

# ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### 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).
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.

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<sup>1</sup> <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&usq=AFQjCNHQwS4RPEu3dL617rq7mCuJhVkhfg>

<b><i>Section: Duty</i></b>	<b><i>Welsh Government</i></b>	<b><i>Minister of the Crown and Government Departments</i></b>	<b><i>Other public authorities</i></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.