice, and/or give their assent with conditions, that must be followed. In an emergency, your IDB may undertake necessary operations but must immediately inform Natural England. This system provides the underpinning statutory protection for all sites, including those which are also of international importance, such as special protection areas (**SPAs**) or special areas of conservation (**SACs**), which have also been designated for their European importance.

Where the conservation interests of an SSSI are dependent, in whole or part, on the proper management of water levels, your IDB should either prepare, or be party to, a water level management plan, setting out the relevant objectives for the site and the water level management actions required to restore, or maintain, the favourable conservation status of the SSSI.

6.8.3 Protected species are those species that are specifically protected by legislation. Your IDB may need to apply for a licence from Natural England if its work will have an impact on a protected species.

The Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 make it an offence to intentionally, or recklessly kill, injure, or take a protected species, or damage, destroy or obstruct access to structures or places used by protected species for shelter, breeding or protection. Protected species that IDBs are most likely to encounter include badgers, bats, freshwater fish, otters, reptiles, water voles, white-clawed crayfish, nesting birds and most recently beavers (protected from 1st October 2022). The legal

protection, licencing requirements, actions and mitigations vary between protected species and specific advice should be sought. Your IDB can apply for class licences that enable IDB maintenance activities, working under specific licence conditions, in areas where disturbance of badgers, beavers or water voles might be an issue. Where beavers exist or are planned to be reintroduced, which is increasingly being supported by policy and legislation, local management groups are usually set up. IDBs are encouraged to join these groups at the earliest opportunity to ensure that all benefits and risks are properly understood and considered.

- 6.8.4 National parks.** If your IDB is within a national park it may be notified by the appropriate national park authority of land of importance for conservation purposes. Your IDB must consult the national park authority before undertaking any activities on such land likely to destroy or damage anything of conservation importance. In an emergency, your IDB may undertake necessary activities, but should immediately inform the national park authority.
- 6.8.5 Invasive non-native species (INNS)** are a widespread and increasing problem nationally. If left uncontrolled non-native species that have been introduced or escaped can present a threat to aquatic and riparian systems. Your IDB should consider how its operations and functions may impact on and be impacted by invasive non-native species and notifiable diseases. Your IDB should plan its biosecurity measures accordingly, addressing relevant issues and risks. A template biosecurity policy and procedures for IDBs are available from the ADA website (see [11.3](#)). Working in partnership with other bodies is essential when managing INNS.
- 6.8.6 Environmental impact assessments (EIA)** may be required by your IDB for 'improvement works', if those works are likely to cause significant effects on the environment. Under the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (the Regulations), and subsequent amendments, 'improvement works' are those that aim to deepen, widen, straighten, or otherwise improve or alter any existing watercourses, or raise, widen or otherwise improve or alter any existing drainage works. These regulations require your IDB to follow the environmental impact assessment procedure, and may require the preparation of an environmental statement, before carrying out any of these specified 'improvement works'.

6.8.7 Water framework directive (WFD). This is European Union legislation, which establishes a framework for the protection of inland surface waters, estuaries, coastal waters and groundwater in terms of their chemistry, ecology and morphology. The European Union Withdrawal Act 2018 carries over the requirements of the water framework directive, into domestic law as retained EU law.

Your IDB must have regard to the relevant river basin management plan (**RBMP**) when undertaking works and issuing consents to others. This should include ensuring all IDB activities and consents are compatible with local WFD objectives and may require your IDB to undertake a WFD compliance assessment. In practice this means considering what actions or measures contained in the RBMP relate to your IDB's functions, and implementing the necessary actions to either improve those water bodies that are at a lower status/potential than they should be, and/or ensure that there is no deterioration of them. Further guidance or direction may be issued by the Environment Agency.

6.8.8 Fish passage. There is also specific legislation your IDB will need to consider when building or modifying structures that may cause obstruction, or mortality, to migratory fish or eels, such as pumping stations, or any weir or dam that might cause an obstruction.

6.8.9 Environmental expertise. It is, therefore, vital that your IDB is able to fully access proper professional ecology and conservation advice. It is strongly recommended that your IDB either employs its own conservation officer or ensures that it has proper access to a properly qualified adviser:

6.9 Working together: It is particularly important that there is a close working relationship between your IDB, the Environment Agency, local authorities and other statutory bodies, to ensure best value and the best use of the available powers and resources. It is good practice for your IDB to liaise with these other RMAs (see 1.3), and vice versa, on the development of, and updates to, relevant strategies, plans and long-term investment programmes where they relate to flood risk management. Often a particular issue requires the exercise of powers by more than one body, or a partnership working approach. This may occur where powers need to be exercised in different areas or over different forms of flooding, or where one body is able to authorise another to work on its assets or systems.

For instance, while main river works may not be undertaken by your IDB under its own powers, arrangements may be made with the EA for it to do so, or for

the Environment Agency to work on your IDB's system, either under section 11 of the LDA 1991 or a public sector cooperation agreement (**PSCA**) (see below). Your IDB may also carry out administrative, professional or technical work for another IDB and work outside its internal drainage district under sections 14 and 20 of the LDA 1991.

- 6.9.1 Cooperation.** Sections 13 and 14 of the FWMA 2010 require your IDB to cooperate and share information with other RMAs. Section 13 of the FWMA 2010 also enables your IDB to enter into arrangements with other RMAs for a flood risk management function to be exercised on its behalf by another RMA or vice versa.
- 6.9.2 Consortiums of IDBs.** An agreement can be made between two or more IDBs to provide administrative, professional and technical services for another (Section 11(5) of the LDA 1991). Such an arrangement makes sense where there are several small IDBs in one area. This arrangement allows for efficiencies to be made by sharing common resources such as accommodation, management, finance and technical services. Such an arrangement is exempt from a public procurement exercise provided it complies with the general conditions of the Procurement Act 2023. A consortium is not a legal entity and therefore cannot enter into contracts etc in its own name. In a consortium, there is usually a lead board, which is a member IDB which enters into contracts etc on behalf of the consortium. The consortium would usually have an agreement in place such as a consortium management agreement which would regulate how the member IDBs work together.
- 6.9.3 Public sector co-operation agreements (PSCAs).** These agreements have been developed to enable a RMAs to undertake flood risk management maintenance works and other activities on behalf of another for mutual benefit, in accordance with section 13 of the FWMA 2010 (Section 13). They aim to secure efficient local working arrangements, achieve greater value for money, and take advantage of local skills and experience so should be considered by all IDBs and other RMAs. Such agreements are routinely used where an IDB wishes, and is best able, to deliver maintenance work on main rivers with the resources available. PSCAs can also be used to enable mutual assistance during flood events and subsequent flood recovery works. It is suggested that each agreement covers a period of up to five years with annual reviews to refine the specific extent of activities to be carried out. Guidance and a template PSCA are available from ADA and the EA (see 11.3).

6.10 Involving the community. Your IDB is a local body and should aim to achieve the optimum flood risk management for local people and be active in service delivery. The community should therefore be engaged with the IDB's plans. Any increase in drainage rates and special levies required for works may be more acceptable to local people if they can understand the need, see real benefits and know and trust your IDB. By involving the community, your IDB can speak for them and by consulting, listening and identifying needs, you can agree priorities with the local community.

6.10.1 Websites. Your IDB should have a publicly accessible website that is regularly maintained and kept up to date with the latest information, meeting dates and documents. ADA has published guidance on the basic content for an IDB website (see 11.3). This will act as an information hub for anyone wishing to find out about the work and functions of your IDB, and it will assist your IDB's transparency and accountability (see 9).

6.10.2 Communications. Your IDB should also take every opportunity to raise its profile and make more people aware of its existence and work. Many IDBs now issue a newsletter periodically to ratepayers, often with their annual drainage rate demand (see 7.3). However, as householders and non-agricultural businesses no longer receive any drainage rate demand directly from your IDB, it is too easy for them to be unaware of its work or, even, its existence. Your IDB can decide the best way of doing so, but may for example include: engaging with local media, taking part in local events (e.g. agricultural shows); making visits to schools or colleges; holding open days; presenting to local groups and organisations; or inviting representatives to attend a tour (known as an inspection) of the internal drainage district. You may also consider asking the local council to add in relevant information to their annual demand to ratepayers.

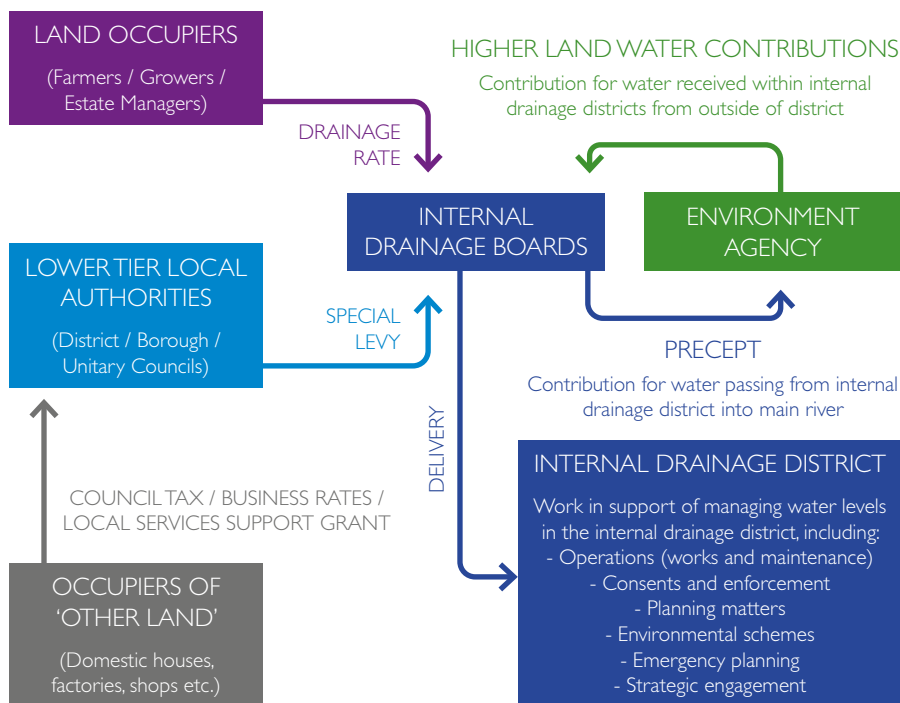
7 FUNDING AND FINANCE

It has always been a principle in the law of land drainage that those who benefit from it, or create a need should pay for it. Here you can understand the core mechanisms by which your IDB is funded, how these rates and levies are calculated, and discover other sources of funding that may be available to your IDB.



7 FUNDING AND FINANCE

FLOW CHART SHOWING THE TYPICAL INCOME AND EXPENDITURE OF AN IDB



IDBs' power to raise and apportion expenses is set out in the Land Drainage Act 1991 (**LDA 1991**) and the Internal Drainage Boards (Finance) Regulations 1992 (**"the 1992 Regulations"**). Section 36 of the LDA 1991 determines that the expenses of an IDB shall be met by:

- Drainage rates collected directly from agricultural land and buildings within the internal drainage district; and
- Special levies issued on local authorities within the internal drainage district to cover the other land (such as domestic houses, factories, shops etc). Occupiers of all other land pay council tax or non-domestic rates to the local council who are then charged by the IDB.

All properties within an internal drainage district are deemed to derive benefit from the activities of an IDB and therefore subject to a rate or charge paid annually. The proportion of drainage rates and special levies paid to each IDB is dependent upon the amount of agricultural land and other land in the internal drainage district. IDBs may also receive income from other sources for example, the Environment Agency, rechargeable works, rents, or loans.

7.1 Drainage rates and special levies are the main sources of funding for the work of your IDB. In order to raise this finance, your IDB is required each year to calculate, before 15th February preceding the relevant financial year, the overall annual value (see below) of the agricultural and non-agricultural properties and land within its internal drainage district, in accordance with section 40 of the LDA 1991 and regulation 10 of the Internal Drainage Boards (Finance) Regulations 1990. The total agricultural proportion of the value of the internal drainage district is the total annual value of the agricultural properties, divided by the total value of the internal drainage district.

In each financial year, IDBs must do an annual determination of the aggregate annual value of the chargeable properties. There is no express requirement in the LDA 1991 or the 1992 Regulations for an IDB to undertake individual valuations of chargeable properties every year. However, an IDB has the power (section 43 of the LDA 1991) to determine a new annual value of a chargeable property if it considers the amount should be increased or reduced, due to the agricultural land and buildings being upgraded or downsized. This allows the burden of drainage rates payable to be fairly distributed among all the chargeable properties in the district. A farmer or landowner may also request a new determination of the annual value of their chargeable property if they consider the value should be altered.

Agricultural properties are land and/or buildings used for the purpose of agriculture and not subject to a band for council tax or a non-domestic rating valuation. These agricultural properties are assessed for drainage rates while all other land, property, and infrastructure in the internal drainage district, of whatever type, is assessed for the special levy. The definitions of "agricultural buildings" and "agricultural land" are found in the Local Government Finance Act 1988.

7.2 The annual value of a property for the purposes of drainage rates is equal to the yearly rent at which that property might have been let, on a tenancy from year-to-year beginning on 1st April 1988 and on the relevant terms, set out in section 41 of the LDA 1991. Whether the property is actually rented or not does not matter.

Your IDB had to assess its annual value not later than 31st December 1992 or, if later, when the property became chargeable to drainage rates and must notify the occupier of the property of this assessment, in accordance with section 42 of the LDA 1991. There are also provisions in the LDA 1991 for the value of a property to be increased or decreased, where circumstances make this appropriate, together with appeal rights.

- 7.3 Drainage rates** are set at a specified amount of pence per £1 of annual value. Drainage rates are demanded directly from the occupier of the agricultural property (or the owner if the property is unoccupied). Where the name of the occupier is unknown, the drainage rate demand can simply be addressed to “the occupier”. The demand must be in the form prescribed in the Schedule to the Drainage Rates (Forms) Regulations 1993. The full amount of the drainage rate can be recovered by your IDB from any person who occupies the property at any time during the financial year.

The drainage rate must be made before 15th February in any year. This is the date the rate resolution is passed, but it is not invalid if made later. It must be sealed by your IDB and your IDB must then, within 10 days, publish a notice. The notice must state: the amount of the drainage rate, the amounts of your IDB's expenses to be raised by means of drainage rates and special levies respectively, and the date on which the rate was made. This notice should be placed in one or more public places in the internal drainage district, or otherwise so as to be reasonably publicly available. Today, many boards publish their notice on their website as well. Payment of a drainage rate is due on demand.

Under section 52 of the LDA 1991, your IDB must also keep a register containing information about properties liable to drainage rates and a map showing those properties. These must be kept open to inspection by members of the public.

Your IDB is entitled to serve the owner of a property liable for drainage rates a notice which requires them to state in writing the name and address of the occupier of the property. This is because the demand for drainage rates must be served on the occupier.

An error or change in the current or last preceding drainage rate can be corrected with notice of any changes being given to any affected occupier.

- 7.4 Differential rates.** Normally, drainage rates are set at a uniform amount throughout the internal drainage district, but section 28 of the LDA 1991 provides that, where appropriate, for instance perhaps because of different levels of benefit derived, your

IDB may, after consultation with the Environment Agency (**EA**) and subject to approval from the Department for Environment, Food and Rural Affairs (**Defra**), make a differential rating order and levy differential drainage rates and special levies.

Your IDB may also decide that some of the internal drainage district should be exempt from Drainage Rates under section 47 of the LDA 1991. The IDB would use the same procedure as deciding differential rates to do so.

An occupier may also request your IDB to make an exemption order.

7.5 Arrears of drainage rates may be recovered by proceedings in the magistrates' court for a liability order. It is however normal practice to first issue both reminders and a final warning prior to commencing full legal recovery proceedings through the courts. When recovering debts from an individual, an IDB must comply with the pre-action protocol for debt claims. Further information about the protocol can be found on the Ministry of Justice website. Your IDB may authorise any board member or officer to conduct proceedings or any proceedings for a warrant of control, which is the first stage of the formal enforcement process for the recovery of arrears. Your IDB could also take small claims proceedings in the county court to recover such arrears.

7.6 The special levy raises the remaining expenses of your IDB after drainage rates have been assessed. A special levy is issued under regulation 6 of the Internal Drainage Boards (Finance) Regulations 1992. It is demanded from district/unitary councils in proportion to the aggregate value of all 'other land' (non-agricultural land and property) within the internal drainage district. As with drainage rates, it must be issued before 15th February in each year, but is not invalid if issued later; and a substituted levy may be issued to correct any errors, but only in respect of the current financial year. The special levy is also sealed by your IDB and, unlike drainage rates, is sent to the relevant district/unitary council. Where there is more than one such council, the individual levies are assessed on the areas within each such authority liable to the special levy.

The special levy demand must be issued within 10 days of being made and must state the amount of the levy, the authority to which it is issued and the date of issue. The demand must be issued to every special levy paying council, wholly or partly, in your internal drainage district. Your IDB must keep a record of any Special Levy issued by it. The record must show the required information in respect of each special levy and must be kept open to inspection by members of the public. In default of any other agreement between your IDB and the relevant local authority, special levies are payable in two instalments, on 1st May and 1st November each year.

- 7.7 The calculation of the special levy is based on the values of the non-agricultural properties that existed in 1989. The properties were originally valued on the basis of their previously existing rateable values under the former General Rate Act 1967. These values were then used to calculate an average hectare valuation for all such properties and infrastructure within the internal drainage district. This is then applied, and used, to value properties to be comprised in the special levy which have either been constructed since that date or have otherwise become included in the special levy, for example through a change of land use from agriculture to another use, e.g. commercial, amenity or domestic. The annual value is assessed as at 31st December each year. This is the only time that such an assessment can take place. It is important to ensure that any land or buildings that can no longer be classified as agricultural property are accounted for on or before the deadline of 31st December. The land does not need to be fully developed or occupied for the change to take place.

Such a change will mean that the former agricultural property is no longer liable to drainage rates and that the average hectare value for the special levy applies instead to the newly developed area. This would lead to an increase in the area subject to the special levy and a consequential increase to the proportion of the IDB's expenditure paid through the special levy. Since the value apportioned to the transferred property would be the "average hectare valuation", it is likely that it will be different to the value previously assessed for drainage rates.

- 7.8 Other funding sources available to your IDB might include:

7.8.1 Higher land/upland water contributions are discretionary payments from the EA. These payments are payable towards an IDB's expenses in dealing with flows which pass into the internal drainage district from an area of physically higher land. Under section 57 of the LDA 1991 such contributions may be requested by the IDB from the EA. There is no statutory formula for such payments, which are made on arrangements agreed between the IDB and the EA. However, they should be related to the proportion of upland water passing through your internal drainage district and the cost/extent of the works undertaken by the IDB to deal with such flows. These payments are approved by the local regional flood and coastal committee (**RFCC**), to which your IDB will also pay the precept (see below).

7.8.2 Capital schemes undertaken by your IDB may qualify for flood defence grant in aid (**FDGIA**) if the scheme meets Defra's qualifying criteria. This funding is administered by the EA, in accordance with section 59 of the

LDA 1991 and section 16 of the Flood and Water Management Act 2010 (**FWMA 2010**). To obtain such funding, your IDB must demonstrate that there will be a sufficient level of public benefit obtained from the works. The present arrangements, termed “partnership funding”, envisage that, in normal circumstances, a local contribution is also required. This is usually from a developer contribution, another risk management authority (**RMA**), local council or any 3rd party who may benefit from the scheme. Any shortfall can be met from a variety of sources, but, in the case of IDB works, is likely to be represented by a contribution from the IDB's own funds, raised through the drainage rates and special levies, or through borrowing.

At present, however, the rules for FDGIA are largely based on numbers of properties protected and agricultural land does not command a high value for these purposes. Increasingly IDBs are making joint bids for grant in aid with other local RMAs.

Example in relation to shortfall:

In the case of a £1,000,000 scheme that only attracts £900,000 FDGIA because it cannot demonstrate it is protecting enough assets, the £100,000 shortfall has to be met by others. Normally this would be the applicant, but can also include commercial organisations who may benefit from the scheme e.g. local landowners.

- 7.8.3 **Commutated sums** can be paid by a third party to your IDB for it to take on responsibility for the maintenance and/or running of any works in connection with the drainage of land, provided that work is not on a main river (e.g. new pumping station or drain maintenance). The amount is calculated over a period agreed between the parties. The calculation needs to take account of future inflation increases in those costs. It must also recognise that the IDB has received the sum as a lump sum in advance which may generate investment/interest returns (i.e. a discounted cash flow). A commuted sum must be approved by the local EA office and formal approval is required from Defra under section 33 of the LDA 1991.
- 7.8.4 **Local enterprise partnerships (LEPs)** From April 2024, the Government ceased its sponsorship and funding of LEPs. The government now supports local and combined authorities to take on the functions delivered by LEPs. Where not already delivered by a combined authority, or in areas where a devolution deal is not yet

agreed, the government expects these functions to be exercised by upper tier local authorities, working in collaboration with other upper tier local authorities over functional economic areas as appropriate.

- 7.8.5 **A local authority** can make additional contributions under section 60 of the LDA 1991, towards your IDB's expenses of carrying out or maintaining any drainage works. From April 2024, there may be increased funding available from upper tier local authorities and combined authorities, following the transfer of the LEPs' functions to local authorities.
- 7.8.6 **Consenting to obstructions etc. in watercourses** is subject to a statutory application fee of £50. Your IDB can demand this fee when it receives an application under section 23 of the LDA 1991 for the erection or alteration of a mill dam, weir or like obstruction or a culvert in a watercourse (see 6.5.2).
- 7.8.7 **Rental income.** Although this is often not a significant income stream for boards, some IDBs do rent out land (e.g. for grazing).
- 7.8.8 **Major development.** Where a major infrastructure project is being undertaken under a development consent order (**DCO**), in accordance with the Planning Act 2008, IDB byelaws and consenting powers are suspended, but those provisions are enshrined in the DCO itself. In this case, your IDB can recover the full costs of consenting and supervision activity from the development.
- 7.8.9 **Consultancy and rechargeable work.** An IDB with employees may also receive income from consultancy work. Some IDBs also offer a contractual voluntary "pre-application procedure" to developers. This gives developers the opportunity to discuss potential applications for the IDB's consent, whether or not also involving an application for permission, before such application is submitted.

Rechargeable work areas include working with councils, other RMAs and private works.

Public sector co-operation agreements (PSCAs) (see 6.9.3). These agreements aim to secure efficient local working arrangements, achieve greater value for money, and take advantage of local skills and experience so should be considered by all IDBs and other RMAs. Such agreements are routinely used where an IDB wishes, and is best able, to deliver maintenance work on main rivers with the resources available. PSCAs are generally undertaken on a 'full-cost recovery' basis.

7.8.10 **If byelaws have been made** in accordance with section 66 of the LDA 1991 (see 6.5.1) which require your IDB's consent before any increased flows may be discharged to or within its internal drainage district, it may seek contributions from a developer to cover the increased costs of accepting and evacuating such flows. Such contributions should, however, be limited to the recovery of such costs and not be a source of profit.

7.8.11 **Grants.** Your IDB should investigate grant and award funding to implement its plans, especially where these will provide environmental or community enhancements.

7.9 **Borrowing.** IDBs have specific borrowing powers under section 55 of the LDA 1991 for up to 50 years from any appropriate lender; subject to ministerial approval. In practice, IDBs usually borrow from the Public Works Loan Board (**PWLB**). This is a government department that makes available finance to public authorities. The PWLB has a variety of different loan types available to IDBs. These can be paid out in tranches, repaid earlier; or rescheduled subject to interest premiums (see 11.3). Before your IDB may borrow, it must first submit an application for such borrowing to the local EA office. This application must set out the reasons why the loan is required, the amount which it wishes to borrow and the proposed term of the loan. If approved, Defra will confirm this in a borrowing approval letter, which will set out the conditions that need to be fulfilled, how much the IDB can borrow, and the maximum term of the loan period. There is a fee payable, with repayments made half-yearly. Any borrowing is secured by an automatic charge on the revenues of the IDB. Fixed rate loans and variable rate loans are available.

7.10 **Taxation.** As a non-profit making statutory body, your IDB is not liable to corporation tax. IDBs are liable for all other taxes (e.g. income tax, pay as you earn (PAYE), including complying with HMRC mileage and expenses rules, national insurance (NI), value added tax (VAT), stamp duty, etc) unless a specific exemption exists.

IDBs can recover the VAT paid out for its activities as a public authority. For many IDBs, this may just mean submitting a VAT claim form. However, where your IDB undertakes work for others and therefore undertakes “business activities”, it will need (subject to the taxable limits) to register for VAT and then charge VAT on such work. Your IDB must also account to HMRC for any income tax, national insurance and other PAYE payments deducted from employees. Generally, IDBs are a net recipient from VAT.

- 7.11 Precept.** This is paid by your IDB to the EA under section 139 of the Water Resources Act 1991, as a contribution of such an amount as is “fair”. Although there are no statutory formulae for the precept calculation, the then Minister of Agriculture Fisheries & Food in 1982 decided the principle that the EA will relate their precept charges to the costs of those parts of their programme of works which benefit IDBs. This contribution can amount to a substantial part of an IDB's expenditure. The charge should be settled locally between your IDB, the RFCC, and other IDBs within the RFCC's area. It is expected that the Environment Agency will describe the nature of the work being undertaken as the basis for each year's precept. Your IDB may appeal to Defra about the amount of the precept.



8 FINANCIAL MANAGEMENT

You and your fellow board members share collective responsibility for your IDB's financial management. Here you can learn about the financial rules that must be followed, how the budget is put together; banking provisions, reserves, investments, and how your IDB is audited.

8 FINANCIAL MANAGEMENT

- 8.1 **Taking responsibility.** As a board member, you share collective responsibility for the financial management of your IDB. You should ensure that you have an up-to-date knowledge of your IDB's financial position throughout the year. Your IDB will have made arrangements for its finances to be administered by an officer known, in law, as the responsible financial officer (**RFO**), who may also be your IDB's clerk. Your role is to ensure that the RFO acts properly so that your IDB avoids the risk of loss, fraud or bad debt, whether through deliberate or careless actions. Robust financial checks and oversight are of great importance. Your IDB may make electronic payments or pay by cheque. Whatever arrangement is in place you should ensure that there is a system to reduce the risks of error or fraud.
- 8.2 **Financial rules.** The statutory powers to raise and spend money through drainage rates and special levies mean that financial rules and procedures have been set by government, which are designed to protect your IDB and ensure that it takes no unacceptable risks with public money. The financial rules applicable to your IDB are set out in the Land Drainage Act 1991 (**LDA 1991**), your IDB's financial regulations, and ancillary documents such as a "policy for safeguarding public money" and a "fraud and corruption policy". Model versions of these documents are available from ADA and the Department for Environment, Food and Rural Affairs (**Defra**). At all times in dealing with public money, your IDB must exercise due care and attention and adhere to its financial regulations.
- 8.3 **Internal control.** Your IDB must operate an overall system of internal control appropriate to its expenditure and activity, which must include effective mechanisms for documenting and recording the criteria, rationale and considerations on which decisions by the IDB were based. There is extensive guidance on risk and internal control in The Practitioners' Guide, published by the Smaller Authorities Proper Practices Panel (**SAPPP**). SAPPP is a joint group comprising ADA, the National Association of Local Councils, and the Society of Local Council Clerks. This guidance can be found on the ADA website (see 11.3).

Your IDB must also clearly set out the terms and conditions for any chair's allowance and the terms and conditions applicable to officers' pay and conditions. Your IDB must ensure that there is an effective structure for managing the process.

Ultimately you should ensure that all board members of your IDB, and particularly the chair, work together with your clerk and RFO so that appropriate advice is given, all legal requirements are met, proper financial records and accounts are kept, an effective system of internal control maintained, and proper procedures followed.

8.4 The budget. Preparing the annual budget is one of the key statutory tasks for your IDB. The budget is the plan for income and revenue and capital expenditure over the forthcoming year and results in your IDB setting its drainage rates and special levies for the year (see 7.2-7.7). Your IDB's financial year runs from 1st April to 31st March which is in line with the government and other public authorities. The budget gives your IDB the overall authority to make spending commitments by demonstrating where your IDB's income is raised and is to be spent and enables your IDB to monitor its progress during the year by comparing actual spending against planned spending. By checking spending against budget plans on a regular basis, your IDB can control its finances during the year so that it can confidently make progress towards what it wants to achieve. The board must set a balanced budget so that its income plans match its expenditure plans. It can use reserves to balance the budget, but this should only be on a short term/ad hoc basis.

8.4.1 How the budget is put together and how it should be used is extremely important for board members to understand. The budget is an essential tool for controlling the finances and demonstrates that your IDB will have sufficient income to meet its objectives and carry out its activities. The key stages in the budgeting process are: the review of the current year's budget and spending, the determination of the plans for spending, the assessment of levels of anticipated income and the provision for contingencies, bad debts and reserves. The budget should then be approved and the drainage rates and special levies set. It is good practice for your IDB to openly discuss forward financial planning with your special levy paying council and make it aware of the purpose of proposed IDB activities. This means the council can also plan for any additional demands.

8.4.2 Regular monitoring of the budget will be achieved during the year by the clerk/RFO who will present regular reports on budget monitoring and financial position statements to the board. These working papers are designed to help you decide whether your IDB's finances are on schedule and should include comparisons with previous financial years. By reviewing the budget against actual expenditure on a regular basis at meetings, your IDB can control and monitor its finances and gain early warning of any potential shortfall and action required.

8.5 Value for money is essential for any public body, including your IDB. This means ensuring that funds are spent efficiently to provide an effective service that enjoys the widest possible local support. The aim is to achieve more benefit for the

least possible expense, without compromising quality. To assess "value for money" your IDB should regularly consider whether it can operate with more financial efficiency, such as through innovation or with a different supplier.

It is good practice to consult with other IDBs and ADA to ensure that all reasonable steps are being taken to effect this and to deliver a more economic service.

8.6 Banking. Your IDB should have a current bank account for its day-to-day banking requirements, either with one of the traditional high street providers, or another appropriate and secure bank/building society. Your IDB may also have separate interest-bearing accounts to hold funds either for general reserves or specific projects. The IDB and its officers are responsible for setting up the banking arrangements as approved by the IDB.

8.6.1 Approval process. The bank accounts, bank mandate, and list of authorised signatories must be approved by your IDB. It is sensible to have a number of signatories to allow for absences and changes. These can include board members. Whilst not all board members will be bank account signatories, all board members still remain responsible for your IDB's finances. The bank mandate should be in line with your IDB's financial regulations, and there should be a system in place to reduce the risks of error or fraud. All payments, including those made by direct debit, standing order or bank transfer, must be authorised either by your IDB itself or under delegated authority and should be supported by invoices and/or receipts. Blank cheques should never be signed as this presents a very high risk of fraud. If you are asked to sign as an approved signatory, always make sure that both purchase and payment have been properly agreed, and that supporting paperwork matches the cheque or other payment voucher. Cheques should also not be passed through any other bank account, nor should your IDB account be used to pass cheques for other parties. It is of course also important to remove bank signatories from the bank mandate as soon as they cease to be employed by, or be a board member of, your IDB.

8.6.2 Cash and cheques received should be entered into the accounting records on the date of receipt and banked promptly. A financial report should be a regular part of board meeting agendas. This should include summary details of receipts and payments to and from the board's bank accounts, bank account balances and details of any investments held, including interest rates and interest earned. Your IDB should provide payment

information on your website, as required by the transparency code for smaller authorities (see 9), but, in any event, your IDB should include a list of all payments made, including the date and amount, with the financial report. Boards should seek advice from their bank before accepting larger cash payments.

- 8.7 Reserves.** The notional view that IDBs should simply produce a balanced budget each year is not practically realistic. Retention of a sensible level of reserves is therefore prudent to enable your IDB to operate should an event occur. A reserves policy will help your IDB demonstrate where reserves are being accrued towards specific causes to meet the IDB's strategic and operational plans.

Your IDB may be considering a capital project and wish, quite sensibly, to begin to accrue funds in advance of expenditure. The most prudent approach to large capital expenditure is likely to be the building up of appropriate reserves that will reduce the need for further drainage rate and special levy rises or for borrowing.

Additionally, as an authority established to manage flood risk, whose expenditure will to a very large extent be weather dependent, your IDB will need to retain adequate reserves to maintain an adequate level of operations during "wet years".

In practice, auditors tend to view IDBs as acting properly if proper and adequate, but not excessive, reserves are retained. As a general rule, in the absence of a specific cause, an IDB can regard this to be the retention of a normal year's expenditure, less any grant funding received. Your IDB should, however, always be prepared and able to justify any balances held to its auditors, ratepayers and the general public.

- 8.8 Investments** of such retained monies should be made prudently and safely by your IDB. Typically, IDBs hold their reserves in the form of easily accessible bank deposits or other short-term investments. Occasionally, circumstances require IDBs to consider making other types of investment, such as when saving for a future capital project or while deciding how to apply the proceeds of an asset sale or a donation. In deciding whether it is appropriate to make longer-term investments, the IDB should follow the latest guidance on local government investments issued by the Ministry of Housing, Communities and Local Government (see 11.3).

Your IDB's investment strategy should be set out in a policy document. The document will outline management arrangements for the investments held and

procedures for determining the maximum periods for which funds may prudently be committed. In essence the policy will state how much can be borrowed by your board, for how long and who from. The policy should ensure and demonstrate that your IDB has properly assessed the risk of committing funds to longer term investments and complies with legislative requirements. Long-term investments in assets whose capital values may fluctuate carry considerable risks and require active management. Investment management is a specialist area and your IDB may therefore wish to seek independent professional assistance from a regulated investment broker when developing its investment strategy and policy.

- 8.9 **Adequate insurance** through a reputable insurance company is extremely important for your IDB. Some insurance covers will, depending on your IDB's circumstances, be required by law. Key areas of risk which either should be covered or which your IDB should consider are public liability, employer's liability, fidelity guarantee, professional indemnity, personal accident, engineering, engineering inspection, property, motor vehicles and plant, cyber security, contractors' all risks, marine, libel and slander, and terrorism. Specific power to insure board members against personal accident while they are engaged on IDB business is conferred by Schedule 2 of the LDA 1991. This also provides that any sum received under such a policy is to be paid to, or to the personal representatives of, the insured person. To ensure best value for money your IDB should review its insurance arrangements and the use of any broker at regular intervals. Full and proper disclosure of every material circumstance relevant to making a fair presentation of a risk to your IDB's insurer is required under the Insurance Act 2015.

Consultants, contractors and other third parties working for your IDB should hold their own insurance and your IDB should have a system in place for checking the adequacy of such policies.

- 8.10 **Accounts and audit.** All smaller public authorities, including your IDB, must complete and publish an annual governance and accountability return (**AGAR**) to communicate their financial, operational and administrative position. It is the principal means through which your IDB is held accountable. It consists of three parts: your IDB's annual governance statement, your IDB's accounting statements, and, where relevant, the external auditors report and certificate. As a board member, you have a responsibility for ensuring that the AGAR accurately sets out your IDB's position.

8.10.1 **The annual governance statement (AGS)** requires board members to confirm whether your IDB has made proper governance arrangements

and/or addressed any weaknesses during the year. The AGS requires your IDB to answer a number of assertions either “Yes”, confirming that all is in order; or “No”, which indicates that some remedial action is needed, and provide an explanation. Your IDB will need to have the requisite evidence to support your answers regarding relevant areas, including:

- financial management,
- internal control,
- legal compliance,
- exercise of electors’ rights,
- the assessment and management of risks,
- internal audit,
- any litigation, or other matters or events that had a financial impact on the IDB.

Your IDB’s annual governance statement must then be approved by the IDB, before approval is given to the accounting statements. It must be signed by the chair and clerk. Signed statements confirm your IDB’s responsibility for governance arrangements during the year.

The AGS must be published by your IDB no later than 30 September alongside the statement of accounts and, if it has received it, the external auditor’s certificate and report.

8.10.2 Accounting statements must be prepared each year by your IDB’s RFO. This is in accordance with the Local Audit and Accountability Act 2014 and the Accounts and Audit Regulations 2015.

Accounting statements will be based on your IDB’s income and expenditure for the year; and include the previous year’s figures as a comparator; opening and closing balances, and asset values based on historic cost. If your IDB’s gross income or expenditure does not exceed £200,000, it has the option to report its financial details either on an income and expenditure basis or on a receipts and payments basis.

Your RFO will need to demonstrate, to the satisfaction of board members, how the figures in the accounting statement reconcile with those in the primary accounting records. It is worth mentioning that the restrictions on the use of funds that arise from the sale of fixed assets, set out in the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, do not apply to IDBs.

The accounting statement must be signed by your IDB's RFO and then approved at a board meeting, following which it is signed by the chair.

8.10.3 Internal audit must be arranged as part of your IDB's system of internal control. This is where a properly competent and independent person scrutinises and carries out checks on your IDB's financial processes, systems, controls and governance arrangements.

The internal auditor must be able to demonstrate independence from the IDB's financial decision making. A clerk, RFO or board member (or close associates such as family members of those individuals) are not considered independent from the IDB's decision making. The internal auditor is expected to inspect all documentation which should be supplied by the IDB on request from the auditor.

The findings of internal controls are reported to your IDB. It is best practice for the auditor to report back to the IDB at a board meeting. The findings, together with regular feedback from the RFO on the accounts, ensure that all board members are aware of your IDB's financial position. This ensures everything is open and transparent and you have the necessary information as a board member accountable for the IDB's finances. The process of internal audit should be an ongoing process and the auditor should carry out regular tests during the year focusing on areas of risk.

After the year end, the auditor is required to complete and sign a report, which is part of the AGAR. This confirms that your IDB's system of controls is in place and operating. The audit does not, however, involve a detailed inspection of all records and transactions. The internal auditor reports their findings to your IDB and will give a level of assurance so that all board members are aware of the financial and governance controls in place. Your IDB should regularly review the effectiveness of its internal audit function.

8.10.4 External audit is also a requirement for most IDBs. The process is based on a review of your IDB's annual governance statement and accounting statements for the year. The external audit takes the form of the checking at distance of the written return submitted by the IDB. This is known as a 'limited assurance regime'. That is unless your IDB is chosen for a sample detailed on-site audit or exceeds the upper threshold limit for the limited audit regime.

The external auditor's report and certificate becomes the third and final part of the AGAR. If the external auditor finds no issues of concern, your IDB will receive its certificate and an unqualified opinion on the limited assurance, meaning that there is no cause for concern. However, your IDB must meet as soon as possible to consider any report on any serious weaknesses or irregularities, or any public interest report issued by the external auditor.

- 8.10.5 Appointing an external auditor.** While your IDB may appoint its own external auditor, this is not recommended as it requires the IDB to follow the cumbersome and time-consuming provisions of the Local Audit and Accountability Act 2014, including the formation of an audit panel. As a much more convenient alternative, your IDB can join a sector-led body which will procure and appoint the external auditors. Smaller Authorities Audit Appointments Ltd (**SAAA**) is currently appointed by the Secretary of State as the appropriate body for IDBs. The lower and upper limits for audit exemption and returns are currently under review and could change. Further information about IDB audit procedures and current threshold limits is available from the SAAA's website (see [1.1.3](#)).
- 8.10.6 Exemptions.** Your IDB may be able to declare itself as an exempt authority in regard to an external audit depending on annual turnover. The current exemption threshold is available from the SAAA's website (see [1.1.3](#)). Such IDBs are still required to produce the same information and the same accounts prior to audit and must abide by the requirements of the transparency code for smaller authorities (see [9.2.1](#)). They should submit a copy of the exemption certificate to their notified external auditor.
- 8.10.7 Publicising the accounts and audit.** Local government electors have the right to inspect the accounts and records of your IDB and to raise any issues with its external auditor. Your IDB's responsible financial officer must publish a notice with details of the public inspection rights on your IDB's website. The period of inspection is 30 working days, which must include the first 10 working days of July after the end of the accounting period, and as soon as possible after the accounts have been signed. This must be accompanied with the publication of your IDB's AGAR stating that at this time it is unaudited.

After the external audit process, your IDB must also publish its AGAR and the external auditor's certificate together with any report or recommendations that they may have made. This must be done by 30th

September. Your IDB must publicise that the external audit has been completed, that the statement of accounts has been published, and details of the right of inspection conferred by the Local Audit and Accountability Act 2014. This is known as the notice of conclusion of audit. Your IDB is also required to approve acceptance of the external auditor's report at the next board meeting.

9 TRANSPARENCY AND ACCOUNTABILITY

Learn about the importance of transparency and how your IDB is held to account by the public through: the relevant transparency code, annual reporting to Defra, the supervisory functions of the Environment Agency, scrutiny by local authorities, and the Freedom of Information Act 2000.



9 TRANSPARENCY AND ACCOUNTABILITY

9.1 **Holding your IDB to account.** Openness and transparency should be the fundamental principle behind everything your IDB does. It can save money, strengthen people's trust in public bodies, encourage greater public participation in decision-making, and help local people shape local public services. This implies a proactive culture of transparency and openness, as well as adherence to processes that are based on strict accountability. To facilitate this, data held and managed by IDBs, and other public bodies, should be made available to the public unless there are specific sensitivities, or a specific exemption applies. Local people should be able to see data covering the use of assets, how money is spent, and how and what decisions are made.

9.2 **Transparency codes.** Under section 2 of the Local Government, Planning and Land Act 1980, the Ministry of Housing, Communities and Local Government (**MHCLG**) has published two transparency codes setting out how public bodies should make information available to the public. Both provide a sensible way of ensuring that the work of IDBs is publicly recognised and their independence valued. Your IDB should be clear which transparency code it is following.

9.2.1 **The transparency code for smaller authorities** requires the online publication of key financial, governance and meeting information. It applies to IDBs with an annual turnover not exceeding £25,000 and has replaced the need for external annual audit for most IDBs where this is the case.

The code requires IDBs to publish the following information:

- all items of expenditure above £100;
- end of year accounts;
- annual governance statement;
- internal audit report;
- list of councillor or member responsibilities;
- the details of public land and building assets; and
- minutes, agendas and meeting papers of formal meetings.

This information should be published at least annually and not later than 1st July in the year immediately following the relevant accounting year.

Separately, all IDBs must publish their annual end of year accounts online.

Whilst this code only applies to IDBs with an annual turnover of £25,000

or less, ADA recommends all IDBs comply with this code. ADA also recommends IDBs with annual turnover exceeding £200,000 comply with the local government transparency code (see 9.2.2 below).

9.2.2 The local government transparency code aims to facilitate greater transparency of larger local authorities' activities. The code sets out details of the minimum data that local authorities must publish, and further data that it is recommended they should publish. Such data includes:

- any items of expenditure above £500 (excluding VAT);
- procurement information for goods or services;
- land and assets held by local authorities;
- their organisation charts; and
- certain detailed information regarding staff.

The transparency code for smaller authorities specifically states that transparency can be implemented in a way that complies with data protection legislation. Where smaller authorities are disclosing information which potentially engages data protection legislation, they must ensure that the publication of that information is compliant with the data protection provisions. The code states that the legislation does not restrict or inhibit information being published naming councillors, members or senior local authority officers who have taken certain decisions, because of the public interest in the scrutiny of such senior individuals and decision makers. It also states that information can be published naming the suppliers with whom the authority has contracts, including sole traders, because of the public interest in accountability and transparency in the spending of public money.

9.3 Publications. Both transparency codes require IDBs to routinely publish information about their activities, spending, and governance on a website which is publicly accessible and free of charge. Ideally this should be on your IDB's own website, or failing that, the website of a local authority covering the internal drainage district. Documents to be published include: the annual governance and audit return, the list of any board member responsibilities, and details of public land and building assets that have a market value and appear in the fixed assets register. In relation to each asset, your IDB should publish: a description, the location, owner/custodian (normally the board), the date of acquisition (if known), the cost of acquisition (or proxy value), and present use. If no land and buildings are owned, then it is useful to state this fact. Minutes of formal meetings should be published no later than one month after the meeting has taken place. Meeting agendas, which should be as full

and informative as possible, and associated meeting papers, must also be published not later than three clear days before the meeting under section 1(4) of the Public Bodies (Admission to Meetings) Act 1960.

9.3.1 Publication scheme. All IDBs are required to adopt and maintain a publication scheme, setting out the classes of information your IDB holds, the manner in which it intends to publish the information, and whether a charge will be made for the information. The purpose of a scheme is to ensure a significant amount of information is proactively published, without the need for a specific request, developing a greater culture of openness.

The Information Commissioner's Officer (**ICO**) has prepared and approved a model publication scheme that may be adopted by any public authority without further approval and will be valid until further notice. Guidance and examples specifying what should be incorporated in an IDB's publication scheme are also available from ADA.

The information your IDB releases in accordance with its publication scheme represents the minimum that it must disclose. If a member of the public wants information not listed in the scheme, they can still ask your IDB for it.

The ICO model publication scheme allows for fees to be charged where it can be justified, and it requires these charges to be published. Also, if a charge is to be made, the basis for the charge must be made clear. Where a charge applies, the public should be left in no doubt as to what the charge is for and the amount. A schedule of charges included in an authority's guide to information which is regularly updated will help to make this transparent.

9.4 Website. Under the Public Sector Bodies (Website and Mobile Applications) (No.2) Accessibility Regulations 2018, the board's website must meet certain accessibility and readability standards set out in government guidance "Understanding accessibility requirements for public sector bodies".

9.5 An annual report of your IDB's proceedings during the previous year must be sent to Defra each year in accordance with paragraph 4(1) of schedule 2 to the Land Drainage Act 1991 (**LDA 1991**). This is known as the 'IDB1 report'. The minister of state sets the format of the report each year and the deadline for when it must be submitted, typically 31st August. A copy should be published on your IDB's website, and copies must be sent to the Environment Agency (**EA**)

and to every county council or unitary authority within the internal drainage district. The report includes a section on financial information which should be consistent with the information submitted in your IDB's annual governance and accountability return (see 8.10). The remainder of the report seeks information on a number of areas, including details of: the special levies (see 7.6), how your IDB accesses environmental expertise, your IDB's governance, board members' attendance, your IDB's public engagement process, asset management, health and safety, and your IDB's complaints procedure. It is therefore a comprehensive document by which your IDB can be held to account but also by which the success of and good practices adopted by your IDB can be shown.

- 9.6 **Supervision.** The EA has certain supervisory functions relating to your IDB. They may for instance, send for the approval of the Department for Environment, Food and Rural Affairs (**Defra**) a scheme to alter the boundaries of or constitute, reconstitute, amalgamate or abolish an IDB, become an IDB, give directions to your IDB for securing the maintenance and efficient working of drainage works and the construction of necessary new works, and, where they take the view that land is likely to be injured by flooding which could be remedied by your IDB, they may exercise your IDB's operational and revenue raising powers. The Environment Agency are generally empowered but not required to carry out works and exercise their functions in this respect through the regional flood and coastal committee (**RFCC**) (see 1.4).
- 9.7 **Scrutiny.** Under section 9FH of the Local Government Act 2000 (**LGA 2000**), the overview and scrutiny committee (**OSC**) of a local authority may review and scrutinise risk management authorities (including IDBs) in relation to their flood management functions. Under section 9FH(3) of the LGA 2000, an IDB must comply with a request made by an OSC for information or for a response to a report made by the committee. Under section 9FH(5) of the LGA 2000, the board must have regard to reports and recommendations of an OSC.

Whilst not routinely used, an OSC could, for example, use these powers if there were a flooding event in the area and the OSC wanted to undertake a review of the event or to review current arrangements for local flood risk management in the area.

- 9.8 **Freedom of Information.** The public has a general right of access to recorded information held by public authorities under the Freedom of Information Act 2000 (**FOIA 2000**). This entitles members of the public to request information which is held by your IDB. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

- 9.8.1 **Receiving an information request.** Your IDB has two separate duties when responding to a valid request for information: to tell the applicant whether your IDB holds any information falling within the scope of their request, and to provide that information. Your IDB normally has 20 working days to respond to a request.
- 9.8.2 **Refusing an information request.** However, this does not mean your IDB is always obliged to provide the information requested. In some cases, there will be a good reason why your IDB should not make public some or all of the information requested.

Your IDB can refuse an entire request under the following circumstances:

- It would cost too much or take too much staff time to deal with the request (subject to the point on charging below).
- The request is vexatious.
- The request repeats a previous request from the same person.

In addition, the FOIA 2000 contains a number of exemptions that allow your IDB to withhold information from a requester.

If your IDB is refusing all or any part of a request, it must send the requester a written refusal notice.

- 9.8.3 **Charging.** Your IDB may also charge a fee associated with answering an information request in certain circumstances, and in accordance with the regulations that govern this. Fees may be either to recover communication costs, such as for photocopying, printing and postage, or to recover the cost of complying with a request which would exceed the cost limit referred to in the legislation. In the latter case, your IDB can offer to supply the information and recover its full costs (including staff time), rather than refusing the request.

If your IDB wishes to charge such a fee, it should send the requester a fees notice. The information does not need to be sent until your IDB has received the fee and the time limit for complying with the request excludes the time spent waiting for the fee to be paid.

- 9.8.4 **Environmental and spatial data.** As a public authority that holds environmental and spatial data, your IDB has a legal obligation to make that information available under the Environmental Information Regulations 2004 and INSPIRE Regulations 2009. Spatial data is any data

with a direct or indirect reference to a specific location or geographical area, it is often referred to as geospatial data or geographic information.

- 9.8.5 **Re-use** means using public sector information for a purpose other than the initial public task it was produced for. Typically, this would mean an individual, a company or other organisation taking information your IDB has produced and republishing it or using it to produce a new product or resource, often by combining it with other information. This is sometimes, though not always, on a commercial basis.

Under the Re-use of Public Sector Information Regulations 2015 (**RPSIR 2015**), your IDB must permit re-use of information you hold the intellectual property rights to in response to a request and respond within 20 working days, but certain information is exempt. It may charge for the marginal costs of reproducing, providing and disseminating the information for re-use. It may also impose conditions on information re-use, but the conditions must be as open and non-restrictive as possible.

If your IDB makes certain information available under the open government licence (**OGL**), no request has to be made, but re-users must follow the terms of the OGL.

- 9.9 **Data Protection.** Your IDB must comply with the Data Protection Act 2018 (**DPA 2018**) and the UK General Data Protection Regulations (**UK GDPR**). Together this legislation seeks to give people stronger rights over personal data use, and increases the requirement for consent, which must be an active choice by the individual (the data subject). In short, they make the legislation more relevant to the way technology is used today when processing personal data.

As a public body, your IDB must appoint a data protection officer (**DPO**) to monitor internal data protection compliance, inform and advise on your data protection obligations, and act as a contact point for those individuals you hold data on and the supervisory authority. A DPO may be shared with other IDBs or organisations. It is also useful for the DPO to attend training before being appointed.

- 9.9.1 **Personal data** is information relating to a living individual who is identifiable from that data either alone or in combination with other information held by your IDB, which is a data controller because it processes personal data.
- 9.9.2 **Controllers** are the main decision-makers – they exercise overall control over the purposes and means of the processing of personal data.

- 9.9.3 **Processors** act on behalf of, and only on the instructions of, the relevant controller.
- 9.9.4 **Processing.** The term “processing” is very broad. It essentially means anything that is done to, or with, personal data (including simply collecting, storing or deleting those data). Online identifiers, such as IP addresses, are also now classed as personal data and data will have to be stored in commonly used formats.
- 9.9.5 **Data protection principles.** Everyone responsible for using personal data, including your IDB, has to follow strict rules called “data protection principles”. They must make sure the information is:
- used fairly, lawfully and transparently;
 - used for specified, explicit purposes;
 - used in a way that is adequate, relevant and limited to only what is necessary;
 - accurate and, where necessary, kept up to date;
 - kept for no longer than is necessary; and
 - handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage.

Particular care should be taken before processing “sensitive personal data”, which relates to matters such as ethnic background, health, religious beliefs, political opinions, trade union membership, biometrics and sex life or sexual orientation. In deciding what information to process, your IDB should consider whether certain information should be withheld.

- 9.9.6 **Privacy notice.** Data protection legislation requires that your IDB provides information about why and how it processes personal data about a data subject. This must be concise, transparent, intelligible and easily accessible; written in clear and plain language, particularly if addressed to a child; and provided free of charge. The most common way to provide this information is through a privacy notice, which is a public statement of how your IDB applies the data protection principles to processing data. Your IDB should ensure that it clearly sets out the purposes for which data is held by your IDB.
- 9.9.7 **Internal policies and procedures which specifically cover data protection** will also need to be adopted and regularly reviewed by your IDB. These

will help your staff understand how data should be protected, and provide guidance about how incidents such as personal data breaches should be handled.

9.9.8 **As a statutory body** with rating and levying powers, your IDB will retain the right to process certain data whether or not consent is given but will have to ensure that its model for obtaining consent, where this is required, is brought up-to-date and meets the requirements of UK GDPR.

9.9.9 **Access to their personal data** can be requested by an individual at “reasonable intervals” and your IDB is required to respond to such requests within one calendar month, free of charge unless the request meets the threshold of ‘complex’, in which case this time period can be extended by a further two months. It will therefore be in your IDB’s interests to have proper systems in place to ensure that when requests are made, data can be easily located. It is also important to ensure that you are aware of the circumstances under which you can refuse to comply with a request and the exemptions for not providing certain information requested which are contained in the DPA 2018. For further information visit the ICO’s website.

9.9.10 **Additional rights also available to individuals under UK GDPR.** These include the following:

- the right to be informed;
- the right of rectification;
- the right to erasure;
- the right to restrict processing;
- the right to data portability;
- the right to object; and
- rights in relation to automated decision making which include profiling.

9.9.11 **Public interest** makes it unlikely, however, that the law would restrict the publication of information naming board members or officers of your IDB who have taken certain decisions, or your IDB’s suppliers.

9.9.12 **Data breaches** are a matter for the ICO, who can impose fines and other sanctions for a breach. Certain personal data breaches must be notified to the ICO within 72 hours of you becoming aware of the breach. If the breach is likely to result in a high risk of adversely affecting individual’s rights and freedoms, you must also inform those concerned without undue delay.

Further information about all aspects of Freedom of information, environmental information and data protection can be obtained from the ICO website (see [11.3](#)).

- 9.10 Complaints.** Even in the best run IDB, complaints from local residents and others impacted by the IDB's activities will be received from time to time. Complaints can also be a useful source of organisational learning.

Your IDB should ensure that it has a proper and clearly set out procedure, detailed on its website, for responding to complaints. It should also consider regular reports to its governing body summarising any learning from complaints received. A proper procedure could comprise two stages: the first stage which is the response; and a second stage which is dealt with like an appeal or review, which should be dealt with by a more senior officer.

Under paragraph 2 of the Commissions for Local Administration (Extension of Jurisdiction) Order 2004 and section 25(2) of the Local Government Act 1974, complainants who are dissatisfied with the final response to their complaint have the right to complaint to the local government & social care ombudsman (**LGSCO**). The procedure should therefore signpost to the LGSCO once local resolution is at an end. IDBs should consider the LGSCO's guidance on complaint handling, and on remedies, that can be found at their website (see [11.3](#)).

Your IDB will have a separate procedure for dealing with complaints against members under the code of conduct (see [4.4.6](#)).



10 MANAGING RISKS AND HAZARDS

Understand how the principles of risk management relate to your IDB and its management of: health and safety, data protection, continuity planning, and complaints.

10 MANAGING RISKS AND HAZARDS

10.1 Working effectively. As a small public authority, your IDB should be well placed to establish good working arrangements involving a limited number of personnel. However, things may go wrong from time to time and your IDB, with the assistance of your clerk, should recognise when something needs attention and when external advice is needed. Good risk management will enable your IDB to anticipate where breakdowns and accidents might occur and put preventative measures in place. It is important that the clerk and board members are confident in their respective roles, duties and responsibilities, work as a team, and properly communicate with each other.

10.2 Risk management. Being responsible for the running of a public body can be challenging. However, identifying those risks that are truly business critical will enable your IDB to successfully assess, manage, and monitor them. This is what effective “risk management” is all about, and it is designed to protect you and your IDB from possible problems, minimising losses and maximising gains.

Your IDB will need to identify the most effective process to enable it to manage risks. This should cover areas including the operational effectiveness of its systems, finance, security, damage to property, legal, IT and potential damage to reputation. Over time these risks and your IDB's objectives will change so these processes should be regularly reviewed and be flexible enough to respond to these changes.

10.2.1 Be strategic. As a minimum, your IDB should have a risk management strategy or policy that has been approved by board members and adopted. This strategy or policy requires your IDB to identify corporate and operational risks, assess the risks for likelihood and impact, and identify and allocate responsibility for mitigating controls, as well as appropriate insurance cover. Your IDB and officers should clearly focus on those significant risks that would prevent the achievement of your IDB's strategic objectives. For instance, pumping stations and other assets should be regularly checked and these checks properly recorded.

10.2.2 A register of your IDB's corporate business risks should be established, linking them to strategic business objectives and assigning ownership for each risk. The risks arising from and within working arrangements should be identified as part of this process. There should also be a link between this function and your IDB's arrangements for reviewing its system of internal control.

Business Risk and Dynamic Risk Registers

A useful way of assessing risk is to separate business risks from dynamic risks.

Business Risk Register: these are standing risks. They should be reviewed at least annually by the board. They tend not to change dramatically over short periods of time. Rather they remain relatively stable.

Dynamic Risk Register: these reflect the current risks that are outside normal business-related risks and are being actively managed. They tend to be short-lived but often amount to a higher level of risk than those on the business risk register.

For example:

Some boards remove pumps and reduce the immediate level of protection in an area. This normally takes place in a way that is closely managed by the board, with plans in place. If there an unplanned failure were to occur, the level of risk would rise. This risk would be reflected on the dynamic risk register until mitigated and or resolved.

10.2.3 Risk assessment. Reports to support any strategic policy decisions, and any project initiation documents, should include a risk assessment and the identification of mitigating actions. Identifying both the likelihood and potential impact of a risk may assist your IDB in assessing whether a risk can be tolerated, what mitigation should be put in place, or whether the risk should be transferred, for example through insurance, or must be addressed by stopping the relevant activity or method of delivery.

Your IDB will have to carry out and document risk assessments for its activities to ensure it operates safely. It is particularly important that your IDB establishes rules covering working site safety, the wearing of protective clothing, and safe use of equipment (including ensuring proper maintenance).

Remember, the health and safety arrangements of partners, key suppliers and contractors should also be assessed as their performance could adversely affect your IDB. Under the Construction Design and

Management (CDM) Regulations 2015, specific legal duties are placed on designers of construction projects. Your IDB must ensure that any work requiring specialist input, for instance the removal of asbestos, is legally undertaken.

10.3 Health and safety is one of the most important areas of risk management for your IDB, and board members have both collective and individual responsibility. Your IDB has a duty to operate a safe working environment and must protect employees and anyone who may be affected by your IDB activities, including members of the public. The Health and Safety at Work etc Act 1974 is the primary piece of legislation covering occupational health and safety in Great Britain, and the Health & Safety Executive (**HSE**) is the body responsible for the encouragement, regulation, and enforcement of workplace health, safety and welfare, and a key source of information on such matters (see [11.3](#)).

By law, your IDB must:

- ensure risk assessments are carried out, assessing the risks to employees and any other people who could be affected by your IDB's activities;
- ensure it has access to competent health and safety advice;
- arrange for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
- have a written health and safety policy if it has five or more employees; and
- consult employees about their risks at work and current preventive and protective measures.

It is important that health and safety arrangements are adequately considered and resourced as failure to comply with these requirements can have serious consequences, and sanctions include fines, imprisonment and disqualification. Under the Corporate Manslaughter and Corporate Homicide Act 2007, an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care, which results in death. The maximum penalty is an unlimited fine and the court can additionally require the organisation to publish details of its conviction and fine.

10.3.1 Leading safely: Health and safety are a corporate governance issue. Your board should set the direction for effective health and safety management, and it should be integrated into your IDB's governance structure, including committees.

Health and safety should appear as a standing agenda item for each board meeting. Your clerk and engineer can each give clear visibility of leadership to other staff, but some IDBs find it useful to name one of their number as the health and safety 'champion' on the board. Their presence can be a strong signal that the issue is being taken seriously and that its strategic importance is understood. Providing health and safety training to some or all of the board can promote understanding and knowledge of the key issues in your IDB.

10.3.2 Planning safely. Your IDB needs to ensure it is aware of the significant risks posed by its activities. It is advisable for your IDB to have a written health and safety policy even if it employs less than five people. It should set out the board's own role, requiring it to 'own' and understand the key issues involved, and decide how best to communicate, promote and champion health and safety.

The health and safety policy is a 'living' document and it should evolve over time. For instance, your IDB should consider the health and safety implications of introducing new processes, new working practices or new personnel, dedicating adequate resources to the task and seeking advice where necessary.

10.3.3 Recording and reporting accidents. Your IDB should keep an accident book available to record details of any accidents, and your IDB should nominate an individual to ensure that health and safety requirements are met. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (**RIDDOR**) puts duties on your IDB as an employer and those in control of work premises (the responsible person) to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses) to the HSE.

10.3.4 Reviewing health and safety performance should be completed by your IDB at least once a year. The review process should examine whether the IDB's health and safety policy reflects its current needs. It is important to report health and safety shortcomings, and the effect of all relevant board and management decisions. Your IDB should then decide actions to address any weaknesses, and a system to monitor their implementation, considering immediate reviews in the light of major shortcomings or events.

II SOURCES OF ADVICE AND INFORMATION

Here you can find out where to go for further information and advice on a whole range of matters your IDB may come across when performing its functions. You can also find out about what ADA is and how they can help.



11 SOURCES OF ADVICE AND INFORMATION

11.1 **ADA** is your IDB's representative organisation. ADA provides advice, guidance, and representation on a regular basis to IDBs through its head office, branches and committees and is in regular contact with the Department for Environment, Food and Rural Affairs (**Defra**) and other government departments and agencies. Details of your local ADA Branch can be found on the ADA website. In order to benefit from ADA's services, and to keep abreast of developments affecting IDBs, your IDB must be a member of ADA. To keep members informed and up to date on relevant news, advice and updates, ADA publishes a quarterly magazine, the ADA Gazette, and a monthly email called the News Stream. ADA has also published templates of governance documents that it is recommended that your IDB makes use of.

11.2 **Principal Acts of Parliament** that affect or govern your IDBs function include:

- the Land Drainage Act 1991;
- the Flood and Water Management Act 2010;
- the Water Resources Act 1991;
- the Environment Act 2021,
- the Local Audit and Accountability Act 2014;
- the Accounts and Audit Regulations 2015;
- the Wildlife and Countryside Act 1981; and
- the Data Protection Act 2018.

There are of course a host of other acts of parliament, statutory instruments and local legislation that affect the running of your IDB. You can access most of these from legislation.gov.uk (see below), but some older or local legislation may not be available online.

11.3 **Helpful websites.** Further useful information, and documents referred to in this guide, can be accessed from the web addresses below:

ada.org.uk | ADA's website contains important news, and information about key topic and events that are relevant to IDBs and other risk management authorities. You can also find links to the websites of all the IDBs and other organisations that are members of ADA.

defra.gov.uk | Department for Environment, Food and Rural Affairs.

dmo.gov.uk | The Debt Management Office operates the Public Works Loan Board facility. More information on local authority lending can be found on their website.

environment-agency.gov.uk | Environment Agency.

good-governance.org.uk | Good Governance Institute.

gov.uk | The government website including advice and guidance on flood and risk management.

gov.uk/government/organisations/ministry-of-housing-communities-local-government | Ministry of Housing, Communities and Local Government

hse.gov.uk | The Health and Safety Executive have a host of information about health and safety at work.

ico.org.uk | The Information Commissioner's Office is the independent authority set up in the UK to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. It has important information about data protection and transparency.

justice.gov.uk | Ministry of Justice, information about court procedures and rules, including the pre-action protocol for debt claims.

legislation.gov.uk | Comprehensive and authoritative source of UK legislation.

lgo.org.uk | The Local Government and Social Care Ombudsman is the final stage for complaints about IDBs, councils, adult social care providers and some other organisations providing local public services.

localaudits.co.uk | Smaller Authorities' Audit Appointments Ltd (SAAA) is the sector led company appointed by the government to procure and appoint external auditors to smaller authorities, including your IDB. Their website contains information and guidance about audit procedures.

nao.org.uk | The National Audit Office (NAO) scrutinises public spending for Parliament and can investigate public bodies such as IDBs, issuing reports with their findings.

naturalengland.gov.uk | Natural England.

nonnativespecies.org | The Non-Native Species secretariat provides tools and information for those working to control the spread of invasive non-native species.

therrc.co.uk | The River Restoration Centre provides practical advice and case studies about river restoration and wetland habitat enhancement.

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