What is the problem under consideration? Why is government intervention necessary?
People owning or occupying land adjacent to watercourses can significantly influence local levels of flood risk. They have legal responsibilities to keep these watercourses free of obstructions and, where operating authorities decide that it is not appropriate to spend public money, owners are required to meet those responsibilities. However, awareness of these responsibilities is low and the means available to neighbours and the authorities for enforcing compliance are little known and sometimes expensive. Owners' and occupiers' actions on flood risk tend to impact on others rather than on themselves, so there is little motivation for them to reduce the risk of flooding. Government intervention is needed because climate change is likely to increase the importance of this issue and because a more effective lever is required if local authorities and internal drainage boards are to manage this aspect of local flood risk.

What are the policy objectives and the intended effects?
Reduce flood damage from obstructed watercourses and provide an effective dispute resolution mechanism.

What policy options have been considered? Please justify any preferred option.
1. Amend the role of the Agricultural Land Tribunal by i. introducing fees and a mechanism for alternative dispute resolution and changing the tribunal’s name to better reflect its role regarding urban ditches. ii. extending the remit of the ALT to cover all ordinary watercourses and not just ditches.
2. Create a statutory nuisance that applies to obstructions to any ordinary watercourse.
Option 1 is preferred over Option 2 because it provides more discretion over the enforcement of riparian responsibilities, because will be perceived as more just and because the ALT has already proven itself effective in conducting work of this nature.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?
Option 1 – 2014/15. Option 2. – two years after implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible Minister:

Date:
## Summary: Analysis & Evidence

<table>
<thead>
<tr>
<th>Policy Option: 1</th>
<th>Description: Change the name and procedures of the Agricultural Land Tribunal and extend its remit to all ordinary watercourses</th>
</tr>
</thead>
</table>

### Costs

#### ANNUAL COSTS

<table>
<thead>
<tr>
<th>Description and scale of key monetised costs by 'main affected groups'</th>
<th>ALT costs would increase by a PV of £619,000. Per-case costs would increase for some parties in ALT cases but decrease for others.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>One-off (Transition)</th>
<th>Yrs</th>
<th>£ 0</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Average Annual Cost (excluding one-off)</th>
<th>20</th>
<th>Total Cost (PV)</th>
<th>£ 1.03 million</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Other key non-monetised costs by 'main affected groups'</th>
<th>The introduction of fees might act as a barrier to justice for people with less financial means.</th>
</tr>
</thead>
</table>

### Benefits

#### ANNUAL BENEFITS

<table>
<thead>
<tr>
<th>Description and scale of key monetised benefits by 'main affected groups'</th>
<th>The main benefit would be the reduction in flood damage, which would be enjoyed by property owners and occupiers. The cost per case would reduce for the ALT but the number of cases would increase.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>One-off</th>
<th>Yrs</th>
<th>£ 0</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Average Annual Benefit (excluding one-off)</th>
<th>20</th>
<th>Total Benefit (PV)</th>
<th>£ 1.27 million</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Other key non-monetised benefits by 'main affected groups'</th>
<th>Improved access to justice for people affected by flooding from obstructed watercourses. More use of informal dispute resolution, leading to improved relations between some disputing neighbours.</th>
</tr>
</thead>
</table>

### Key Assumptions/Sensitivities/Risks

Assumptions: i. Average benefit per ALT case resulting in works is £2,000 reduced flood damage p.a. for 10 years in. ii. Costs are calculated for a 10 year period and benefits for a 20 year period because the cases in year 10 will provide benefits for 10 years. iii. The extra cases from the extended remit will equal that from the existing remit regarding ditches; climate change will increase both.

### Price Base

<table>
<thead>
<tr>
<th>Price Base Year</th>
<th>Time Period Years</th>
<th>Net Benefit Range (NPV)</th>
<th>NET BENEFIT (NPV Best estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>20</td>
<td>£ -0.6 million to +1.1 million</td>
<td>£ 0.24 million</td>
</tr>
</tbody>
</table>

### What is the geographic coverage of the policy/option?

England and Wales

### On what date will the policy be implemented?

2011

### Which organisation(s) will enforce the policy?

ALT (funded by Defra)

### What is the total annual cost of enforcement for these organisations?

£97,000

### Does enforcement comply with Hampton principles?

Yes

### Will implementation go beyond minimum EU requirements?

No

### Will the proposal have a significant impact on competition?

No

### Annual cost (£-£) per organisation (excluding one-off)

<table>
<thead>
<tr>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

### Impact on Admin Burdens Baseline (2005 Prices)

<table>
<thead>
<tr>
<th>Increase of</th>
<th>Decrease of</th>
<th>Net Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>£ 7,500</td>
<td>£ 0</td>
<td>£ 7,500</td>
</tr>
</tbody>
</table>

Key: Annual costs and benefits: Constant Prices
### Summary: Analysis & Evidence

#### Policy Option: 2

**Description:** Create a new statutory nuisance regarding obstructions to the flow of ordinary watercourses

#### Costs

<table>
<thead>
<tr>
<th>One-off (Transition)</th>
<th>Average Annual Cost (excluding one-off)</th>
<th>Description and scale of key monetised costs by ‘main affected groups’</th>
</tr>
</thead>
<tbody>
<tr>
<td>£ 0</td>
<td>£ 74,000</td>
<td>The removal of responsibilities for obstructed ditches from the ALT would reduce costs by PV £806,000 over 10 years, but the new system would have PV costs of £1,437,000 over 10 yrs, so the net PV cost is £631,000. Most costs would fall on local authorities: an undiscounted £112,000 per year. Total landowner costs would also increase.</td>
</tr>
</tbody>
</table>

Other key non-monetised costs by ‘main affected groups’

Local authorities might be perceived as less impartial than the ALT, leading to a diminished perception of justice.

#### Benefits

<table>
<thead>
<tr>
<th>One-off</th>
<th>Average Annual Benefit (excluding one-off)</th>
<th>Description and scale of key monetised benefits by ‘main affected groups’</th>
</tr>
</thead>
<tbody>
<tr>
<td>£ 0</td>
<td>£ 61,000</td>
<td>The removal of responsibilities for obstructed ditches from the ALT would reduce PV benefits by £846,000 over 20 years. However, this option has PV benefits of £1,734,000, so the net PV benefit is £888,000. Most benefits would be enjoyed by property-owners/occupiers.</td>
</tr>
</tbody>
</table>

Other key non-monetised benefits by ‘main affected groups’

Access to justice regarding floods from obstructed watercourses would be improved by the creation of a unified system for all neighbourly disputes (e.g. including, for example, noise nuisance).

#### Key Assumptions/Sensitivities/Risks

Key assumptions: on average, each statutory nuisance case that results in works will bring an annual benefit of £2,000 in reduced flood damage for 10 years. Costs only accrue for 10 years and benefits for 20 years because the cases in year 10 will provide benefits for the following 10 years.

<table>
<thead>
<tr>
<th>Price Base Year</th>
<th>Time Period Years 20</th>
<th>Net Benefit Range (NPV) £ -325,000 to +£818,000</th>
<th>NET BENEFIT (NPV Best estimate) £ 257,000</th>
</tr>
</thead>
</table>

#### Key:

- **Annual costs and benefits:** Constant Prices
- **Net Impact:** (Net) Present Value

<table>
<thead>
<tr>
<th>Impact on Admin Burdens Baseline (2005 Prices)</th>
<th>(Increase - Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase of £ 0</td>
<td>Decrease of £ 14,000</td>
</tr>
</tbody>
</table>

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**Key:**

- **Annual costs and benefits: Constant Prices**
- **(Net) Present Value**
PROPERTY-OWNER AND OCCUPIER RESPONSIBILITIES FOR FLOOD RISK FROM WATERCOURSES

1. Introduction

Obstructions to watercourses can cause flooding on neighbouring land and increase the risk of loss, disruption or danger to residents, businesses and public authorities. This impact assessment considers ways of resolving disputes between neighbours on this issue and ways of encouraging or obliging owners or occupiers of adjoining land to play their part in reducing flood-risk by maintaining the adequate flow of water through these watercourses. It considers existing mechanisms for doing this and looks at options for new mechanisms.

Operating authorities need to be provided with the powers to enforce the responsibilities of property owners and occupiers where this is necessary. Operating authorities have permissive powers to conduct such works themselves but they normally only take action when they believe it can be justified in the public interest. If they consider that public expenditure is not justified, some powers exist to oblige property owners and occupiers to conduct such works themselves. This impact assessment reviews these powers.

2. Background

2.1 Riparian responsibilities

Under common law, landowners in properties adjoining natural watercourses are, in the absence of any other legal title, presumed to be the owners of the bed of the watercourse to its midpoint. These landowners are known as ‘riparian’ owners – ripa being the Latin term for riverbank. Riparian owners have the common-law right to receive water from upstream neighbours in its natural quantity and the common-law responsibility to pass water on to downstream neighbours, without obstruction, in its natural quantity.

In addition to the common law responsibilities of property owners and occupiers, in the case of most watercourses public authorities will also have permissive powers to conduct that work, as follows:

- Designated ‘main rivers’¹ – Environment Agency
- Ordinary watercourses – the internal drainage board if there is one, or else the district council or unitary local authority.

The likelihood of these authorities maintaining these watercourses at public expense will vary according to a number of factors, including the availability of funds and the perceived flood risk that they create. Where action is not taken at public expense, maintenance will be a matter for the riparian owners.

Watercourses become obstructed because of natural siltation, inadequate culverting and other artificial obstructions. The readiness of public authorities to clear such obstructions, has, to varying degrees, removed some of the necessity for riparian owners to meet their common law responsibilities. As a result, riparian owners are often unaware of their responsibilities and

¹ I.e. These, in the main, are larger watercourses that are key to managing the risk of flood and coastal erosion
assume that the state will and should maintain the watercourses next to their properties\(^2\). This issue was highlighted in the floods of summer 2007, when failures to maintain watercourses led to several instances of severe flooding\(^3\).

The effective mobilization of riparian owners is therefore critical to the good management of fluvial flood risk. This aim is addressed here. People who own land that adjoins watercourses, it is argued, need to be made more aware of the concept of riparian ownership and of the responsibilities associated with it and authorities need to be provided with clear means of obliging owners and occupiers to meet their responsibilities where necessary.

### 2.2 Understanding and awareness of riparian responsibilities

Awareness of the existence of riparian responsibilities is currently low and as part of the consultation. No proposals are made here on this question, but we are asking for suggestions on how awareness and understanding could be improved.

It is during the purchase of properties that attention is most likely to be paid to the rights and responsibilities associated with those properties. This, therefore, presents an opportunity for spreading awareness of the existence and nature of riparian duties. Although the consultation contains no firm options on how to increase awareness of riparian responsibilities, it is recommended that options are developed in the future.

Information on riparian responsibilities is included under the general default issues that conveyancing solicitors would normally be expected to identify. However, there is no specific requirement that they be identified; nor does there appear to be any mechanism for prompting solicitors to consider this issue.

There is no obligation for Home Information Packs (HIPs) to cover these issues. Although the results of searches regarding sewerage and drainage may be included in HIPs (Statutory Instrument 2006 no. 1503: 9.k.vii), riparian responsibilities are not currently recorded in any searchable register, so it is unlikely that this part of the legislation will lead to responsibilities being highlighted. Sections 9e and 9g of the regulations seem more helpful in this respect. They say that HIPs “may contain information which” “would be of interest to potential buyers of the property interest” on topics that include their “rights and obligations”. However, although any thorough search for such “rights and obligations” should uncover riparian duties, there is no obligation for them to be included. Furthermore, as information on riparian ownership is not included on any national database, they are not picked up by privately available environmental or flood-risk searches\(^4\).

The HIPs Regulations have recently been amended and further changes are not desirable in the immediate term. The inclusion of a question in the HIP that covers riparian issues can be considered in the longer term. Such a step would have the advantage of allowing potential purchasers to make better informed decisions at the point of purchase. It also has justice benefits. Currently, people can be compelled to spend relatively large sums of money meeting responsibilities of which they were not aware. Of course, according to the principle of *caveat emptor* (“let the buyer beware”), it is the


\(^4\) For which, see, for example: [http://www.homecheckpro.co.uk/corp/samples/sitescope/homecheckflood_sample.pdf](http://www.homecheckpro.co.uk/corp/samples/sitescope/homecheckflood_sample.pdf) and [http://www.homecheckpro.co.uk/corp/samples/sitescope/sample_HCP_residential_170604.pdf](http://www.homecheckpro.co.uk/corp/samples/sitescope/sample_HCP_residential_170604.pdf)
task of the buyer of any property to ensure that they become aware of the responsibilities associated with their purchase. However, riparian responsibilities are so little known that it seems unfair to expect buyers to detect such issues unaided, especially as none of the standard searches includes such information. To increase awareness of the issue would be to ameliorate the existing injustice of this situation.

2.2 Operating authorities’ powers to enforce riparian responsibilities

If the flow of water in a watercourse is obstructed, operating authorities are able, under Section 25 of the Land Drainage Act, to issue notices to riparian owners or others to clear the obstruction, giving deadlines for their implementation. If landowners fail to carry out the work, the relevant operating authority has the power to gain entry to the property and carry out the work itself and recover the costs from the landowner. In practice, however, the expense associated with cost recovery is often high, especially if landowners choose to enter into legal dispute. This sometimes deters operating authorities from issuing notices of works if the potential benefits of doing so are not considered extensive enough to justify the associated risks.

2.1.3 The Agricultural Land Tribunal

A distinction is made in the law between ditches and other watercourses, for the Land Drainage Act 1991 gives jurisdiction to resolve disputes over obstructed ditches to the Agricultural Land Tribunal (the ALT). Ditches, a subset of ordinary watercourses, are ‘narrow channel[s] dug in the earth, usually used for drainage, irrigation or as a boundary marker’

The ALT is an independent body funded by Defra and the Welsh Assembly Government. As well as dealing with issues relating to obstructed ditches, it considers a range of issues associated with agricultural tenancies. The former function of the ALT is supported by the Environment Agency.

As the name of the tribunal suggests, the main part of its work is related to agricultural issues. However, it can also deal with disputes over non-agricultural ditches and ditches in urban areas.

The ALT offers a remedy where operating authorities decide not to address a ditch-related issue themselves. When the tribunal receives applications on such cases, it commissions the Environment Agency to complete technical investigations into the issues concerned and conducts hearings in which further evidence can be presented by the parties involved. It has the power to issue notices of works and, where compliance is not forthcoming, to request that the Environment Agency implements solutions and recharges the landowners or occupiers concerned.

Examples of ALT cases

In one case, the ALT ruled that a pipe section that had been inserted into a roadside ditch by a previous owner had restricted the flow of water away from a neighbouring smallholding, causing the property to flood. The riparian owners of the ditch, also smallholders, were ordered by the tribunal to remove the existing pipe and any filling material and to clear the area of the ditch that the backed-up water had caused to silt up.

In a second example, the ALT ruled that inadequate culverts belonging to a county council had caused a home and a commercial enterprise to flood during heavy rain. The ALT ordered the local authority to replace one culvert with a larger box culvert and to supplement another with two parallel conduits.

In a third example, a homeowner applied to the ALT for an order authorising him to enlarge a pipe running under a neighbour’s garage in order to prevent damage to his own land. The tribunal threw out the application,

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6 Case references: E 40 77; M ALT M LD 29; Y&H ALT 2 1589
stating that any improvement would be doubtful and at best marginal and that the expense of demolishing and rebuilding the garage and conducting remedial work on the pipe would be out of proportion to the value of the land in question.

In a fourth case, the tribunal ruled against an applicant who claimed that his home and garden were being damaged due to the infilling of a ditch that ran through a neighbour’s property. The ALT found that although the ditch had been filled, an adequate pipe had been inserted into the ditch when it was filled and no further work was necessary to ensure adequate flow through the watercourse.

As can be seen from the above examples, cases vary enormously, so it is difficult to give figures that meaningfully represent the costs of performing works or the benefits of those works. In recent cases, however, the cost of works varied from £500 to £150,000. The Environment Agency estimate that the average cost of works is about £3,500 and that the average reduction in flood damage is about £2,000 per annum for each case in which works are carried out.

The ALT provides landowners with a free and accessible means of resolving neighbourhood disputes over watercourse maintenance\(^7\). However, cases are processed at the expense of the state; they can sometimes be brought for purely vexatious reasons, and the formal, confrontational nature of the process is neither conducive to amicable resolutions nor fosters good long-term relations between neighbours.

The work of the ALT has been identified as a candidate for transfer into the single, unified tribunal being set up by the Tribunals Service. Such a transfer would likely happen in 2011/2012. Discussions with the Ministry of Justice indicate that this possibility need not prevent Defra from introducing reforms to the work of the ALT.

### 3. Policy options

The options considered in this document are shown below. Other potential options could be added to this list, including the use of charges and / or taxes to incentivise behaviour change. These should perhaps be given consideration in the future, outside the timescale of the current programme for the Floods and Water Bill.

1. **Amend the powers of the Agricultural Land Tribunal**
   - Rename the tribunal ‘The Drainage and Agricultural Land Tribunal’.
   - Oblige applicants and respondents to consider alternative forms of dispute resolution before their case is considered by a hearing of the tribunal.
   - Charge an application fee of £100 and a hearing fee of £1,000, allowing the tribunal to pass these costs on to the losing party in a dispute.
   - Extend the remit of the Agricultural Land Tribunal to cover all ordinary watercourses rather than just ditches.

2. **Replace the role of the ALT in resolving disputes over obstructed watercourses by creating a statutory nuisance that allows local authorities to issue notices obliging riparian owners to remove natural / artificial obstructions from natural or artificial watercourses.**

\(^7\) Its main historical function has been to resolve disputes over agricultural tenancies, which is why the term “agricultural” is in the title.
4 Option 1 – Amend the remit and arrangements of the Agricultural Land Tribunal

4.1 The current system

The Agricultural Land Tribunal has a number of advantages as a means of resolving disputes over watercourse maintenance and ensuring that small-scale, local flood hazards are reduced. Where neighbours are unable to reach agreement over the standard of maintenance and who should perform it, the ALT provides an expert, independent arbitration service at little or no cost to landowners.

a. Neighbours are often unable to ascertain with any certainty the provenance of a flood or the likelihood that the existing state of a watercourse might cause flooding. The ALT has access to experts in this field who are able to inspect drainage systems, review the law regarding their maintenance and make judgements as to the consequences of any problems with maintenance.

b. The ALT also has the advantage of being independent. Although funded and administered by Defra (with the support of the Environment Agency for drainage cases), each tribunal consists of three independent members. As a result, the tribunals’ decisions are likely to be respected by disputing neighbours.

c. The ALT is able to exercise flexibility over how it reaches its judgements. Tribunals do not need to refer to their own previous cases nor to cases heard by other tribunals; each case can be dealt with on its own merits and the relative costs and benefits of any proposed action are generally taken into account. This pragmatic approach is well suited to an area in which each case entails a unique set of considerations.

d. A key advantage of the ALT is the fact that it provides access to justice with minimal financial barriers. The ALT currently charges no fees and although it has the power to award costs, parties are not obliged to employ professional lawyers and do not normally do so. As a result, the services of the tribunal are accessible to individual householders and large landowners alike.

On the other hand, the present system also has a number of disadvantages.

a. Although established originally, to deal with disputes regarding agricultural land, most drainage issues currently referred to the ALT, concern watercourses in residential areas. Being somewhat of a misnomer, it is likely that the current name causes confusion. It might also deter some applications from householders who would benefit from its services.

b. The role of the ALT in dispute resolution is somewhat of an aberration. For most disputes between neighbours, the main alternative to a civil case would not be a tribunal, but a complaint to the local authority with regard to a statutory nuisance. This lack of consistency makes the legal system for neighbourhood disputes difficult for members of the public to understand. As a result, it makes the delivery of effective neighbourhood justice harder to deliver.

c. Furthermore, it might be seen as unfair that members of the public can apply to the ALT at no cost when they would have to pay for many other types of dispute to be resolved. Although most other tribunals do not charge for their services, their cases generally relate to the actions of public authorities rather than those of private individuals or businesses. Cases between individuals or businesses, on the other hand, do normally attract a fee.
the small claims courts, for example, the fee is between £20 and £120, while a whole range of different fees apply to civil proceedings in the county courts.

Furthermore, it is possible that the absence of any fee encourages vexatious applications, in which applicants, rather than pursuing a genuine drainage grievance, apply to the ALT simply in order to aggravate neighbours with whom they have a dispute over a different matter. Given that our estimate of the public cost of the average ALT case that goes to a hearing is £10,000, this is a potential problem.

d. The ALT process, although an appropriate mechanism for resolving disputes, is likely, because of its legal and formalised nature, to erode relationships between the applicants and respondents in many cases. Given the relationship between those involved, the maintenance of a good relationship will be important for collaboration and cooperation over future issues, including flood risk management.

Costs and benefits of the current system

The ALTs in England receive around nine applications for drainage cases per year. Of these, about two-thirds are resolved without the need for a hearing and about a third go as far as a hearing. The number of appeals against the rulings of the tribunal is negligible.

We estimate the current annual cost of the resolution of disputes over ditches by the ALT and the implementation of works to be £55,000. Assuming that climate change causes the number of cases to increase by 5% per year for the next ten years, the total present value cost over the next ten years would be £806,000 million.

Some of the main benefits of the ALT’s work, the provision of procedural justice and equity, cannot easily be valued. As described above, the ALT system provides an independent and expert adjudication process to people who have experienced events that can be distressing and costly. As no fee is charged for applications, the system provides equal access to justice independently of people’s ability to pay.

The quantifiable benefits concern reductions in flooding and, in some cases, improvements to the productivity of land. These are estimated to add up to about £2,000 per year, for ten years, for each case that results in works being performed. The figure normally used for flood alleviation schemes funded by the Environment Agency is an annual average benefit per residential property of £15,000\(^8\). As this level of damages generally attracts Agency funding and we are talking here about situations where drainage bodies have decided that it is not in the public interest to intervene, this can be taken as an upper limit. Given that, for the same reason, the floods involved are likely to be relatively small in scale, it can also be assumed that most floods dealt with by the ALT will only damage one property and that the average number of properties damaged might be around 1.5. The upper limit for the damage prevented by each case is therefore an average of £22,500.

Based on a heuristic analysis of their experience of actual ALT cases, the Environment Agency estimate that the actual annual average benefit per case is about £2,000. In order to minimise the risk of overstating the benefits of the ALT’s work, and in spite of the large difference between this estimate and the upper limit discussed above, the £2,000 figure is taken as the most likely average benefit.

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\(^8\) Figure supplied by Professor Colin Green, Flood Hazard Research Centre
In the analyses in this document, the costs are calculated over ten years and the benefits over twenty years because the cases in year 10 will provide benefits for the following 10 years.

Assuming a 5% annual increase over the next ten years in the number of cases due to climate change, the present value benefits of ten years of the ALT’s work would amount to £846,000.

Given all the above assumptions, the Net Present Value of the next ten years of the ALT’s work is £39,000. It is important to note, however, that some of the main benefits of the work of the ALT are not easily quantifiable and are not, therefore, reflected in this figure. These include the provision of affordable justice to disputing neighbours and the reduction in anxiety when the risk of flooding is reduced.

**Sensitivity testing**

<table>
<thead>
<tr>
<th></th>
<th>Average annual benefit of works carried out</th>
<th>Duration of benefits</th>
<th>Annual increase in number of cases</th>
<th>Net present value over 20 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worst-case</td>
<td>£1,000</td>
<td>2 years</td>
<td>10%</td>
<td>-£360,000</td>
</tr>
<tr>
<td>Best estimate</td>
<td>£2,000</td>
<td>10 years</td>
<td>5%</td>
<td>£39,000</td>
</tr>
<tr>
<td>Best-case</td>
<td>£3,000</td>
<td>12 years</td>
<td>10%</td>
<td>£722,000</td>
</tr>
</tbody>
</table>

The sensitivity of the prediction can be tested by varying some of the variables that have the most significant impact on the NPV. The results of this analysis are shown in Table 1, which shows that the NPV of the ALT could be as low as -£360,000 or as high as £722,000.

**4.1.1 The creation of a single, generic tribunal service**

The 2001 report on tribunals by Sir Andrew Leggatt\(^9\) recommended that all or most tribunals be incorporated into a single Tribunals Service rather than being administered by their different government departments. This, he argued, would bring the benefits of, *inter alia*, “greater administrative efficiency, a single point of contact for users, improved geographical distribution of tribunal centres, common standards, an enhanced corporate image” (paragraph 4). Subsequently, legislation passed in the Tribunals, Courts and Enforcement Act 2007 enabled the creation of a single, generic tribunal service for all tribunals.

For the time being, the ALT remains outside of this generic tribunal service, but it is likely that such a transfer will occur in 2011 or 2012. In the event of such a transfer, the ALT would become absorbed into one or more chambers within the new, single tribunal. However, the jurisdiction and procedural identity of the ALT would remain intact. Within the new, unified tribunal, separate jurisdictions (such as that over land drainage issues) will be able to retain their own fee structures and procedures. As a result, we do not consider it inappropriate to propose changes to the way the ALT is marketed and run.

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4.2 Proposal: change the name of the Agricultural Land Tribunal

Giving the Agricultural Land Tribunal a name that suggests more clearly its role in resolving drainage disputes\textsuperscript{10} would make its role in resolving disputes over watercourses more immediately evident to people who might otherwise not know of this function. It is anticipated that this would improve the equity of the system, access to which is limited, at present, to those who have the resources and skills to find out about the tribunal’s existence and role.

It is likely that a change of name would increase the number of applications to the tribunal and thereby increase costs. There is no certain way of knowing how large this increase might be. However, ditches are more common on agricultural land than they are in urban areas. Furthermore, awareness of the role of the tribunal in urban areas is likely to remain relatively low for a number of years. For these reasons, it is assumed that the number of land drainage applications to the ALT would increase by 20% if the name were changed.

If none of the other changes were introduced that are discussed below, the change of name would generate an estimated NPV of about £42,000.

4.3 Proposal: Introduce Early Neutral Intervention

Both the Administrative Justice & Tribunals Council and the Tribunals Service support the use of Alternative Dispute Resolution (ADR) mechanisms in the work of tribunals and the Tribunals Service is currently piloting their use in two of its tribunals.

Due to the nature of the legal process, formal hearings of the tribunal encourage a confrontational approach to drainage issues and are not conducive to good ongoing relations between neighbours. At present, approximately a third of ALT drainage cases progress as far as the hearing stage of the tribunal process, with most being resolved after the receipt of the technical report and before a hearing is convened. In this option, an alternative dispute resolution mechanism known as ENI would be introduced in order to reduce this number still further.

In ENI, a meeting is convened between the disputing parties and an independent, expert chairperson who is familiar with their case. In this meeting, participants are helped to obtain a better understanding of the facts of the situation and of the perspectives of the other parties. They are also informed what the outcome is likely to be if they proceed with the full legal process. As a result of all these elements of the ENI process, disputing parties are given the opportunity reach a voluntary agreement with each other and to avoid further stages in the formal process. Furthermore, in a well-run and successful ENI meeting, the atmosphere is constructive and friendly and fractured relationships between neighbours can sometimes be improved.

ENI meetings are chaired by either the chairman of the tribunal or the member with expertise in drainage issues. This would be at the discretion of the ALT Secretary. A successful ENI intervention requires a good grasp of the material facts of the case, so meetings would be held after a technical report has been produced by the ALT’s independent drainage engineer.

Research suggests that successful mediation-type events require the voluntary participation of all parties\textsuperscript{11}. Participation in the process would therefore be contingent on the agreement of all the applicants and respondents, who would be asked, shortly after application, to sign a statement saying that they are, or are not, willing to commit themselves to the process.

\textsuperscript{10} e.g. the Drainage and Agricultural Land Tribunal or the Watercourse Maintenance and Agricultural Land Tribunal

\textsuperscript{11} See research commissioned by the Ministry of Justice, Twisting arms: court referred and court linked mediation under judicial pressure. http://www.adrnow.org.uk/go/SubPage_134.html
Should one or more of the parties refuse to take part, or should agreement not be reached in the ENI process, a case would be taken to a formal hearing of the tribunal.

**Costs and benefits**

The figures reported below assume that the name of the ALT has been changed, as described above. They do not, however, assume the existence of fees or any extension of the remit of the ALT.

The introduction of the offer of ENI would incur transaction costs and would require the participation of a member of the tribunal and the provision of meeting space.

Research conducted in the Central London County Court suggests that, if participation is voluntary, 62% of cases can be resolved by processes similar to ENI. There is no reliable way of predicting in what proportion of cases parties would agree to participate in this process. However, given that the process takes time and would cost the parties money, and given that its outcomes are not binding, it seems likely that the potential delay and expense would act as a deterrent to some parties. Others might be intimidated by the prospect of facing their disputing neighbours in such a relatively intimate setting or might be cynical about the likely success of a voluntary process. For these reasons it is assumed here that, in the absence of any financial incentive to participate in ENI, only 10% of drainage cases that would otherwise go to a hearing would participate in ENI. The success rate for these cases, it is assumed, would be the same as that in the county court research – 62%.

Based on the number of cases currently received by the ALT, but allowing for an increase due to the proposed change of name, this would lead to an NPV of £6,000 over twenty years.

As described above, a second benefit would be an improvement in relationships between the parties. This should, in at least some cases, lead to better flood risk management in the future.

The benefits of this option remain relatively low here because parties will be charged for ENI. As, for the sake of the analysis in this section, it is assumed that there is no hearing fee, there would be a clear financial reason for not opting for ENI and going straight on to a hearing instead. The full extent of the benefits of this option only becomes clear when a hearing fee is introduced (see the next section).

**4.4 Proposal: introduce fees for applications and hearings**

To create greater consistency between the ALT and the courts, we suggest the introduction of fees. Fees are currently being considered by the Tribunals Service for a number of other types of tribunal cases, including those concerning immigration cases.

The fee would be divided into two portions. The first, a fee for registering the case with the ALT, would be charged to the applicant at the point of application. This would be non-refundable and non-transferable. The second would only be incurred in the event of a tribunal hearing and would be charged to the losing party in the case.

For the registration fee, we suggest a nominal sum of £100, £2 of which would be a transaction cost. This should be large enough to deter vexatious applications but not too high to deter most genuine cases. There is no evidence on the scale of the effect of introducing such a fee, but it is
assumed here that 5% of people who would otherwise apply to the ALT would be deterred from doing so.

A hearing fee needs to be large enough to act as an incentive for parties to opt for the ENI process and engage in it meaningfully. It should not, however, be so large as to deter genuine applicants from applying to the ALT or from taking their case forward if ENI fails. We suggest a fee of £1,000, which is about a fifth of the total cost of a hearing\textsuperscript{12}.

The ALT does not currently have the power to charge fees, so such a power would need to be provided in legislation.

There is no evidence to suggest the size of impact such a fee would have. It is assumed here, however, that an additional 40% of cases that currently go to a hearing would go through the ENI because of the hearing fee, increasing the total to 50%. Given this assumption, the introduction of fees would lead to an NPV of £61,000 over twenty years.

It is important to note that within this overall NPV there is an increase in costs to parties in ALT cases (of an estimated £400 per case) and a corresponding decrease in the need for public funding.

The above calculations include the impact of the change of name and of the introduction of ENI, both of which are described above. The benefits of the hearing fee, in particular, are highly dependent on the introduction of ENI.

\textbf{4.5 Extend the remit of the Agricultural Land Tribunal to cover all ordinary watercourses}

Currently, the remit of the ALT in drainage issues is restricted to ditches. Although not defined in the legislation, the term ‘ditch’ can be taken to mean small, dug channels used for drainage purposes. As a result, it excludes larger watercourses, natural watercourses and those used for any purpose other than drainage. Only local authorities and the Environment Agency presently have the authority to issue notices concerning obstructions to these other categories of watercourse.

Under this option, the ALT would have its existing powers extended to cover all watercourses not designated as ‘main rivers’. This would have the advantage of extending all the advantages of the ALT system to a great many more watercourses. As this would have significant implications for the workload, structure and administration of the ALT, we propose that such a change was postponed until after the transfer of the ALT into the single, unified tribunal that will be administered by the Tribunals Service.

Cases would only be eligible to be brought to the Tribunal if they regarded sections of watercourse that were not already the subject of active maintenance by a local authority or internal drainage board. This would be consistent with the rules defining the ALT’s current roles, for, according to the Land Drainage Act 1991, the ALT only has jurisdiction over ditches that are not, “vested in, or under the control of, a drainage body” (section 28, 5). A clearer means would need to be found, however, of interpreting the phrase, “vested in, or under control of”, whose meaning is not entirely clear.

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\textsuperscript{12} The cost of a hearing represents approximately half of the cost of the average ALT cases that is not resolved informally.
Costs and benefits

The calculations shown below presuppose the introduction of the reforms described above, namely: the change to the name of the ALT, the offer of ENI to all parties and the introduction of fees.

It is further assumed in this analysis that this expansion of the ALT’s role would lead to the land drainage caseload of the ALT being double what it would otherwise be. It is also assumed that the cost and benefit figures for the cases acquired under the extended remit would be identical to those for cases covered by the existing remit. Given this assumption, the additional NPV of a ten-year extension of the ALT’s role would be £135,000 over twenty years.

The largest quantifiable benefit would be a reduction in flood damage. No empirical data is available on the size of this benefit but, as discussed above, the figure used here is £2,000 per case.

These benefits are assumed to continue for an average of ten years. Where works result in permanent changes (e.g. where existing pipes or culverts are deemed to provide insufficient capacity), the benefits will last longer than this. However, where obstructions are caused by siltation or by objects washed down from up-stream, the possibility of the obstructions recurring is high. In this latter scenario, it is possible that riparian owners will become more aware of their responsibilities and meet them, in the future, without the need for further prompting. This, however, cannot be certain, so the duration of the benefits is assumed to be less than ten years and it seems reasonable to assume a lower average duration for the benefits of removing obstructions.

As well as the reduction in material damage, the benefits of which would accrue to property owners and occupiers, there would be a reduction in the health impacts of flooding, including the stress caused by damage to property and home.

Other benefits would include improved access to justice for people experiencing flood risk because of riparian owners’ failures to clear blockages to larger watercourses. At present, although local authorities have the option of issuing notices against such owners, they are not obliged to do so and the only alternative open to people affected by the risk is to take the complex and expensive route of taking a case to the civil courts. This option would provide a low-cost route to justice in all cases.

4.6 Total costs and benefits of Option 1

The implementation of all the proposals in this option would result in an NPV of £244,000.

The benefits of reduced flood risk are mostly enjoyed by private landowners, whereas most of the costs would be borne by the Government department that sponsors the ALT: currently Defra, but, from 2011/12, probably the Ministry of Justice.

The extra undiscounted admin burden for households, businesses and other organisations is estimated at around £7,000 per year – an average increase of £124 for each household, business or other organisation affected by these proposed changes.

These calculations assume that:
- compared to the number of cases that would be brought to the ALT if no changes were made, the extension of the remit of the ALT doubles the number of cases
that the change of name increases the number of cases by a further 20% of this total
but that this total reduces by 5% because of the application fee
and that the number of cases that go to a hearing is reduced by 31% (because 50% of
those that would have gone to a hearing opt to go through ENI and 62% of these do not
then go to a hearing).
Table 2  Costs and benefits of Option 1

<table>
<thead>
<tr>
<th>Policy change</th>
<th>Present value costs</th>
<th>Present value benefits</th>
<th>NPV</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£’000s over 10 years</td>
<td>£’000s over 20 years</td>
<td></td>
</tr>
<tr>
<td>Name change</td>
<td>127</td>
<td>169</td>
<td>42</td>
</tr>
<tr>
<td>ENI</td>
<td>4</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Fees</td>
<td>16</td>
<td>77</td>
<td>61</td>
</tr>
<tr>
<td>Extended remit</td>
<td>880</td>
<td>1,015</td>
<td>135</td>
</tr>
<tr>
<td>Total</td>
<td>1,027</td>
<td>1,271</td>
<td>244</td>
</tr>
</tbody>
</table>

There are three key variables in this calculation. For the sake of sensitivity testing, the results of varying these are shown in the table below.

Table 3  Sensitivity testing of Option 1

<table>
<thead>
<tr>
<th></th>
<th>Average annual benefit of works carried out (£)</th>
<th>Take-up of ENI when a fee is charged for hearings</th>
<th>New cases resulting from extension of remit (as proportion of existing caseload)</th>
<th>Net present value over 20 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worst-case</td>
<td>1,000</td>
<td>20%</td>
<td>150%</td>
<td>-£624,000</td>
</tr>
<tr>
<td>Best estimate</td>
<td>2,000</td>
<td>50%</td>
<td>100%</td>
<td>£244,000</td>
</tr>
<tr>
<td>Best-case</td>
<td>3,000</td>
<td>60%</td>
<td>150%</td>
<td>£1,129,000</td>
</tr>
</tbody>
</table>

5. Option 2 - Use statutory nuisance law to help ensure watercourses are not obstructed

In this option, we consider creating a clear distinction between remedies for disputes over ditches and flood risk and those regarding ditches and drainage more generally. At present, both sets of issues are dealt with by the ALT. Here, we propose that responsibility for disputes over flood risk be removed from the ALT. Instead, a new statutory nuisance would be created and would be enforced by local authorities. This statutory nuisance, furthermore, would apply to all ordinary watercourses and not just to ditches.

The 1990 Environmental Protection Act (EPA) incorporates a list of matters that constitute statutory nuisances, including, for example, noise produced by neighbours. Under the Act, local authorities are empowered to issue abatement notices.

Appeals are heard by local magistrates, usually within a month of being lodged. If no appeal is made or an appeal is rejected, failure to comply with an abatement notice is a criminal offence. Furthermore, in the case of non-compliance, local authorities have the power to do whatever is necessary to abate the nuisance and to charge the person concerned for the costs.
Neither watercourses nor flood risk were listed in the EPA. However, the legislation allows new nuisances to be declared by other Acts. Here the option is considered of creating such a nuisance to cover watercourse maintenance is considered.

A partial remedy of this nature already exists. The Public Health Act 1936, section 259, describes, “choked or silted up” “watercourses, ditches, ponds etc” as an unlawful public nuisance. There are two problems with this as a remedy. Firstly, it expressly excludes obstructions created by natural processes in a natural watercourse – for example, siltation. Secondly, the intention behind this part of the 1936 act was to address the nuisance of the risks posed to public health by watercourses that were so obstructed as to be stagnant. As the purpose of the nuisance was not to deal with the problem of flood risk, its use in this respect might be legally difficult.

To properly replace the function of the ALT, a new public nuisance would therefore need to be created. Such a nuisance would need to cover all the issues covered by the common-law requirements associated with riparian ownership.

Statutory nuisances are dealt with by local authorities, so under this option the resolution of disputes about watercourse maintenance would fall to them. Local authorities usually deal with public nuisances when they receive complaints from the public and they usually do so at no cost to the complainant. Under this option, therefore, all the costs of resolving these disputes would accrue to district councils or unitary authorities, which would be obliged to investigate complaints and, where appropriate, issue abatement notices or compliance notices.

With the Draft Floods and Water Bill giving upper tier local authorities responsibility for managing local sources of flood risk, their assumption of responsibility for resolving local disputes over watercourse maintenance would seem sensible. Furthermore, as a result of their role in enforcing the EPA, local authorities are experienced in dealing with local disputes of a similar nature and should therefore possess many of the requisite skills for taking on the proposed role – including experience of a range of alternative approaches to dispute resolution. A final advantage of this approach is that it would provide a remedy that was consistent with the remedy for most other neighbourhood disagreements and, as a result, would make the system of remedies easier to understand and therefore more accessible to the public.

One disadvantage of this option is that it would split responsibility for the resolution of disputes about ditches between two bodies: the ALT and local authorities. Section 28(1)(b) the Land Drainage Act 1991 currently provides a course of action for landowners who want to make improvements to the drainage of their land, even if the existing circumstances do constitute a legal nuisance. It would be neither appropriate nor possible to include this power under statutory nuisance regulations. Hence, either this power would need to be left with the ALT or legislate would need to be passed giving it to local authorities. At present, however, it is not clear how often the existing power is used by the ALT and whether it would be greatly missed.

**Costs and benefits**

This option is likely to result in quantifiable costs and benefits in a number of ways.

1. A small number of tribunals cover the whole of England and the Environment Agency currently contracts two experts to produce technical reports on cases across the country. As a result, tribunal members and experts have to travel considerable distances to inspect the areas under dispute. Being relatively local, councils tasked to adjudicate cases would
have lower travel and accommodation costs. For the same reason, local authority drainage engineers are also likely to have more knowledge of the drainage issues affecting the area. The costs per case incurred for this work by local authorities would, therefore, be lower than the costs currently incurred by the Environment Agency when it appoints one of its two consultant engineers to report on ALT cases.

2. Compared with the ALT, local authorities’ greater familiarity with local contexts should also make it easier for them to gain an understanding of the social and technical factors behind specific disputes, thus facilitating speedier resolution.

3. In the existing system, the Environment Agency commissions a report by a drainage engineer in all cases that go beyond the initial application stage. These cost, on average, £5,000. Local authorities would have greater discretion in this respect. Where they considered the technical considerations of a case to be clear-cut, they might decide not to commission a study at all.

4. On the other hand, costs could increase if the creation of a statutory nuisance led to an increase in the number of disputes that were brought forward for resolution. Given the relative obscurity of the ALT and the widespread representation of local authorities as the appropriate agency for resolving neighbourhood disputes, this seems likely.

5. Compared to the present system, the introduction of a statutory nuisance regime is likely to lead to an increase in the number of appeals. The administration of the ALT reports that parties very rarely appeal against the rulings of the tribunals because, they argue, the tribunal process is viewed as extremely fair. A statutory nuisance system run by a local authority would probably be viewed as less fair and is likely to prompt a greater number of appeals. Local authorities, being drainage bodies, have an interest in the management of ditches, are party-political, tax-raising organisations and enforce a wide range of other regulations. As a result, parties will sometimes be less likely to believe in their impartiality and might be tempted to appeal against their actions in cases of statutory nuisance regarding watercourses.

To assess the overall costs and benefits of this option, we make the following assumptions:

a. 1 and 2, above, lead to a 30% reduction in average per-case administration costs, compared to the ALT.

b. From point 3: that expert reports would only be commissioned in 80% of cases.

c. From point 4: that the number of annual cases will be 10% higher than it would be for the ALT.

d. That in 20% of cases, parties would appeal against the notices issued to them by the local authority and that each appeal would cost £1,000 of public money.\(^\text{13}\)

e. Compliance with the average notice costs £3,500 and yields benefits of £2,000 per year for an estimated period of ten years.

f. Costs accrue for ten years but benefits, which continue for ten years after each case, are totalled for a period of twenty years.

Given these assumptions, the net present value of Option 2 would be £257,000 over 20 years.

\(^\text{13}\) Appeals against existing statutory nuisance notices are generally heard on a monthly basis by local magistrates. Cases in the magistrates’ courts are usually heard by a panel of three magistrates (Justices of the Peace) supported by a legally qualified Court Clerk. Magistrates are not paid but are compensated for costs and loss of earnings.
Most of the costs of this option are borne by local authorities with an average annual cost of £112,000. The predicted average undiscounted public cost per case is £5,000, compared to an estimated £6,000 for the average cost of cases currently dealt with by the ALT.

It is anticipated that this option would lead to a reduction in the overall admin burden for households, businesses and other organisations. Annual undiscounted annual costs for this group would reduce by £14,000, with average admin costs of £120 per party involved in a statutory nuisance case.

A further cost of this option is that it would lead to disputes over ditches and flood risk being dealt with under a different regime to ditches and drainage improvement. At present, cases can be brought to the ALT on both issues: i.e. where there is the risk of damage to the land of a neighbour (flood risk) or where the neighbour wishes to improve the drainage of his land and cannot do so unless another property owner makes some changes to a ditch. The latter group of issues could not be addressed by the law of statutory nuisance. Hence, under this option, they would have to remain with the ALT. This splitting of the two different types of dispute might cause some confusion amongst people looking for the right avenue to resolve their disagreements and could, therefore, hamper access to justice for some people.

Three variables in this calculation have been identified as key to the sensitivity of the results of this analysis. To test the sensitivity of the results of the benefit-cost calculations, these variables are varied in the table below. Of the three variables, the one with the greatest impact on the NPV is the average annual benefit for the works carried out.

Table 4  Sensitivity testing of Option 2

<table>
<thead>
<tr>
<th></th>
<th>Average annual benefit of works carried out</th>
<th>Increase in no of ditch-related cases compared with ALT</th>
<th>Proportion of cases leading to an appeal</th>
<th>Net present value (20 years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worst-case</td>
<td>£1,000</td>
<td>20%</td>
<td>50%</td>
<td>-£325,000</td>
</tr>
<tr>
<td>Best estimate</td>
<td>£2,000</td>
<td>5%</td>
<td>20%</td>
<td>£257,000</td>
</tr>
<tr>
<td>Best-case</td>
<td>£3,000</td>
<td>20%</td>
<td>10%</td>
<td>£818,000</td>
</tr>
</tbody>
</table>

5. Summary
5.3 In Option 1, the Agricultural Land Tribunal (ALT) would play an expanded role in resolving disputes and would be given jurisdiction over any stretch of watercourse that was not on a designated *main river* and that was not being actively maintained by any drainage body. Changes would also be introduced to the arrangements employed by the ALT in order to introduce efficiencies and cost savings. Although these changes include the introduction of fees for parties involved in watercourse-related cases at the ALT, they also extend access to the form of justice provided by the tribunal.

5.4 In Option 2, the role of the ALT in resolving disputes over obstructed watercourses would be replaced by a new statutory nuisance. This would provide a quicker and simpler means for neighbours to resolve disputes, but might be perceived as less impartial. The statutory nuisance mechanism is more familiar to most householders and is also probably less intimidating than a tribunal, so this option is likely to lead to an increase in the number of cases.

### Table 5  Summary of costs and benefits – both options

<table>
<thead>
<tr>
<th>Option description</th>
<th>PV costs</th>
<th>PV benefits</th>
<th>NPV</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Amend the arrangements employed by the Agricultural Land Tribunal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name change</td>
<td>£42,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early Neutral Intervention</td>
<td>£6,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td>£61,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extending remit to all ordinary water-courses</td>
<td>£135,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>£244,000</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. New statutory nuisance covering all ordinary watercourses</td>
<td></td>
<td></td>
<td><strong>£257,000</strong></td>
</tr>
</tbody>
</table>

5.2 The preferred option is Option 1. This option has a marginally lower predicted NPV than Option 2. Within the context of the range of possible values of NPV revealed by the sensitivity testing, however, the NPVs of the two options can be treated as essentially the same. The NPV figures were therefore not a significant factor in the selection of a preference and three other factors informed the decision.

5.7 The first reason for preferring Option 1 is the need for discretion to be used in the application of the common law over riparian responsibilities. The benefits of removing an obstruction to a watercourse should always be weighed against the costs and in some cases a slight reduction in risk might only be achievable by the expenditure of a great deal of money. Currently, a great deal of discretion is provided to the ALT, who, according to the Land Drainage Act 1991, ‘may’ make an order ‘if they think fit’. As a result, the ALT is able to take issues such as benefits and costs into account. It is not clear whether it would be possible to provide similar discretion to local authorities under statutory nuisance law. Currently, local authorities have a legal duty to issue abatement notices in all instances where they discover the existence of a statutory nuisance.

5.7 A second reason for preferring Option 1 is the issue of justice. Although the tribunal process is a less familiar route for the resolution of neighbourly disputes, the independence of the ALT would cause it to be seen as more impartial than local authorities, so this option enhances the perception of justice.
5.8 Finally, whereas the ALT has a track record of successfully resolving disputes over watercourse maintenance, the effectiveness of statutory nuisance legislation in this area is uncertain.

6. Monitoring and evaluation

6.1 If Option 1 were implemented, the impact of ENI and fees would be evaluated by:
   • keeping records of enquiries that did not lead to applications and interviewing these people about their decisions not to apply
   • two years after the introduction of the hearing fee, interviewing a small sample of applicants and respondents about the impact of the fee on their decisions during cases
   • two years after the introduction of ENI, consulting ALT members on its effectiveness
   • three years after the expansion of the ALT's remit, reviewing the number of applications and the effectiveness of the tribunal in dealing with the new category of case.

6.3 If Option 2 were adopted, it effectiveness would be reviewed one year after its introduction and then again, two years later.

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1 Land Drainage Act 1991, III. 28.i.