

Rivers Authorities and Land Drainage Bill HL Bill 169 of 2017–19

Summary

The [Rivers Authorities and Land Drainage Bill 2017–19](#) is a private member's bill introduced in the House of Commons by David Warburton (Conservative MP for Somerton and Frome). The bill seeks to establish new bodies known as river authorities.¹ These would coordinate flood risk management in particular areas. Under the bill, local councils and other bodies with responsibilities concerning flood risk prevention would be able to apply to the Secretary of State to request for a new rivers authority to be established. The Secretary of State would have the power to then lay an affirmative statutory instrument for its creation. The provisions of the bill concerning river authorities apply to England only.²

The bill also seeks to make it easier to establish new internal drainage boards or expand those internal drainage boards which already exist.³ These bodies currently operate in 112 areas in England, established under the Land Drainage Act 1991, and are responsible for maintaining water courses, reducing flood risk and managing water levels. However, the methodology, required under the 1991 Act, for establishing how new or expanded internal drainage boards receive funding is considered to be out of date. The bill seeks to enable more up-to-date data to be used in these calculations. The internal drainage boards apply to England and Wales only.⁴

The bill was introduced in the House of Commons on 5 March 2018. It had its second reading on 8 February 2019, and completed its Commons stages, with government support, on 15 March 2019. It was introduced in the House of Lords on 18 March 2018 and is sponsored in by Lord Bethell (Conservative). It is due to have its second reading on 16 May 2019. The explanatory notes to the bill have been provided by the Department for Environment, Food and Rural Affairs, with the consent of Lord Bethell.⁵

Legislative Background and Bill Provisions: River Authorities

Following flooding in Somerset in the winter of 2013–14, the [Somerset Rivers Authority](#) was established in 2014.⁶ This is a non-statutory body and is funded by Somerset councils using flexibility afforded to it by the current local government finance settlement.⁷ The board of the Somerset Rivers Authority has asked the Government to provide it with precepting powers: this would enable a precept to be added to council tax bills in the Somerset Rivers Authority area.⁸ Somerset Rivers Authority has argued this would ensure its funding was on a more stable footing.

The Government has stated its support for enabling the Somerset Rivers Authority to become a precepting body. However, the Government has also stated that this would require primary legislation and that to do so for the Somerset Rivers Authority alone would require a hybrid bill to be introduced, which was likely to be a lengthy process.⁹ David Warburton has therefore sought to establish a procedure for this process through his bill, which would be available to local authority areas across the

whole of England. The Government has stated that it has thus far only received a request for the establishment of Somerset Rivers Authority as a precepting body.¹⁰

Clause 1 and schedule 1 of the bill would provide for the establishment of rivers authorities through amendments to the Flood and Water Management Act 2010:

- New section 21A of the 2010 Act—set out in clause 1(3) of the bill—would provide the Secretary of State with the power to establish river authorities by regulations, laid under the affirmative procedure for statutory instruments.¹¹ The bill would also enable the Secretary of State to specify in the regulations: the period of time before the river authority is to become fully established;¹² the composition of the river authority, including the appointment of its members and financial matters;¹³ and to make provisions about its proceedings and the proceedings of any of its committees or sub committees.¹⁴
- Schedule 1 would add a new schedule 1A to the 2010 Act. This would set out the procedure by which the relevant risk management authorities must submit a scheme to the Secretary of State before the regulations could be laid establishing a new river authority.¹⁵ These risk management authorities would include the Environment Agency, local authorities, internal drainage boards, water companies, and highway authorities.¹⁶
- New section 21E would establish the main functions of the rivers authority.¹⁷ These duties would include the preparation of a plan that would set out all the flood risk management work to be conducted by the risk management authorities during that financial year. It would also include publishing a plan for any additional flood risk management work it believed should be carried out. This additional flood risk management work would be carried out either by the relevant risk management authority or by the rivers authority itself.
- New section 21F provides the rivers authority with relevant powers to carry out its functions, including entering into contracts and acquiring and disposing of property.
- New section 21G would require the Secretary of State to publish a national framework for rivers authorities, setting out their priorities and objectives.
- New section 21H would enable risk management authorities to apply to the Secretary of State to lay regulations to change the boundaries of existing rivers authorities.
- New section 21I would establish the process by which the Secretary of State might wind-up an existing rivers authority. This would require new regulations to be made. New section 21J includes a requirement for the Secretary of State to hold a consultation before taking such action.

Bill Provisions: Internal Drainage Boards

Clauses 2–4 and schedule 2 concern how internal drainage boards are funded. Internal drainage boards were established under the Land Drainage Act 1991, and each receives funding from two sources: rates paid by agricultural land owners and levies issued to district or unitary authorities.¹⁸ The amount of funding each internal drainage board receives from these two sources depends on the proportion of agricultural and urban land in its area. The 1991 Act states that, to calculate how much the levies issued

to district or unitary authorities should be, the internal drainage board should use the “non-domestic rating list of a charging authority on 1st April 1990” and the “valuation list on 31st March 1990”.¹⁹ However, as the Government has stated in the explanatory notes for the bill, the 1990s rating lists are not available in some areas.²⁰ This, the Government has argued, is preventing internal drainage boards in these areas from expanding or the creation of new internal drainage boards.²¹

The bill would enable internal drainage boards to make these calculations using alternative data to that specified in the 1991 Act. Clause 2 would provide the Secretary of State with the power to make regulations which establish an alternative methodology for calculating the value of non-agricultural land in their internal drainage district.²² These regulations would be subject to affirmative procedure. The Secretary of State would be able to specify in the regulations what methodology might be available to the new internal drainage board. For this process to be carried out, clause 3 would enable information sharing between the internal drainage board and HM Revenue and Customs.²³ Clause 4 provides the Secretary of State with similar powers to make regulations concerning the methodology used for calculating the value of agricultural land and buildings in an internal drainage district.²⁴ The Government has said this is to avoid a situation where different methodologies are used for the valuation of agricultural and non-agricultural land, leading to a potential distortion.²⁵

House of Commons Stages

Second Reading

The bill received cross-party support throughout its stages in the House of Commons. In his speech outlining the purpose of the bill at second reading, David Warburton argued the Somerset Rivers Authority had been working effectively since its creation in 2015.²⁶ He said the bill was needed to ensure it could continue to conduct its work over the long-term:

We are fortunate in Somerset that we already have such a body, but we need the bill to incorporate it fully. In doing so, the Somerset Rivers Authority would be able to secure its future. A flood risk management authority would have duties and would, for the first time, be able to put its finances on a stable footing as a precepting body. The bill includes additional safeguards for local tax payers, of course, and would allow the rivers authority to plan its water and flood management schemes into the future and thereby create a safer, more secure environment for us all.²⁷

He stated that the bill would also enable similar bodies to be created elsewhere in England where there was local demand.²⁸ Regarding internal drainage boards, Mr Warburton noted there were three in operation in Somerset and stated his support for the work they did.²⁹ However, he stated that some parts of England did not benefit from having these bodies and that the measures in his bill were necessary to enable an expansion in their number.

Several Conservative backbench MPs voiced support for the bill, including Victoria Prentis (Conservative MP for Banbury) who spoke of the experiences of her constituents during the 2015–16 winter floods.³⁰ In addition, Peter Heaton-Jones (Conservative MP for North Devon) noted what he described as the “extraordinarily valuable work” done by the Somerset Rivers Authority, and drew attention to the efforts of Braunton Marsh internal drainage board in his own constituency.³¹

James Cartlidge (Conservative MP for South Suffolk) spoke in support of the proposal for flood risk management to be funded through a council tax precept.³² However, he raised concerns about whether

enough was being done to coordinate flood risk prevention across the country, arguing that the Environment Agency was “pulling out” of its current role.³³ Michael Tomlinson (Conservative MP for Mid Dorset and North Poole) also raised concerns regarding the role of the Environment Agency, asking David Warburton whether new rivers authorities would be performing the coordination role that the Environment Agency should be performing.³⁴ Mr Warburton responded that rivers authorities would “complement” the work of the Environment Agency, noting that in Somerset the Environment Agency was one of the risk management authorities that worked with Somerset Rivers Authority.³⁵ Mr Tomlinson also asked what might happen if there was a dispute between the various risk management authorities in a local area regarding whether to establish a new rivers authority.³⁶ The then Minister for Agriculture, Fisheries and Food, George Eustice, responded by saying the bill would require a consultation be held before a new rivers authority could be established.³⁷

The Shadow Environment Minister responsible for Water, Flooding, Fishing and Coastal Communities, Luke Pollard, offered support for the bill from the Labour benches. He stated that it was “long overdue” and criticised the Government for not introducing these measures earlier.³⁸ He asked the Government whether it might take a more proactive role in promoting the establishment of new river authorities. He also noted that the proposals were to be funded by either local authority taxpayers or landowners, but not necessarily those who used the land for business purposes. He asked the Government whether it might consider alternative forms of funding, specifically through the “polluter pays” principle, whereby efforts to raise funding would be targeted at those industries that contributed to climate change.³⁹

George Eustice, highlighted the Government’s support for the bill, arguing that this would secure the future of the Somerset Rivers Authority as an autonomous precepting authority.⁴⁰ He also argued that measures concerning internal drainage boards were essential for their expansion and for the creation of new ones.⁴¹ Responding to the points made by Luke Pollard regarding pollution, Mr Eustice stated that the focus of the bill was on flood risk management, but that the principle of “polluter pays” was applied elsewhere in the work of Environment England and the Environment Agency.⁴² He did not respond during his speech to the question on whether there would be a national strategy for the roll-out of more rivers authorities. However, the Government has stated in its explanatory notes to the bill that it was “not currently considering establishing rivers authorities in other parts of England”.⁴³

Committee Stage

The bill passed committee stage with only one amendment. This was a government amendment to change an outdated reference to the Data Protection Act 1998, following the coming into force of the Data Protection Act 2018.⁴⁴ During committee stage, Luke Pollard, noted again that there was no requirement in the bill for local councils to establish rivers authorities and asked how it was envisaged that they might be rolled out.⁴⁵ He also asked how local communities would be able to challenge rivers authorities and internal drainage boards and hold them to account.⁴⁶ The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Thérèse Coffey, stated that, while the Government would be open to the creation of new rivers authorities where there had been an expression of interest, the only expression of interest it had received so far was from Somerset.⁴⁷ Regarding accountability, she said that rivers authorities would be accountable to the local government ombudsman for England.⁴⁸

Report Stage and Third Reading

No amendments were tabled for report stage and the bill received further cross-party support at third reading.⁴⁹ David Warburton again stated he was not aware of any desire or need for the establishment

of rivers authorities other than in Somerset.⁵⁰ Matt Warman (Conservative MP for Boston and Skegness) suggested that the creation of a rivers authority in Lincolnshire “could be” a solution to coordinating flood risk management there.⁵¹ However, he felt that such a move should come from the local authorities and internal drainage boards in this area, rather than being “imposed” by central government.

At the end of third reading, the Minister for Agriculture, Fisheries and Food, Robert Goodwill, stated that, following royal assent, the Government intended to take “necessary steps to develop and publish its national framework for rivers authorities, and will engage with interested parties in doing so”.⁵² He indicated this would enable local consultations to be held in those areas that wished to hold them.

Further Information

- House of Commons Library, [Flood Risk Management and Funding](#), 22 November 2017.

¹ [Explanatory Notes](#), pp 2–3.

² *ibid*, pp 3–4.

³ *ibid*, pp 2–3.

⁴ *ibid*, pp 3–4.

⁵ [Explanatory Notes](#).

⁶ The Somerset Rivers Authority was launched in January 2015.

⁷ *ibid*, p 2; Somerset Rivers Authority, ‘[About Us: Funding from Local Partners](#)’, accessed 20 March 2019.

⁸ *ibid*, p 2.

⁹ [Public Bill Committee. Rivers Authorities and Land Drainage Bill, 11 March 2019, session 2017–19, 1st sitting, col 10.](#)

¹⁰ [Explanatory Notes](#), p 2.

¹¹ River Authorities and Land Drainage Bill, clause 1(3).

¹² River Authorities and Land Drainage Bill, clause 1(3), new section 21B.

¹³ River Authorities and Land Drainage Bill, clause 1(3), new section 21C.

¹⁴ River Authorities and Land Drainage Bill, clause 1(3), new section 21D(5).

¹⁵ [Explanatory Notes](#), p 2.

¹⁶ *ibid*.

¹⁷ River Authorities and Land Drainage Bill, clause 1(3), new section 21E.

¹⁸ [Explanatory Notes](#), p 2.

¹⁹ *ibid*.

²⁰ *ibid*.

²¹ *ibid*.

²² *ibid*, p 5.

²³ *ibid*, pp 5–6.

²⁴ *ibid*, p 6. It provides similar powers to the National Assembly for Wales.

²⁵ *ibid*, p 6.

²⁶ [HC Hansard, 8 February 2019, cols 571–3.](#)

²⁷ *ibid*, col 572.

²⁸ *ibid*.

²⁹ *ibid*, col 573.

³⁰ *ibid*, cols 574–5.

³¹ *ibid*, col 578.

³² *ibid*, col 576–7.

³³ *ibid* col 576.

³⁴ *ibid*, col 572.

³⁵ *ibid*.

³⁶ *ibid* cols 576–7.

³⁷ *ibid*, col 584.

³⁸ *ibid*, col 580.

³⁹ *ibid*.

⁴⁰ *ibid*, col 583.

⁴¹ [HC Hansard, 8 February 2019, cols 583.](#)

⁴² *ibid*, col 584.

⁴³ [Explanatory Notes](#), p 2.

⁴⁴ [Public Bill Committee, Rivers Authorities and Land Drainage Bill, 11 March 2019, session 2017–19, 1st sitting, cols 13–14.](#)

⁴⁵ *ibid*, col 8.

⁴⁶ *ibid*.

⁴⁷ *ibid*, col 10.

⁴⁸ *ibid*, col 11.

⁴⁹ [HC Hansard, 15 March 2019, cols 712–26.](#)

⁵⁰ *ibid*, col 713.

⁵¹ *ibid*, col 719.

⁵² *ibid*, col 726.

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