

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

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Impact of and adaptation to climate change

National reports and programmes

Section 56: Report on impact of climate change

247. This section places a duty on the Secretary of State to lay reports before Parliament assessing the risks of the current and predicted impact of climate change for the UK, which might include the risks to the natural environment, to infrastructure, to the economy, to society or any other risks.
248. *Subsections (2) and (3)* require the Secretary of State to lay the first report before Parliament no later than three years after the section comes into force, and subsequent reports at intervals of no more than five years. *Subsection (4)* allows the Secretary of State to extend the period for laying a report, but requires him to publish a statement setting out his reasons and saying when the report will be laid.
249. *Subsection (5)* requires the Secretary of State to take the Committee on Climate Change's advice under section 57 into account before laying the report before Parliament and *subsection (6)* places a duty on the Secretary of State to send a copy of the report to the other national authorities (defined in section 95 as the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department).

Section 57: Advice of Committee on Climate Change on impact report

250. *Subsection (1)* of this section requires the Committee on Climate Change to provide the Secretary of State with advice in relation to his reports assessing the risks of climate change to the United Kingdom under section 56. Section 56(5) requires the Secretary of State to take the Committee's advice into account before laying his reports before Parliament.
251. *Subsection (2)* requires the Committee to give its advice at least six months before the Secretary of State is required to lay his reports before Parliament – under section 56, the first report must be laid before Parliament within 3 years after the Act receives Royal Assent, with subsequent reports at least every five years.
252. *Subsection (3)* requires the Committee to send copies of its advice to the other national authorities (see section 95) at the same time as it gives its advice to the Secretary of State and *subsection (4)* requires it to publish its advice in an appropriate manner as soon as is reasonably practical after that.

Section 58: Programme for adaptation to climate change

253. This section requires the Secretary of State to prepare UK Government adaptation programmes.

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254. *Subsection (1)* places a duty on the Secretary of State to lay before Parliament adaptation programmes covering the Government's objectives in relation to adaptation to climate change, and its proposals and policies for meeting these objectives (indicating an appropriate timescale). The programme should address the risks identified in the most recent report under section 56.
255. *Subsection (2)* provides that the objectives, proposals and policies should contribute to sustainable development.
256. *Subsection (3)* requires the Secretary of State to lay the adaptation programme before Parliament as soon as is reasonably practicable after laying his report on the risks of climate change under section 56. *Subsection (4)* requires him to send a copy of each programme to the other national authorities.

Section 59: Reporting on progress in connection with adaptation

257. This section places a duty on the Committee on Climate Change to report to Parliament on its assessment of the progress made towards the implementation of the objectives, proposals and policies in the Secretary of State's adaptation programmes under section 58.
258. *Subsection (1)* sets out the basic duty, and provides that progress reports on adaptation should be contained in the reports on progress towards meeting carbon budgets and the 2050 target required by section 36.
259. *Subsection (2)* sets out the timing of the progress reports under this section. The first progress report is to be made in the second year after the Secretary of State lays his first adaptation programme under section 58. This means that if the first adaptation programme is laid before Parliament in 2012, the Committee's first report on the progress made towards implementing must be laid before Parliament by 30th June 2014 (as required, for 2014, by section 36(4)). In accordance with section 37(4), the Secretary of State would be obliged to respond to that report by 15th October 2014.
260. *Subsection (3)* provides that subsequent progress reports are to be laid before Parliament every two years, unless the Secretary of State makes an order under *subsection (4)* to require annual progress reporting. *Subsection (5)* states that the negative resolution procedure (see section 91) applies to orders made under subsection (4).

Section 60: Programme for adaptation to climate change: Northern Ireland

261. This section requires the relevant Northern Ireland department to prepare adaptation programmes.
262. *Subsection (1)* places a duty on the relevant Northern Ireland department to lay before the Northern Ireland Assembly adaptation programmes covering its objectives in relation to adaptation to climate change, and its proposals and policies for meeting these objectives (indicating an appropriate timescale). The programme should address the risks identified in the most recent report under section 56.
263. *Subsection (2)* provides that the objectives, proposals and policies should contribute to sustainable development. *Subsection (3)* provides that subsequent programmes must include an assessment of the progress made towards implementing the objectives, proposals and policies in the earlier programmes.
264. *Subsection (4)* requires the relevant Northern Ireland department to lay the adaptation programme before the Northern Ireland Assembly as soon as is reasonably practicable after the report under section 56 has been laid before Parliament and *subsection (5)* requires the department to send a copy of it to the Secretary of State, the Scottish Ministers and the Welsh Ministers.

Reporting authorities: non-devolved functions

Section 61: Guidance by Secretary of State to reporting authorities

265. This section gives the Secretary of State a power to issue guidance to “reporting authorities”. The term “reporting authority” is defined in section 70(1) to mean any person or body with functions of a public nature, and statutory undertakers.
266. *Subsection (1)* gives the Secretary of State the power to issue guidance. 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 assessing the impact of climate change and preparing those proposals and policies.
267. *Subsection (2)* means that the guidance will not apply to a reporting authority’s “devolved functions”. Section 70 sets out how to determine what a reporting authority’s “devolved functions” are – see the notes on that section for more detail.

Section 62: Directions by Secretary of State to prepare reports

268. This section allows the Secretary of State to require reporting authorities, individually or jointly with other reporting authorities, to prepare reports on adaptation.
269. *Subsection (1)* provides that the Secretary of State 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 functions;
 - a statement setting out the authority’s proposals and policies for adapting to climate change, 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.
270. *Subsection (2)* allows the Secretary of State to require two or more authorities to prepare a joint report. *Subsection (3)* allows the Secretary of State to give directions to the reporting authority about the timing of the report and the matters it should cover, and allows the Secretary of State to limit the report’s coverage to a particular geographical area.
271. *Subsection (4)* has the effect that the Secretary of State cannot require an authority to produce a report dealing with how it will adapt to the impact of climate change in relation to its “devolved functions” (defined in section 70 – see the notes on that section for more information). But the Secretary of State can require the report to cover all of the authority’s other, non-devolved, functions.

Section 63: Compliance with Secretary of State’s directions

272. This section requires any reporting authority issued with directions under section 62 to comply with them and sets out other details of how they must prepare their reports.
273. *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.
274. *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 Secretary of State:

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- 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; and
- any guidance issued by the Secretary of State under section 61.

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

275. *Subsection (4)* applies where the Secretary of State directs a reporting authority which has functions exercisable in or as regards Wales or which has “devolved Welsh functions” (as defined in subsections (6) and (7) of section 70). In those circumstances, the authority must also have regard, so far as is relevant, to:

- any guidance issued by the Welsh Ministers under section 66;
- the Welsh Ministers’ most recent report on climate change under section 80.

276. *Subsection (5)* requires a reporting authority to send a copy of its report to the Secretary of State. *Subsection (6)* requires the Secretary of State to publish the report in such manner as he considers appropriate, but subject to the exceptions in subsection (7). Under *subsection (7)*, the Secretary of State is not required to publish anything that he 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 he is prohibited from disclosing by any enactment.

277. *Subsection (8)* requires reporting authorities to have regard to their own reports in the exercise of all of their functions other than their “devolved functions” (see section 70 for the definition).

Section 64: Consent of, or consultation with, devolved authorities

278. This section deals with situations where one or more of the “devolved authorities” (as defined in section 70(3)) has an interest or is involved in a function covered by the Secretary of State’s guidance under section 61 or in directions given by the Secretary of State under section 62. For example, the Secretary of State may wish to issue guidance to reporting authorities in an area where he would normally only have the power to act with the consent of, or following consultation with, one or more of the devolved authorities; this section sets out the procedures the Secretary of State must follow.

279. *Subsection (1)* sets out two situations in which the Secretary of State is required to obtain the consent of a devolved authority before issuing guidance under section 61 or directions under section 62:

- 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 the devolved authority and a Minister of the Crown. 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 Secretary of State would be required to obtain the consent of the Welsh Ministers;
- the second situation, under paragraph (b), is where a function of a reporting authority relates to a function exercisable by a Minister of the Crown but only with the agreement of the devolved authority.

280. *Subsection (2)* sets out two situations in which the Secretary of State is required to consult a devolved authority before issuing guidance under section 61 or directions under section 62:

- the first situation, under paragraph (a), is where a devolved authority has a function which relates to a reporting authority’s function, but in exercising its function the

devolved authority is not required to do so jointly with a Minister of the Crown. This covers situations where a devolved authority 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 a Minister of the Crown which may only be exercised after consulting the devolved authority.

Section 65: Report on exercise of power to give directions

281. *Subsection (1)* of this section requires the Secretary of State to lay reports before Parliament setting out how he intends to exercise his powers under section 62.
282. *Subsection (2)* provides that the Secretary of State must state the circumstances in which he is likely to give directions to reporting authorities, and the authorities (or kinds of authorities) to whom directions should be given as a matter of priority; *subsection (3)* provides that this does not affect the Secretary of State's general discretion as to how he may exercise his power to issue directions.
283. *Subsection (4)* requires the Secretary of State to consult, as appropriate, persons likely to be affected by his report before he lays it before Parliament.
284. *Subsection (5)* requires the Secretary of State to lay his first report before Parliament within 12 months of the Act obtaining Royal Assent. *Subsection (6)* provides that subsequent reports must be laid before Parliament no later than the time he lays his adaptation programme under section 58 before Parliament (this means that there will be reports at least every 5 years).
285. *Subsection (7)* requires the Secretary of State to send a copy of each report to each of the other national authorities.

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;

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- 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;
 - 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.

Interpretation

Section 70: Interpretation

300. *Subsection (1)* of this section defines the term “reporting authority” as used in sections 61 to 69. The term covers any person or body with functions of a public nature (all public sector bodies, except those in subsection (2)) and persons who are, or are deemed to be, “statutory undertakers” under the relevant town and country planning legislation applicable in the different parts of the United Kingdom (for example, many utilities providers).
301. *Subsection (2)* expressly provides that some persons or bodies who would otherwise be covered are not “reporting authorities”, namely any Minister of the Crown, either House of Parliament, any devolved authority (as defined in subsection (3)) and any devolved legislature (as defined in section 97).
302. *Subsection (3)* defines the term “devolved authority”, for the purposes of sections 61 to 69 and this section, to mean:
- the Welsh Ministers, the First Minister or the Counsel General;
 - the Scottish Ministers, the First Minister, the Lord Advocate or the Solicitor General for Scotland; and
 - a Minister within the meaning of the [Northern Ireland Act 1998 \(c.47\)](#) or a Northern Ireland department.
303. *Subsection (4)* defines what is meant by a reporting authority's “devolved functions” for the purposes of sections 61 to 69 and this section. This term covers functions of a reporting authority which are already effectively governed (or are capable of being governed) by the devolved administrations or devolved legislatures, or where the

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devolved administrations have related functions, and where no related functions are retained by a Minister of the Crown. This provision includes flexibility so that it will continue to reflect the devolution settlements in the future (for example, if the National Assembly for Wales is given further legislative competence).

304. *Subsection (5)* sets out the situations where functions which are exercisable by a Minister of the Crown are not to be treated as preventing a reporting authority's function being a "devolved function" under subsection (4). Paragraph (a) covers situations where a Minister of the Crown only has a listed continuing or intervention function. Paragraph (b) covers situations where a Minister of the Crown is only required to agree to the exercise of a function by the devolved authority and paragraph (c) covers situations where a Minister of the Crown's only function is to be consulted by the devolved authority.
305. *Subsection (6)* defines what is meant by a reporting authority's "devolved Welsh functions". This term covers functions of a reporting authority which are already effectively governed (or are capable of being governed) by the Welsh Ministers or the National Assembly for Wales, or in relation to which the Welsh Ministers, the First Minister or the Counsel General have related functions.
306. *Subsection (7)* sets out some situations in which a reporting authority's functions are not to be treated as "devolved Welsh functions". These are situations in which the Welsh Ministers, the First Minister or the Counsel General have the function only of giving or withholding consent to exercise of functions by, or being consulted by, a Minister of the Crown.