

# CLIMATE CHANGE ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Impact of and adaptation to climate change**

##### **Reporting authorities: devolved Welsh functions**

##### *Section 66: Guidance by Welsh Ministers to reporting authorities*

286. This section gives the Welsh Ministers a power to issue guidance to reporting authorities in relation to their devolved Welsh functions. It provides that the guidance may deal with how reporting authorities should assess the current and predicted impact of climate change, how they should prepare proposals and policies to adapt to climate change, and how they should co-operate with other reporting authorities when adapting to climate change.
287. Subsections (6) and (7) of section 70 set out how to determine what a reporting authority's "devolved Welsh functions" are – see the notes on section 70 for more detail.

##### *Section 67: Directions by Welsh Ministers to prepare reports*

288. This section allows the Welsh Ministers to require reporting authorities, individually or jointly with other reporting authorities, to prepare reports on adaptation in relation to their devolved Welsh functions.
289. *Subsection (1)* provides that the Welsh Ministers may require a reporting authority to prepare a report covering any or all of the following matters:
- an assessment of the current and predicted impact of climate change on the authority's devolved Welsh functions;
  - a statement setting out the authority's proposals and policies for adapting to climate change in relation to its devolved Welsh functions and its timescales for introducing the proposals and policies;
  - an assessment of the progress the authority has made towards implementing any proposals and policies contained in an earlier report.
290. *Subsection (2)* allows the Welsh Ministers to require two or more authorities to prepare a joint report. *Subsection (3)* allows the Welsh Ministers to give directions to the reporting authority about the timing of the report and the matters it should cover, and allows the Welsh Ministers to limit the report's coverage to a particular geographical area.
291. The Welsh Ministers can only require a reporting authority to produce a report dealing with the authority's "devolved Welsh functions". See the notes on subsections (6) and (7) of section 70 for an explanation of what this covers.

**Section 68: Compliance with Welsh Ministers' directions**

292. This section requires any reporting authority issued with directions under section 67 to comply with them and sets out other details of how they must prepare their reports.
293. *Subsection (1)* sets out the basic duty on reporting authorities to comply with directions. *Subsection (2)* provides that where two or more reporting authorities have been directed to prepare a joint report, then they must take reasonable steps to cooperate with one another in preparing it.
294. *Subsection (3)* lists a number of reports and programmes that all reporting authorities must have regard to when preparing their own reports following a direction from the Welsh Ministers:
- the Secretary of State's most recent report on the current and predicted risks of climate change under section 56;
  - the Secretary of State's most recent adaptation programme under section 58;
  - any guidance issued by the Secretary of State under section 61;
  - any guidance issued by the Welsh Ministers under section 66;
  - the Welsh Ministers' most recent report on climate change under section 80.

But reporting authorities need have regard only to those reports and programmes so far as they are relevant.

295. *Subsection (4)* requires a reporting authority to send a copy of its report to the Welsh Ministers. *Subsection (5)* requires the Welsh Ministers to publish the report in such manner as they consider appropriate, but subject to the exceptions in subsection (7). Under *subsection (6)*, the Welsh Ministers are not required to publish anything that they could refuse to disclose under the [Freedom of Information Act 2000 \(c.36\)](#) or under the [Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#) or which they are prohibited from disclosing by any enactment.
296. *Subsection (7)* requires reporting authorities to have regard to their own reports in the exercise of all of their "devolved Welsh functions" (see section 70 for the definition).

**Section 69: Consent of, or consultation with, Secretary of State**

297. This section deals with situations where the Secretary of State has an interest or is involved in a function covered by the Welsh Ministers' guidance under section 66 or in directions given by the Welsh Ministers under section 67. For example, the Welsh Ministers may wish to issue guidance to reporting authorities in an area where they would otherwise have the power to act only with the consent of, or following consultation with, a Minister of the Crown; this section sets out the procedures the Welsh Ministers must follow.
298. *Subsection (1)* sets out two situations in which the Welsh Ministers are required to obtain the consent of the Secretary of State before issuing guidance under section 66 or directions under section 67:
- the first situation, under paragraph (a), is where the guidance or directions relate to a function of a reporting authority in relation to which a function is exercisable jointly by a Minister of the Crown and the Welsh Ministers, the First Minister or the Counsel General. For example, certain functions on the Welsh border are exercisable jointly by the Secretary of State and the Welsh Ministers; before issuing guidance relating to those functions, the Welsh Ministers would be required to obtain the consent of the Secretary of State;

*These notes refer to the Climate Change Act 2008 (c.27)  
which received Royal Assent on 26th November 2008*

- the second situation, under paragraph (b), is where a function of a reporting authority relates to a function exercisable by the Welsh Ministers, the First Minister or the Counsel General but only with the agreement of a Minister of the Crown.

299. *Subsection (2)* sets out two situations in which the Welsh Ministers are required to consult the Secretary of State before issuing guidance under section 66 or directions under section 67:

- the first situation, under paragraph (a), is where a Minister of the Crown has a function which relates to a reporting authority's function, but in exercising his function the Minister of the Crown is not required to do so jointly with the Welsh Ministers, the First Minister or the Counsel General. This covers situations where the Welsh Ministers and a Minister of the Crown have concurrent functions which cover the same or similar ground but are exercisable independently;
- the second situation, under paragraph (b), is where a reporting authority's function relates to a function of the Welsh Ministers, the First Minister or the Counsel General which may be exercised only after consulting a Minister of the Crown.