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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Natural Resources Body for Wales  
(Consequential Provision) Order 2013**

**PART 5**

**Charging schemes**

**Charging schemes: general provisions**

**16.**—(1) Section 41 of the 1995 Act<sup>(1)</sup> is amended as follows.

(2) In subsection (1), in the opening words, for “section 42” substitute “sections 41B, 41C and 42”.

(3) After subsection (10) insert—

“(10A) Any power of the Secretary of State to make regulations under this section is exercisable in relation to Wales only after consultation with the Welsh Ministers.”

**Charges in respect of EU greenhouse gas emissions trading scheme**

**17.**—(1) Section 41A of the 1995 Act<sup>(2)</sup> is amended as follows.

(2) In subsection (1)—

- (a) in the opening words, for “new Agencies” substitute “charging authorities”;
- (b) in the closing words, for “new Agency” substitute “charging authority”.

(3) In subsection (1C)—

- (a) for “new Agency” substitute “charging authority”;
- (b) after “Secretary of State” insert “, the Welsh Ministers”.

(4) In subsection (2)—

- (a) in paragraph (b), for “SEPA” substitute “another charging authority”;
- (b) in the closing words—
  - (i) for “SEPA” substitute “that other charging authority”;
  - (ii) after “Secretary of State” insert “, the Welsh Ministers”.

(5) In subsection (3), for “SEPA” substitute “the relevant charging authority”.

(6) In subsection (5)—

- (a) at the beginning, insert “The Natural Resources Body for Wales and”;
- (b) for “it receives” substitute “they receive”.

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(1) Section 41 was amended by [W.S.I. 2013/755 \(W. 90\)](#). There are other amendments to section 41 that are not relevant to this Order.

(2) Section 41A was inserted by [S.I. 2005/925](#) and amended by [S.I. 2012/2788](#) and [W.S.I. 2013/755 \(W. 90\)](#).

(7) In subsection (7), in the appropriate place insert—

““charging authority” means the Agency, the Natural Resources Body for Wales or SEPA;”.

**18.**—(1) Section 42(3A) of the 1995 Act<sup>(3)</sup> is amended as follows.

(2) For “new Agency”, in each place where it occurs, substitute “charging authority”.

(3) After “Secretary of State” insert “or, as the case may be, the Welsh Ministers”.

### **Charges in respect of abstraction and impounding licences: cross-border matters**

**19.** After section 41A of the 1995 Act, insert—

#### **“Charging schemes in respect of abstraction and impounding licences: joint charging schemes**

**41B.**—(1) A charging scheme under section 41 relating to licences under Chapter II of Part II of the 1991 Act may be made by both of the appropriate agencies acting jointly (referred to in this section as a “joint charging scheme”), if that scheme prescribes charges in relation to licences granted within a combined area that—

- (a) is partly in England and partly in Wales; and
- (b) includes all of, or any part of, the catchment areas of the rivers Dee, Wye and Severn.

(2) A joint charging scheme must—

- (a) designate the combined area to which it applies; and
- (b) specify the manner in which the sums recovered by way of charges prescribed by the scheme are to be apportioned between, and paid to, each appropriate agency.

(3) Subsections (9) and (9A) of section 41 do not apply to joint charging schemes.

(4) Subject to subsection (5), the appropriate agencies may not make a joint charging scheme unless the provisions of the scheme have been approved under section 42 by the Secretary of State and the Welsh Ministers acting jointly.

(5) Section 42 applies in relation to joint charging schemes as though references in that section to—

- (a) anything done by or in relation to either the Secretary of State or the Welsh Ministers were references to that thing being done by or in relation to the Secretary of State and the Welsh Ministers acting jointly;
- (b) a charging authority were references to both of the appropriate agencies acting jointly.

(6) This section does not affect any power of an appropriate agency to make a charging scheme under section 41.

#### **Charging schemes in respect of abstraction and impounding licences: cross-border arrangements**

**41C.**—(1) An appropriate agency may not make or revise a relevant charging scheme unless it has—

- (a) notified the other appropriate agency of its proposal; and

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(3) Section 42(3A) was inserted by [S.I 2012/2788](#).

- (b) had regard to any information provided by the other appropriate agency relating to costs or expenses—
  - (i) which the other appropriate agency has incurred or expects to incur, and
  - (ii) in respect of which the other appropriate agency considers that the relevant charging scheme should make provision.
- (2) Subsection (1) does not apply to a joint charging scheme made in accordance with section 41B.
- (3) An appropriate agency may not, without the consent of the other appropriate agency, enter into any agreement, or any variation of an agreement, as a result of which it will be liable to incur costs or expenses—
  - (a) in respect of which it would expect a relevant charging scheme made by the other appropriate agency (or by both of the appropriate agencies acting jointly) to make provision; and
  - (b) which would, if an existing relevant charging scheme were revised to make provision for the purpose of recovering the amount required to meet those costs or expenses in full, result in a significant increase in the charges payable under that charging scheme.
- (4) Either appropriate agency may refer the question of whether consent should be given for the purposes of subsection (3) for determination by the Secretary of State and the Welsh Ministers acting jointly.
- (5) The Secretary of State and the Welsh Ministers, acting jointly—
  - (a) may give guidance to the appropriate agencies as to the exercise of the appropriate agencies' functions under this section;
  - (b) must arrange for any guidance given under this subsection to be published in such manner as they consider appropriate.
- (6) The appropriate agencies must have regard to any guidance given under subsection (5).
- (7) In this section, "relevant charging scheme" means a charging scheme under section 41 which relates to any extent to licences granted under Chapter II of Part II of the 1991 Act in respect of abstractions from, or impounding of, waters in the catchment areas of the rivers Dee, Wye and Severn."

### **Approval of charging schemes and application of sums recovered**

**20.**—(1) Section 42 of the 1995 Act<sup>(4)</sup> is amended as follows.

(2) In subsection (3), after paragraph (b) insert—

- “(c) in the case of licences granted by the Agency under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Natural Resources Body for Wales incurs in carrying out its functions under Part II of that Act or section 6(2A) above in the catchment areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from, or impounding of, waters in England,
- (d) in the case of licences granted by the Natural Resources Body for Wales under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Agency incurs in carrying out its functions under Part II of that Act or section 6(2) above in the catchment

<sup>(4)</sup> Section 42 was amended by the Food Standards Act 1999 (c. 28), section 41(1) and (4), Schedule 5, paragraphs 44(1) and (2), and Schedule 6; other relevant amending instruments are [S.I. 2010/675](#), [2012/2788](#), and [W.S.I 2013/755 \(W. 90\)](#).

areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from, or impounding of, waters in Wales.”

(3) In subsection (7), after “Agency” insert “or by both of the appropriate agencies acting jointly”.

(4) After subsection (9) insert—

“(9A) The Agency must pay to the Natural Resources Body for Wales any sums which the Agency recovers under a charging scheme made under section 41 (other than a joint charging scheme made in accordance with section 41B) that may fairly be regarded as recovered for the purpose of meeting (in whole or in part) any costs and expenses incurred, or deemed to have been incurred, by the Body in carrying out its functions under Part II of the 1991 Act or section 6(2A) above.

(9B) The Natural Resources Body for Wales must pay to the Agency any sums which the Body recovers under a charging scheme made under section 41 (other than a joint charging scheme made in accordance with section 41B) that may fairly be regarded as recovered for the purpose of meeting (in whole or in part) any costs and expenses incurred by the Agency in carrying out its functions under Part II of the 1991 Act or section 6(2) above, other than costs and expenses that are deemed to have been incurred by the Body.

(9C) Any sums recovered by an appropriate agency by way of charges prescribed by a joint charging scheme made in accordance with section 41B must be apportioned between, and paid to, each appropriate agency in the manner specified by the scheme pursuant to section 41B(2)(b).

(9D) For the purposes of subsections (9A) and (9B), costs or expenses are deemed to have been incurred by the Natural Resources Body for Wales if the liability for those costs or expenses was transferred from the Agency to the Body on 1st April 2013—

- (a) by a transfer scheme made by the Welsh Ministers under section 23 of the Public Bodies Act 2011; or
- (b) by virtue of article 10 of, and paragraph 2 of Schedule 7 to, the Natural Resources Body for Wales (Functions) Order 2013.”

(5) After subsection (10) insert—

“(10A) Any dispute as to the apportionment or payment of sums under subsection (9A), (9B) or (9C) shall be determined by the Secretary of State and the Welsh Ministers acting jointly.”

**21.** The function of approving charging schemes under section 42 of the 1995 Act is exercisable by the Secretary of State free from any requirement to consult the Welsh Ministers(5).

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(5) In relation to Wales, the function was made exercisable only after consulting the National Assembly for Wales by article 5(1) of, and Schedule 2 to, the 1999 Order (*see* the entry in Schedule 2 relating to the 1995 Act). The function of being consulted was transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule to, the 2006 Act. The entry relating to the 1995 Act in Schedule 2 to the 1999 Order is revoked by article 29(3) of this Order.