

## Environment (Wales) Bill – Statement of Policy Intent

This document provides an indication of the current policy intention for the subordinate legislation, directions and guidance that the Welsh Ministers are empowered or required to make under the provisions of the Environment (Wales) Bill ('the Bill'). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with the Explanatory Memorandum and Explanatory Notes. Details of the Assembly procedure for each subordinate legislative power are set out in detail in chapter 5 of the Explanatory Memorandum, which was laid alongside the Bill on 11 May 2015..

The overarching aim of the Bill is to put in place legislation that will enable Wales' resources to be managed in a more proactive, sustainable and joined-up manner and to establish the legislative framework necessary to tackle climate change. The Bill supports the Welsh Government's wider work to help secure Wales's long term well-being, so that it benefits from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

Section	Description	Policy Intention
<b>Part 1 - Sustainable Management of Natural Resources</b>		
11 (2)	Provides the Welsh Ministers with the power to add, remove or amend a description of a person listed as a public body under section 11(1).	<p><u>Policy intent</u></p> <p>The public bodies listed in section 11(1) are subject to various requirements in Part 1. Section 12 of Part 1 provides that the Welsh Ministers may direct them to take steps as appear to them to be reasonably practicable to implement an area statement. Section 13 provides that they must have regard to guidance published by the Welsh Ministers on matters addressed in the area statements. Section 14 provides that they are under a duty to provide information or other assistance to Natural Resources Wales (NRW) if NRW asks them.</p> <p>Section 11 (2) provides for the Welsh Ministers, by regulations, to add to, remove or amend the list of public bodies in section 11(1).</p> <p>Section 11(5) provides that, before using these powers, the Welsh</p>

		<p>Ministers must consult with NRW, the person/body that would potentially be affected by the power and anyone else considered appropriate.</p> <p>The purpose of this power is to ensure that the list of bodies subject to the duties in Part 1 may be amended to take account of any organisational restructuring of public bodies in Wales, for example, where the functions of a public body are transferred to another body.</p> <p><u>Timing</u> Currently there is no intention to change the list but the power provides the flexibility to do so if needed.</p>
22(1)	Provides the Welsh Ministers with the power to suspend provision(s) in legislation, in relation to an application from NRW of that provision on a specific person, for the purpose of undertaking an experimental scheme.	<p><u>Policy Intent</u> This power enables a flexible approach to addressing any potential legislative barriers which may prevent new ways of working, and therefore prevent the realisation of the opportunity for furthering the sustainable management of natural resources.</p> <p>The power will only be used where NRW has submitted to the Welsh Ministers an application requesting that the Welsh Ministers use this power as NRW has identified a legislative barrier which prevents the trialling of a new approach via an experimental scheme. NRW will be required to provide detailed reasons on why the provision to be suspended creates a barrier and outline why the use of the power is necessary in order for them to undertake an experimental scheme.</p> <p>The Bill provides for an integrated approach, which considers the benefits received from ecosystems and the resilience of those ecosystems. Current legislation does not always provide for this approach. Trialling new techniques, approaches, methods or concepts may both enable the delivery of the objectives of legislation and also be in line with the approach proposed in the Bill. To ensure that the appropriate method for</p>

		<p>delivery is implemented, the power to undertake experimental schemes enables the trialling of new methods to identify the most appropriate method for particular situations. This approach also enables further understanding of the opportunity, risks, any unintended consequences from the application of the approach and what actions are needed to achieve change.</p> <p>These may include:</p> <ul style="list-style-type: none"> <li>Trialling approaches to identify best practice, which can be introduced as general binding rules. This approach may enable specific activities to be authorised without the requirement for a licence or permit (see case study)</li> <li>Trialling the potential of new methods in relation to designed restoration, creation or use of a particular resource as a mitigation measure which will help contribute to ecological resilience (e.g. woodland creation or streamside vegetation; peatland or wetland restoration; natural reed-bed filtration system);</li> <li>Trialling approaches which adapt or amend an existing (or a group of existing) licensed / permitted activities in order to achieve improved outcomes within a specific area (e.g. water catchment);</li> </ul> <p><u>Case Studies</u></p> <p>Examples of where the power may be used have been provided in Annex 1. These case studies illustrate how existing legislation may be blocking new approaches to be applied in order to deliver sustainable management of natural resources. These case studies provide examples for the Forestry Act 1967 and the Land Drainage Act 1991.</p> <p><u>Timing</u></p> <p>Only as and when an application has been submitted by NRW and the Welsh Ministers are satisfied that the suspension will contribute to the sustainable management of natural resources. As such the power will be</p>
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		<p>used as and when an application is submitted.</p> <p><u>Process</u></p> <p>In an application, NRW must identify a provision to be suspended in order for a proposed experimental scheme to be carried out and which will help to deliver sustainable management of natural resources.</p> <p>The provision to be suspended must relate to a function of NRW. It must be in relation to undertaking an experimental scheme and be for the purpose of contributing to the sustainable management of natural resources.</p> <p>It is intended that NRW will:</p> <ul style="list-style-type: none"> <li>Provide details on the proposed experimental scheme.</li> <li>Identify the appropriate provision within legislation and why this provision blocks an experimental scheme.</li> <li>Provide information on the parties involved in the experimental scheme.</li> <li>Identify how the suspension will assist in the sustainable management of natural resources.</li> <li>Provide information on how the scheme will be monitored.</li> </ul> <p>Under the Bill, the Welsh Ministers must will:</p> <ul style="list-style-type: none"> <li>Consult with any person to be affected by the suspension.</li> <li>Consider whether the proposal is necessary to enable an experimental scheme and to contribute to sustainable management of natural resources.</li> </ul> <p>The Welsh Ministers would also assess the implications in relation to compliance with EU legislation.</p> <p>The Welsh Ministers will then consider the proposed Order to temporarily suspend legislation through the affirmative procedure.</p>
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		<p><u>Key elements of the proposed subordinate legislation</u></p> <ol style="list-style-type: none"> <li>1. Identify provision which is a function for which NRW is responsible which is to be suspended.</li> <li>2. Whether provision is amended, modified or an exemption applies to a specific person.</li> <li>3. Duration of the suspension (not to exceed a period beyond three years).</li> </ol>
22(6)	Provides the Welsh Ministers with the power to revoke regulations made under section 22(1), where regulations are no longer needed.	<p><u>Policy intent</u></p> <p>This power will be used to remove any suspension of legislation under section 22(1) so that it reverts to its original draft.</p> <p><u>Timing</u></p> <p>This power would be used to revoke the regulations made under section 22(1).</p>
24 (1)	Provides the Welsh Ministers with the power to change the timing for preparation or publication of the State of Natural Resources report (SoNaRR) and the National Natural Resources report (NNRP).	<p><u>Policy intent</u></p> <p>Under section 7 of the Bill, NRW must publish a State of Natural Resources Report (SoNaRR), which contains an assessment of the state of natural resources in Wales, including an assessment of the extent to which the sustainable management of natural resources is being achieved in Wales. NRW are required to publish the first SoNaRR four months after section 7 of the Bill comes into force. The subsequent SoNaRR documents must be published before the end of the calendar year prior to the year when the Assembly election is held.</p> <p>Under section 8, the Welsh Ministers must prepare and publish the National Natural Resources Policy (NNRP), setting out their policies for contributing to achieving the sustainable management of natural resources in Wales. The Welsh Ministers are required to publish the first NNRP before the end of ten months starting with the day the section</p>

		<p>comes into force. The Welsh Ministers must review the NNRP after each Assembly election.</p> <p>Section 24(1) of the Bill gives the Welsh Ministers the power to change the timing for the preparation or publication of SoNaRR and NNRP. At present the timings align with those under the Well-being of Future Generations (Wales) Act 2015. For example, the production of NNRP is aligned with the development of the Welsh Ministers' well-being objectives and preparation of the Future Trends Report. The power provides flexibility to change the timings in future, including if the timings of requirements under the Well-being of Future Generations (Wales) Act 2015 change.</p> <p><u>Timing</u> There is currently no intention to make the regulations, but the power provides flexibility to do so if required.</p>
13(1)	Provides the Welsh Ministers with the power to issue guidance about steps that should be taken to address matters set out in an area statement. A public body must have regard to it in the exercise of its functions.	<p><u>Policy intent</u> Section 14(2) of the Bill provides public bodies with a duty to provide assistance to NRW in relation to area statements, if NRW asks them. The public bodies are listed in section 11(1).</p> <p>The guidance issued under section 13(1) would provide these public bodies with further information on how they can assist NRW in the implementation of an area statement. The guidance would help ensure that there is buy-in from other stakeholders at the local level to implement an area statement.</p> <p>The guidance could also cover the link with the requirements of the Well-being of Future Generations (Wales) Act 2015. For example, some of the public bodies will be statutory members of a Public Services Board and may assist in the implementation of an area statement through the</p>

		<p>preparation and delivery of local well-being plans.</p> <p>The guidance would also help to provide public bodies with advice on how they may deliver their functions in a way that can contribute to the sustainable management of natural resources through implementing an area statement, for example, by considering it in the development of their plans, programmes or strategies.</p> <p>Under section 12(1) of the Bill, the Welsh Ministers will have a power to direct a public body to take steps to implement an area statement. Therefore if the public body does not comply with the guidance issued under section 13(1), the Welsh Ministers could direct them to.</p> <p><u>Timing</u> It is intended that the guidance would be provided as soon as possible after the Bill receives Royal Assent.</p>
<b>Part 2 – Climate Change</b>		
30(1)	<p>This section requires the Welsh Ministers to outline one or more interim target years before 2050 and set a maximum amount of net Welsh emissions for each of those target year(s) as a percentage below the baseline.</p>	<p>This power enables the Welsh Ministers to develop and set interim targets based on the most up to date scientific and technical evidence at national, European and International level as well as draw upon advice from a specified advisory body. The power will enable the Welsh Ministers to develop and set interim targets, in order to provide an appropriate pathway to meet the 2050 target and provide the direction for carbon budgets.</p> <p>In relation to the power to make subordinate legislation in general the provisions ensure that future measures needed for the purposes of reducing emissions are flexible and can be introduced, if required, quickly in the light of experience and evidence without the need for primary legislation.</p>

		<p><u>Policy intent</u></p> <p>Interim targets are intended to guide the setting of carbon budgets in the medium term and to guide the rate at which carbon budgets are reduced to meet the long-term 2050 target. In the absence of interim targets the total cumulative emissions to the atmosphere are largely unrestricted. By setting interim targets the total cumulative emission permitted under a carbon budget system is set out to ensure short and medium term goals are met.</p> <p>Before using these powers, the Welsh Ministers must request advice from the Advisory Body on the setting of the targets as outlined in section 49 of the Bill and take the advice into account.</p> <p>The interim targets are set in secondary legislation to ensure that they are set at a level that is up to date with the latest scientific and technical evidence and that emissions reductions can be made at the most economically effective rate. Section 32(3) sets out the range of issues that must be taken in to account as an evidence base to inform the decision making when setting the targets such as the latest scientific knowledge about climate change and the most recent future trends report under the Well-being of Future Generations (Wales) Act 2015.</p> <p>Setting interim targets in advance recognises that it is not possible now to accurately forecast up until 2050 the range of factors which need to be taken into account regarding reducing Welsh greenhouse gas emissions. Some technologies or changes in plant need a long lead in time and some behaviours take time to change.</p> <p><u>Timing:</u></p> <p>The power to set an interim target will be used as soon as is reasonably practicable based on advice received from the advisory body and in</p>
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		<p>conjunction with the development and setting of the first two carbon budgets to ensure consistency.</p> <p>Any further use of the power to set any further interim targets will only be used if scientific and technical evidence, advice from the advisory body or reviews of progress on meeting the 2050 target indicate that a further interim target is required.</p> <p>.</p>
31(1)	<p>This section requires the Welsh Ministers to set carbon budgets, which set a maximum amount of emissions for each budgetary period. The budgetary periods are 2016-2020 and each succeeding period of five years.</p>	<p><u>Policy intent</u></p> <p>Section 31 (1) imposes a requirement on the Welsh Ministers to set carbon budgets, which set a maximum amount of emissions and guide the rate of emission reduction. The budgetary periods are 2016-2020 and then each succeeding period of five years up until 2050.</p> <p>The Welsh Ministers must set these budgets in advance with the first two budgetary periods, needing to be set before the end of 2018 and each subsequent budget will need to be set five years before the budget in question.</p> <p>Before using these powers, the Welsh Ministers must request advice from the Advisory Body on the setting of carbon budgets as outlined in section 49 of the Bill and take the advice into account.</p> <p>The budgets are set in secondary legislation to ensure that they are set at a level that is up to date with the latest evidence and that emissions reductions can be made at the most economically effective rate. Section 32(3) sets out the range of issues that must be taken in to account as an evidence base to inform the decision making when setting budgets such as the latest scientific knowledge about climate change, the most recent future trends report under the Well-being of Future Generations (Wales) Act 2015.</p> <p>Setting carbon budgets in advance recognises that it is not possible to</p>

		<p>accurately forecast now up until 2050 the range of circumstances and factors which may occur and effect (and therefore need to be taken into account) the ability to reduce Welsh greenhouse gas emissions. Some technologies or changes in plant need a long lead in time and some behaviours take time to change.</p> <p><u>Timing</u></p> <p>The budgetary periods are 2016-2020 and then each succeeding period of five years up until 2050. Section 31(4) requires the first two budgets to be set by 2018 and each subsequent budget to be set at least 5 years before the start of the budgetary period in question.</p> <p>The setting of the carbon budgets and wider emission reduction framework will be developed over time taking in to account the latest evidence base and advice from the Advisory Body.</p>
33(2)	Enables the Welsh Ministers to provide in regulations which carbon units can be credited to and debited from the net Welsh emissions account and how this can be done.	<p><u>Policy intent</u></p> <p>Regulations under section 33(2) are intended to define how the net welsh emission account can be credited and debited as a result of carbon trading schemes. The regulations will define what units will be permitted to count towards the net Welsh emissions account and how they are accounted for. The policy intention is to define how carbon credits that exist within the traded (EU-ETS) and non-traded sectors will be included within the net Welsh emissions account. By defining these provisions in regulation it is possible to retain flexibility to take into account future European and international practice in relation to carbon units. This power allows for flexibility in the future. It is possible that firms in Wales may participate in other such trading schemes. If the net Welsh emissions account is to take account of the units traded within such schemes, it will be necessary to define the terms by which this occurs.</p>

		<p><u>Timing:</u> This power will be used as and when required in order to retain flexibility to address any changes in relation to future European and international practice as well as to address any new trading schemes that may be introduced in the future.</p>
33(3) and 33(4)	Provides the Welsh Ministers with the power to limit the net amount of carbon units that may reduce the net Welsh emissions account for a period and allows the Welsh Ministers to specify carbon units that do not count towards the limit in section 33(3).	<p><u>Policy Intent</u> This power is intended to limit the degree to which carbon credits can be used to offset net Welsh emissions account in Wales and provides a means to ensure that action is taken domestically to reduce emissions within Wales.</p> <p>This power allows certain types of carbon units to be unrestricted in their use towards the Welsh emission target. This power will permit certain carbon units to be traded freely in Wales and ensures that section 33(3) does not restrict the operation of carbon schemes in Wales. For example, this power may specify that trading under a certain scheme can operate freely of any limit introduced by any regulations under section 33(3).</p> <p><u>Timing:</u> This power will be used as and when required in order to retain flexibility to address any scientific or technical evidence, European or international practice or advice from the advisory body.</p>
35 (1)	Enables the Welsh Ministers to make provision, by regulations, for a proportion of emissions from international aviation and international shipping to be attributed to Wales	<p><u>Policy intention</u> As international aviation and international shipping emissions are generally not directly emitted in a specific country, it may be necessary to specify how certain amounts of these emissions will be allocated to the Welsh emissions account. This allocation may also need to change over time, particularly if a European or international agreement makes such a change necessary in the future. There is no current international</p>

		<p>agreement on how to allocate these emissions to states. This power allows for flexibility in the future to take into account international aviation and international shipping emissions to the net Welsh emissions account. Providing for this inclusion through regulation allows the Net Welsh Emissions Account to be updated to reflect international reporting guidelines as agreements are reached on the approach to international aviation and shipping emissions.</p> <p><u>Timing:</u> This power will be used as and when required in the first instance after having received advice from the advisory body and in future in response to any European or international agreement that makes such a change necessary. There is no current international agreement on how to allocate these emissions to states.</p>
36(1)	Provides the Welsh Ministers with the power to define the meaning of Carbon Units in terms of reducing, removing and imposing an amount of greenhouse gas emissions.	<p><u>Policy intent</u> This power allows for flexibility in the future defining what “carbon units” are in line with wider practice.</p> <p><u>Timing:</u> As soon as reasonably practicable after receiving Royal Assent, having received advice from the advisory body.</p>
36(2)	Provides the Welsh Ministers with the power to establish a scheme, or use an existing scheme, for the registering and tracking of carbon units and for establishing and maintaining accounts in which carbon units may be held and between which they may be transferred.	<p><u>Policy intent</u> Regulations made under section 36(2) would establish a scheme for registering and accounting for the carbon units which are bought or sold or otherwise transferred in Wales. Such a scheme may be necessary to administer the trading of carbon units in Wales. The regulations may (under section 36(3)) allow the Welsh Ministers to amend an existing scheme to allow for such administration. In addition under section 36(4) the regulations may provide for a range of functions including the appointment of an administrator, conferral of functions on an appointed administrator, conferral of function on the Welsh Ministers and for the</p>

		<p>Welsh Ministers to delegate functions conferred or imposed on them through regulations.</p> <p><u>Timing</u> The intention is to use this power only if it is necessary to monitor the use of carbon units and at present it is not yet known whether such a scheme is necessary. However, if it does become necessary, these provisions allow such a scheme to be created.</p>
37(2)	Provides the Welsh Ministers with the power to amend, add or modify the list of greenhouse gases targeted by the Act section 37(1)	<p><u>Policy intent</u> This power allows for flexibility in the future to keep up to date with the latest climate science, particularly as the Bill is designed to be long-term. As climate change science is an evolving science, it may become necessary in the future to amend, modify or add new gases to the list of those covered by the targets in the Bill in line with international reporting guidelines, or the ambition of the Welsh Ministers. For example, hydrofluorocarbons and perfluorocarbons are families of gases; it is accepted practice to refer to them collectively but it may be appropriate in the future to describe individual gases within those families. The regulations would enable the Welsh Ministers to respond to these kinds of changes.</p> <p><u>Timing</u> This power will only be used in response to up to date scientific knowledge that indicates that a new greenhouse gas requires to be added to the list. This power enables flexibility to respond to developing science in this area.</p> <p>For example, in 2013 the Intergovernmental Panel on Climate Change added a new gas to the greenhouse gas protocol which increased the list of six target greenhouse gases to seven with the inclusion of nitrogen trifluoride. The timing of the Bill allows us to add this gas to the list of</p>

		greenhouse gases in the Bill.
38(3)	Provides the Welsh Ministers with the power to amend and modify the baseline year for a greenhouse gas outlined in section 38(2).	<p><u>Policy intent</u> This power allows for flexibility in the future to keep up to date with the latest climate science, particularly as the Bill is designed to be long-term. If a new greenhouse gas is added under section 37(2) a baseline year will need to be designated alongside the quantity of emissions for that year in order for it to be added to the net emissions account for the purposes of targets and budgets within the Bill. Furthermore, this provision allows for the chosen baseline year to be modified. This enables the Bill to remain up-to-date with international reporting guidelines, or the ambition of the Welsh Ministers, should evidence indicate that alternative baseline years should be adopted for existing gases listed under 38(2).</p> <p><u>Timing</u> This power enables flexibility to address any new scientific evidence or any changes in European and international practice which indicates that an amendment is required. Any such amendment would be based upon up to date evidence and advice from the advisory body.</p> <p>In relation to the addition of a greenhouse gas to the list, this power will only be used in response to up to date scientific knowledge that requires that a new greenhouse gas requires to be added to the list and therefore a baseline year has to be established. This power enables flexibility to respond to developing science in this area.</p>
44(1)	Provides the Welsh Ministers with the power to designate a person to be the advisory body	<p><u>Policy intent</u> Section 44(1) enables the Welsh Ministers to designate, by regulations, a person (to be known as the advisory body) to carry out the advisory functions set out in the Bill. In the absence of regulations made under section 44(1), the UK Committee on Climate Change established by the UK Climate Change Act 2008 will be the Advisory body.</p>

		<p>The Bill specifies what the advisory functions are in relation to the setting of interim targets, budgets and various other provisions and clarifies that these may include further advisory functions.</p> <p>This power allows for flexibility in the future as to which body or person carries out advisory functions under this Bill, particularly as the Bill framework is designed to be long-term. Should the Welsh Ministers identify a suitably qualified expert on climate change who can specialise/focus on Welsh emissions, they may wish to designate such an individual, as the advisory body for the purpose of Part 2 of the Bill.</p> <p><u>Timing</u> This power will only be used if and when a suitable body or individual can be identified as the advisory body. It is not intended to use this power immediately. In the absence of regulations designating a person, the UK Climate Change Committee is designated as the Advisory Body. This power allows for flexibility in the future as to which body or person carries out advisory functions under this Bill, particularly as the Bill is designed to be long-term.</p>
47	The provision gives the Welsh Ministers the power to give guidance to the Advisory Body.	<p><u>Policy intent</u> The Advisory Body has a key role in providing advice in relation to a number of provisions within the Bill. The science, technology and policy around climate change is constantly being developed and reviewed in light of the latest evidence.</p> <p>Section 47 allows the Welsh Ministers to give guidance to the Advisory Body. In certain areas of advice or analysis, it may be appropriate to give the Advisory Body guidance to ensure they take into account international or Welsh specific policies or practices such as the setting of standards, methods or approaches.</p>

		<p><u>Timing</u> The intention is not to provide guidance immediately but this power will enable the Welsh Ministers the flexibility to ensure that the advisory body is providing the most effective evidence and advice for reducing emissions in Wales.</p> <p>The science, technology and policy around climate change is constantly being developed and reviewed in light of the latest evidence. This provision allows flexibility in the future to keep up to date with the latest evidence to inform our decision making and to utilise the provision at a later date if appropriate.</p>
52	This section defines international carbon reporting practice in terms of the protocols to the United Nations Framework Convention on Climate Change, or other European or international arrangements or agreements which the Welsh Ministers specify by regulations.	<p><u>Policy intent</u> This power allows for flexibility in the future taking into account future European and international agreements and arrangements relating to “international carbon reporting practice” which is to be taken into account when acting under certain provisions of the Bill (see sections 43(4) and 51(2).</p> <p><u>Timing</u> This power will only be used in response to any developments in international carbon reporting and provides flexibility in order to address these developments. As such the power will only be used to add future European and international agreements and arrangements relating to climate change to the meaning of “international carbon reporting practice” which must be taken into account when acting under the provisions of Part 2 of the Bill.</p>
<b>Part 3 - Charges for Carrier Bags</b>		
55(1)	The Welsh Ministers have the ability to make regulations to place	<p><u>Policy intent</u> The intention of widening the scope of the Climate Change Act 2008 is</p>



	<p>a charges on different types of carrier bags, in addition to the charge already placed on single use carrier bags, and place a duty on sellers to apply the net proceeds of the carrier bags charge to both environmental and non-environmental good causes as specified in regulations.</p>	<p>twofold.</p> <p>The Welsh Government is taking the opportunity to replace the provisions in section 77 of, and Schedule 6 to, the Climate Change Act 2008 with a carrier bags regime for Wales which can be adapted in a flexible and targeted way through the use of regulations as evidence of need emerges. Provisions in Part 3 are broadly the same as those in Schedule 6 except that they will extend the Welsh Ministers' enabling powers so that they may make regulations to place minimum charges on different types of carrier bags as specified in the regulations and not just those intended for single use. This will allow Welsh Ministers to be responsive to changes in consumer behaviour and the demand for different types of bags, should future evidence identify that the supply and disposal of these types of carrier bags is to the detriment of the environment. If future evidence does identify that this course of action is necessary, the options for placing minimum charges on different types of bags would be consulted on and subject to a full and detailed impact assessment at that time, taking into account learning and experiences of other administrations in this area. In addition, any changes to the current regulations to include a minimum charge on other types of carrier bags would be subject to the affirmative process.</p> <p>Secondly section 57 of the Bill will impose a duty on sellers to apply the net proceeds of the carrier bag charge to good causes as specified in regulations. This will ensure that all of the net proceeds generated from the carrier bags charge will be donated to good causes and that there is consistency in practice by all sellers across Wales. As a consequence, sellers will no longer have the option of retaining the proceeds.</p> <p>The Bill no longer contains the limitation in paragraph 4A of Schedule 6 to the Climate Change Act 2008 which is that regulations may only provide for the net proceeds to be applied to environmental good causes. Sellers</p>
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		<p>may apply the net proceeds to any charitable purpose as will be specified in regulations. This amendment will ensure that when section 57 which requires sellers to apply the net proceeds of the charge to good causes comes into force, it will not disrupt the existing arrangements of those sellers who are currently donating the net proceeds to non-environmental good causes. Regulations could provide that sellers may apply the net proceeds to any charitable purpose or could specify the charitable purposes that may benefit.</p> <p><u>Timing</u> As stated above it is not the policy intention to amend the current regulations to place a minimum charge on other types of carrier bags until evidence does identify that this course of action is necessary. Work is currently ongoing to gather and analyse the current evidence available and this will also include the findings of the independent review on the single use carrier bags charge which is due to report in June this year. We are also considering the current learning and experiences of other administrations in this area and if, following the analysis of all of the evidence available, it is determined that a minimum charge should be placed on other types of bags. We will exercise the power to make Regulations.</p> <p>Regulations made under section 57 which apply the net proceeds of the charge to charitable purposes will come into force at the same time as this section is commenced in accordance with section 88(3)(a).</p>
<b>Part 4 - Waste Disposal and Collection</b>		
66 inserts a new section 45AA into the Environmental	Section 45AA(6): power of the Welsh Ministers to specify separation requirements in regulations, which are steps to be taken for the purpose of ensuring	<p><u>Policy intent</u> In relation to the powers in sections 45AA(6) and (7), sections 45AA(1) and (2) require local authorities responsible for arranging waste collection, and those (businesses) responsible for collection, transport etc. of waste, to carry out their functions in accordance with separation requirements</p>

<p>Protection Act 1990</p>	<p>the separation of different types of waste from each other or from other substances or articles.</p> <p>Section 45AA(7): Power of the Welsh Ministers to specify in regulations, the circumstances in which a separation requirement under section 45AA(6) is applicable.</p> <p>Section 45AA(10)(a): Power of the Welsh Ministers in regulations, to specify exceptions to the duties in sections 45AA(1) and (2) (collection etc of waste in accordance with separation requirements).</p> <p>Section 45AA(10)(b): Power of the Welsh Ministers to specify exceptions to the duty in section 45AA(4)(presentation of waste for collection in accordance with separation requirements).</p>	<p>specified in regulations under sub-sections 6) and (7). It is anticipated that the powers under subsections (6) and (7) may be used, amongst other things, to:</p> <ul style="list-style-type: none"> <li>specify the types of waste to be collected separately, and kept separate thereafter;</li> <li>specify acceptable levels of contamination within separately collected materials or other technical requirements appropriate to the separate collection, transport, treatment et.c of different types of waste;</li> <li>set out particular circumstances in which particular requirements apply;</li> <li>specify when the particular requirements come into effect.</li> </ul> <p>Materials such as recyclable paper, card, glass, plastic, metal, food and wood are currently being considered for separate collection. The technical requirements surrounding the collection of specified materials, particular circumstances and timings will be developed as part of the development of Regulations and statutory guidance.</p> <p>It is intended that the Regulator for these provisions will be Natural Resources Wales.</p> <p>The power in section 45AA(10(a)) is intended to be used to specify exceptions to the separate collection etc. duties in sections 45AA(1) and (2). It is anticipated that as policy develops, or when consultation takes place in relation to making regulations to specify separation requirements, it may become necessary to except certain as yet unidentified individuals or bodies, from the duties in subsections (1) and (2).</p> <p>The power in section 45AA(10(b)) is intended to be used in relation to section 45AA(4) which places a duty on occupiers of non-domestic premises in Wales, to present waste for collection in accordance with</p>
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	<p>Section 45AA(11): Power of the Welsh Ministers when exercising the enabling powers in sections 45AA(6), (7) and (10), to make different provision for different purposes, different cases (including different persons, premises or types of waste) and different areas.</p>	<p>separation requirements specified in regulations made under sections 45AA(6) and (7). Section 45AA(5) contains exceptions () to the duty in subsection (4) for domestic property and caravans. It is anticipated that, as for the duties under subsections (1) and (2), as policy develops, or when consultation takes place in relation to making regulations to specify separation requirements, it may become necessary to except certain as yet unidentified individuals or bodies, from the duties in subsection (4). In that event, the power in section 45AA(10(b)) can be used to make additional exceptions to those already set out in subsection (5).</p> <p>The power in section 45AA(11) is intended to be used in conjunction with the exercise of any or all of the enabling powers in subsections (6), (7) and (10). As the description of the power implies, it is intended to confer sufficient flexibility on the Welsh Ministers in exercise of the other enabling powers, to adapt the effects of regulations made under those powers, to take account for example, of individual circumstances, local conditions and requirements of proportionality, when making regulations.</p> <p>New section 45AB enables the Welsh Ministers to produce codes of practice to give practical guidance around the separation requirements. This would cover additional points of detail to assist those obligated by the regulations and the Regulator. Matters the codes could cover include preferred separate collection methods and the maximum levels of contamination in recyclate. Such codes of practice would be admissible in evidence in court proceedings</p> <p>It is intended that the Regulator for these provisions will be Natural Resources Wales</p> <p><u>Timing</u></p> <p>It is not intended that the Welsh Ministers will exercise any of the powers to make regulations in section 45AA, before January 2017.</p>
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<p>67 Inserts new section 34D into the Environmental Protection Act 1990</p>	<p>Section 34D(6)(a): Power of the Welsh Ministers to make provision in regulations, for the duty in section 34D(1) (prohibition on disposal of food waste to sewer) to apply only in specified circumstances.</p> <p>Section 34D(6)(b): power of the Welsh Ministers to specify in regulations, exceptions to the duty in section 34D(1), in addition to those in section 34D(2).</p> <p>Section 34D(6)(c): Power of the Welsh Ministers to amend the definition of food waste in section 34D(5).</p> <p>Section 34D(7): Power of the Welsh Ministers when making regulations under subsection (6)(a) or (b), to make different provision for different purposes, different cases (including different persons, premises or types of food waste)</p>	<p>Section 34D(1) prohibits occupiers of non-domestic premises in Wales, from disposing of food waste to the sewer. The prohibition, subject to statutory exceptions in subsection (2), applies to all such occupiers in all circumstances. The power in section 34D(6)(a) is intended to be used to specify circumstances in which the prohibition is to apply. Such circumstances may in future be identified as a result of policy development or future consultation. The power would be used to specify particular circumstances in which the prohibition may or may not apply, or to apply subject to variations, to take account of particular circumstances.</p> <p>Subsection (2) excepts domestic households and caravans from the duty in section 34D(1). As policy develops, or as a result of future consultation, further necessary exceptions may be identified. The power in section 34D(6)(b) is intended to be used in such circumstances, to permit the Welsh Ministers to make necessary exceptions.</p> <p>Food waste is defined in section 34D(5). As food processing and recovery technology changes, or as a result of future consultation or policy change, a necessity may arise to change the definition of “food waste” to which the prohibition in subsection (1) applies. The power in section 34D(6)(c) is intended to enable the Welsh Ministers to adapt the provision to such changes.</p> <p>The power in section 34D(7) is intended to be used in conjunction with the exercise of the enabling powers in subsections (6)(a) and (b). It is intended to confer sufficient flexibility on the Welsh Ministers in exercise of the other enabling powers, to adapt the effects of regulations made under those powers, to take account for example, of individual circumstances, local conditions and requirements of proportionality.</p> <p><u>Timing</u> It is not intended that the prohibition in section 34D(1) or associated</p>
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	and different areas.	regulations made under this section, will be brought into force before January 2017. It is likely that regulations will need to be made to support implementation of the prohibition after this date, although the precise content and extent of the supporting regulations will be determined later, following further policy development and consultation on the regulations themselves.
68 Inserts new section 9A into the Waste (Wales) Measure 2010	Section 9A(1) and (2): Power of the Welsh Ministers to make provision to prohibit or otherwise regulate the incineration of specified kinds of waste	<p><u>Policy intent</u> The policy intention is that otherwise recyclable materials are prohibited from being burnt at incineration plants in Wales.</p> <p>The regulations may, amongst other things:</p> <p>Specify materials to be banned from incineration plants in Wales. The Welsh Government is considering bans on recyclable materials such as uncontaminated paper and plastics.</p> <p>Amend Regulations made under the Pollution, Prevention and Control Act 1999, linked to the incineration of waste, for example, the Environmental Permitting (England and Wales) Regulations 2010. This is currently intended to be the first use of the enabling powers. The power will be used in order to amend the existing Environmental permitting Regulations, to prohibit, by way of the permitting regime, the incineration of specified materials. In time, free-standing Wales only regulations may be made in relation to prohibition of incineration of specified materials. These would, amongst other things:</p> <ul style="list-style-type: none"> <li>➤ Provide for offences for failure to comply with the ban.</li> <li>➤ Provide for penalties for failure to comply with the ban, including criminal and civil sanctions</li> <li>➤ Provide for Appeals against civil sanctions.</li> <li>➤ Provide for regulators and their functions. The Welsh Government intends Natural Resources Wales (NRW) to regulate this</li> </ul>

		<p>provision. NRW permit and inspect existing facilities in Wales and it is anticipated that the prohibition would be regulated via this system.</p> <p><u>Timing</u> It is not intended that the new section 9A, or regulations made under the powers in it, will come into force before January 2017.</p>
<b>Part 5 - Fisheries for Shellfish</b>		
72	<p>Enables the Welsh Ministers to require any person that applies for an Order under section 1 (via new sub-sections 2A and 2B) of the Sea Fisheries (Shellfish) 1967 Act to provide any information that the Welsh Ministers consider necessary in order to consider such an application.</p>	<p><u>Policy intent</u> Subsections 1(2A) and 1(2B) of the 1967 Act will enable the Welsh Ministers to:</p> <p>Specify the form and manner in which an application for a Shellfishery Order must be made, without the need to make subordinate legislation for that purpose. At present, the application form which must be used is set out in the Several and Regulating Fisheries (Form of Application) Regulations 1987 (S.I. 1987/217). However, the information which needs to be provided in relation to each such proposed fishery will be determined on a case by case basis and a requirement to specify that information in a Statutory Instrument is, consequently, undesirably inflexible.</p> <p>Require any person that applies for an Order under section 1 of the 1967 Act to provide any information that the Welsh Ministers consider necessary (which could include environmental information) in order to consider such an application. The information which will be required in relation to such applications will be considered and determined on a case by case basis.</p> <p><u>Timing</u> Orders will be made on an ad-hoc basis when applications are received.</p>

73	Requires the Welsh Ministers to ensure that an Order made under section 1 (via new sub-section 5A) of the Sea Fisheries (Shellfish) 1967 Act includes any provisions considered appropriate to prevent harm to any EMS or to otherwise protect the marine environment	<p><u>Policy intent</u> Section 73 ensures that when deciding whether to grant such an Order, the Welsh Ministers consider the possibility of a European Marine Site (EMS) or the marine environment being harmed by the granting of the Order and to attach conditions to avoid such harm from occurring.</p> <p><u>Timing</u> Orders will be made on an ad-hoc basis when applications are received.</p>
74	Provides the Welsh Ministers with the new power (via new section 5(B) of the Sea Fisheries (Shellfish) Act 1967) to serve a Site Protection Notice on the Grantee of a Shellfishery, requiring them to take action or operate their fishery in the manner specified in the Notice.	<p><u>Policy intent</u> Section 5 of the 1967 Act allows the Welsh Ministers to determine a several or regulating fishery if certain matters are occurring (for example, the Grantees are not properly cultivating the relevant fishery).</p> <p>The main scenario where the new Site Protection Notice power would be used is where a several or regulating Order has been granted and it later transpires that the normal operation of that fishery was threatening to, or actually, causing harm to an EMS.</p> <p>The new Site Protection Notice power provides greater flexibility to the Welsh Ministers in the management of the operation of such shellfisheries in order to ensure that the Welsh Ministers can take action quickly where such a fishery is being operated properly but damage to an EMS could still result (or has resulted) from the same.</p> <p>This new power will ensure that the Welsh Ministers are able to comply with their obligations under the Habitats Directive.</p> <p><u>Timing</u> Notices will be issued an ad-hoc basis when circumstances require.</p>



75	Provides the Welsh Ministers with the new power (via new section 5E of the Sea Fisheries (Shellfish) Act 1967) to, in certain circumstances (where a Site Protection Notice has been served), vary or revoke Shellfishery Orders, made under section 1 of the 1967 Act, in order to protect a European marine site.	<p><u>Policy intent</u> This power can only be used to vary or revoke a Shellfishery Order (made under section 1 of the Sea Fisheries (Shellfish) Act 1967) in order to ensure that the terms of that Order reflect the terms of the Site Protection Notice issued under section 74 of the Bill.</p> <p><u>Timing</u> On an ad-hoc basis when circumstances require.</p>
<b>Part 6 - Marine Licensing</b>		
78	Where the Welsh Ministers are the appropriate licensing authority, enables the appropriate licensing authority, to charge fees for monitoring an activity authorised by a marine licence, assessing and interpreting the results of any monitoring of an activity authorised by a licence as well as fees for dealing with an application by the licensee for a variation, suspension, revocation or transfer of marine licences.	<p><u>Policy intent</u> These provisions are being inserted into the Marine and Coastal Access Act 2009 (MCAA).</p> <p>The functions for the appropriate licensing authority have been delegated to Natural Resources Wales (NRW), who administers the marine licensing system in Wales.</p> <p>Part 6 will supplement existing charging powers at section 67 of the MCAA so as to enable NRW to charge fees for a broader range of functions that they undertake as the appropriate licensing authority. This includes the ability to charge fees in relation to monitoring the activities authorised by a marine licence and licensee requested variations, transfers, suspensions and revocations.</p> <p>These fees are to be determined by or in accordance with regulations made by the Welsh Ministers in its capacity as licensing authority. Fees and charges applied will be based on the principle of full cost recovery.</p>

		<p>Fees for an application for a marine licence (as opposed to fees for monitoring, variation, transfer etc.) are currently set by type of activities and are generally set out in bands. Fees range from £127 for small scale construction activities through to £38,650 for large scale renewable energy projects.</p> <p>There are some monitoring fees currently in place for projects which are subject to Environmental Impact Assessment (EIA), ranging from £535 - £32,625 per annum, depending on the size and type of project. A Fees Review, followed by a public consultation, will establish fees for all types of licensable activities to recover costs of the marine licensing process. Subject to the outcome of the review there are a number of models that may be adopted to set marine licensing fees for example fixed banded fees or hourly rates.</p> <p>If a fee is not paid for varying, suspending, revoking or transferring a licence, the licensing authority may refuse to proceed with the application completely or until the matter is resolved.</p> <p>This section also enables the licensing authority, if it carries out any investigation, examination or test which in its opinion is necessary or expedient to enable it to determine an application by a licensee for a variation, suspension, revocation or transfer of a licence under section 72, to require the licensee to pay a fee towards the reasonable expenses of that investigation, examination or test (see subsection (6) of proposed section 72A of the MCAA). Given the ad hoc and project specific nature of these fees they will not be set within subordinate legislation.</p> <p>Where fees under provisions of this Bill are required to be set out in Regulations, it is anticipated that the 2011 Regulations will be updated, by the Welsh Ministers, using existing regulation making powers alongside the new Regulation making powers contained in the Bill to produce one</p>
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		<p>statutory instrument setting out all marine licensing fees. Fees will be set following a fees review and public consultation.</p> <p><u>Timing</u> The intention is to introduce a new marine licensing fees and charges regime by the end of 2016. As such, all necessary secondary legislation will need to be brought into force at that time.</p>
79	<p>This section enables the licensing authority to charge a deposit on account of a fee, require payment in advance and the power to waive or reduce a fee.</p>	<p><u>Policy intent</u> These provisions are being inserted into the MCAA.</p> <p>This section makes provision enabling the licensing authority to charge a deposit on account of a fee, require payment in advance and the power to waive or reduce a fee.</p> <p>This section requires that deposit amounts are to be determined by or in accordance with regulations made by the licensing authority (these functions are not delegated to NRW). The Regulations may also set out how and when a fee or deposit is to be paid.</p> <p>Current marine licensing fees are set out in the Marine Licensing (Application Fees) (Wales) Regulations 2011. It is anticipated that the 2011 Regulations will be updated, by the Welsh Ministers, using existing regulation making powers alongside the new Regulation making powers contained in the Bill, to produce one statutory instrument setting out all marine licensing fees and deposits. Fees and deposits will be set following a fees review and public consultation.</p> <p>If a deposit is not paid when required in relation to monitoring of an existing licence, the licensing authority may vary, suspend or revoke a licence.</p>

		<p>If a deposit is not paid when required in relation to an application to vary, suspend, revoke or transfer a licence, the licensing authority may refuse to proceed with the application completely or until the matter is resolved.</p> <p>Notwithstanding any action taken as set out above in response of a non payment, the non payment of a fee or deposit may be recovered by the licensing authority as a civil debt.</p> <p><u>Timing</u> The intention is to introduce a new marine licensing fees and charges regime to include deposits by the end of 2016. As such, all necessary secondary legislation will need to be brought into force at that time.</p>
80	<p>This section makes provision to require the Welsh Ministers, by Regulations, to provide an appeal mechanism against a notice issued to vary, suspend or revoke a marine licence as a result of the non-payment of a fee or a deposit charged in relation to monitoring an activity authorised by a marine licence or assessing and interpreting the results of any monitoring of an activity authorised by a marine licence..</p>	<p><u>Policy intent</u></p> <p>These provisions are being inserted into the MCAA.</p> <p>The provision requires the Welsh Ministers to make regulations to provide for an appeal mechanism against the imposition of notices to vary, suspend or revoke a licence, as a result of the non payment of fees or a deposit in relation to the monitoring of an activity authorised by a marine licence or assessing and interpreting the results of any monitoring of an activity authorised by a marine licence,. The procedure for appeals against notices issued under sections 72, 90, 91, 102 and 104 of the MCAA is currently set out in the Marine Licensing (Notice Appeals) (Wales) Regulations 2011. Appeals are made to the First-tier Tribunal, in accordance with those Regulations. It is anticipated that the same approach will be adopted for notices relating to non payment of monitoring fees. The existing Regulations will be amended to bring the necessary changes into effect.</p>

		<p><u>Timing</u></p> <p>The intention is to introduce a new marine licensing fees and charges regime by the end of 2016. As such, all necessary secondary legislation will need to be brought into force at that time.</p>
<b>Part 7 – Miscellaneous and General</b>		
82	Enables the Welsh Ministers to make decisions on membership and payments relating to new Flood and Coastal Erosion Committee.	<p><u>Policy intent</u></p> <p>These provisions are being inserted into the Flood and Water Management Act 2010. The policy intent is to establish a committee to provide advice on flood and coastal erosion risk management to the Welsh Ministers, to be known as the Flood and Coastal Erosion Committee. The advice provided by this committee will be based on information from different risk management authorities in Wales and cover all sources of flooding. The current committee, Flood Risk Management Wales, will be abolished.</p> <p>This provision will enable the Welsh Ministers to make regulations regarding the membership of the committee (including the number of members, conditions of eligibility for appointment, and the method for selection and appointment). The Welsh Ministers will also make provision about the proceedings of the committee (including quorum and the nature and extent of a majority required for specified purposes) and for the payment of the chair of the committee and the payment of allowances to committee members.</p> <p><u>Timing</u></p> <p>Regulations will need to be made immediately in order that the new committee is created as soon as possible and the current committee abolished.</p>

## **Section 22: Power to suspend statutory requirements for experimental schemes: Case Studies**

The following are some potential examples of how the suspension power provided in section 22 of the Environment (Wales) Bill may be used. These are merely illustrative examples and not proposals for suspension.

The detail of any proposal would need to be worked through, for example to avoid unintended consequences in relation to other permitting or licensing regimes (including of course where those are implementing European obligations in Wales (e.g. licensing of activities by NRW under the Conservation of Habitats and Species Regulations 2010)).

### **A. FORESTRY ACT 1967**

#### **1. Section 1(3A) – Balancing Duty**

##### **1.1 Achieving a ‘Reasonable Balance’ in relation to the exercise of forestry functions**

This case study provides an example of how a temporary suspension of section 1(3A) could enable an experimental scheme. Section 1(3A) provides:

*In discharging their functions. . . the [appropriate forestry authority] shall, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between—*

*(a) the development of afforestation, the management of forests and the production and supply of timber [, the production and supply of timber and, in Scotland, the delivery of the climate change targets], and*

*(b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.*

The appropriate forestry authority in Wales is Natural Resources Wales (NRW).

This subsection requires NRW to discharge its functions while endeavouring ‘to achieve a reasonable balance’ between the afforestation and the management of forests for the production and supply of timber, and the ‘conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest’.

**An experimental scheme would enable NRW on behalf of Welsh Ministers, to test the suspension of the ‘balancing duty’ in order to trial a different approach to managing Welsh Government Forestry Estate in line with the sustainable management of natural resources.**

## 1.2 Reasons:

While the balancing duty suggests that a trade-off is required between economic and conservation considerations in relation to the Welsh Government Woodland Estate, it does not recognise the value of ecosystem services. Therefore the duty may act as a blockage to NRW fully undertaking its role in relation to the sustainable management of natural resources and in applying the principles in the exercise of their functions.

## 1.3 Scheme:

An experimental scheme could involve, for example, temporarily suspending the section 1(3A) to enable NRW to continue its ongoing work on recreation, education and community engagement on the forestry estate, which would aim to maximise the multiple benefits of the woodland estate for society, the economy and the environment. A scheme of this kind would inform how NRW's forestry functions could be best extended to reduce the risk of challenge that may come with the balancing duty as currently worded.

In addition, the balancing duty may not enable targeted action in relation to carbon storage.

For example in relation to Scotland, this part of the Forestry Act enables afforestation to 'deliver climate change targets'. There is no equivalent provision for England or Wales. This may be an important tool in relation to the new targets provided in Part 2 of the Bill.

## 1.4 Potential conflicts with NRW's new purpose:

- Considering multiple benefits provided by ecosystems;
- Take account of the benefits and intrinsic value of natural resources and ecosystems;
- Take account of the short, medium and long-term consequences of actions.

## 2. Section 9(1) – Felling Licences

This case study provides an example of how a temporary suspension of section 9(1) may assist an experimental scheme. Section 9(1) states:

*A felling licence granted by the [appropriate forestry authority] shall be required for the felling of growing trees, except in a case where by or under the following provisions of this Part of this Act this subsection is expressed not to apply.*

The appropriate forestry authority in Wales is NRW.

### 2.1 The current situation

NRW uses the UK Forestry Standard as the basis against which forestry proposals, including felling licences are approved. Felling licences are issued for both felling and thinning of trees. For the former, NRW are able to apply restocking conditions which ensure that woodland cover is maintained. These conditions are prescribed

within the Act. Under the legislation NRW has powers to enforce restocking conditions where the licence is not complied with.

The UK Forestry Standard sets out the UK Government's approach to sustainable forestry and delivers a balance between the interests of forestry as a commercial business on one hand, and safeguarding environmental and other public benefits on the other hand.

Many woodlands in Wales are certified under the UK Woodland Assurance Standard (UKWAS). UKWAS exists to provide a practical basis for certification schemes to operate in the UK. The UKWAS standard is essentially an audit protocol or check-list, and it is endorsed by both the major international certification schemes, FSC and PEFC.

The UKWAS check-list is derived from two principal sources: the requirements of the UKFS, (which are necessary for forestry proposals to be approved in any case), and the requirements of the international certification schemes.

## **2.2 The Suspension Power**

The suspension power could be used to explore how an 'earned recognition' exemption from some felling licences as required by Forestry Act 1967 might be desirable.

## **2.3 Potential Schemes**

### Thinning licences

Certified woodlands in Wales must meet UKFS, so an assessment of proposals by NRW and the need for it to issue a felling licence for thinning operations may be an additional burden in some situations where woodlands are certified and therefore being managed to UKFS standards.

An experimental power would enable NRW on behalf of the Welsh Ministers, to test an exemption for thinning in certified woodlands, with a records management system to monitor activity.

### Clear Felling licence conditions

All certified woodlands must have management planning documentation which meets the requirements set out in UKWAS, and therefore the principles of FSC and/or PEFC. These will specify how the woodland management across the whole woodland meets the standards of sustainable forest management and therefore requires the woodland to be restocked or regenerated in accordance with those principles. One restriction of felling licences is that restocking conditions are set at a "licence by licence" scale, and therefore apply UKFS at that scale rather than at the forest scale. Also there are burdens on both NRW and owners in relation to time taken to ensure that the owner agrees with the conditions.

**Under an experimental power, NRW would be able to test on behalf of Welsh Ministers, allowing conditions for felling licences in certified woodlands to be adapted to simply state 'restocking as per the FCS/PEFC approved management planning documentation'. NRW would still issue the licence, due to the checks required in UKFS such as acidification implications but could**



take a light touch to restocking proposals. The requirement for the owner to agree the proposals could be removed, as he/she would be a party to the approved management plan.

## 2.4 Delivering sustainable management of natural resources

Lifting regulatory burdens on persons managing forestry sustainably in accordance with UKFS and UKWAS;  
Promoting sustainable forest management by incentivising compliance with UKFS and UKWAS certification;  
Improving regulating services provided by ecosystems;  
Improving supporting services provided by ecosystems;  
Improving provisioning and cultural services provided by ecosystems

## B. LAND DRAINAGE ACT 1991

### 3. Section 23 – Consent Requirements

This case study provides an example of how a temporary suspension of section 23(1) may assist an experimental scheme. Section 23(1) states:

*No person shall—*

*(a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or*

*(b) erect a culvert in an ordinary watercourse, or*

*(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse,*

*without the consent in writing of the drainage board concerned.*

### 3.1 Operation of section 23

Each consent is assessed on the impact the obstruction may have on the watercourse and the impact further down the watercourse, where there are a number of obstructions e.g. grip blocks, as each obstruction may be in different part of the watercourse, the impact of the one obstruction at one point in a watercourse may be very different to the impact of another obstruction at another point in the watercourse.

Under the LDA, a contravention of the requirement for consent is classed as a nuisance. Section 24(1) states:

*If any obstruction is erected or raised or otherwise altered, or any culvert is erected or altered, in contravention of section 23 above, it shall constitute a nuisance in respect of which the drainage board concerned may serve upon such person as is specified in subsection (2) below a notice requiring him to abate the nuisance within a period to be specified in the notice."*

An IDB (where the land is within an internal drainage district) or local authority where it is not in an IDD may issue a notice to a person to stop the nuisance within

specified period of time (s24(1), LDA 1991). If a person does not comply with the notice or acts in contravention of the notice, the drainage board may remove the works and recover the costs of the removal (s24(4), LDA 1991). Further they may be liable to a fine (s24(3)).

Under the LDA a drainage board is:

- a) in relation to a watercourse in an internal drainage district – it is the IDB – for the majority of IDD's, NRW are therefore the drainage board for all of the IDD's in Wales;
- b) in relation to a watercourse in an area outside and IDD – it is the lead local flood authority (i.e. the local authority) as defined in s6 of the Flood and Water Management Act 2010.

### **3.2 Potential Scheme in relation to grip blocking**

Grip blocking is the practice of creating small dams across a ditch or “grip” to retain water in areas of previously drained land, usually peat-bogs. It is an important tool in facilitating the rewetting of upland areas for peat restoration, carbon storage and slowing down the release water into ordinary and main river system.

To identify situations where the application of best practice can be applied in relation to the use of grip blocks without the need of a consent. To assess what best practice approaches are appropriate and effective. This would be where NRW are the party undertaking the scheme on the land that they either own or manage.

### **3.3 Suspension power**

The power could be used to remove the requirement for consent for the installation of grip blocking under an experimental scheme where NRW is the applicant. This would ensure that NRW were not therefore subject to a contravention under section 24.

### **3.4 Assisting sustainable management of natural resources**

Improving regulating services provided by ecosystems, in particular peatbogs to provide carbon storage;

Improving regulating services provided by ecosystems, in particular in relation to assisting flood alleviation;

Improving supporting and cultural services provided by ecosystems, in particular rewetting of upland areas.