

# ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **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

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

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.