

# ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Environment (Wales) Act 2016 which were passed by the National Assembly for Wales on 2 February 2016 and received Royal Assent on 21 March 2016. They have been prepared by the Department for Natural Resources of the Welsh Government to assist the reader.
2. The Explanatory Notes should be read in conjunction with the Act. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not require any explanation or comment, none is given.

### COMMENTARY ON SECTIONS

#### **Part 1 – Sustainable management of natural resources**

3. Part 1 of the Act is concerned with the sustainable management of natural resources. It makes provisions for a new iterative process for the Welsh Ministers, Natural Resources Wales (NRW) and other public bodies to contribute to achieving the sustainable management of natural resources.
4. This Part defines natural resources, sustainable management of natural resources and the principles of sustainable management of natural resources.
5. Part 1 confers functions on the Welsh Ministers and on NRW to assist in the delivery of sustainable management of natural resources. The Welsh Ministers are required to produce a national natural resources policy and NRW is required to produce a state of natural resources report and area statements. This Part provides for the process and timeframe for the production of these documents and confers a function on public bodies (defined in the Act) to provide assistance and/or information requested by NRW for the production of these documents. This Part also confers functions on the Welsh Ministers to implement the national natural resources policy and for NRW to implement an area statement.

6. This Part substitutes article 4 of the Natural Resources Body for Wales (Establishment) Order 2012, providing NRW with a new general purpose to pursue sustainable management of natural resources. This Part also replaces NRW functions in relation to entering management agreements in the National Parks and Access to Countryside Act 1949, the Wildlife and Countryside Act 1981 and the Countryside Act 1968. This Part also replaces NRW's functions in the 1968 Act, in relation to experimental schemes. Part 1 confers on the Welsh Ministers a power, on application from NRW, to make regulations to allow for a limited suspension of legislative requirements in order to facilitate an experimental scheme which is likely to contribute to sustainable management of natural resources.
7. Part 1 replaces section 40 of the Natural Environment and Rural Communities Act 2006 (the NERC Act 2006) for public authorities with functions in relation to Wales and replaces section 42 of the NERC Act 2006 in relation to the Welsh Ministers' duty to prepare a list of important living organisms and habitats for biodiversity in relation to Wales. It requires these public authorities in the proper exercise of their functions to seek to maintain and enhance biodiversity and in so doing promote the resilience of ecosystems.

### **Section 1 – Purpose**

8. This section makes clear that the purpose of this Part is to promote the sustainable management of natural resources.

### **Section 2 – Natural resources**

9. Section 2 defines natural resources for the purposes of Part 1 of the Act.
10. The definition covers all living organisms (biotic), other than people, and non-living components and materials (abiotic) that make up the natural environment.
11. The definition is not limited to terrestrial natural resources; it also includes coastal and marine natural resources.
12. The definition lists examples of components of the natural environment and includes, for example, biological and geological resources, environmental media (air, water and soil) and also flow resources (such as tide, wind and solar).

### **Section 3 – Sustainable management of natural resources**

13. This section defines “sustainable management of natural resources” for the purposes of Part 1 of the Act. Section 4 describes how sustainable management of natural resources should be delivered, through the principles of sustainable management.

14. Subsection (1)(a) provides that sustainable management of natural resources is about using (or not using) natural resources (as defined in section 2) to promote the objective at subsection (2).
15. Subsection (1)(b) and (c) clarifies that sustainable management of natural resources is also about taking, or not taking, action that promotes or hinders the achievement of the objective at subsection (2).
16. Subsection (2) provides that the objective of the sustainable management of natural resources is to maintain and enhance the resilience of ecosystems and the benefits they provide. A resilient ecosystem is healthy and functions in a way that is able to absorb disturbance and deliver benefits over the long-term. The key characteristics of a resilient ecosystem are described in section 4(i).
17. Maintaining and enhancing the resilience of ecosystems and the benefits they provide such as the provision of food and fibre helps to meet current and future social, economic and environmental needs and contribute to the achievement of all the seven well-being goals under section 4 of the Well-being of Future Generations (Wales) Act 2015.
18. The “benefits”, or services, provided by ecosystems are the tangible and intangible benefits obtained from ecosystems and natural resources and include:
  - Supporting services, for example nutrient cycling, oxygen production and soil formation. These are the services that are necessary for the production of all other services;
  - Provisioning services, for example food, fibre, fuel and water. These are the products obtained from ecosystems;
  - Regulating services, for example climate regulation, water purification and flood protection. These are the benefits obtained from the regulation of ecosystem processes; and
  - Cultural services, for example education, recreation, and aesthetic benefits. These are the non-material benefits people obtain from ecosystems.
19. An example of managing resource use, at subsection (1), is the amount, frequency and location of water abstraction from a river. To meet the objective at subsection (2) water is not abstracted at a rate faster than it can be replenished or in a manner that will have an adverse effect on the wider ecosystem and the other ecosystem benefits provided by the river. Water availability is assessed not only on the impact in the short term but over the long term and on the ability of the ecosystem to provide benefits for future generations.

20. An example of subsections (1(b) and (c)) meeting the objective at subsection (2) could include managing the impact of production activities on the health and functioning of ecosystems. The use of recycled materials, for example, can help to reduce the rate at which natural resources are used in production activities, but that activity may also involve the emission of pollutants into the aquatic environment or the air, and therefore have a negative impact on the health of our ecosystems. Sustainable management includes taking action (or not taking action) to reduce potential negative impacts from activities so as to maintain and improve resilient ecosystems.

#### **Section 4 – Principles of sustainable management of natural resources**

21. Section 4 establishes the principles that determine how the sustainable management of natural resources is to be delivered. The principles are complementary and interlinked and are not listed in order of priority.
22. Paragraph (a) provides for an adaptive approach to decision-making. This involves generating new knowledge and seeking to reduce uncertainties, thereby allowing a decision-maker to anticipate and cater for change.
23. Paragraph (b) requires spatial scale to be considered. This includes considering the appropriate local, regional or national spatial level to address issues or to deliver opportunities. For example, linkages between ground water, surface water and rainfall within the area of a river catchment mean that impacts on any one of these can affect hydrological processes within the catchment and the benefits linked to these processes, such as clean water provision.
24. Paragraphs (c), (d) and (e) require working with appropriate sectors of society. Decisions should be made in consideration of the evidence and information gathered from relevant stakeholders and different sectors of society, including for example, local communities and the public. The term “evidence” in this context is not solely a reference to scientific evidence and would include local knowledge as well as empirical data and scientific evidence.
25. Paragraph (f) requires that benefits that are provided by our natural resources and ecosystems are identified and considered, as well as the intrinsic value of those ecosystems and resources, which is the value of natural resources and ecosystems for their own sake. All provisioning, supporting, regulating and cultural benefits (or services) should be considered, as appropriate. Information on benefits is provided at paragraph 18. For example, in forestry management, in addition to taking into consideration the provision of timber, other services such as carbon storage, habitat provision or recreational activities are also considered. Woodlands require long term management that demands careful selection of species and location for tree planting such that a range of ecosystem services and benefits can be optimised over a generation or more.

26. Paragraph (g) requires short, medium and long term consequences to be considered, including the time lags and feedback times for ecosystems to respond to our interventions. For example, proposals to introduce a new wetland to help reduce diffuse pollution from farmland would have to factor in the time for the wetland to develop the necessary biophysical conditions to control the pollution, together with the variability of water flows over time into the design and monitoring of the wetlands.
27. Paragraph (h) requires the taking of actions which can avert significant damage to ecosystems. This provides a preventive approach within the principles of sustainable management of natural resources.
28. Paragraph (i) requires that particular aspects of ecosystem resilience are considered. This list is not an exhaustive definition but identifies for the purpose of this Part, the key aspects of resilient ecosystems.

### **Section 5 – General purpose of Natural Resources Body for Wales**

29. This section substitutes a provision for article 4 of the Natural Resources Body for Wales (Establishment) Order 2012 (Establishment Order) so that the sustainable management of natural resources becomes the core purpose of NRW.
30. The Establishment Order established NRW as the environmental and conservation body in Wales and sets out its general functions. Article 4 of the Establishment Order set out the general purpose of NRW, which was to ensure that the environment and natural resources of Wales were sustainably maintained, enhanced and used for the benefit of the people, environment and economy of Wales today and in the future.
31. Article 4(1)(a), as substituted by section 5 of this Act, now places a duty on NRW to pursue the sustainable management of natural resources in relation to Wales when exercising any of its functions. Sustainable management of natural resources has the meaning in section 3 of the Act.
32. Article 4(1)(b) requires that, in carrying out its functions, NRW must also apply the principles of sustainable management which are set out in section 4 of the Act. The duties in article 4 only apply to the extent that they are consistent with the proper exercise of NRW's functions and therefore they do not conflict with or override any provisions in this Act or any other legislation, which confer powers or duties on NRW.

33. An example of applying the principles to a function can be illustrated in the preparation of a state of the natural resources report (a requirement under section 8 of the Act). In preparing the report NRW must apply the principles in section 4, which would include considering all relevant evidence and information that will be required to prepare the report, as well as engaging with relevant stakeholders who may have access to any relevant evidence. In addition, NRW would need to take into account the current variability of species and habitats within ecosystems, the ability of ecosystems to respond to changes or increased demands and be able to continue to provide services such as clean water, food, tourism and flood and disease control.
34. Section 5(4) amends the Establishment Order by repealing articles 5B and 5E. Article 5B requires that NRW must have regard to actual or possible ecological changes when carrying out their nature conservation functions. This requirement will now fall under the principles of sustainable management of natural resources as provided in section 4 of this Act and therefore article 5B is no longer necessary.
35. Article 5E requires that NRW must have regard to the health and social well-being of individuals and communities as well as economic well-being. These requirements are subsumed within the duties placed on NRW by the Well-being of Future Generations (Wales) Act 2015, so article 5E is no longer required.

#### **Section 6 - Biodiversity and resilience of ecosystems duty**

36. Section 6 places a duty on public authorities, as defined in subsection (9), to seek to maintain and enhance biological diversity (referred to as biodiversity). All public bodies, statutory undertakers, Ministers of the Crown and other public office holders are required to apply the duty when they are carrying on any functions in Wales, or in relation to Wales. Two exceptions are set out in subsection (3): the functions of Her Majesty's Revenue and Customs (HMRC) and the judicial functions of courts and tribunals are not subject to the duty.
37. Where the duty in section 6 applies, public authorities are required to comply with that duty instead of the duty in section 40 of the NERC Act 2006.
38. Section 40 of the NERC Act 2006 required all public authorities in England and Wales to have regard to conserving biodiversity when carrying out their functions. Section 40 is amended so that it continues to apply where HMRC are carrying out their functions, and where other public authorities are carrying out functions in relation to England (see paragraph 9(2) of Schedule 2 to the Act).

39. Section 6(1) of the Act requires that public authorities when carrying out their functions in relation to Wales do so in a way that aims to improve and not reduce biodiversity and that in doing they must seek to further the resilience of ecosystems. A definition of biodiversity is provided in section 26 to aid in the general interpretation of the term, and relates to the variety of all living organisms at the various levels at which they exist. Whilst resilience is not defined in section 6, a number of key characteristics of resilience are contained in subsection (2).
40. Section 6(2) of the Act requires that in delivering the obligation under subsection (1), public authorities must consider diversity between and within ecosystems for example the diversity of species and habitats, the extent, state, connectivity of ecosystems and their ability to deal with and recover from unexpected events for example the impacts of climate change. The list in subsection (2) is not intended to be an exhaustive list of matters that must be taken into account as some matters may not be relevant to every situation. See also the notes for section 4.
41. Under section 6(4) of the Act, the Welsh Ministers, the Counsel General, government departments and Ministers of the Crown are under an additional duty to have particular regard to the Convention on Biological Diversity 1992<sup>1</sup>, which is a global agreement addressing all aspects of biodiversity. This duty does not apply to the other public authorities as defined in subsection (5) but these other public authorities are required to have regard to any guidance issued by the Welsh Ministers in relation to complying with the duty under section 6.
42. Subsection 6(5) requires that in complying with the duty under section 6(1) public authorities, other than Ministers of the Crown or government departments, must have regard to the list of living organisms and types of habitat published under section 7, a state of natural resources report published under section 8 and any area statement published under section 11, which relates to the area of the public authority.
43. A public authority, other than Ministers of the Crown or government departments, must publish a plan outlining how it will meet its duty under subsection (1). This plan must be reviewed in light of a report published under subsection (7).

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<https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwiEljiJzLAhUG6xQKHeGGBEcQFghCMAM&url=https%3A%2F%2Fwww.cbd.int%2Fdoc%2Flegal%2Fcbd-en.pdf&usg=AFQjCNHqwS4RPEu3dL617rq7mCuJhVkhfg>

44. Section 6(7) requires that every three years, all public authorities must publish a report on how they have met their obligations under the biodiversity duty. Public authorities could include this report in any other reports that they are required to publish.
45. Subsection 6(9) lists the public authorities to which the duty in section 6(1) applies. This includes a wide range of bodies including for example local health boards, national health trusts and national park authorities.
46. Although section 6 only applies in relation to Wales, this does not mean that it is about biodiversity only in Wales. It applies to biodiversity in a global sense and requires public authorities to consider the effect of decisions taken, or activities carried out, within Wales insofar as those decisions or activities may have implications in relation to biodiversity outwith Wales. This might be illustrated by the example of a public authority in Wales which is considering whether to purchase products made from materials sourced from a tropical rainforest. The biodiversity implications of that purchasing decision would need to be considered by the public authority. The table identifies those public authorities with requirements under each section of section 6.

<b>Section: Duty</b>	<b>Welsh Government</b>	<b>Minister of the Crown and Government Departments</b>	<b>Other public authorities</b>
Sections (6)(1),(2)	Yes	Yes	Yes
Section (6)(4)(a)	Yes	Yes	Yes
Section (6)(4)(b)	Yes	Yes	Yes
Section (6)(5)	Yes	No	Yes
Section (6)(6)	Yes	No	Yes
Section (6)(7)	Yes	Yes	Yes
Section (6)(8)	Yes	No	Yes

### **Section 7 – Biodiversity lists and duty to take steps to maintain and enhance biodiversity**

47. This section is similar to the duty in section 42 of the NERC Act 2006 which it replaces. It places a duty on the Welsh Ministers to publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales.
48. Before publishing, reviewing and revising the lists, the Welsh Ministers must consult NRW (subsections (2) and (4)).



49. This section also requires the Welsh Ministers to take, and encourage others to also take measures to sustain and improve the listed organisms and habitats (subsection (3)).
50. In producing the list or taking any measures to sustain and improve the listed organisms and habitats, the Welsh Minister must apply the principles of sustainable management of natural resources (as provided in section 4 of the Act). The Welsh Ministers must therefore consider any appropriate evidence, for example as provided in the state of natural resources report (see section 7) and also engage with any relevant stakeholders (subsection (5)).
51. Section 42 of the NERC Act 2006 is repealed by paragraph 9(3) of Schedule 2 to the Act.

### **Section 8 – Duty to prepare and publish state of natural resources report**

52. In order to assist persons in achieving the sustainable management of natural resources in relation to Wales, section 8 requires NRW to publish a ‘state of natural resources report’. This report will provide a source of evidence that will be available for any person concerned with natural resources in relation to Wales. It will be of assistance to any person applying the principles of sustainable management of natural resources; taking account of all relevant evidence is part of the principle set out in section 4(e).
53. The report must contain NRW’s assessment of the current condition of natural resources in relation to Wales. The report must also include NRW’s assessment of the extent to which sustainable management of those natural resources is being achieved. For example, the status of ecosystems to deliver multiple benefits and their assessment on whether their current status will be able to adapt to demands to ensure the long-term delivery of these multiple benefits.
54. The report must also include an assessment of biodiversity, in addition to information on the main trends that are affecting, or may affect natural resources and information on any areas where there may be insufficient information to enable an assessment.
55. When preparing a report under this section, NRW will be guided by its general duties. This includes its general purpose as set out in article 4 of the Natural Resources Body for Wales (Establishment) Order 2012 (as replaced by section 5(2) of this Act), which requires NRW to apply the principles of sustainable management of natural resources when exercising its functions.
56. Subsection (3) requires NRW to publish the first report within four months of this subsection coming into force. This subsection comes into force at the end of the period of two months starting with the day the Bill receives Royal Assent (see section 88(2)(a)).

57. Subsection (4) requires NRW to publish a report before the end of the year preceding a year in which each subsequent ordinary general election of the National Assembly for Wales is to take place. Section 3 of the Government of Wales Act 2006 (as amended by section 1 of the Wales Act 2014) provides that an ordinary general election will take place in the fifth calendar year following that in which the previous ordinary general election was held. Following publication of the first state of natural resources report, the next ordinary general election will be due to take place in May 2021. The second state of natural resources report will therefore have to be published before the end of the calendar year 2020, with subsequent reports published every five years.
58. Subsection (5) requires NRW to publish a draft version of the state of natural resources report before the end of the calendar year before the year in which the final report must be published under subsection (4). The draft of the second state of natural resources report will therefore have to be published before the end of the calendar year 2019. This requirement applies to each cycle of the publication of the state of natural resources reports, except for the publication of the first report under subsection (3).
59. The Welsh Ministers must have regard to the latest report when they are preparing a national natural resources policy (section 9(9)).

### **Section 9 – Duty to prepare, publish and implement natural resources policy**

60. This section requires the Welsh Ministers to prepare, publish, implement and review a ‘national natural resources policy’ setting out their policies that will contribute to the sustainable management of natural resources (see section 3).
61. Subsection (2) requires the Welsh Ministers to set out in the policy what they consider to be the key priorities, risks and opportunities for the sustainable management of natural resources. Subsection (9) requires that the Welsh Ministers in preparing and revising the policy must have regard to the latest ‘state of natural resources report’. In addition, the Welsh Ministers must apply the principles of sustainable management of natural resources when preparing or revising a ‘national natural resources policy’ (subsection (8)).
62. The policy must also include a summary of any consultations undertaken in its preparation and any representations received as a result of the consultations.
63. Subsection (2) also requires that the Welsh Ministers must include in the policy what they consider needs to be done in relation to climate change and biodiversity.

64. Subsection (4) requires the Welsh Ministers must also take all reasonable steps to implement the policy and also to encourage the implementation of the policy by other parties. In implementing the policy the Welsh Ministers must apply the principles of sustainable management of natural resources (see subsection (8)).
65. The policy is to be published and reviewed in accordance with the timings provided in this section. The first 'national natural resources policy' must be published within 10 months of this section coming into force. This section comes into force at the end of the period of two months starting with the day the Act receives Royal Assent (see section 88(2)(a)).
66. The policy is an enduring document, in that the published policy will continue to apply unless and until a revised policy is published following a review. The Welsh Ministers may review the policy at any time but must review it following a general election of the National Assembly for Wales. The requirement to review following a general election applies whether it is an ordinary general election (under section 3 of the Government of Wales Act 2006) or an extraordinary election (under section 5 of that Act). Following a review, the Welsh Ministers may choose to continue with the existing policy, or they can revise the policy as they see fit. If the policy is revised, the policy as revised must then be published (see subsection (7)).

#### **Section 10 - Meaning of public body in sections 11 to 15**

67. Section 10 lists certain persons as being a 'public body' for the purposes of sections 11 to 15 of the Act.
68. Subsection (2) provides that the Welsh Ministers may, by regulations, amend the meaning of public body in section 10 by adding or removing a person from the list, or amending the description of such a person. Only bodies that have public functions may be added to the list (subsection (3)). If the body exercises both public and other functions, only their public functions can be subject to sections 11 to 14 of the Act (subsection (4)). A Minister of the Crown can only be added to subsection (1) if the Secretary of State consents.
69. Prior to exercising this power, the Welsh Ministers must consult NRW, the person to be affected and any other person that they consider appropriate (subsection (5)).

## **Section 11 - Area Statements**

70. Section 11 requires NRW to facilitate the implementation of the national natural resources policy by preparing, publishing and implementing 'area statements'. Subsection (4) requires that NRW must ensure that every area of Wales is covered by one or more area statements but that the number, siting, and geographical extent of the areas in relation to which statements are produced is determined by it, in accordance with what they consider to be most appropriate for facilitating the implementation of the policy.
71. When exercising any functions, NRW will be guided by its general duties. Of particular relevance to this section will be its general purpose as set out in article 4 of the Natural Resources Body for Wales (Establishment) Order 2012 (as replaced by section 5(2) of this Act). This requires NRW to apply the principles of sustainable management of natural resources when exercising functions in relation to area statements. Subsection (2) clarifies subsection (1) to confirm that the statements may also be used by NRW for any other reason to assist in the exercise of any of their functions. For example, NRW may choose to use an area statement to outline how they will deliver their other functions relevant to that area, in addition to those functions related to the implementation of the national policy.
72. The form and content of the area statements are not prescribed; this is left to NRW to decide. However, subsection (3)(a)-(d) contains matters in general terms that must be included within each area statement they produce.
73. Paragraph (a)(i), (ii) and (iii) requires each area statement to provide an explanation of why a statement has been prepared for an area by including information on the natural resources within that area and the benefits they provide and by identifying priorities, risks and opportunities for the sustainable management of natural resources, which need to be addressed in that area.
74. Paragraph (b) requires NRW to include within an area statement how it has applied the principles of sustainable management of natural resources (as provided in section 4) in the preparation of an area statement. Paragraph (c) requires NRW to provide information on how it proposes to deliver its functions in that area to address the priorities, risks and opportunities identified in paragraph (a)(iii) and how it will apply the principles of sustainable management in doing so.
75. Paragraph (d) requires NRW to identify the public bodies, which it considers may be able to assist in relation to the identified priorities, risks and opportunities.

76. To assist NRW in complying with its obligation to produce and implement area statements, section 14 of this Act provides NRW with power to require certain bodies (listed as 'public bodies' in section 10 of this Act) to provide it with information and other assistance.
77. Subsection (4) requires NRW to ensure that every area of Wales is covered by one or more area statements.
78. Subsection (5) requires NRW to take all reasonable steps to implement an area statement. They must also seek to promote implementation of the area statement by other persons. Persons who are listed as being a 'public body' in section 10 of this Act are under a duty to provide such assistance to NRW as it requires in exercising functions under this section (see section 14). Those persons are also subject to the Welsh Ministers' power of direction under section 12, and must have regard to guidance issued to them pursuant to section 13.
79. Subsection (6) makes provision designed to ensure that area statements produced under subsection (1) continue to be effective in facilitating the implementation of the national policy. NRW is required to keep the statements under review, and may revise them at any time.
80. Subsection (7) requires NRW to consider rationalising the number of plans, strategies or other similar documents that operate in relation to the area to be covered by any given area statement. Before publishing a statement, NRW must consider whether:
  - any existing plan, strategy or other similar document (including another area statement) should be included within the statement. For example, NRW may seek to rationalise other plans that they prepare by incorporating them within an area statement; or
  - an area statement should be included within another plan, strategy or other similar document.

### **Section 12 - Welsh Ministers' directions to implement area statements**

81. This section enables the Welsh Ministers to direct a public body (as listed in section 10 of the Act), to take actions to address matters specified in an area statement under section 11(3). The Welsh Ministers must consider such actions to be reasonably practicable for the body to take. A direction may only require a public body to do something that is within the scope of its functions (subsection (4)).
82. For example, where (pursuant to section 14) NRW has requested that a body take specified steps to assist it in the implementation of an area statement, the body subsequently fails to provide that assistance, a direction may be issued by the Welsh Ministers to the body. This could require the body to provide this assistance but only if the Welsh Ministers consider that it is reasonably practicable for the body to do so.

83. Subsection (2) requires the Welsh Ministers to consult the public body affected before issuing a direction under this section. A direction made under this section must be published and can be varied or revoked by any subsequent direction (subsection (5)).
84. A public body must comply with a direction that has been issued under this section (subsection (3)). A direction under this section is enforceable by the Welsh Ministers applying to the High Court for a mandatory order. Failure to comply with a mandatory order is a potential contempt of court.

### **Section 13 – Guidance about implementing area statements**

85. This section places a duty on public bodies (see section 10) to have regard to any guidance published by the Welsh Ministers in relation to the steps that should be taken to deal with the matters that have been identified in an area statement produced by NRW (under section 11) on specific priorities, risks and opportunities for sustainable management of natural resources that need to be addressed in that area.
86. Public bodies must have regard to this guidance in relation to how they exercise their functions in a way that can therefore contribute to the implementation of an area statement.

### **Section 14 – Duty of public bodies to provide information or other assistance to NRW**

87. This section places a requirement on public bodies (see section 10) to provide NRW with information or other assistance, in the exercise of its functions, for the purpose of preparing and publishing a state of natural resources report (see section 8) and an area statement (see section 11), where NRW has requested this information or assistance.
88. The duty to supply information to NRW under this section does not apply if the public body is prohibited by law to from doing so, for example where access to information is restricted such as where data protection or national security requirements apply or where to provide information would contravene a right protected under human rights law.
89. The duty to assist NRW under this section does not apply if providing the assistance is incompatible with the body's duties or would result in adverse effects on the exercise of the body's functions (subsection (2)). For example, NRW could not require a public body which has charitable status to act in a manner which would be contrary to its charitable status.

90. Subsection (3) provides that the Future Generations Commissioner for Wales (established under the Well-being of Future Generations (Wales) Act 2015) is also subject to the duty to provide information and/or assistance under subsections (1) and (2), but only for the preparation and publication of the state of natural resources report (see section 8). The duty does not apply if the Commissioner is prohibited by law from providing the requested information, or if the Commissioner considers that providing the assistance is incompatible with the Commissioner's duties or would result in adverse effects on the exercise the Commissioner's functions.

### **Section 15 - Duty of NRW to provide information or other assistance to public bodies**

91. This section requires NRW, on request from a public body (see section 10), to provide that body with information or other assistance, in the exercise of its functions, for the purposes of implementing an area statement.
92. However, NRW must not provide any information that it is prohibited from providing by law.
93. NRW is also not required to provide any other assistance requested by a public body where NRW considers that doing so would be incompatible with NRW's own duties or would otherwise have an adverse effect on the exercise of its functions (subsection (2)). For example this would apply where the provision of assistance would be incompatible with NRW's position as a regulator.

### **Section 16 - Power to enter into land management agreements**

94. Section 16 enables NRW to enter into agreements with any person who has an interest in land (as defined in subsection (3)) about how they manage their land. It replaces NRW's various powers to enter into land management agreements which are in section 39 of Wildlife and Countryside Act 1981 (the 1981 Act), sections 15 and 45 of the Countryside Act 1968 (the 1968 Act) and section 16 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).
95. The previous powers could only be exercised for the purposes of nature conservation, providing access to the countryside or enhancing the natural beauty of the countryside (section 39 of the 1981 Act), for the conservation and protection of designated sites such as Sites of Special Scientific Interest (SSSIs) (section 15 of the 1968 Act) or for ensuring the management of land as a nature reserve (section 16 of the 1949 Act).
96. NRW's powers to enter into agreements under the 1949 Act, 1968 Act and 1981 Act are removed by paragraphs 1 to 3 of Schedule 2 to this Act. However, its power to enter into land management agreements under regulation 16 of the Conservation of Habitats and Species Regulations 2010 has not been repealed and is unaffected by the provisions in this Act.

97. Section 16 of this Act confers a broader power to enter into land management agreements for any purpose within the remit of NRW. This includes any of the purposes for which land management agreements made under the previous powers could be used, but is not limited to those purposes.
98. It also includes agreements that further NRW's general duty to pursue the sustainable management of natural resources as provided under section 5 of this Act. The effect of section 5 on section 16 means that NRW will also need to apply the principles of the sustainable management of natural resources as specified in section 4 of this Act.
99. Under section 16 NRW may enter into land management agreements with any person who has an interest in the land.
100. A person with an interest in the land is defined in subsection (3) and means those with a freehold or leasehold estate in land, a rent charge and those with rights such as the right to hunt or shoot game.
101. Section 16 does not impose a requirement on a person to enter into an agreement with NRW and they are voluntary arrangements.
102. For example the terms of a land management agreement may require a land owner to manage their land in a particular way, for which they may receive payments or other benefits in return.
103. Section 16(2) provides a non-exhaustive list of the type of terms and conditions that may be included in an agreement. Some examples of how the land may be used and restrictions on activities that may be undertaken are below:
  - On farmland, under the terms of an agreement, the land owner/occupier may be required not to cultivate a certain area of the land, or they may be asked not to cut down certain trees.
  - It may be a term of an agreement that a land owner/occupier must manage the flow of water through his or her land for the purposes of managing flood risk. For example the land owner/occupier may be required under the agreement to retain certain peat bogs or forestry coverage, therefore, restricting the use of the land but for the purpose of flood retention. This is an example of alternative measures that may be taken to manage flood risk by managing land in a way that retains water and attenuates flow to prevent flooding downstream.
  - NRW may undertake management activities (i.e. harvesting woodland) on the land, or appoint someone else.
  - NRW may also use management agreements for managing land that falls within a SSSI. The terms of an agreement may reflect the interests of any management scheme relating to a SSSI that may be made under section 28J of the 1981 Act. A management scheme sets out measures to be taken for conserving and restoring a SSSI.



104. Section 16 needs to be read in conjunction with the consequential amendments made to the 1949 Act, the 1968 Act and the 1981 Act by Schedule 2, Part 1 of this Act, which repeals those sections in relation to NRW. Transitional provisions in section 20 ensure that any existing agreements made by NRW are to be treated as agreements under this Act.

### **Section 17 - Effect on successors in title of certain land management agreements**

105. Section 17 sets out the circumstances in which the terms of a section 16 land management agreement may bind subsequent owners or tenants of the land. This section only applies where the person making the land management agreement has a “qualifying interest” as defined in subsection (3), i.e. where the person owns the freehold of the land or holds it under a lease granted for a term of at least seven years. It makes provision for circumstances where the title to the land is either registered or not registered. Most titles in land in England and Wales are registered with HM Land Registry but there is some land that remains unregistered.
106. Section 17(1) applies to land that is not registered. The interest created under a management agreement may be registered as a Class D(ii) land charge in accordance with the Land Charges Act 1972 (c.61). The effect of registering the land charge is that the terms of a land management agreement are binding on any successor to the person with a qualifying interest.
107. A successor is defined in subsection (4) and will generally be any person who buys the freehold or leasehold interest (for a term of more than 7 years) in land. The buyer will not be bound by the terms of an agreement if the interest has not been registered as a Class D(ii) land charge.
108. Section 17(2) applies to registered land and the interest created under a section 16 land management agreement must be registered by way of a notice on the registered title in accordance with the Land Registration Act 2002 (c.9). If the interest is not registered as a notice the successor to the title will not be bound by the terms of the agreement.
109. Currently, an agreement made under section 39 of the 1981 Act binds subsequent/future owners or occupiers of the land whether it is registered or not.
110. Providing NRW either registers the interest under an agreement either as a notice on the register of title in the case of registered land or as a Class D(ii) land charge in the case of unregistered land they may enforce the terms of a land management agreement against any person who acquires a qualifying interest in the land.
111. Section 17 needs to be read in conjunction with the consequential amendments made by Part 1 of Schedule 2.

### **Section 18 - Application of Schedule 2 of the Forestry Act 1967 to land management agreements**

112. This section enables certain persons, who might not otherwise have the power to do so, to enter into section 16 land management agreements with NRW. These are the same persons who have the power to enter into forestry dedication covenants under the Forestry Act 1967 by virtue of Part 1 of Schedule 2 to that Act. This section is only relevant to tenants for life of settled land, land belonging to certain universities and colleges, and certain ecclesiastical land.

### **Section 19 - Effect of agreements on dedication of highway and grant of easement**

113. The effect of this section is that where the public or a particular person has used a right of way across land by virtue of a section 16 land management agreement, that use of the land is not relevant when determining under law whether the land is treated as having been dedicated as a highway or whether an easement is treated as having been granted.

### **Section 20 - Transitional provisions**

114. The section provides that land management agreements made by NRW under the 1981 Act, the 1968 Act and the 1949 Act, before its powers under those Acts are replaced by the powers in section 16 of this Act, will be treated as land management agreements under section 16 of this Act. Sections 17 to 21 will therefore apply to them.

### **Section 21 - Crown land**

115. This section provides for who may enter into section 16 land management agreements on behalf of the Crown.

116. NRW may enter into a section 16 agreement in relation to Crown land but section 21 means that the agreement must be either made or approved by the appropriate authority, depending on whether the Crown holds the relevant interest in land. The appropriate authority depends on who the Crown land belongs to and is defined in subsection (4). "Crown land" is defined in subsection (3).

117. Subsection (5) provides that any question about who is the appropriate authority is referred to the Treasury.

### **Section 22 - Power to suspend statutory requirements for experimental schemes**

118. Section 22 enables the Welsh Ministers, on the application of NRW, to make regulations, which can temporarily suspend a specified statutory provision for which NRW is responsible for the purpose of enabling an experimental scheme as provided under section 23. These schemes will enable NRW to trial new approaches to help it achieve the sustainable management of natural resources and may include the development of or application of new methods, concepts or techniques, or the application or further development of existing methods, concepts or techniques.

119. Regulations under section 22(1) may confer an exemption from a requirement, relax a requirement, and require the person to whom the exemption or relaxation applies to comply with conditions stated in regulations. The suspension or relaxation is limited to a period not exceeding three years (and which may be extended once by a further period not exceeding three years). See section 22(4) and (5).
120. The regulations may also modify an enactment in a way the Welsh Ministers consider necessary for the enforcement of, or in consequence of the exemption, relaxation or conditions. Paragraphs (c) and (d) provide that when a statutory requirement is suspended or relaxed by regulations under subsection (1), conditions may be put in place which a party is required to comply with, in addition to enabling the Welsh Ministers to transfer existing enforcement measures from the existing enactment.
121. Regulations may only be made in relation to statutory requirements for which NRW is responsible. These requirements are defined in section 22(9). The requirement must be imposed by an enactment. NRW is responsible for the statutory requirement if it is a requirement:
  - to comply with a standard set or requirement imposed by NRW;
  - to obtain a licence or other authorisation from NRW before doing something;
  - that may be enforced by NRW; or
  - that applies to NRW and is concerned with the way in which (or the purposes for which) natural resources are managed or used.
122. Section 22(2) provides that regulations may not remove or modify a function of a Minister of the Crown which was exercisable before 5 May 2011, without the consent of the Secretary of State.
123. Section 22(3) provides that regulations may also only be made where the Welsh Ministers:
  - Are satisfied that the provision is necessary to enable an experimental scheme (see sections 22(9) and 23) that is likely to contribute to the sustainable management of natural resources (as defined in section 3);
  - Are satisfied that the regulations do not have the overall effect of increasing regulatory burdens for any person;
  - Have consulted those they think are likely to be affected by the provisions of the regulations and those persons that they think are likely to be otherwise affected by the experimental scheme.

124. Regulations are subject to the affirmative resolution procedure (see section 25(3)) unless their only substantive effect is to revoke previous regulations under section 22(1) – in which case they need only be laid in the Assembly after being made and there is no obligation to undertake any consultation. Regulations might be revoked where an experimental scheme has ended prior to the initial three year period or before the end of any extension period and as such the regulations are no longer necessary.
125. The regulations may apply only in relation to Wales.
126. An application made by NRW for regulations to be made may, for example, be on the basis that a particular proposed experimental scheme would require an exemption from the need to obtain a particular consent to be able to undertake a particular activity. The purpose of the suspension could be to trial minimum common standards, which could be applied in place of the consent for particular circumstances or activities.
127. Section 22(8) requires NRW to evaluate an experimental scheme for which statutory requirements have been suspended or relaxed, and publish the evaluation of the scheme.
128. Section 22(9) defines an experimental scheme as a scheme carried out under arrangements made by NRW under article 10C of the Establishment Order, which is a scheme designed to develop or to apply new or modified methods, concepts or techniques, or to develop or test proposals for regulatory change.

### **Section 23 – Power of NRW to conduct experimental schemes etc.**

129. This section substitutes a provision for article 10C of the Establishment Order.
130. Article 10C, (as substituted by section 23) has the effect of extending the general research functions of NRW to include the making of arrangements for the carrying out of experimental schemes.
131. Article 10C(1) gives NRW (referred to in the Establishment Order as “the Body”) power to make arrangements for the carrying out of research and experimental schemes that are relevant to the exercise of its functions. Research or schemes may be carried out by NRW or other persons.
132. Article 10C(3) provides that when NRW exercises these functions in relation to nature conservation, it must have regard to the common standards for the monitoring of nature conservation, research into nature conservation and analysis of resulting information that have been established by the Joint Nature Conservation Committee (as provided under section 34(2) of the NERC Act 2006).

133. The purpose of article 10C is to enable NRW to undertake, support or commission research and also experimental or innovative schemes, whereby these schemes are a means to trial new approaches to the delivery of their powers and obligations under legislation in a way that can help them to meet their overarching purpose of achieving the sustainable management of natural resources.
134. NRW currently has powers under section 4 of the Countryside Act 1968 (“the 1968 Act”) to make and carry out experimental schemes designed to facilitate the enjoyment of the countryside, or to conserve or enhance its natural beauty or amenity. This power is therefore restricted to a limited area of NRW’s remit. Article 10C extends the scope of NRW’s power to conduct experimental schemes. Section 4 of the 1968 Act is repealed (see paragraph 2(2) of Schedule 2 to the Act).
135. For the purposes of article 10C an experimental scheme is a scheme designed to develop or apply new or modified methods, concepts or techniques, or to develop or test proposals for regulatory change.
136. NRW may trial the development or application of new methods, concepts or techniques to deliver their actions in a way that helps to achieve the outcome of sustainable management of natural resources. This may include new administrative, technical, or scientific approaches to achieving this outcome. An example of this could include the trialling of new standards or conditions, which may lead to the development of legislation providing for a general binding rule (GBR) i.e. the trialling of alternative methods of regulating activities.
137. An illustrative example of this could be where NRW seeks to develop statutory codes of practice that can identify minimum standards for certain activities, without the need for permitting or licensing and which can deliver the same or improved standard of performance. NRW may wish to undertake a trial in a particular area covered by an area statement (as provided in section 11 of the Act) to identify the role of natural resources to assist in flood alleviation (for example through the role of peatlands).
138. The power to support experimental schemes in article 10C(2) is not limited to financial support and so could include the provision of equipment and expertise. Where NRW do provide financial support, this may be either as a grant or as a loan or a combination of both and may attach conditions requiring repayment or the whole or part of any grant (articles 10B(2) and (3) of the Establishment Order).

## **Section 24 – Power to amend periods for the preparation and publication of documents**

139. Sections 8 (3) to (5) and 9(5) set out the timescales for publishing the final and draft state of natural resources report and the national natural resources policy. This section provides that the Welsh Ministers may, by regulations, change those timescales. Subsection (3) provides that before making the regulations, the Welsh Ministers must consult NRW.

### **Section 25 – Regulations under this Part**

140. This section establishes the Assembly procedure to be followed when making regulations under Part 1 of the Act. All regulations in Part 1 are subject to the Assembly's affirmative procedure. However, regulations made under section 22(1) where the purpose is to revoke existing regulations made under that section are not subject to the affirmative procedure but only need to be laid before the Assembly (subsection (4)).
141. To go through the 'affirmative procedure' refers to statutory instruments which must be approved by the National Assembly for Wales to become law.
142. Subsection (2) gives flexibility for the regulations in Part 1 to apply differently in different circumstances and make transitional or saving provision.

### **Section 27 – Minor and consequential amendments and repeals**

143. This section introduces Part 1 of Schedule 2 to the Act which sets out the minor and consequential amendments and repeals of other legislation which are related to the provisions in Part 1 of the Act.

### **Part 2 – Climate change**

144. Part 2 of the Act places a duty on the Welsh Ministers to ensure that the 'net Welsh emissions account' for the year 2050 is at least 80% lower than the baseline. The Act makes provisions for a net Welsh emissions account.
145. The Welsh Ministers must in regulations specify interim emissions targets for 2020, 2030 and 2040. These interim targets must be consistent with the 2050 target. The Act also requires the Welsh Ministers to set in regulations a series of carbon budgets for each five-year period between 2016 and 2050 and ensure that the net Welsh emissions account for each of these periods does not exceed the carbon budget for that period. These carbon budgets must be consistent with the interim and 2050 targets.
146. The Act places a duty on the Welsh Ministers to produce a report detailing the policies and proposals that will deliver the reductions demanded by the carbon budgets in Wales by reference to the areas of responsibility of each of the Welsh Ministers. In setting or amending interim targets or carbon budgets, the Welsh Ministers must receive advice from the 'advisory body', which can be the UK Committee on Climate Change (as established in the Climate Change Act 2008), a person designated by the Welsh Ministers in subordinate legislation, or a new body established by the Welsh Ministers to exercise functions of the advisory body.

### **Section 28 - Purpose of this Part**

147. This section sets out the purpose of this Part, which is to require the Welsh Ministers to meet targets for reducing emissions of greenhouse gases from Wales.

### **Section 29 - The 2050 emissions target**

148. Subsection (1) of this section imposes a duty on the Welsh Ministers to ensure that the net Welsh emissions account for 2050 is at least 80% lower than the baseline. The baseline is defined in section 38 as the aggregate amount of net Welsh emissions of certain listed greenhouse gases for the baseline years of those gases (either 1990 or 1995 for each gas). The target for 2050 is set by reference to baseline years rather than a particular quantum of emissions because the baseline years are subject to revision as understanding of historic emissions improves. Using baseline for this calculation is consistent with the methodology employed for the purposes of the Kyoto Protocol to the United Nations Framework Convention on Climate Change 1998, an international agreement to limit emissions of greenhouse gases, to which the UK is party.
149. Subsection (3) provides the Welsh Ministers with a power to amend subsection (1) by setting the 2050 target as a percentage greater than 80%. The power may only be used if one of the conditions provided in section 32(2) is met and must have regard to the matters provided in section 32(3). Before the Welsh Ministers lay draft regulations to amend the 2050 target, they must seek advice from the advisory body (section 49(1)). The advice provided to the Welsh Ministers by the advisory body must also include the body's opinion on the matters provided in section 50(1), which includes whether the proposed target is the highest achievable target and if not, what is the highest achievable target.
150. The term "the net Welsh emissions account" is defined in section 34. See explanatory notes on sections 33 and 38 for a more detailed explanation of carbon accounting and the net Welsh emissions account.

### **Section 30 - Interim emissions targets**

151. This section places a duty on the Welsh Ministers to set interim emissions targets, which are maximum amounts for the net Welsh emissions account for each interim target year. It also places a duty on the Welsh Ministers to ensure that those targets are not exceeded. These interim targets will be expressed as a percentage reduction and work in the same way as the 2050 target.

152. Subsection (3) specifies that the interim target years are 2020, 2030 and 2040 and subsection (4) requires that before the end of 2018, the Welsh Ministers must set interim emissions targets for those years. When making the regulations to set these targets, the Welsh Ministers must regard to the matters provided in section 32(3). Before the Welsh Ministers lay draft regulations to set the targets for 2020, 2030 and 2040, they must seek advice from the advisory body (section 49(1)). The advice provided to the Welsh Ministers by the advisory body must also include the body's opinion on the matters provided in section 50(1), which includes whether the proposed targets are the highest achievable targets and if not, what are the highest achievable targets.

### **Section 31 - Carbon budgets**

153. This section places a duty on the Welsh Ministers to set, for each five year budgetary period, a maximum total amount for the net Welsh emissions account, which is known as a carbon budget. The Welsh Ministers are required to ensure that net Welsh emissions account for each period does not exceed the carbon budget for that period. The first budgetary period is 2016-2020, and the remaining budgetary periods are each succeeding period of five years, ending with 2046-2050.
154. The section requires the Welsh Ministers to set 2 consecutive carbon budgets for the periods 2016-2020 and 2021-2025 before the end of 2018. It also creates a duty to set subsequent carbon budgets at least 5 years in advance of the budgetary period to which they relate. When making the regulations to set carbon budgets the Welsh Ministers must regard to the matters provided in section 32(3). Before the Welsh Ministers lay draft regulations to set a carbon budget they must seek advice from the advisory body (section 49(1)). The advice provided to the Welsh Ministers by the advisory body must also include the body's opinion on the matters provided in section 50(2), which includes the appropriate level of the carbon budget for the period.

### **Section 32 - Emissions targets and carbon budgets: principles**

155. This section requires the Welsh Ministers to set interim emissions targets at a level that is consistent with meeting the 2050 emissions target. It requires the Welsh Ministers to set carbon budgets at a level that is consistent with meeting the interim targets and the 2050 target.



156. Under subsection (2), the Welsh Ministers may not make regulations which change the 2050 emission target, an interim emissions target or a carbon budget unless at least one of the following conditions is met:
- They are satisfied that it is appropriate to do so as a result of significant development in either scientific knowledge about climate change or in EU or international law or policy that relates to climate change;
  - The advisory body has recommended the change; or
  - Regulations have been made under section 35 or 37 providing for emissions of a greenhouse gas from international aviation or international shipping to count as part of the Welsh emissions of the gas, or amending the list of greenhouse gases that are relevant for the purposes of Part 2.
157. Subsection (3) places a duty on the Welsh Ministers to have regard to a set of criteria when making regulations changing the 2050 emissions target, or setting or changing an interim emissions target or a carbon budget. The criteria are:
- The most recent state of natural resources report published by NRW under section 8 of Part 1 of this Act;
  - The most recent future trends report under section 11 of the Well-being of Future Generations (Wales) Act 2015;
  - The most recent report (if any is available at the time of setting or changing any of the targets or budget) of the Future Generations Commissioner under section 23 of that Act;
  - Scientific knowledge about or technology relevant to climate change; and
  - EU and international law and policy relating to climate change, including international agreements which include measures to limit increases in global average temperatures.

### **Section 33 – The net Welsh emissions account**

158. Subsection (1) defines the net Welsh emissions account as the aggregate of net Welsh emissions, minus any carbon units credited to the account for the period plus any carbon units debited from the account for the period.
159. Subsection (2) enables the Welsh Ministers to define in regulations which carbon units can be credited to and debited from the net Welsh emissions account, and how this can be done.
160. Subsection (3) provides that regulations made under subsection (2) must ensure that, where carbon units are used to reduce the net Welsh emissions account, they are not also used to offset other emissions elsewhere. This could otherwise lead to “double-counting”.
161. Subsection (4) provides that regulations must limit the extent to which carbon units can be used to reduce the net Welsh emissions account.

### **Section 34 – Net Welsh emissions**

162. This section defines Welsh emissions and Welsh removals of greenhouse gases, and provides that Welsh emissions minus Welsh removals are net Welsh emissions for a period.

### **Section 35 – Welsh emissions from international aviation and shipping**

163. This section enables the Welsh Ministers to make regulations providing for emissions of a greenhouse gas from international aviation and international shipping to count as Welsh emissions of the gas.

### **Section 36 – Carbon units**

164. This section enables the Welsh Ministers to define “carbon units” in regulations. It provides the Welsh Ministers with the power by regulations, to establish a scheme or use an existing scheme, for the registering and tracking of carbon units and for establishing and maintaining accounts in which carbon units may be held.

### **Section 37 – Greenhouse gases**

165. This section lists “greenhouse gases” for the purpose of Part 2 of the Act and enables the Welsh Ministers to make regulations to add a gas or modify a description of a gas.

### **Section 38 – The baseline**

166. This section defines the “baseline” for the purposes of this Part of the Act and enables the Welsh Ministers to make regulations to amend that baseline. This would enable the Welsh Ministers to specify the baseline year for a greenhouse gas which has been added by regulations under subsection 37(2) or modify the baseline year for a greenhouse gas that is already listed. The Welsh Ministers can only modify the baseline year for a greenhouse gas if they are satisfied that it would be appropriate to do so as a result of significant developments in EU or international law or policy relating to climate change.

### **Section 39 – Proposals and policies for meeting carbon budgets**

167. This section places a duty on the Welsh Ministers to prepare a report for each budgetary period which sets out their proposals and policies on how the budget they have set will be met. The report must include proposals and policies by reference to the areas of responsibilities of each of the Welsh Ministers. For the first budgetary period the report is to be produced as soon as reasonably practicable after setting the carbon budget for that period (as provided in section 31). For subsequent budgetary periods the report must be published before the end of the first year of the period in question. The Welsh Ministers are required to publish the report.

### **Section 40 – Carrying amounts from one budgetary period to another**

168. This section provides a power for the Welsh Ministers to “bank” and “borrow” emissions between budgetary periods.

169. Under subsections (1) and (3), the Welsh Ministers may “borrow” up to 1% of the next budget. An amount from the next budget is “carried back” to the budget preceding it. Where this power is used, the next budget (which will already have been set by order) is reduced by the amount that has been borrowed.
170. Under subsection (4) the Welsh Ministers may carry forward any part of the carbon budget that exceeds the net Welsh emissions account for that period (i.e. to “bank” a budget surplus, but not necessarily all of it). The banked amount is added to the next budget (subsection (5)).
171. The Welsh Ministers must consult with the ‘advisory body’ before exercising powers under this section (that is, before banking or borrowing).

#### **Section 41 - Final statement for budgetary period**

172. This section places a duty on the Welsh Ministers to lay a statement before the National Assembly for Wales on the final figures for the net Welsh emissions account during a budgetary period these figures are used to determine whether a budget has been met.
173. Subsections (2) to (6) place a duty on the Welsh Ministers to provide information on:
  - under subsection (2), the total amounts of Welsh emissions, Welsh removals and net Welsh emissions for each greenhouse gas (each of the gases included in the target – see section 36);
  - under subsection (3), the total amount of carbon units that have been credited to or debited from the Welsh emissions account in that budgetary period, and details of the number and type of those units;
  - under subsection (4), the final amount of the net Welsh emissions account for the budgetary period;
  - under subsection (5), whether the Welsh Ministers have decided to bank a surplus from the previous budget or to borrow from the next budget (using the power in section 40) and, if so, the amount banked or borrowed;
  - under subsection (6), the final amount of the carbon budget for the period.
174. Subsection (7) provides that the question of whether the budget has been met is to be determined by reference to the figures in the statement.
175. Subsection (8) requires the Welsh Ministers to provide an explanation of why they consider that the carbon budget has been met or not met.
176. Subsection (9) requires that the statement must include the Welsh Ministers’ assessment of the extent that their proposals and policies (including those set out in the report under section 39) have contributed to the carbon budget for that period and how these have been carried out.

177. Under subsection (10) an assessment must cover the areas of responsibility for each Welsh Minister, which corresponds to the requirements under section 39(2) to include proposals and policies covering the areas of responsibility of each of the Welsh Ministers.
178. Subsections (11) and (12) require that the statement for each carbon budget period to include an estimate of the total amount of emissions, whether in Wales or elsewhere, which are attributable to the consumption and use of goods and services in Wales.

#### **Section 42 - Proposals and policies where carbon budgets not met**

179. This section applies where a final statement has been laid before the National Assembly for Wales in respect of a budgetary period, and the net Welsh emissions account for the period exceeds the carbon budget. It requires the Welsh Ministers to lay a report before the National Assembly setting out proposals and policies to compensate for the excess emissions. They must do so no later than three months after laying the final statement for the budgetary period.

#### **Section 43 - Statements for interim target years and 2050**

180. This section places a duty on the Welsh Ministers to prepare and lay before the National Assembly for Wales a statement for each interim target year and for 2050.
181. Subsections (2) to (4) requires the following information to be included in the statements for each of the appropriate target years:
- under subsection (2), in respect of each greenhouse gas the total amount of Welsh emissions, Welsh removals and net Welsh emissions for the year;
  - under subsection (3), the total amount of carbon units that have been credited to and debited from the net Welsh emissions account, and details of the number and type of units;
  - under subsection (4), the amount of the net Welsh emissions account for the year.
182. Subsection (5) provides that the question of whether the interim targets or 2050 target has been met is to be determined by referring to the information provided in the statement for the target year to which it relates.
183. Subsection (6) provides that the Welsh Ministers must include an explanation of the reasons why they consider that the targets have or have not been met.
184. A statement under this section must be laid before the National Assembly for Wales before the end of the second year after the year to which it relates; for example, the statement for 2020 must be laid before the end of 2022 (subsection (1)(b)).

185. Subsection (7) enables the Welsh Ministers to combine a statement under this section with the statement for a carbon budgetary period (under section 41) that covers the year of the relevant target.

#### **Section 44 - Advisory body**

186. This section enables the Welsh Ministers, by regulations, to establish a new body to exercise functions of the advisory body or to designate a person to be the advisory body for the purposes of Part 2 of the Act. The Welsh Ministers may only designate a person that exercises functions of a public nature.
187. Subsection (3) provides that if the Welsh Ministers do not establish a new body or designate a person by regulations under subsection (1), the advisory body will be the UK Committee on Climate Change (established under section 32 of the Climate Change Act 2008).
188. Subsection (4) provides that regulations under subsection (1)(a) may include provisions about: the status and membership of the body; employment of staff, remuneration, allowances and pensions for members and staff; the organisation and procedure of the body; and reports and accounts.
189. Subsection (5) provides that regulations to establish a new body as the advisory body may include a provision which would enable the Welsh Ministers to give directions to the advisory body in relation to the matters listed in subsection (4).

#### **Section 45 - Progress reports**

190. This section places a duty on the advisory body to submit reports to the Welsh Ministers setting out its view on progress that has been made in relation to the interim and 2050 targets and on the carbon budgets. The advisory body must provide views on whether the targets and budgets are likely to be achieved and views on any further action considered necessary to achieve them.
191. Subsection (1) requires the advisory body to submit a report to the Welsh Ministers before the end of the first budgetary period (which covers the years 2016-20) providing its views on progress towards meeting the carbon budgets that have been set under Part 2, the interim emissions targets and the 2050 emission target.
192. Subsection (2) requires the advisory body to send a report to the Welsh Ministers no later than six months after they have laid a final statement for a budgetary period before the National Assembly for Wales under section 41. This report must provide the advisory body's views on the way in which the carbon budget for the period has been met or not, actions taken by the Welsh Ministers to reduce the net Welsh emission account and also the matters that are set out in subsection (1) (i.e. progress towards meeting the remaining budgets and targets).

193. Subsections (3) and (4) require the advisory body to send a report to the Welsh Ministers containing its views on whether the next interim target (where relevant) and the 2050 target is the highest target that is achievable and, if not, what is the highest achievable target. The report must be sent to the Welsh Ministers no later than six months after they have laid the statements for the interim target years before the National Assembly for Wales under section 43.
194. Subsection (5) provides that a report under subsection (3) or (4) can be combined with a report under subsection (2) on a carbon budget.
195. Subsection (6) places a duty on the Welsh Ministers to lay a copy of each of the reports they receive under subsections (1) and (2) before the National Assembly for Wales.
196. Subsection (7) places a duty on the Welsh Ministers to lay a response to any report they receive under this section from the advisory body before the National Assembly for Wales no later than six months after receiving the report.

#### **Section 46 - Duty of advisory body to provide advice and assistance**

197. This section places a duty on the advisory body to respond to requests for advice, analysis, information and assistance by the Welsh Ministers in connection with Ministers' functions under the Act or in relation to climate change in general.

#### **Section 47 - Guidance to advisory body**

198. This section provides that the advisory body must have regard to any guidance given by the Welsh Ministers in respect of carrying out its functions under the Act. Subsection (2) provides that the Welsh Ministers may not give the advisory body guidance on the content of any advice or report.

#### **Section 48 - Regulations: procedure**

199. This section establishes the Assembly procedure to be followed when making regulations under Part 2 of the Act. Where the regulations designate a person to be the advisory body (section 44(1)(b)) and do not amend primary legislation, or where regulations make provision about international carbon reporting (section 52), they are subject to the Assembly's negative procedure. All other regulations in Part 2 are subject to the Assembly's affirmative procedure.

#### **Section 49 - Requirement to obtain advice about proposals to make regulations**

200. This section provides that before any draft affirmative regulations are laid before the National Assembly for Wales under section 48, the Welsh Ministers must request advice from the advisory body (see section 44) about the proposal to make the regulations and also take that advice into account.

201. Subsections (2) to (4) require that when the Welsh Ministers request advice from the advisory body, they must specify a reasonable time period in which to provide the advice. The advisory body must provide the advice within that time period and must set out the reasons for the advice.
202. Subsection (5) places a duty on the Welsh Ministers to publish any advice they receive from the advisory body as soon as reasonably practicable after they have received it.
203. Subsection (6) provides that if the draft affirmative regulations laid before the National Assembly under section 48(3) are different from what was recommended by the advisory body, the Welsh Ministers must lay before the National Assembly a statement explaining the reasons why the regulations are different.
204. Subsection (7) provides that the Welsh Ministers do not need to seek the advice of the advisory body before laying draft regulations which either establish a new body as the advisory body or designate a person as the advisory body.

#### **Section 50 –Advice about proposed regulations relating to targets and budgets**

205. This section makes provision about how the advisory body must respond to requests under section 49 for advice on proposed regulations.
206. Subsection (1) requires that in relation to proposed regulations changing the 2050 emissions target or setting or changing interim emissions targets, the advisory body's advice must include its opinion on whether the Welsh Minister's proposed target is the highest achievable target and if not, what the body considers is the highest achievable target.
207. Subsection (2) requires that in relation to proposed regulations setting or changing carbon budgets, the advisory body must advise on the levels at which carbon budgets should be set and on the extent to which budgets should be met by reducing the amount of net Welsh emissions or by the use of carbon units credited to the net Wales emissions account. The advisory body must advise on the respective contributions towards meeting carbon budgets that should be made by sectors of the Welsh economy covered by trading schemes (taken as a whole) and by other sectors not covered (taken as a whole). The advisory body is also required to advise on sectors of the Welsh economy in which there are particular opportunities for contributions to be made towards meeting carbon budgets through reductions in emissions of greenhouse gases.

208. A 'trading scheme' for the purposes of this section is the meaning given by section 44 of the Climate Change Act 2008. Section 44 of that Act defines trading schemes as schemes which either:
- limit activities that consist of the emission of greenhouse gases or that directly or indirectly lead to such emissions (for example, "cap and trade schemes" which cap emissions from a particular set of activities and allow trading of emissions within the cap), or
  - encourage activities that consist of, or that directly or indirectly lead to, reductions in emissions of greenhouse gases or the removal of greenhouse gases from the atmosphere.
209. Subsection (3) requires the advisory body when advising the Welsh Ministers on making regulations that will change the 2050 emissions target or set or change an interim emissions target or a carbon budget to have regard to the matters listed in section 32(3) of the Act.

### **Section 51 – Measurement of emissions**

210. Section 51 provides that emissions, emissions reductions and removals are to be measured in tonnes of carbon dioxide equivalent, and defines that term.

### **Section 52 – International carbon reporting practice**

211. Section 52 defines international carbon reporting practice in terms of the protocols to the United Nations Framework Convention on Climate Change, or other European or international arrangements or agreements which the Welsh Ministers specify by regulations. This power allows the definition to be updated to take account of new international arrangements and agreements.

### **Part 3 – Charges for Carrier Bags**

212. This Part gives the Welsh Ministers powers to make regulations about charges for carrier bags.
213. It repeals in relation to Wales section 77 of, and Schedule 6 to, the Climate Change Act 2008 (c.27) which conferred powers on the Welsh Ministers to make regulations about charges for carrier bags intended for single use. The Climate Change Act was amended by the Waste (Wales) Measure 2010 (nawm 8) which conferred further powers to make regulations about how the net proceeds from the sale of carrier bags must be applied. These powers were not exercised at that time as the preferred policy was to enlist the co-operation of the sellers by encouraging them to apply the net proceeds to good causes through a voluntary agreement.
214. The regulations made under these provisions that are in force at the time this Act receives Royal Assent are the Single Use Carrier Bags Charge (Wales) Regulations 2010 (as amended by the Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011) ("the 2010 Regulations").



215. Provisions in this Part generally confer the same regulation-making powers as the Climate Change Act 2008. The main changes are that:
- definitions of the key terms “carrier bag” and “seller of goods” are set out in the primary legislation rather than being left to regulations;
  - the Welsh Ministers are under a duty to make regulations which impose a minimum charge;
  - the charge may apply to any type of carrier bag specified in the regulations and not just to those intended for single use;
  - sellers must be required to apply the net proceeds of sales of carrier bags to charitable purposes relating to environmental protection and improvement and which benefit Wales; an exception is provided for those sellers who wish to maintain their existing arrangements with non-environmental good causes;
  - the regulations are in all cases subject to affirmative procedure.

#### **Section 54 – Meaning of “carrier bag”**

216. Section 54 defines “carrier bags” as those bags which may be supplied either at the place where the goods are sold, or those supplied for the purpose of delivering goods. Generally carrier bags to which a minimum charge may apply would be those which are supplied by retailers to their customers when they buy goods in store or those supplied by companies who are delivering goods such as a supermarket providing an online grocery delivery service.

#### **Section 55 – Requirement to charge**

217. Section 55(1) provides that the Welsh Ministers must make carrier bag regulations. Carrier bag regulations are regulations which require sellers of goods to charge for carrier bags as specified in the regulations that are supplied in circumstances mentioned in subsection (3). These circumstances are either where the goods are sold from a place in Wales, or where they are intended to be delivered to a person living in Wales.
218. Subsection (4) provides that the carrier bags to which the requirement applies may be described by reference to their technical specifications such as a bag’s size, thickness, composition, price and/or its intended use or a combination of any of these factors. Price was not specified as a factor in Schedule 6 to the Climate Change Act 2008.

### **Section 56 – Sellers of goods**

219. Section 56 provides for the carrier bag regulations to apply to either all sellers of goods or to certain types of seller (see subsection (3)). It allows the regulations to apply provisions to both named sellers and to sellers identified by reference to specified factors (and examples of the factors that may be specified are given in subsection (4)).
220. Subsection (1) defines a “seller of goods” for the purpose of the regulations as a person who sells goods in the course of a business. Sellers may, for example, include high street retailers, supermarkets, street or market traders or any person running an internet business selling goods. The term does not include, and the regulations may not apply to, any person who occasionally sells their own possessions privately, for example, at a car boot sale or on an internet sale or auction site.
221. Subsection (2) makes clear that the business carried on by a seller of goods need not be a commercial enterprise undertaken for profit (so that a seller of goods could be a charity) and that a body exercising public functions will be acting in the course of a business.

### **Section 57 – Application of proceeds**

222. Under section 57(1), carrier bag regulations must require sellers to apply the net proceeds of the charge to charitable purposes which relate to environmental protection or improvement and which benefit Wales. This is subject to subsection (2) which provides that regulations must include an exception for sellers who have existing arrangements where they apply money earned by selling carrier bags to other charitable purposes.
223. “Net proceeds of the charge” is defined in section 63 to mean the gross proceeds of charge less any amount that the regulations may specify such as, for example, administration costs. The “gross proceeds of the charge” means the amount that the seller receives as a result of the minimum charge. It does not include money received which is over and above the minimum charge so if the sellers charges 8p for a bag and the minimum charge is 5p the gross proceeds of the charge will be 5p.
224. The net proceeds must be applied to “charitable purposes”, which are defined in subsection (8) as having the same meaning as in section 2 of the Charities Act 2011 (c.25). The purposes are described in section 3 of that Act and include the advancement of environmental protection or improvement.
225. Under subsection (8) regulations may modify the definition of “charitable purpose” where the Welsh Ministers consider it necessary or expedient for securing an appropriate application of the net proceeds of the charge. This power might be exercised, for example, where the definition in section 2 of the Charities Act has been amended and the new definition is considered no longer appropriate for the purpose of the regulations.

226. Where sellers have existing arrangements before the regulations come into force and are voluntarily donating money they receive for carrier bags to charitable purposes that do not fall within subsection (1), subsection (2) provides that the regulations must include an exception enabling them to donate the net proceeds of the charge to those purposes. This is subject to provision made by the regulations under subsections (2) and (3).
227. Under subsection (2)(a), the regulations must specify a period during which the seller must have made payments to other charitable purposes. For example, the regulations might provide that the exception only applies if a seller has made a payment during the year before the regulations come into force.
228. Under subsection (2)(b), the regulations must require sellers to give notice that they wish to continue with these arrangements in order to rely on the exception. Subsection (3) provides that regulations may include details about how the exception applies such as how notice must be given, the information contained in it and any conditions.
229. Subsection (4) provides that regulations under subsection (1) may give the seller discretion to choose the charitable purpose or may specify one or more charitable purpose (but it must still be a charitable purpose falling within subsection (1))
230. Subsections (5) provides for the regulations to make provision about the arrangements for applying the net proceeds and the persons who may accept those proceeds on behalf of the charity. Under subsection (6), the regulations may give the Welsh Ministers powers to enforce the regulations if the seller fails to apply the net proceeds as required.

### **Section 58 - Administration**

231. Section 58 makes provision about who may be responsible for administering the carrier bag charging regime. This section provides that the carrier bag regulations may appoint any person to be an administrator and may confer powers and duties on that person for the purpose of administering the regime. Under the 2010 Regulations, county and county borough councils are the administrators for their area.
232. In order to confer powers and duties on the administrator under subsection (3), subsection (4) provides that the regulations may modify enactments that apply to the administrator (such as enactments about the powers and duties of local authorities). "Enactment" is defined in section 87. The administrator may be given enforcement functions under section 60.

### **Section 59 – Record-keeping and publication of records**

233. This section makes provision about records that must be kept and information that must be provided in relation to the carrier bag charging regime. This section may apply to any person but the regulations are most likely to impose duties on the sellers and any person who receives any net proceeds of charge for charitable purposes.
234. Currently regulation 8(3) of the Single Use Carrier Bags (Wales) Regulations 2010 requires sellers to keep information on the number of single use carrier bags supplied, the amount received by way of the charge and the uses to which the net proceeds have been put.
235. Subsection (2)(b) provides that the regulations may require information about carrier bag charges to be published or supplied to any of the persons identified in paragraphs (i) to (iii). These are Welsh Ministers, any administrator appointed under section 58 or members of the public.
236. Subsection (3) provides examples of records or information that may be required under the regulations. Regulations could, for example, require sellers to provide information about how many bags they have sold in any given period and the amount they have received in charges. They might also require the sellers to give a breakdown of how they have calculated the net proceeds of the charge as defined in section 63 and how those proceeds have been used.
237. Subsection (4) provides that the regulations may require any person who receives any net proceeds of the carrier bag charge from a seller of goods to publish or supply records or information about the money they have received.

### **Section 60 – Enforcement**

238. Section 60 enables carrier bag regulations to make provision about how the carrier bag regime is to be enforced. The regulations may confer various functions on administrators appointed under section 58. The regulations may give the administrator the power to require the seller to provide information and documentation and to question the sellers or their employees, but only if the administrator reasonably believes that there has been a failure to comply with the regulations.

### **Section 61 – Civil sanctions**

239. Section 61 introduces Schedule 2 which makes provision about civil sanctions that may be imposed on any person who does not comply with the carrier bag regulations.

### **Section 62 – Regulations under this Part**

240. Section 62 provides that the carrier bag regulations must be made by statutory instrument and cannot be made until a draft has been laid before and approved by resolution of the National Assembly for Wales. .
241. This section also gives the Welsh Ministers power to include provisions in the carrier bag regulations dealing with any ancillary matters, and to apply the regulations in different ways for example, by applying different minimum charges to different types of bag.

### **Section 64 – Minor and consequential amendments and repeals**

242. This section introduces Part 2 of Schedule 2 to the Act, which makes minor and consequential amendments and repeals in the Climate Change Act 2008 and the Waste (Wales) Measure 2010.

### **Part 4 – Collection and Disposal of Waste**

243. Part 4 of the Act is concerned with the collection and disposal of waste, and makes provision for requiring source segregation and separate collection of waste, banning the incineration of waste and banning the disposal of food waste to sewer from non-domestic premises. The purpose of the provisions is to promote increased separation of different types of waste, and prohibit certain forms of disposal of recoverable types of waste.

### **Section 65 - Requirements relating to separate collection etc. of waste**

244. Section 45 of the Environmental Protection Act 1990 (c 43) requires local authorities in Wales to arrange to collect household waste and, on request, commercial waste produced in their area. The local authority either fulfils this function using its own resources, or arranges with a private contractor to carry out the function on its behalf. Commercial and industrial waste not falling within the local authority duties in section 45 is collected by private contractors by way of individual contract with the waste producer. Collectively, household, commercial and industrial waste is referred to in that Act, as “controlled waste”<sup>2</sup>.
245. In addition to the requirements of section 45 of the Environmental Protection Act 1990, waste collectors must comply with the requirements of regulations 13 and 14 of the Waste (England and Wales) Regulations 2011 [S.I. 2011/988], which transpose in part, EU Directive 2008/98/EC (the Waste Framework Directive). The regulations require that from 1 January 2015, subject to certain provisions, waste collectors must separately collect at least paper, metal, plastic and glass, and keep those materials separate after collection.

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<sup>2</sup> “The terms “household, commercial, industrial and controlled” waste are defined in section 75 of the Environmental Protection Act 1990

246. Against this background, section 65 inserts a new section 45AA (“Wales: separate collection etc. of waste”) into the Environmental Protection Act 1990. The purpose of the provisions in the new section, is to provide the Welsh Ministers with powers to extend the range of types of waste to be separately collected, and to specify the steps that must be taken to achieve increased separation of waste types.
247. In section 45AA, subsections (1) and (2) are concerned with separate collection of different waste materials. Subsection (1) applies to local authorities exercising their functions under section 45, to make arrangements for collection of controlled waste in their area, for example, with a private contractor. It requires the local authority to ensure that the collection of waste under the arrangements is consistent with applicable separation requirements.
248. Subsection (6) confers a power on the Welsh Ministers to specify separation requirements in regulations, and subsection (7) confers a related power, to specify the circumstances in which such requirements apply. The nature of separation requirements is defined in subsection (6). For example, the Welsh Ministers may specify in regulations which materials should be presented and collected separately and how the wastes should be kept separate from each other once collected. This could include specifying the level of segregation of different waste materials that may be required under different circumstances.
249. Subsection (2) applies an equivalent duty to those who actually collect, keep, treat or transport controlled waste. The duty to act in accordance with applicable separation requirements is intended to apply at all stages in the waste chain, from production of the waste, to final treatment or disposal. It will affect those, including local authorities, who collect, receive or store waste, those carriers who transport waste, and reprocessors, for example, recyclers, who treat waste. The duty does not apply to individuals who are not acting in the course of a business. “Acting in the course of a business” is defined in subsection (3).
250. Subsection (10)(a) confers a power on the Welsh Ministers in regulations, to make the duty in subsections (1) and (2) subject to exceptions. This power, in conjunction with the general power in subsection (11) to make different provision different purposes, cases or areas, will allow the Welsh Ministers to take account of the wide range of circumstances in which these provisions will apply.

251. Subsection (4) complements the requirements in subsections (1) and (2), by imposing a duty to act in accordance with applicable separation requirements on certain categories of waste producers, when presenting waste for collection. This provision requires occupiers of premises, other than householders, to present controlled waste for collection in accordance with applicable separation requirements. Such requirements may for example, include specifying types of recyclable waste materials that must be presented separately for collection.
252. Subsection (5) contains exceptions to the duty in subsection (4). The duty will not apply to occupiers of domestic households or caravans. Subsection (10)(b) provides a power for the Welsh Ministers to make subsection (4) apply subject to exceptions in addition to those in subsection (5). This will permit the Welsh Ministers to adapt the application of the duty in subsection (4) to future changes in waste collection policy.
253. Subsection (8) makes it an offence to fail to comply without a reasonable excuse, with the duty in subsection (2) or (4). By subsection (9), such offences are either-way offences; triable summarily in the Magistrates Court or on indictment in the Crown Court. The penalty on conviction is a fine. There is no limit on the amount of fine that may be imposed.
254. Subsection (11) allows the Welsh Ministers, when exercising their other powers to make regulations under this section, to make different requirements for different circumstances, or to apply requirements differently in different geographical areas. This power by its nature will be exercised in conjunction with the exercise of other powers under this section.
255. Section 45AB (Code of practice), subsections (1) and (2), provide the Welsh Ministers with a power to issue, revise or revoke a code of practice providing guidance on how to comply with the duties in section 45AA. Subsection (3) places the Welsh Ministers under a duty to consult persons that they consider appropriate before issuing a code. This might include, for example, NRW and Welsh local authorities, in addition to other stakeholders. Subsection (4) requires that once issued, the code, or any revision to an existing code, must be published and laid before the National Assembly for Wales.
256. Such a code of practice would not be directly binding on a person subject to the duties in section 45AA. However, subsection (5) makes the code of practice admissible in evidence in court proceedings, for example where a court is considering whether or not an offence under section 45AA(8) has been committed, and the court must take account of the code on questions to which it is relevant.

**Section 66 - Prohibition on disposal of food waste to sewer**

257. Section 34 of the Environmental Protection Act 1990 places a broad duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a dealer or broker, has control of such waste, to take all reasonable measures to prevent, amongst other things, any unlawful deposit of waste by another person, or any contravention of the Environmental Permitting Regulations 2010.
258. Section 66 inserts section 34D into the Environmental Protection Act 1990, which in subsection (1) bans the disposal of food waste to public sewer from non-domestic premises in Wales. Under the prohibition, the occupier of any non-domestic premises must not dispose of food waste to a public sewer or to any drain that discharges to a public sewer. Non-domestic premises include business and public sector premises but do not include, for example, private houses. The operation of subsection (1) is subject to a power of the Welsh Ministers, in subsection (6)(a), to specify in regulations the circumstances in which subsection (1) is to apply. This power, in conjunction with the general power to make different provision for different purposes in subsection (7), permits the Welsh Ministers to take account of the wide range of premises and circumstances in which the prohibition on disposal of food waste will apply.
259. Subsection (2) sets out exceptions to the prohibition in subsection (1). Occupiers of domestic property and caravans are excepted. Subsection (2) is subject to a power of the Welsh Ministers in subsection (6)(b), in conjunction with the power in subsection (7), to make regulations providing for subsection (1) to apply subject to exceptions in addition to those in subsection (2). Like the power in subsection (6)(a), this will enable the Welsh Ministers to take account of changing circumstances and government policy.
260. Food waste is defined in subsection (5). Subsection (6)(c) provides a power for the Welsh Ministers by regulations, to amend the definition of food waste.
261. Subsection (3) of section 34D provides that failure to comply with the prohibition in subsection (1) without a reasonable excuse will be an offence, and by virtue of subsection (4) such an offence is triable summarily in the Magistrates Court or on indictment in the Crown Court. On conviction, the person committing the offence will be liable to an unlimited fine.
262. Section 66(2) of the Act makes a consequential amendment which clarifies that a trade effluent consent issued to an occupier by the sewerage undertaker under the Water Industry Act 1991 does not override the prohibition in section 34D against disposing of food waste to sewer. It ensures that anything exempted from the prohibition in section 34D by regulations made by the Welsh Ministers is capable of being regulated by the trade effluent regime.



**Section 67 - Power to prohibit or regulate disposal of waste by incineration**

263. Section 9 of the Waste (Wales) Measure 2010 contains provisions which confer powers on the Welsh Ministers to make regulations prohibiting or otherwise regulating the disposal by landfilling of specified types of waste. The purpose is to divert recoverable waste from disposal, and increase recycling in Wales. Section 67 of the Act inserts a new section 9A into the Measure, which contains provisions similar to those for landfill, but which relate to prohibition or regulation of incineration of specified types of waste.
264. Subsection (1) of the new section 9A provides the Welsh Ministers with a power to make regulations which prohibit or otherwise regulate incineration in Wales of specified types of waste. Such a power may, for example, be used to specify certain types of otherwise recyclable waste material which are not to be incinerated.
265. Subsection (2) describes certain particular types of provision which may be included in regulations under subsection (1). This includes a power to create offences, prescribe penalties and provide for enforcement authorities. Subsection (2) also includes a power to amend regulations made under section 2 of the Pollution Prevention and Control Act 1999, which would include the Environmental Permitting (England and Wales) Regulations 2010, which regulate, amongst other things, the permitting and operation of incineration facilities.
266. Subsection (3) defines incineration for the purposes of section 9A, along with “waste incineration plant”, and “waste co-incineration plant”. The power in subsection (1) therefore applies to plants including those whose main purpose is to burn waste (for example waste incinerators) and those who burn waste to provide energy to power a process.

**Section 68 - Civil sanctions**

267. Subsection (1) of section 68 provides that the regime of civil sanctions and controls under the Regulatory Enforcement and Sanctions Act 2008 is available in relation to offences committed under sections 34D and 45AA of the Environmental Protection Act 1990 inserted by sections 65 and 66. Those sanctions may be used as an alternative to prosecution for offences, if the regulator is satisfied that an offence has been committed.
268. Subsections (2) to (8) amend section 10 of the Waste (Wales) Measure 2010, to bring offences committed under the provisions of the new section 9A concerning incineration, under the civil sanctions regime that is already in place in the Measure.

### **Section 69 - Regulations**

269. Section 69 amends section 161 of the Environmental Protection Act 1990, to make provision for the procedure to be followed in relation to regulations brought forward by the Welsh Ministers under the new sections 45AA and 34D of that Act. In particular, subsection (4) inserts a new subsection (2AA) into section 161, which provides that regulations under the new sections are subject to affirmative procedure in the National Assembly for Wales. The amendments to section 161 also update terminology by replacing references to subordinate legislation made by the old National Assembly for Wales with references to the Welsh Ministers.
270. Section 69 also amends section 20 of the Waste (Wales) Measure 2010 to provide that regulations under the new section 9A of the Measure are subject to affirmative procedure in the National Assembly.

### **Section 70 - Minor and consequential amendments and repeals**

271. This section provides for further amendments to be made to existing legislation as a result of the provisions in this Part of the Act. The amendments are detailed within Part 3 of Schedule 2 to the Act.

### **Part 5 - Fisheries for Shellfish**

272. This Part of the Act makes amendments to sections 1 and 3 of the Sea Fisheries (Shellfish) Act 1967 ("the 1967 Act") and introduces new sections 5A to 5F into it. The main purpose of these changes is to enable the Welsh Ministers to make the necessary provision and take the necessary action in relation to shellfishery orders, granted under section 1 of the 1967 Act, for the purposes of the protection and the prevention of harm to European Marine Sites (EMS). "European marine sites" is defined by new section 5F(1) of the 1967 Act (as inserted by section 50 of this Act) by reference to regulation 8 of the Conservation of Habitats and Species Regulations 2010 which includes Special Areas of Conservation (designated pursuant to the Habitats Directive 92/43/EEC) and Special Protection Areas (designated pursuant to the Wild Birds Directive 79/409/EEC).

### **Section 71 - Applications for orders relating to fisheries**

273. Section 1 of the 1967 Act enables the Welsh Ministers to make an order conferring a right of several fishery or a right of regulating a fishery. A several order transfers ownership of the specified shellfish to the person (known as the grantee) upon whom that fishery is conferred. A regulating order enables a person to manage fishing activity (for the specified shellfish) within a specified area, often by issuing permits to others to fish.

274. Section 1(2) of the 1967 Act enables the Welsh Ministers to specify, in a statutory instrument, the form and manner in which an application for a several or regulating shellfishery order must be made. Section 71 of the Act amends section 1 of the 1967 Act so that it is no longer necessary to make a statutory instrument for these purposes. Section 1(2A) of the 1967 Act will enable the Welsh Ministers to specify the form and manner in which an application for a shellfishery order must be made, without the need to make subordinate legislation for that purpose.
275. Section 71 of the Act further inserts a new section 1(2B) into the 1967 Act which enables the Welsh Ministers to require any person that applies for an order under section 1 of the 1967 Act to provide any information that the Welsh Ministers consider necessary (which could include environmental information) in order to consider such an application.
276. These amendments to section 1 of the 1967 Act will apply in relation to any application made after section 71 of this Act comes into force. Any such applications received before that date will be processed pursuant to the previous wording of section 1(2) of the 1967 Act.

### **Section 72 - Requirement to include environmental provisions in orders relating to fisheries**

277. Section 72 of the Act inserts a new section 5A into the 1967 Act which requires the Welsh Ministers to ensure that an order made under section 1 of the 1967 Act includes any provisions considered appropriate to prevent harm to any EMS or to otherwise protect the marine environment. "Marine environment" is defined by the new section 5A(2). Definitions of "European marine site" and "harm" for these purposes are provided at section 5F(1) of the 1967 Act, inserted by section 75 of the Act.
278. The provisions of the new section 5A will not apply in relation to any shellfishery order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).

### **Section 73 - Power to serve notices for protection of European marine sites**

279. Section 73 of the Act inserts new sections 5B, 5C and 5D into the 1967 Act. These new sections enable the Welsh Ministers to issue a site protection notice ("SPN") and deal with related matters.
280. In order to ensure that the Welsh Ministers have appropriate powers to prevent "harm" (as defined by section 5F(1) of the 1967 Act, inserted by section 75 of the Act) to an EMS as a result of the operation of a several or regulated shellfishery, section 5B(1) provides a new power for the Welsh Ministers to serve a SPN on the grantee of the relevant shellfishery in the specified circumstances.

281. Section 5B(2) and (3) specify the requirements that may be included in a SPN. In some cases a SPN might identify the activities being undertaken as part of the management of the fishery that may harm (or become harmful to) an EMS, and then specify what steps must be taken or what actions must be avoided in order to prevent that harm from happening. A SPN can include a requirement to take action as well as a requirement to abstain from taking certain actions.
282. Section 5B(4) makes provision regarding the form and content of the SPN (which can include provision that the grantees are required to comply with beyond the period of the several or regulating fishery, see section 5B(8) of the 1967 Act).
283. Section 5B(5) requires the Welsh Ministers to consult with the relevant grantee before issuing a SPN unless they are of the view that urgent action to prevent harm is needed and subsection (7) requires the Welsh Ministers to publish every SPN in such a way as to bring the SPN to the attention of anyone likely to be affected by it.
284. Section 5B(6) enables the Welsh Ministers to adjust or cancel a SPN.
285. Section 5B(9) provides that the enforcement powers set out at section 5(2) to (7) of the 1967 Act (which include powers to make inquiries and examinations and to enter onto certain land for those purposes etc.) are available for the purposes of the new section 5B (i.e. the power to serve a SPN).
286. Section 5C (inserted into the 1967 Act by section 73 of the Act) provides an appeal mechanism in relation to SPNs. An appeal may be made to the First-tier Tribunal. This section specifies the decisions which can be appealed and the persons that may bring or be party to such an appeal.
287. Section 5C(4) enables the First-tier Tribunal to suspend or adjust a SPN while the appeal is ongoing and subsection (5) enables the Tribunal to confirm, amend or cancel the relevant SPN. Subsection (6) enables the Tribunal to order the Welsh Ministers, where the Tribunal varies or cancels a SPN, to pay compensation to any party to the appeal who has suffered loss or damage as a result of the relevant SPN.
288. If a grantee who has been served with a SPN fails to comply with its terms, section 5D (inserted into the 1967 Act by section 73 of the Act) enables the Welsh Ministers to take the necessary steps themselves and recover any costs associated with those actions from the Grantee.

289. The provisions of the new sections 5B, 5C and 5D will not apply in relation to any shellfishery order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).

#### **Section 74 – Power to vary or revoke orders to protect European marine sites**

290. Section 74 of the Act introduces a new section 5E into the 1967 Act. Section 5E(2) enables the Welsh Ministers to vary or revoke a several or regulating order in certain circumstances. Section 5E(1) provides that the power in subsection (2) is only available where the Welsh Ministers have served a SPN, which has not been cancelled (by the Welsh Minister or the First-tier Tribunal) and no appeal is pending in relation to that SPN (the meaning of a pending appeal is further described at section 5E(4)). Once those conditions have been met, subsection (2) then enables the Welsh Ministers to vary or revoke the relevant several or regulating shellfishery order in order to reflect the effect of the SPN. Subsection (3) sets out the relevant consultation requirements.
291. The provisions of section 5E will not apply in relation to any shellfishery Order made under section 1 of the 1967 Act before Part 5 of the Act comes into force (see section 5F(3) of the 1967 Act, inserted by section 75 of the Act).

#### **Section 75 – Supplementary provision**

292. Section 75 of the Act inserts section 5F into the 1967 Act which defines various terms that are relevant to sections 5A to 5E inserted into the 1967 Act by this Act and identifies the fishery orders to which those new sections apply.

#### **Part 6 – Marine licensing**

293. Part 6 of the Act amends Part 4 of the Marine and Coastal Access Act 2009 (the 2009 Act). Part 4 of the 2009 Act establishes a marine licensing regime. Section 65 of the 2009 Act provides that licensable marine activities cannot be carried out except in accordance with a marine licence granted by the appropriate licensing authority. Section 113(4) of that Act defines the appropriate licensing authority in relation to Wales and the Welsh inshore region. For the definition of Welsh inshore region see section 322 of the 2009 Act. Except as provided by section 113(4)(a) of the 2009 Act the Welsh Ministers are the appropriate licensing authority in relation to Wales and the Welsh inshore region. Part 6 of the Act makes amendments which apply where the Welsh Ministers are the appropriate licensing authority.

294. Part 4 of the 2009 Act confers functions on the Welsh Ministers as the appropriate licensing authority. These functions include the power to grant, vary, suspend or revoke a marine licence pursuant to sections 71 and 72 of the 2009 Act. Part 6 of the Act will supplement existing charging powers at section 67 of the 2009 Act so as to enable the Welsh Ministers where they are the appropriate licensing authority, to charge fees for a broad range of applications and activities that they undertake.

#### **Section 76 - Advice and assistance in relation to marine licensing**

295. Section 76 inserts section 67A into the 2009 Act which enables the licensing authority, to provide advice or other assistance and to recover the reasonable costs of doing so. An example of where this power might be used is the provision and recovery of costs relating to pre-application advice and assistance.

#### **Section 77 - Fees for monitoring, variation etc. of marine licences**

296. Section 77 inserts section 72A into the 2009 Act. This enables the Welsh Ministers, as the appropriate licensing authority, to charge fees for monitoring activities authorised by a marine licence and to charge fees for applications for the variation, transfer, suspension and revocation of a marine licence. The Welsh Ministers, as the appropriate licensing authority, may also charge fees towards the reasonable expenses of investigations, examinations or tests necessary or expedient to determine certain applications. The Welsh Ministers, as licensing authority, may refuse to proceed with applications if fees are not paid or, for certain fees, by notice vary, suspend or revoke a marine licence.

#### **Section 78 - Further provision about payment of fees**

297. Section 78 inserts sections 107A and 107B into the 2009 Act which provide for certain practical arrangements relating to the payment of fees. This includes, enabling the Welsh Ministers, as the appropriate licensing authority, to charge deposits, require payment in advance and waive or reduce fees. The Welsh Ministers, as the appropriate licensing authority, have similar powers for non payment of deposits as for non payment of fees under section 77.

#### **Section 79 - Appeal against variation etc. of marine licence for non-payment of fee or deposit**

298. Section 79 amends section 108 of the 2009 Act (Appeals against notices) to provide that the Welsh Ministers must by regulations make provision for persons to be able to appeal against a notice issued as a result of a non-payment of a fee or a deposit.

## **Section 80 - Exceptions from power to delegate marine licensing authority functions**

299. Section 80 amends section 98(6) of the 2009 Act. Section 98(1) of the 2009 Act enables the Welsh Ministers to delegate certain appropriate licensing authority functions to another person. Section 98(6) of the 2009 Act lists excepted functions that cannot be delegated. Section 80 of the Act amends that list by adding the functions of making regulations relating to fees and deposits which have been conferred by sections 77 and 78 of the Act. As a result, those regulation-making functions cannot be delegated pursuant to section 98(1) of the 2009 Act.

## **Part 7 - Miscellaneous**

### **Section 81 - Establishment of Flood and Coastal Erosion Committee for Wales**

300. Section 81 of the Act inserts sections 26B – 26D into the Flood and Water Management Act 2010. These sections will require the Welsh Ministers to establish a committee to provide advice to the Welsh Ministers on matters relating to flood and coastal erosion risk management in Wales. The committee will be known as the Flood and Coastal Erosion Committee or Pwyllgor Llifogydd ac Erydiad Arfordirol.
301. The Flood and Coastal Erosion Committee will be an advisory body with a remit to provide advice to the Welsh Ministers on matters relating to flood and coastal erosion risk management in Wales e.g. flooding from surface water, main rivers, ordinary watercourse, coastal flooding and coastal erosion.
302. Sections 26C and 26D give the Welsh Ministers powers to make provisions, through regulations, about the membership and proceedings of the committee and payments to members and the chair.
303. The Flood and Coastal Erosion Committee replaces Flood Risk Management Wales, the regional flood and coastal committee in Wales established under section 22 of the Flood and Water Management Act 2010. Section 81(2) formally abolishes Flood Risk Management Wales.

### **Sections 82 to 85 - Land drainage**

304. Sections 82 to 85 make provision in relation to various matters which concern land drainage. Sections 82-84 concern Internal Drainage Boards (IDBs) and their funding. IDBs are established to exercise functions relating to the drainage of land in their districts. Recent changes have transferred all IDB functions in Wales to NRW.

305. Section 82 concerns the publication of notices in relation to internal drainage boards (IDBs). Section 83 makes provision in relation to the way in which non-agricultural land is valued for the purposes of the apportionment of drainage expenses in the context of drainage rates. Section 84 concerns appeals against special levies.
306. Section 85 concerns the Welsh Ministers' powers to act to ensure compliance with orders of the Agricultural Land Tribunal (ALT) in relation to cleansing ditches.

**Section 82 – Repeal of requirements to publish in local newspapers etc.**

307. This section repeals provisions of the Land Drainage Act 1991 (LDA 1991) which specify the way in which notices relating to Internal Drainage Boards (IDBs) must be published.
308. The current provisions require notices to be published in one or more local newspapers. The notices to which the requirements apply deal with matters such as alterations to internal drainage districts and the making of byelaws.
309. The changes will not remove the obligation to publish notices, but will mean that publication in a local newspaper is no longer required. This will provide for more flexible advertising arrangements and allow the IDBs and NRW to choose the most appropriate mechanism for distribution of notices, including electronic methods.

**Section 83 - Valuation of non-agricultural land for apportionment of drainage expenses**

310. The expenses of an IDB that are not covered by grant funding are met partly by drainage rates payable by occupiers of agricultural land in its district, and partly by special levies issued to relevant local authorities (who must include the levies in their Council Tax budgets). The proportions of an IDB's expenditure that are met from drainage rates and special levies are determined by comparing the total value of the agricultural land in its district with the total value of the non-agricultural land.
311. For agricultural land, Chapter 2 of Part 4 of the LDA 1991 sets out the valuation methodology that must be used for these purposes. For non-agricultural land, section 37(5) provides that if the land was included on a rating or valuation list in 1990 its value is to be calculated by reference to the value shown on that list.
312. Section 37(5) is out of date and some of the lists to which it refers are no longer available. Section 83 of the Act amends section 37 to replace subsection (5) with new provisions for Wales about the valuation of non-agricultural land.



313. They provide the Welsh Ministers with powers to bring forward regulations to set out new arrangements for determining the value of non-agricultural land used in the calculation of drainage rates and special levies.

**Section 84 – Power to make provision for appeals against special levies**

314. As a result of the transfer of IDB functions in Wales to NRW (in April 2015), NRW will raise special levies on local authorities to pay for part of these functions. These levies were previously raised by IDBs, where local authority appointed members comprised a majority of the board who set the levy.
315. This provision amends section 75 of the Local Government Finance Act 1988 to enable the Welsh Ministers to put in place a mechanism for appeals by local authorities in the event that they believe the NRW levy is unreasonable.
316. The appeal would be to the Welsh Ministers in relation to special levies issued by NRW to meet expenses incurred in the exercise of functions relating to land drainage.

**Section 85 Power of entry: compliance with order for cleansing ditches etc.**

317. Section 85 of the Act inserts in section 29 of the LDA 1991 subsection (1A) which confers a power of entry on the Welsh Ministers or persons authorised by them.
318. Section 28 of the LDA 1991 provides that the Agricultural Land Tribunal (ALT) may grant an order to require a land owner or occupier (the respondent) to carry out work on his or her land to improve land drainage on a neighbour's land. If the respondent fails to comply with the order, the Welsh Ministers or drainage body authorised by them, may rely on the power under section 29 to enter land to carry out the work required by the order and may recover the cost of doing so.
319. Section 29(1A) confers a power on the Welsh Ministers or any person authorised by them to enter any land where it is necessary to do so to inspect whether an order has been complied with. The power may only be exercised after three months of the date of the order (or any longer period specified in the order) and where the Welsh Ministers have reasonable grounds for believing that the order has not been complied with.

320. Section 29(3), (4) and (5) of the LDA 1991 apply in relation to the power in section 29(1A). Section 29(3) makes provision about the taking of other persons and equipment on to the land and securing against trespassers; section 29(4) provides that the person entering the land must give no less than seven days' notice to the occupier; and section 29(5) makes provision for compensation if the person exercising the power causes anyone else to sustain any injury.
321. Section 85(2) has the effect of applying section 29(1A) to any order made under section 28, including those made before this provision comes into force.
322. The power would usually be exercised where the person who has the benefit of an ALT order complains to the Welsh Government that their land continues to suffer from poor drainage because the respondent has not complied with the order.

### **Section 86 – Byelaws made by the Natural Resources Body for Wales**

323. The Local Government Byelaws (Wales) Act 2012 changes the procedures for making byelaws in Wales and enables certain byelaws to be enforced by fixed penalty notices. It applies to byelaws made by local authorities and a number of other public bodies, including the Countryside Council for Wales (CCW). With effect from 1 April 2013, the Natural Resources Body for Wales (Functions) Order 2013 abolished CCW and transferred its functions to NRW. As a result, the references to CCW in the 2012 Act need to be amended to refer to NRW. Those amendments are set out in Part 4 of Schedule 2 to the Act, which is introduced by section 86.

### **Part 8 – General**

324. This Part includes provisions relating to the interpretation, coming into force and short title of the Act.

### **Section 87 – Interpretation**

325. This section sets out some key terms referred to in the Act. In particular, the definition of “Wales” is as in section 158(1) of the Government of Wales Act 2006 which defines it as including the sea adjacent to Wales out as far as the seaward boundary of the territorial sea – i.e. that it goes out to twelve nautical miles. It does not include the Welsh zone which is also defined in section 158(1).

## **Section 88 – Coming into force**

326. Section 88 provides that Part 8 of the Act comes into force on the day that the Act receives Royal Assent. Some provisions come into force at the end of two months after the Act receives Royal Assent. These are: Part 1 (sustainable management of natural resources), Part 2 (climate change), Part 5 (fisheries for shellfish), section 83 (repeal of publication requirements), section 84 (appeals against special drainage levies), section 85 (power of entry) and section 86 (byelaws).
327. Other provisions of the Act will come into force when the Welsh Ministers bring them into force by order. These are: Part 3 (charges for carrier bags), Part 4 (collection and disposal of waste), Part 6 (marine licensing), and section 82 (flood and coastal erosion committee).

## **Schedule 1 – Charges for Carrier Bags: Civil Sanctions**

328. This Schedule is introduced by section 61.

### *Civil Sanctions*

329. Paragraph 1 provides that the carrier bag regulations may make provision that a person who breaches the regulations may be liable to civil sanctions. Sub-paragraph (3) provides that civil sanctions may take the form of fixed monetary penalties (defined in paragraph 2(3)) and discretionary requirements (defined in paragraph 4(3)).

### *Fixed Monetary Penalties*

330. Paragraph 2 provides that the carrier bag regulations may give an administrator a power to impose a fixed monetary penalty not exceeding £5,000 on any person who breaches the regulations. Notices imposing fixed monetary penalties may only be issued in cases where the administrator is satisfied on the balance of probabilities that a breach of the regulations has occurred.

### *Fixed Monetary Penalties: Procedure*

331. Paragraph 3 provides that where administrators have the power to issue fixed monetary penalty notices the regulations must set out the procedure as prescribed in this paragraph.
332. Sub-paragraph (1)(a) provides that before the administrator can impose a penalty they must first issue a 'notice of intent'. The notice must offer the person served the opportunity to either pay the penalty or make representations or objections within a specified time which in both cases must be no more than 28 days of when the notice was received (see sub-paragraphs (2)(e) and (f)). The notice must include the information as set out in sub-paragraphs (2)(a) to (f).
333. Under sub-paragraph (1)(b) the person served may discharge liability for the penalty by making a payment which may be less than or equal to the amount of the penalty. This would allow the administrator to offer a discount for early payment. If a payment is made no further action will be taken.

334. Under sub-paragraph (1)(c) the person served may make written representations and objections against the penalty. At the end of the specified time period, the administrator, having considered the representations or objections decides whether they impose the fixed monetary penalty. If they are still of the view that the penalty is due they may issue a “final notice”. The final notice must include the information in sub-paragraphs (4)(a) to (f). If they decide to withdraw the penalty notice then under paragraph 3(3) they must explain why they have decided not to impose the penalty.
335. Sub-paragraph (5) sets out the circumstances in which a person served may appeal against a final notice. (See paragraph 10 for appeal procedure.)

*Discretionary Requirements*

336. Paragraph 4 provides that the regulations may give an administrator the power to impose, by notice, one or more requirements (“discretionary requirements”) on a person. “Discretionary requirements” are defined in sub-paragraph (3) as:
- the payment of a monetary penalty of an amount that the administrator will determine (“variable monetary penalty”);
  - to take such steps as may be specified by an administrator within such time period as the administrator may specify to ensure that the incident of non-compliance does not continue or recur (“non-monetary discretionary requirement”).
337. Sub-paragraph (2) specifies the standard of proof that must be applied by the administrators when deciding whether there has been a breach of the regulations. Under sub-paragraph (5) the regulations must provide that variable monetary penalties are capped to a maximum amount to be specified in, or determined in accordance with, the regulations.

*Discretionary requirements: procedure*

338. Paragraph 5 provides for the procedure that must be set out in regulations and followed by the administrator when imposing any discretionary requirement. An administrator must serve a notice on the person of their intention to impose a discretionary requirement. The notice must state the time within which the person served may make representations and objections about the proposed sanction. The regulations may not provide for the time period to be any less than 28 days.
339. Sub-paragraph (c) provides that after the end of the specified time for making representations and objections, the administrator must decide whether to impose, withdraw or vary the discretionary requirement or replace it with a different discretionary requirement.
340. When imposing a discretionary requirement an administrator must serve a final notice. The final notice must contain the information set out in sub-paragraph (4), including the fact that the person's right of appeal against the sanction.

341. Sub-paragraph (5) sets out the minimum grounds for appeal against the discretionary requirement that must be available.

*Discretionary requirements: enforcement*

342. Paragraph 6 provides that where a person does not comply with a non-monetary discretionary requirement, the regulations may give an administrator power to impose a monetary penalty. Non-compliance penalties are not available in cases where a person has failed to pay a variable monetary penalty. Sub-paragraph (2) provides that the regulations may either specify the amount of the non-compliance penalty or that the amount may be determined in accordance with the regulations. Alternatively, sub-paragraph (3) provides that the regulations may specify a maximum penalty that an administrator may impose or the maximum amount as determined in accordance with the regulations. Sub-paragraph (5) provides that the regulations must state the grounds on which a non-compliance penalty may be appealed against which grounds are set out in (a) to (c).

*Combination of sanctions*

343. Paragraph 7 restricts the circumstances in which carrier bag regulations may give an administrator powers to impose both types of civil sanction (i.e. fixed monetary penalties and discretionary requirements) in relation to the same kind of breach of the regulations. In particular, if the regulations do confer those powers, they must ensure that the administrator may not serve a notice of intent to impose one kind of civil sanction on a person if it has already imposed the other kind of civil sanction on the person for the same breach.

*Monetary Penalties*

344. Paragraph 8 provides that where the regulations provide for civil sanctions to be imposed they may also make provision as set out in sub-paragraph (1)(a) to (c). They may include discounts for early payment or for the payment of interest or other financial penalty for late payment of the original penalty. Sub-paragraph (1)(b) provides that the total amount of any late payment penalty must not exceed the total amount of the penalty imposed.
345. Under sub-paragraph (1)(c) the regulations may include provisions to enforce the penalties. Provision under sub-paragraph (1)(c) may enable an administrator to recover a penalty or other payment as may be specified in the regulations under sub-paragraph (1)(b) as a civil debt through the civil courts. The regulations may also create a more streamlined process of recovery by treating the penalty as if it were payable under a court order.

*Costs Recovery*

346. Paragraph 9 provides that regulations may confer powers on the administrator to recover their costs, by notice, from a person on whom a discretionary requirement is imposed. Sub-paragraph (2) provides that the costs may include investigation costs, administration costs and the costs of obtaining expert (including legal) advice. Under sub-paragraph (3) where a costs notice is served the administrator may be required to give a detailed breakdown of the costs they are seeking to recover and that person served is not liable for any costs unnecessarily incurred.

347. Sub-paragraph (4) provides that the provision made by the regulations for the payment of the administrator's costs may include provision for the recovery of interest and late payment penalties under paragraph 8. Sub-paragraph 3(d) provides for a right of appeal against the decision of the administrator regarding payment of costs.

*Appeal*

348. Paragraph 10 contains certain procedural provisions for appeals from civil penalties. In particular, it provides that the regulations must provide for appeals to be made to the First-tier Tribunal (established under the Tribunals, Courts and Enforcement Act 2007 (c.15)) or another tribunal created under an enactment. Regulation 21 of the 2010 Regulations provides for appeals against civil sanctions to be made to the First-tier Tribunal.

*Publicity for imposition of civil sanctions*

349. Paragraph 11 provides that the regulations may confer a power on an administrator to issue a publicity notice to a person on whom a civil sanction has been imposed. Such a notice would require the recipient to publicise, at their own cost, that a sanction has been imposed, as well as such other information as may be specified in the regulations. If the person fails to publish the notice as required, the regulations may provide for the administrator to publish the notice and to recover the costs from the person to whom the notice relates.

*Persons liable to civil sanctions*

350. Paragraph 12 provides that the regulations may make provision for officers of a body corporate and partners of a partnership to be liable to civil sanctions.

*Guidance about use of powers to impose civil sanctions and recover costs*

351. Paragraph 13 provides that where an administrator is to have the power to impose civil sanctions, there is to be a corresponding duty on the administrator to publish guidance containing certain information about how it will use its civil sanction powers, including details about fixed monetary penalties and discretionary requirements such as: when they are likely to be imposed, how fixed and variable monetary penalties will be determined, how liability for penalties may be discharged and the effect of a discharge on rights of appeal.

*Publication of enforcement action*

352. Paragraph 14 provides that regulations providing for civil sanctions must secure the publication of reports by the administrator on the use of civil sanctions.

*Compliance with regulatory principles*

353. Paragraph 15 provides that civil sanction powers may not be conferred on an administrator in regulations unless the Welsh Ministers are satisfied that the administrator will comply with principles of better regulation as set out in paragraphs (a) and (b).

*Review*

354. Paragraph 16 requires the Welsh Ministers to review the operation of the civil sanction provisions set out in regulations. The first review must take place as soon as practicable after 1 October 2017 and subsequent reviews must take place as soon as practicable after the end of three years beginning with the date on which the previous review took place. This section also requires the Welsh Ministers to publish the results of the review and lay it before the National Assembly.

*Suspension*

355. Paragraph 17 provides the Welsh Ministers with the power to suspend an administrator's powers to impose civil sanctions in certain circumstances by issuing a direction to the administrator. Such directions may be revoked by the Welsh Ministers. Before issuing a direction, the Welsh Ministers must consult the administrator and such other persons as they consider appropriate. Any directions issued must be laid before the National Assembly for Wales and brought to the attention of those that are likely to be affected by it.

*Payment of penalties into Welsh Consolidated Fund*

356. Paragraph 18 provides for money received from penalties to go to the Welsh Consolidated Fund established under section 117 of the Government of Wales Act 2006, into which is paid public money allocated to the devolved institutions in Wales by the UK Government and also that received from other sources.

## **SCHEDULE 2**

*Part 1: Sustainable management of natural resources*

357. Part 1 of Schedule 2 makes a number of amendments and repeals in relation to Part 1 of the Act.
358. Paragraphs 1 to 5 make a number of amendments as a consequence of sections 16 and 23 of the Act. Amendments are made to the National Parks and Access to the Countryside Act 1949 (1949 Act), Countryside Act 1968 (1968 Act) and Wildlife and Countryside Act 1981 as a result of section 16 of the Act. These amendments have the effect of removing NRW's powers to make land management agreements under these Acts, as those powers are now replaced by the power in section 16 of the Act.
359. Paragraphs 1 to 5 of Schedule 2 also amend various provisions that refer to agreements made under the previous powers in the 1949 Act, 1968 Act and 1981 Act so that they refer instead to land management agreements made under section 16 the Act.
360. Paragraph 2(2) repeals section 4 of the 1968 Act, removing NRW's power to conduct experimental projects or schemes. A broader power to conduct experimental schemes is now provided by section 23 of the Act, which substitutes Article 10C of the Natural Resources Body for Wales (Establishment) Order 2012.

361. Paragraphs 6 to 9 make amendments to a number of Acts to create a link with relevant provisions in Part 1 of the Act. Paragraph 6 amends the Environment Act 1995 to ensure that National Park authorities are required to have regard to the most recent state of natural resources report and any relevant area statement(s) when publishing, adopting or reviewing management plans under section 66 of that Act.
362. Paragraph 7 amends the Countryside and Rights of Way Act 2000 to ensure that in publishing, adopting or reviewing a management plan under section 89 of that Act, the relevant local authority or conservation board must have regard to the most recent stage of natural resources report and any area statement relevant to the area of outstanding natural beauty as appropriate.
363. Paragraph 8 amends the Planning and Compulsory Purchase Act 2004, to ensure that the national natural resources policy is taken into account in the preparation of the National Development Framework and that in the preparation of Local Development Plans (LDP) regard must be had to any areas statements relevant to that LDP.
364. Paragraph 9 amends the duty in section 40 of the NERC Act 2006 for public authorities to have regard to biodiversity, so that it applies only in relation to HMRC, and in relation to other public bodies when they are exercising functions in relation to England. Section 6 of the Act will apply instead where public authorities other than HMRC are exercising functions in relation to Wales.
365. Sub-paragraph (3) repeals section 42 of the NERC Act 2006 which requires the Welsh Ministers to prepare and publish a list of living organisms and habitats of principal importance for biodiversity in Wales. The requirement is now provided for by section 7 of the Act. A number of further amendments are made to Schedule 11 of the NERC Act 2006 in sub-paragraph (4).
366. Paragraph 10 inserts a new paragraph into section 36(1) of the Well-being of Future Generations (Wales) Act 2015. The new paragraph will require Public Service Boards in preparing a local well-being assessment to take into account an area statement or statements published under section 10 of this Act, which relate to any part of a local authority's area. Sub-paragraph (2) updates the definition of UN Sustainable Development Goals in the 2015 Act.



367. Paragraph 11 repeals paragraph 29 of Schedule 2 to the Planning (Wales) Act. Paragraph 29 amended the definition of a public authority in section 40 of the NERC Act 2006. Section 6 of the Act repeals section 40 of the NERC Act 2006 in relation to the functions of public authorities in relation to Wales and therefore paragraph 29 has no effect.

*Part 2: Charges for carrier bags*

368. Paragraphs 10 and 11 of Schedule 2 make consequential amendments to the Climate Change Act 2008 and the Waste (Wales) Measure 2010 which have the effect of disapplying, in relation to Wales, the provisions about single use carrier bags in Schedule 6 of the 2008 Act.

*Part 3: Collection and disposal of waste*

369. In Part 3 of Schedule 2, paragraph 14 makes consequential amendments to the Environmental Protection Act 1990, as a result of the insertion of a new section 45AA. Sub-paragraph (2) has the effect of making section 45A of that Act applicable to England only, and sub-paragraph (3) repeals section 45B.
370. Paragraph 15 repeals section 2 of the Household Waste Recycling Act 2003, which inserted section 45B into the Environmental Protection Act 1990.
371. Paragraph 16 repeals a transitional provision in Schedule 11 of the Government of Wales Act 2006, relating to section 45B of the Environmental Protection Act 1990.
372. Paragraph 17 makes consequential amendments to the Waste (Wales) Measure 2010, as a result of the insertion of a new section 9A of the Measure.

*Part 4: Flood and coastal erosion committee*

373. Section 82(3) and Part 4 of Schedule 2 makes minor and consequential amendments to update legislation which contains references to Regional Flood and Coastal Committees in Wales. The amendments reflect the abolition of Flood Risk Management Wales (the regional flood and coastal committee for Wales) and its replacement by the Flood and Coastal Erosion Committee.

*Part 5: Byelaws*

374. In Part 4 of Schedule 2, paragraphs 26 and 27 make amendments to the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968, both of which contain provisions relating to CCW's byelaw making functions.
375. In Part 4 of Schedule 2, paragraph 28 makes a number of amendments to the Local Government Byelaws (Wales) Act 2012 that removes all references to CCW and replaces them with references to NRW.

*These notes refer to the Environment (Wales) Act 2016 (anaw 3)  
which received Royal Assent on 21 March 2016*

376. Sub-paragraph 2 does so in the section defining which bodies are legislative authorities and have powers to make byelaws for the purposes of the Act. Sub-paragraphs 3 and 4 do so in sections dealing with the procedures and formalities for making byelaws.
377. Sub-paragraph 5 repeals paragraph 11 of Schedule 2 to the Act, in relation to the Wildlife and Countryside Act 1981.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

378. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at:

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=12572>

<b>Stage</b>	<b>Date</b>
Introduced	11 May 2015
Stage 1 - Debate	20 October 2015
Stage 2 Scrutiny Committee - consideration of amendments	26 November 2016
Stage 3 Plenary - consideration of amendments	26 January 2016
Stage 4 Approved by the Assembly	2 February 2016
Royal Assent	21 March 2016

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